

**MANILA ELECTRIC COMPANY, PETITIONER, VS. THE HONORABLE
INTERMEDIATE APPELLATE COURT AND ELPIDIA, FELICIDAD,
ISABEL, JOSE, EUGENIA, AQUILINA, CONSUELO AND NATIVIDAD,
ALL SURNAMED...**

G.R. No. 71393. June 28, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition to review by way of an appeal by certiorari under Rule 45 of the Rules of Court the decision of the Intermediate Appellate Court (now Court of Appeals), dated April 12, 1985 (p. 36, Rollo) affirming in toto the decision of the lower court, holding petitioner Manila Electric Company ("MERALCO," for brevity) liable to private respondents Elpidia, Felicidad, Isabel, Jose, Eugenia, Aquilina, Consuelo and Natividad, all surnamed Leyva and Eduarda Vda. de Leyva ("LEYVAs," for short) for damages and compensation, and its Resolution, dated June 28, 1985, denying petitioner's Motion for Reconsideration.

Based on the respondent court's decision, the facts of the case are as follows:

Nazario Crisostomo and Maria Escusar owned a parcel of land with an area of 5,216.60 square meters, situated in Cainta, Rizal at the corner of Ortigas Avenue and the road leading to the town center of Cainta, covered by O.C.T. 4416, issued in 1931. Upon the death of both, the property passed on to their daughter Bibiana Crisostomo Vda. de Eladio Leyva, whose title was evidenced by TCT 8144. Ultimately, the property was inherited by the LEYVAs who were the children of Bibiana.

Prior to the issuance of OCT 4416, in the name of Nazario Crisostomo between 1929 and 1930, MERALCO erected thereon two transmission steel towers numbered 86 and 87, later renumbered 76 (situated in Lot 1-K, which is owned in common by the LEYVAs and covered by TCT No. 297168) and 77 (situated in Lot 2-V-6, which is also owned in common by the LEYVAs and covered by TCT No. 338524), (par. 3, Partial Stipulation of Facts, quoted in CA Decision, p. 39, Rollo). In 1931, when O.C.T. 4416 was issued, no encumbrance was annotated thereon.

On August 4, 1973, the LEYVAs sued MERALCO for damages and sum of money with prayer for attorney's fees and exemplary damages for its continued use of the LEYVAs' property, claiming that the property became off-limits because of the high voltage of electric current running in the cable lines.

In its answer, MERALCO claimed that it had acquired a grant from the original owner of the land, Nazario Crisostomo, for a perpetual easement of right of way for the erection and operation of the transmission steel towers for which it had paid Crisostomo the total sum of \$12.40. Moreover, even without the grant of perpetual easement, the LEYVAs' complaint is deemed barred by prescription and laches, because of MERALCO's open, continuous and uninterrupted enjoyment of the easement for a period of 43 years.

MERALCO did not present any proof regarding the alleged contract/grant with Nazario Crisostomo. Instead, it

presented a deposition of a certain Leland Gardner, a retired MERALCO field auditor, who testified on the alleged payment by MERALCO of the sum of \$12.40 for the grant of right of way, claiming thus, that in the absence of the original document, Leland's deposition must be admitted as secondary evidence of an original document, pursuant to Sec. 4, Rule 130 of the Rules of Court.

The lower court decided in favor of the LEYVAs, as follows:

"WHEREFORE, in view of the foregoing premises, this Court rules against the defendant MERALCO and finds MERALCO LIABLE TO PLAINTIFFS as follows:

"1) the total sum of Two Hundred Thousand Pesos (P200,000.00) as temperate damages suffered by the plaintiffs for the entire period starting the year 1930 up to 10 August 1973.

"2) the amount of Six Thousand Pesos (P6,000.00) as annual of (sic) yearly compensation for loss of use and deprivation of opportunity to profit and benefit from their lands to be computed from August 11, 1973, the date of filing of the complaint and computed for the same amount annually thereafter;

"3) the legal rate of interest of all the foregoing sums in addition thereto computed from the date of this Decision;

"4) the amount of Ten Thousand Pesos (P10,000.00) as and for attorney's fees in favor of the plaintiffs;

"5) the cost of suit;

"In addition, the counterclaim filed by defendant MERALCO is hereby ordered dismissed for lack of basis and merit;

"Finally, there is no pronouncement as to exemplary damages against any party.

"SO ORDERED" (pp.36-37, Rollo).

MERALCO appealed, assigning the following errors:

"I

THE TRIAL COURT ERRED IN NOT HOLDING THAT APPELLANT ACQUIRED BY TITLE AN EASEMENT OF RIGHT OF WAY OVER APPELLEES' PROPERTY.

"II

ASSUMING ARGUENDO THAT APPELLANT DID NOT ACQUIRE THE EASEMENT BY TITLE, THE TRIAL COURT ERRED IN NOT HOLDING THAT APPELLANT ACQUIRED THE EASEMENT BY PRESCRIPTION.

"III

THE TRIAL COURT ERRED IN NOT DECLARING THAT APPELLEES' CAUSE OR CAUSES OF ACTION, IF ANY, HAVE PRESCRIBED OR HAVE BEEN BARRED BY LACHES.

"IV

THE TRIAL COURT ERRED IN AWARDING TEMPERATE DAMAGES AND ANNUAL COMPENSATION TO APPELLEES FOR PURPORTED 'LOSS OF USE AND DEPRIVATION OF OPPORTUNITY TO PROFIT AND BENEFIT FROM THEIR LANDS.'

"V

THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES IN FAVOR OF APPELLANT" (pp. 37-38, Rollo.)

Respondent court affirmed the decision in toto.

The only issue to be resolved in this case is whether or not MERALCO acquired a perpetual easement of right of way, over subject property.

Respondent court has ruled out the existence of a contract to support MERALCO's claim and consequently, its absence renders the inadmissibility of the Gardner deposition as secondary evidence based on Sec. 4, Rule 130 which provides as follows:

"SEC. 4. Secondary evidence when original is lost or destroyed. — When the original writing has been lost or destroyed, or cannot be produced in court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses."

We agree with respondent court. It is a rule that "before a party can be permitted to introduce secondary evidence of the contents of a written instrument, satisfactory proof must be made of the former existence of the instrument and this necessarily involves proof of its proper execution or genuineness." (V. Francisco, Revised Rules of Court, Ann., Vol. VII, p. 132, 1973 Ed.).

Respondent court quotes portions of the Gardner deposition (pp. 40-42, Rollo):

"8. Q: Were these grants of right of way public instruments or merely simple statements?

"A: In my judgment, they were not public documents, as it is doubtful if they were recorded in any deeds. They were written statements (p. 2, Answers to Cross-Interrogations).

xxx xxx xxx.

"81. Q: Does the defendant MERALCO still have copies of the written grant of right of way executed by Nazario Crisostomo?

"A: No more.

"82. Q: Why does not defendant Meralco have any more copies?

"A: All the copies of the grant were burned during the war.

"83. Q: Where does Meralco usually place said copies?

"A: In the files of the accounting department.

"94. Q: What efforts, if any, did you exert to locate copies of this particular grant of right of way?

"A: We have exerted diligent and extensive effort, {pp. 9-10 of the deposition)

xxx xxx xxx

"40. Q: From whom did you get the date for the entries made in Exhibit'I-D'?

"A: From the receipts signed by the owners of land granting the right of way through the personnel of the right of way department. Such receipts covered the money paid as shown under the heading in the report 'amount' — all the other items covered expenses of Meralco.

"41. Q: When were these data given to you?

"A: Sometime after the transaction to which they refer.

"42. Q: Why were these datas (sic) given to you?

"A: It was routine — being done at that time as part of the standard operating procedure.

"43. Q: What, if any, did you do with such data after you received it?

"A: The date (sic) was sent to Manila Office which was later entered in this report, (p. 5 of his deposition)

"52. Q: Why were such amounts paid to the persons listed in Schedule 16?

"A: The amounts were paid to these persons in consideration for the grant of a right of way for the erection and maintenance of the steel tower.

"53. Q: Do you know who made payment to the persons listed in Schedule 16?

"A: The personnel of the right of way department.

"54. Q: What participation, if any, did you have in making payments to the persons listed in Schedule 16?

"A: I did not personally make the payments." (pp. 6-7, Deposition) (pp. 40-42, Rollo)

The foregoing testimony does not constitute evidence of a contract much less its execution. To quote counsel for the LEYVAs in his Comment (p. 93, Rollo):

"In point of fact, there is no evidence that Nazario Crisostomo ever executed the alleged grant. Leland Gardner, in his deposition, never stated positively that there was an alleged grant of right of way by Nazario Crisostomo. What he saw was the receipt supposedly signed by Nazario Crisostomo for \$7.50 allegedly paid for the erection of the two towers, which receipt was secured by "someone" from the right of way department and filed by that "someone" with the Manila office. Because of this receipt which Leland Gardner saw in the Manila Office, he assumed that Nazario Crisostomo executed a grant of right of way in favor of Meralco because according to him it was standard operating procedure to require the execution of the grant of right of way after payment of the consideration for the erection of the towers. In other words, Leland Gardner who was

not present when the receipt was signed by someone purporting to be Nazario Crisostomo, assumed that it was truly the signature of Nazario Crisostomo, and because of the said receipt he further assumed that the real Nazario Crisostomo executed a grant of right of way in favor of Meralco. It is an assumption based on another assumption x x x."

Alternatively, MERALCO claims that in the absence of a grant or contract to support its title to the grant, it nonetheless acquired title by prescription because it had been in possession of the property since 1930 or for over 43 years.

Again, respondent court correctly ruled that:

"x x x. There being no evidence that the original use of the property in question by Meralco was based upon any express grant of a fee to the said property, or of an easement of right of way nor that it began under the assertion of a right on its part, the presumption must be that the origin of the use was the mere tolerance or licence of Nazario Crisostomo. Thus, in *Cuaycong vs. Benedicto* (37 Phil. 781, 792-793) it was held:

'It is a fundamental principle of the law in this jurisdiction concerning the possession of real property that such possession is not affected by acts of a possessory character which are 'merely tolerated' by the possessor, or which are due to his license (Civil Code, Arts. 444 and 1942). This principle is applicable not only with respect to the prescription of the dominium as a whole, but to the prescription of right in rem. In the case of *Cortes vs. Palanca Yu-Tibo* (2 Phil. Rep., 24, 38) the Court said:

'The provision of Article 1942 of the Civil Code to the effect that acts which are merely tolerated produce no effect with respect to possession is applicable as much to the prescription of real rights as to the prescription of the fee, it being a glaring and self-evident error to affirm the contrary, as does the appellant in his motion papers. Possession is the fundamental basis of the prescription. Without it no kind of prescription is possible, not even the extraordinary. Consequently, if acts of mere tolerance produce no effect with respect to possession, as that article provides, in conformity with Article 444 of the same Code, it is evident that they can produce no effect with respect to prescription, whether ordinary or extraordinary. This is true whether the prescriptive acquisition be of a fee or of real rights, for the same reason holds in one and the other case; that is, that there has been no true possession in the legal sense of the word.' (See also *Ayala de Roxas vs. Maglono*, 8 Phil. Rep., 745; *Municipality of Nueva Caceres vs. Director of Lands and Roman Catholic Bishop of Nueva Caceres*, 24 Phil. Rep., 485).

'Possession, under the Civil Code, to constitute the foundation of a prescriptive right, must be possession under claim of title (en concepto de dueño), or to use the common law equivalent of the term, it must be adverse. Acts of a possessory character performed by one who holds by mere tolerance of the owner are clearly not en concepto de dueño, and such possessory acts, no matter how long so continued, do not start the running of the period of prescription.'

"In the case at bar, the evidence discloses that sometime after the war, plaintiffs complained against MERALCO's use and occupancy of the premises. Subsequently, defendant sometime in 1968 negotiated with plaintiff for the

purchase of the entire lot but the negotiation did not prosper as MERALCO suspended the negotiations on the ground that it was considering the selection of another site. Finally, plaintiff filed the present action on August 7, 1973 after their demand for compensation was refused. It is obvious that there can be no prescription or laches to bar plaintiffs' present action."

xxx. (pp. 42-44,"Rollo)

Based on the foregoing, it is clear that MERALCO never acquired any easement over the LEYVAs' property to construct and operate the steel towers. Consequently, the LEYVAs must be compensated and awarded temperate damages, attorney's fees and annual compensation for the loss of use and deprivation of opportunity to profit and benefit from their lands. As respondent court pointed out (pp. 44-45, Rollo):

"In this case, there is no doubt that plaintiffs' property has been practically off-limits to its entirety because of the danger posed by the high voltage electric current being conducted through cable lines hanging through the steel transmission towers, thereby prejudicing plaintiffs from reaping profits and benefits from their lands. Aggravating the situation, plaintiffs remain as owners only to be liable to payment of real estate taxes and other related dues and levies. Meanwhile, the MERALCO does nothing except to reap benefits and profits in its business concern to the prejudice of plaintiffs; or as Manresa has opined— 'to the annulment of right' of ownership of plaintiffs. For this plaintiffs should not be without redress."

ACCORDINGLY, the petition is hereby DENIED and the decision of the respondent court is AFFIRMED in toto with costs against petitioner.

SO ORDERED.

Narvasa (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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