

REMIGIO O. RAMOS, SR., PETITIONER, VS. GATCHALIAN REALTY, INC., EDUARDO ASPREC, ENELDA ASPREC, ERNESTO ASPREC, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 75905. October 12, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition for review on certiorari, the petitioner assails the decision of the Court of Appeals dated August 29, 1986 which affirmed the November 14, 1984 order of the Regional Trial Court, Branch CXI at Pasay City dismissing the petitioner's civil action for a right of way with prayer for preliminary injunction.

Petitioner Ramos is the owner of a house and lot containing an area of 901 square meters covered by Transfer Certificate of Title No. 14927 situated at Barrio San Dionisio, Paranaque, Metro Manila. The lot was acquired by the petitioner from Sobrina Rodriguez Lombos Subdivision. In the subdivision survey plan of Lot 4133-G, (LRC) PSD-172544, the lot is more particularly described as Lot 4133-G-11 (Exhibits "1" and "1-A"). Two road lots abut petitioner's property namely lot 4133-G-12 with an area of 2,160 square meters clearly appearing as a proposed road in the Lombos subdivision plan and Lot 4135 of the Paranaque Cadastre now known as Palanyag Road but more commonly referred to as Gatchalian Avenue.

Respondents Asprec own Lot 4135. Gatchalian Avenue is alongside Lot 4135. Respondent Gatchalian Realty was granted the road right of way and drainage along Lot 4135 to service the Gatchalian and Asprec subdivisions, by the respondent Asprec.

The records of this case disclose that on April 30, 1981, a complaint for an easement of a right of way with preliminary mandatory injunction was filed by Ramos against the private respondents. Among the allegations in the complaint are:

"xxx that he (referring to the petitioner) constructed his house at 27 Gatchalian Avenue (also known as Palanyag Road), Paranaque, and has since resided therein with his family from 1977 up to the present; that during construction of the house, Gatchalian Realty, Inc. built a 7-8 feet high concrete wall right in front of appellant's premises, blocking his entrance/exit to Gatchalian Road, the nearest, most convenient and adequate entrance/exit to the public road or highway, formerly Sucat Road but now known as Dr. A. Santos Avenue, Paranaque; that this house and lot is only about 100 meters from Sucat Road passing thru Gatchalian Avenue; that prior to this, appellant and his counsel addressed separate request/demand letters (Exh. A and Annex B) to defendant company to allow him to exercise a right of way on the subject premises; that in September 1977, a meeting/conference was held between appellant and his counsel on one hand and Mr. Roberto Gatchalian and counsel on the other, during which defendant Corporation manifested its conformity to grant appellant the requested right of way upon payment of proper indemnity, with the request that appellant inform defendants Asprec of their aforesaid agreement; that consequently, appellant wrote Mr. Cleto Asprec on September 16, 1977 (Exh. D); that with the construction of the 7-8 feet concrete wall appellant and his family have been constrained to pass through the back portion of their lot bounded by other lots belonging to different owners,

which is grassy and cogonal as temporary ingress/egress with great inconvenience and hardship, and this becomes all the more pronounced during the rainy season due to flood and mud (Exhs. B-1, B-1-A, B-2, B-2-A, B-3, B-3-A, B-3-B and B-4); and, lastly, that the aforesaid concrete wall is dangerously leaning towards appellant's premises posing great danger or hazard." (Court of Appeals Decision, p. 3, Rollo, p. 39)

On May 20, 1981, the respondent corporation filed a motion to dismiss on grounds of lack of cause of action and bar by prior judgment alleging that the complaint was merely a reproduction of that filed on October 26, 1972 in Civil Case No. 5930-P which was dismissed on October 30, 1980 for failure to prosecute within a reasonable length of time. Respondents Asprec later joined the respondent company in its motion to dismiss and adopted the grounds and arguments stated therein.

On November 20, 1981, after the petitioner had filed his opposition to the above motions, the lower court issued its order denying the motion to dismiss on the ground that the order dismissing the earlier case was not an adjudication on the merits.

On November 26, 1981, the petitioner filed an urgent ex-parte motion for the issuance of a preliminary mandatory injunction as well as a preliminary prohibitory injunction. On the same day, the lower court set the motion for hearing on December 1, 1981, later reset to December 10, 1981, and ordered that:

"In the meantime, pending determination of the application on the merits and in order that the reliefs sought therein may not be rendered moot and academic, the defendants and all persons acting upon their orders are hereby temporarily enjoined from building, constructing and/or erecting a wall, fence or any enclosure adjoining or abutting plaintiff's premises and/or from restraining, preventing or prohibiting the plaintiff, his family or persons residing in his premises as well as any person/s who may have any dealing or business with them from using, passing and/or traversing the said Gatchalian Avenue in going to or returning from the plaintiff's premises and in going to or returning from Sucat Road via Gatchalian Avenue, until further orders from this Court. (Order dated November 26, 1981, Records, p. 66).

On December 1, 1981, Gatchalian Realty filed its answer and averred, among others, that:

xxx xxx xxx

"Defendant Corporation has never entered into a verbal agreement with plaintiff to grant the latter a road right of way;

xxx xxx xxx

"The so-called Gatchalian Avenue or Palanyag Road is not a public road but a private street established and constructed by the defendant Corporation intended for the sole and exclusive use of its residents and lot buyers of its subdivisions, as well as of the subdivisions owned and operated by the various naked owners of the different portions constituting the entire length and breadth of said street;

"If plaintiff's property referred to in the complaint is Lot No. 4133-G-11, (LRC) Psd-229001 (sic), then a grant of a right of way to plaintiff is not a legal necessity, because such lot has an existing road right of way, more particularly Lot 4133-G-12, towards Dr. Arcadio Santos Avenue (Sukat Road);

xxx xxx xxx

"The opening of Gatchalian Avenue to the property of plaintiff will unduly cause great prejudice to defendant Corporation as it can no longer effectively regulate the use of the said private road; xxx

"Assuming, though not admitting, that plaintiff may be granted a right of way, still the reasonable compensation for such grant would be some P800,000.00, as such portion of Gatchalian Avenue consists of some 2,000 square meters of prime and valuable property which could readily command a market value of

P400.00 per square meter; moreover, plaintiff still has to shoulder his proportionate share of the expenses and upkeep of such street and the real estate taxes imposed thereon." (Answer of Gatchalian Realty, Inc., Records, pp. 81-82).

On December 2, 1981, respondents Asprec filed their answer which basically contained the same averments as that of the realty company.

At the hearing of the petitioner's application for issuance of a writ of preliminary injunction to compel the private respondents to remove the wall constructed right in front of the petitioner's premises barring him access to Gatchalian Avenue, both parties presented oral and documentary evidence to support their respective positions. After the hearing, the lower court issued the following order:

"Plaintiff is given fifteen (15) days to file a memorandum and the defendant is given another fifteen days from receipt thereof to file a reply, after which the case shall be deemed submitted for resolution. So ordered." (TSN, December 10, 1981, p. 57)

After compliance by both parties with the above order, the lower court, on July 9, 1982, rendered a decision the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter to grant the former a right of way through Palanyag Road to and from Don Arcadio Santos Avenue and to and from his residence, upon payment by the plaintiff to the defendants Asprec the sum of P5,000 as indemnity therefor and under the following terms and conditions to wit: (1) the easement created shall be only in favor of the plaintiff, members of his family and person or persons dealing with them; and (2) the opening to be created through the concrete wall separating plaintiff's residence and Palanyag Road shall only be three (3) meters wide and shall be provided by an iron gate by the plaintiff all at the expense of the plaintiff. Without pronouncement as to costs and damages." (Rollo, p. 30)

Thereafter, the respondent company filed a motion to set aside and/or reconsider the lower court's decision for being premature since only the application for the writ of injunction was heard and submitted for resolution and not the entire case. Respondents Asprec, likewise, filed a motion for reconsideration mainly on the ground that the lower court's grant of a right of way through Gatchalian Avenue in petitioner's favor would be in derogation of the "Contract of Easement of Road Right-of-Way and of Drainage" executed between them and Gatchalian Realty.

In his opposition to both motions, the petitioner argued that on the basis of the transcript of stenographic notes taken on December 10, 1981, it was clear that both parties submitted the entire case for resolution inasmuch as the pieces of evidence for the injunction and for the main case were the same and there was nothing left to be presented. Thus, in effect, the petitioner contended that the lower court's decision dated July 9, 1982 was an adjudication on the merits.

On July 8, 1983, the lower court under a new judge by virtue of the reorganization of the judiciary, issued an order setting aside and vacating its previous decision dated July 9, 1982 on the ground that the same was "rendered prematurely as the defendants had not presented their evidence on the main case."

After the petitioner had rested his case, the respondent company filed a motion to dismiss based on the insufficiency of the evidence adduced by the petitioner. An opposition to said motion, was, thereafter, filed by the petitioner.

On November 14, 1984, the lower court, acting on the respondent company's motion to dismiss, issued an order with the following tenor:

"WHEREFORE, finding the motion to dismiss of defendant corporation Gatchalian Realty, Inc. to be impressed

with merit, the same is hereby granted. For insufficiency of evidence, plaintiff's complaint is hereby dismissed, without pronouncement as to costs." (Rollo, p. 34)

The Court of Appeals on August 29, 1986, found that the petitioner failed to establish the existence of the preconditions in order that he could legally be entitled to an easement of a right of way. It affirmed the lower court's order dated November 14, 1984 in all respects, with costs against the petitioner.

Hence, this petition which presents the following assignment of errors:

I

PUBLIC RESPONDENT ERRED IN AFFIRMING IN TOTO THE ORDER OF DISMISSAL OF THE TRIAL COURT IN ALL RESPECTS WITH COSTS AGAINST THE PETITIONER;

II

PUBLIC RESPONDENT ERRED IN ITS DECISION TO THE EFFECT THAT PETITIONER HAS NOT SUFFICIENTLY MET THE REQUIREMENTS OF THE LAW AND IN FAILING TO PROVE HIS RIGHT OF WAY THROUGH GATCHALIAN AVENUE OR PALANYAG ROAD AGAINST THE RESPONDENTS HEREIN;

III

PUBLIC RESPONDENT ERRED IN FAILING TO SET ASIDE THE ORDER OF THE TRIAL COURT, AND NOT ADOPTING THE DECISION OF THE TRIAL COURT DATED JULY 9, 1982 GRANTING TO PETITIONER A RIGHT OF WAY IN THE SUBJECT PREMISES. (Rollo, pp. 14-15)

These assigned errors center on the issue of whether or not the petitioner has successfully shown that all the requisites necessary for the grant of an easement of a right of way in his favor are present.

An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner as defined in Article 613 of the Civil Code. It is established either by law, in which case it is called legal, or by the will of the parties, in which event it is a voluntary easement. (See Article 619, Civil Code of the Philippines; *City of Manila v. Entote*, 57 SCRA 497, 503).

Since there is no agreement between the contending parties in this case granting a right of way by one in favor of the other, the establishment of a voluntary easement between the petitioner and the respondent company and/or the other private respondents is ruled out. What is left to examine is whether or not the petitioner is entitled to a legal or compulsory easement of a right of way.

In the case of *Bacolod-Murcia Milling Company, Inc. v. Capitol Subdivision, Inc., et al.* (17 SCRA 731, 735-6), we held that:

"xxx the Central had to rely strictly on its being entitled to a compulsory servitude of right of way, under the Civil Code, and it could not claim any such servitude without first establishing the preconditions for its grant fixed by Articles 649 and 650 of the Civil Code of the Philippines:

- (1) That it is surrounded by other immovables and has no adequate outlet to a public highway (Art. 649, par. 1);
- (2) After payment of proper indemnity (Art. 649, p. 1, end);
- (3) That the isolation was not due to the Central's own acts (Art. 649, last par.); and

(4) That the right of way claimed is 'at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.' (Art. 650).

"By express provision of law, therefore, a compulsory right of way can not be obtained unless the four requisites enumerated are first shown to exist, and the burden of proof to show their existence was on the Central." (See also *Angela Estate, Inc. v. Court of First Instance of Negros Occidental*, 24 SCRA 500,510)

On the first requisite, the petitioner contends that since the respondent company constructed the concrete wall blocking his ingress and egress via the Gatchalian Avenue, the "nearest, most convenient and adequate road" to and from a public highway, he has been constrained to use as his "temporary" way the adjoining lots belonging to different persons. Said way is allegedly "bumpy and impassable especially during rainy seasons because of flood waters, mud and tall 'talahib' grasses thereon." Moreover, according to the petitioner, the road right of way which the private respondents referred to as the petitioner's alternative way to Sucat Road is not an existing road but has remained a proposed road as indicated in the subdivision plan of the *Sobrina Rodriguez Lombos Subdivision*.

The petitioner's position is not impressed with merit. We find no reason to disturb the appellate court's finding of fact that the petitioner failed to prove the non-existence of an adequate outlet to the Sucat Road except through the Gatchalian Avenue. As borne out by the records of the case, there is a road right of way provided by the *Sobrina Rodriguez Lombos Subdivision* indicated as Lot 4133-G-12 in its subdivision plan for the buyers of its lots. The fact that said lot is still undeveloped and causes inconvenience to the petitioner when he uses it to reach the public highway does not bring him within the ambit of the legal requisite. We agree with the appellate court's observation that the petitioner should have, first and foremost, demanded from the *Sobrina Rodriguez Lombos Subdivision* the improvement and maintenance of Lot 4133-G-12 as his road right of way because it was from said subdivision that he acquired his lot and not either from the Gatchalian Realty or the respondents *Asprec*. 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 petitioner has failed to prove the existence of the first requisite as aforestated, we find it unnecessary to discuss the rest of the preconditions for a legal or compulsory right of way.

Once again, we apply the rule that findings of facts of the Court of Appeals are binding on the Supreme Court and will not be overturned when supported by the evidence on record save in the known exceptions such as gross misappreciation of the evidence or misapprehension of facts. (See *Community Savings and Loan Association, Inc. v. Court of Appeals, et al.*, G.R. No. 75786, promulgated on August 31, 1987; *Regalario v. Northwest Finance Corporation*, 117 SCRA 45; *Agton v. Court of Appeals*, 113 SCRA 322).

WHEREFORE, in view of the foregoing, the petition is hereby DISMISSED for lack of merit. The questioned decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

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

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