

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, PETITIONER AND APPELLEE, VS. PEDRO P. ROXAS, OPPONENT AND APPELLANT.*G.R. No. 7386. March 30, 1912*

Ponente: TRENT, J.

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This appeal involves only a right of way claimed by the appellant Pedro P. Roxas, the owner of the dominant estate, across parcel L, the property of the appellee, to Calle Tejeron, a distance of about 100 meters. The servient estate is bounded on the north by an estero; on the west by the dominant estate; on the southwest by Calle Tejeron; and on the west by lands of Francisco Managan. The eastern line, which joins the dominant estate, is 265 meters long. The appellant claims a right of way starting across parcel L at a point 198 meters from the southern extremity of this line. During the trial of this case in the court below the parties entered into the following agreement:

"It is admitted as a question of fact that the road between the Hacienda de San Pedro Macati and Calle Tejeron, which, according to the witness Leopoldo Areopagueta, was formerly a meter and a half or two meters wide, although at present it has a greater width, has been used from time immemorial by the tenants of the Hacienda de San Pedro Macati for the passage of carts entering and leaving the Hacienda."

In addition to the admitted facts as above set forth, the testimony shows that the road in question is now some 4 meters wide; that since time out of mind there has existed upon lot L near the middle, and also very near this road, a small church; that the faithful use said road in going to this place of worship and that said road is not only used by the tenants of the appellant but also by the people living in the sitio of Suavoy.

It is admitted by both parties that the tenants of the dominant estate have used the road in question since time immemorial for carts, both for entering and leaving the hacienda. It is also an established fact that the said hacienda (the dominant estate) is partly bounded on the south by Calle Tejeron. The point where it is claimed that this right of way starts across lot L is only 198.25 meters from the said street. So the claim of the appellant cannot be that the right of way exists by necessity growing out of the peculiar location of his property, but simply that it arises by prescription, founded alone upon immemorial use by his tenants.

The result is that the road which the appellant seeks to have declared a right of way for the benefit of his hacienda has been used for a great number of years by the members of the appellee's church to go to and from the ermita, and also by the appellant's tenants, and by other people. And furthermore, while it is true that the appellant's tenants have used this road for carts as above stated, yet it has not been shown that such use was absolutely necessary in order to cultivate the dominant estate, but, on the contrary, it clearly appears that the said tenants crossed lot L merely on account of convenience, as they could have reached the public highway by going in other directions, especially south, only 198 meters. Therefore, the admitted and established facts show (1) that the use of the road by the tenants of the appellant in this manner and under these circumstances has not been such as to create an easement by prescription or in any other manner; and (2) that the use of said road by all has been by permission or tolerance of the appellee.

Where a tract of land, as in the case at bar, attached to a public meeting house—such as the ermita—is designedly left open and uninclosed for the convenience of the members or worshippers of that church, the mere passage of persons over it in common with those for whose use it was appropriated is to be regarded as permissive and under an implied license, and not adverse. Such a use is not inconsistent with the only use which the proprietor thought fit to make of the land, and until the appellee thinks proper to inclose it, such use is not adverse and will not preclude it from enclosing the land when other views of its interests render it proper to do so. And though an adjacent proprietor may make such use of the open land more frequently than another, yet the same rule will apply unless there be some decisive act indicating a separate and exclusive use under a claim of right. A different doctrine would have a tendency to destroy all neighborhood accommodations in the way of travel; for if it were once understood that a man, by allowing his neighbor to pass through his farm without objection over the pass-way which he used himself, would thereby, after the lapse of time, confer a right on such neighbor to require the pass-way to be kept open for his benefit and enjoyment, a prohibition against all such travel would immediately ensue. And again, it must be remembered that a right of way, like the one sought to be established in the case at bar, is a charge imposed upon real property for the benefit of another estate belonging to a different owner. Such a right of way is a privilege or advantage in land existing distinct from the ownership of the soil; and because it is a permanent interest in another's land with a right to enter at all times and enjoy it, it can only be founded upon an agreement or upon prescription. And when the latter is relied upon in those cases where the right of way is not essential for the beneficial enjoyment of the dominant estate, the proof showing adverse use—which is an affirmative claim—must be sufficiently strong and convincing to overcome the presumption of permissive use or license, as such a right of way is never implied because it is convenient.

For these reasons, the judgment appealed from denying the appellant's claim to a right of way across lot L is affirmed, with costs against the appellant.

Carson, J., concurs.

Johnson and Moreland, JJ., concur in the result.

CONCURRING

TORRES, J.:

I think that the decision should be affirmed in so far as it orders the registration of the land, but with express recognition of the right of way or road across the land, to this extent reversing the portion overruling the objection.

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