

**ATTY. CORNELIO T. RIVERA, AND AUGUSTO PALOMAR,
PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE
COURT AND LA VISTA ASSOCIATION, INC, RESPONDENTS.**

G.R. No. 74249, January 20, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the Intermediate Appellate Court setting aside the orders issued by the then Court of First Instance (CFI) on November 15, 1982 and October 25, 1983 which granted a writ of preliminary injunction in favor of the petitioners.

The antecedent facts are as follows:

On July 9, 1982, the petitioners filed an amended complaint for damages and injunction with the then Court of First Instance of Rizal, Quezon City, Branch IX alleging among others that:

- "1) they are the owners of a parcel of land located at Diliman, Quezon City described in TCT No. 273733 of the Registry of Deeds of Quezon City in their names;
- 2) they purchased the said property from Maryknoll College Foundation, Inc. as evidenced by the deed of sale (Annex "A" of the amended complaint);
- 3) Maryknoll College granted a road right of way over one half (1/2) portion of the Mangyan Road which is owned by it;
- 4) On October 15, 1968, the City Mayor of Quezon City approved Ordinance No. 7613-S--68 prohibiting the closing, obstruction, preventing or otherwise refusing to the public or vehicular traffic, the use or free access to any subdivision or community street within the jurisdiction of Quezon City;
- 5) On January 20, 1982, the private respondents, its agents and representatives wilfully closed, obstructed, prevented and refused to the petitioners and to the general public or vehicular traffic the use of or free access to Mangyan Road, a 15-meter wide road located in the La Vista Subdivision, one half (1/2) of which is owned by Maryknoll College in violation of the said ordinance. xxx" (Rollo, p. 6)

On November 15, 1982, the Court of First Instance of Rizal presided by Judge Jose P. Castro issued an order granting the writ of preliminary injunction to prohibit La Vista Association from preventing the petitioners and the general public from the use of the Mangyan Road. The trial court stated that the petitioners are entitled to the relief sought in the light of Ordinance No. 7613 and that the closure of the Mangyan Road has caused great and irreparable damage to the petitioners and the public.

La Vista Association filed a motion for reconsideration of the order granting the writ of preliminary injunction which was denied on June 14, 1983.

Consequently, the private respondent filed a petition to dissolve the writ of preliminary injunction on June 23,

1983.

On October 25, 1983, the CFI in denying the petition reiterated its previous Order issued on November 15, 1982.

Thereafter, on March 13, 1984, La Vista Association filed a petition for certiorari and prohibition with preliminary injunction with this Court docketed as G.R. No. L-66626. We remanded the petition to the Intermediate Appellate Court because of the factual issues involved.

On January 6, 1986, the Intermediate Appellate Court rendered a decision with the following dispositive portion:

"WHEREFORE, the writ of certiorari is hereby granted and the orders complained of are hereby annulled and set aside. The writ of preliminary injunction issued by this Court is hereby made permanent." (Rollo, p. 61)

The petitioners filed a motion for reconsideration which was denied on April 16, 1986.

Hence, this petition for review.

The petitioners raise the following assignment of errors, to wit:

I. The Honorable Respondent Court committed a serious error in holding that the petitioners have not shown unquestioned right to the use of the Mangyan Road;

II. The Honorable Respondent Court committed serious errors of law in granting the Petition for Certiorari, because:

(a) A Petition for Certiorari is not the proper remedy as the defunct Court of First Instance had jurisdiction to entertain the Complaint filed by the petitioners;

(b) Certiorari does not lie to correct interlocutory orders;

(c) There are many factual matters that are controverted by the petitioners, hence, certiorari does not lie. (Rollo, p. 8)

We agree with the appellate court that there is no legal justification for the issuance of the extraordinary writ of preliminary injunction enforceable against the private respondent. The petitioners do not have a cause of action for the relief sought.

To be entitled to the injunctive writ, one must show an unquestionable right over the premises and that such right has been violated. (See *Cootuaco v. Court of Appeals, et al.*, G.R. No. 56565, June 16, 1988).

The petitioners claim that they have a right of way over a one-half portion of the Mangyan Road owned by Maryknoll College on the basis of the deed of sale with mortgage executed between the petitioners and Maryknoll College. The pertinent provisions of the deed of sale read:

"D-2). The VENDOR-MORTGAGEE grants to VENDEES-MORTGAGORS the right of way for utilities particularly electric, telephone, water, sewerage and drainage over the one half (1/2) portion of the Mangyan Road owned by VENDOR-MORTGAGEE.

D-3). The VENDOR-MORTGAGEE further grants and extends a road right of way inside the Maryknoll College Campus in the event the La Vista Subdivision Association refuses VENDEES-MORTGAGORS access to the other half portion of the road owned by the said association." (Rollo, p. 35)

It is the phrase "inside Maryknoll College Campus" which according to the petitioners suffers ambiguity. To clarify such ambiguity, the petitioners deemed it necessary to relate the historical background of the Mangyan Road, to wit:

"Brief historical background of Mangyan Road"

"The Tuasons used to own a vast tract of land in Quezon City. The Tuasons sold portions of this land to the Philippine Builders Corporation, which in turn sold them to Ateneo de Manila. Ateneo de Manila then sold portions of this property to Maryknoll College. The petitioners acquired a parcel of land from the Maryknoll College.

The Deed of Sale between the Tuasons and the Philippine Builders Corporation, stipulates:

"3. That the boundary line between the property herein sold and the adjoining property of the VENDORS shall be a road fifteen (15) meters wide, one-half of which shall be taken from the property herein sold to the VENDEE and the other half from the portion adjoining to the VENDOR;"

When Maryknoll College bought portions of the property from Ateneo de Manila it constructed a wall at the middle of the 15 meter wide boundary. Thus, one-half of the 15 meter wide boundary road became part of its school campus. However, a Complaint was filed by the Tuasons before the defunct Court of First Instance of Rizal for the demolition of the said wall. Maryknoll College agreed to set back the wall to restore the original area of a 15-meter wide boundary road. This 15 meter wide boundary road is what is now called the Mangyan Road.

The Tuasons converted the portions of the original vast tract of land not sold to the Philippine Builders Corporation into what is now known as the La Vista Subdivision, the subdivided lots of which are now owned by the members of the private respondent." (Rollo, pp. 10-11)

The petitioners further argue:

"This explains why it is provided in the Deed of Sale between Maryknoll College and the petitioners that:
"(D-3) The VENDOR-MORTGAGEE further grants and extends a road right of way inside Maryknoll College Campus in the event the La Vista Subdivision Association refuses VENDEE-MORTGAGORS access to the other half portion of the road owned by said association."

The phrase 'inside Maryknoll College Campus' refers to the one-half (1/2) portion of Mangyan Road which was part of the College Campus when Maryknoll College built a wall at the middle of the 15 wide boundary road between La Vista Subdivision and the Maryknoll College." (Rollo, p. 11)

The petitioners' position is not impressed with merit. The deed of sale was executed on September 6, 1979, many years after the wall built in the middle of the Mangyan Road had been drawn back to its present position. Undoubtedly, Dr. Lourdes R. Quisumbing the then president of the Maryknoll College Foundation, Inc. who entered into the contract of sale with the petitioners could not have considered the one-half (1/2) portion of the Mangyan Road as part of the Maryknoll College Campus. And to construe the one-half (1/2) portion of the Mangyan Road as "inside the Maryknoll College Campus" would be odd and whimsical.

The provisions of the deed of sale with mortgage are clear. It is the well-settled rule in the interpretation of a contract that if its terms are clear, the literal meaning of the stipulations shall control (Government Service Insurance System v. Court of Appeals, 145 SCRA 311 [1986]). Maryknoll College granted a right of way over the one-half (1/2) portion of the Mangyan Road only for utilities particularly electric, telephone, water, sewerage, and drainage. It was a grant for specific purposes only. It did not grant a road right of way over that particular portion of the road. Maryknoll however provided a road right of way inside the Maryknoll College Campus "in the event the La Vista Subdivision Association refuses VENDEE-MORTGAGORS (the petitioners) access to the other half portion of the road owned by said association." And with regard to this provision, Maryknoll did not fail in its obligation to provide a road right of way inside its campus. To support this point, the private respondent submitted a manifestation showing that there are two (2) roads located within the Maryknoll College Campus leading from

the petitioners' lot to Katipunan Avenue. This, petitioners did not refute. If indeed the petitioners have been granted a road right of way, such right should have been asserted against Maryknoll College and not La Vista which is actually not a party to the contract.

Notwithstanding the existence of a city ordinance, the petitioners do not have an unquestioned right over the one-half portion of the Mangyan Road. In the case of *Ramos, Sr. v. Gatchalian Realty, Inc.* (154 SCRA 703 [1987]), this Court had the occasion to explain:

"xxx To allow the petitioner access to Sucat Road through Gatchalian Avenue inspite of a road right of way provided by the petitioner's subdivision for its buyers simply because Gatchalian Avenue allows petitioner a much greater ease in going to and coming from the main thoroughfare is to completely ignore what jurisprudence has consistently maintained through the years regarding an easement of a right of way, that 'mere convenience for the dominant estate is not enough to serve as its basis.' To justify the imposition of this servitude, there must be a real, not a fictitious or artificial, necessity for it." (See Tolentino, *Civil Code of the Philippines*, Vol. II, 2nd Ed., 1972, p. 371)

Considering that the petitioners do not have a clear right over the one-half portion of the Mangyan Road, then the issuance of the questioned writ of preliminary injunction was improper. The facts and circumstances of the case do not warrant the issuance of the writ in which case certiorari will lie to correct the abuse of discretion committed by the Court of First Instance. As held in the case of *Maguan v. Court of Appeals*, (146 SCRA 107 ([1986])):

"All these notwithstanding, the trial court nonetheless issued the writ of preliminary injunction which under the circumstances should be denied.

For failure to determine first the validity of the patents before aforesaid issuance of the writ, the trial court failed to satisfy the two requisites necessary if an injunction is to issue, namely: the existence of the right to be protected and the violation of said right. (*Buayan Cattle Co., Inc. v. Quintillan*, 128 SCRA 276).

Under the above established principles, it appears obvious that the trial court committed a grave abuse of discretion which makes certiorari the appropriate remedy." (underlining supplied)

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit. The questioned decision of the Intermediate Appellate Court is AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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