

TOMAS ENCARNACION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE INTESTATE ESTATE OF THE LATE EUSEBIO DE SAGUN AND THE HEIRS OF THE LATE ANICETA MAGSINO VIUDA DE SAGUN,...

G.R. No. 77628. March 11, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Presented for resolution in the instant petition for review is the not-so-usual question of whether or not petitioner is entitled to a widening of an already existing easement of right-of-way. Both the trial court and the Appellate Court ruled that petitioner is not so entitled, hence the recourse to this Court. We reverse.

The facts are undisputed.

Petitioner Tomas Encarnacion and private respondent Heirs of the late Aniceta Magsino Viuda de Sagun are the owners of two adjacent estates situated in Buco, Talisay, Batangas.[**] Petitioner owns the dominant estate which has an area of 2,590 square meters and bounded on the North by Eusebio de Sagun and Mamerto Magsino, on the south by Taal Lake, on the East by Felino Matienzo and on the West by Pedro Matienzo. Private respondents co-own the 405-square-meter servient estate which is bounded on the North by the National Highway (Laurel-Talisay Highway), on the South by Tomas Encarnacion, on the East by Mamerto Magsino and on the West by Felipe de Sagun. In other words, the servient estate stands between the dominant estate and the national road.

Prior to 1960, when the servient estate was not yet enclosed with a concrete fence, persons going to the national highway just crossed the servient estate at no particular point. However, in 1960 when private respondents constructed a fence around the servient estate, a roadpath measuring 25 meters long and about a meter wide was constituted to provide access to the highway. One-half meter width of the path was taken from the servient estate and the other one-half meter portion was taken from another lot owned by Mamerto Magsino. No compensation was asked and none was given for the portions constituting the pathway.[1]

It was also about that time that petitioner started his plant nursery business on his land where he also had his abode. He would use said pathway as passage to the highway for his family and for his customers.

Petitioner's plant nursery business through sheer hard work flourished and with that, it became more and more difficult for petitioner to haul the plants and garden soil to and from the nursery and the highway with the use of pushcarts. In January, 1984, petitioner was able to buy an owner-type jeep which he could use for transporting his plants. However, that jeep could not pass through the roadpath and so he approached the servient estate owners (Aniceta Vda. de Sagun and Elena Romero Vda. de Sagun) and requested that they sell to him one and one-half (1 1/2) meters of their property to be added to the existing pathway so as to allow passage for his jeepney. To his utter consternation, his request was turned down by the two widows and further attempts at negotiation proved

futile.

Petitioner then instituted an action before the Regional Trial Court of Batangas, Branch 6 (Tanauan) to seek the issuance of a writ of easement of a right of way over an additional width of at least two (2) meters over the De Saguns' 405 square-meter parcel of land.[2]

During the trial, the attention of the lower court was called to the existence of another exit to the highway, only eighty (80) meters away from the dominant estate. On December 2, 1985, the lower court rendered judgment dismissing petitioner's complaint. It ruled:

"It is clear, therefore, that plaintiff at present has two outlets to the highway: one, through the defendants' land on a one meter wide passageway, which is bounded on both sides by concrete walls and second, through the dried river bed eighty meters away. The plaintiff has an adequate outlet to the highway through the dried river bed where his jeep could pass.

"The reasons given for his claim that the one-meter passageway through defendants' land be widened to two and one-half meters to allow the passage of his jeep, destroying in the process one of the concrete fences and decreasing defendants' already small parcel to only about 332.5 square meters, just because it is nearer to the highway by 25 meters compared to the second access of 80 meters or a difference of only 65 meters and that passage through defendants' land is more convenient for his (plaintiff's) business and family use are not among the conditions specified by Article 649 of the Civil Code to entitle the plaintiff to a right of way for the passage of his jeep through defendants' land." [3]

On appeal, the Court of Appeals affirmed the decision of the trial court on January 28, 1987 and rejected petitioner's claim for an additional easement.

In sustaining the trial court, the Court of Appeals opined that the necessity interposed by petitioner was not compelling enough to justify interference with the property rights of private respondents. The Appellate Court took into consideration the presence of a dried river bed only eighty (80) meters away from the dominant estate and conjectured that petitioner might have actually driven his jeep through the river bed in order to get to the highway, and that the only reason why he wanted a wider easement through the De Sagun's estate was that it was more convenient for his business and family needs.

After evaluating the evidence presented in the case, the Court finds that petitioner has sufficiently established his claim for an additional easement of right of way, contrary to the conclusions of the courts a quo.

While there is a dried river bed less than 100 meters from the dominant tenement, that access is grossly inadequate. Generally, the right of way may be demanded: (1) when there absolutely no access to a public highway, and (2) when, even if there is one, it is difficult or dangerous to use or is grossly insufficient. In the present case, the river bed route is traversed by a semi-concrete bridge and there is no ingress nor egress from the highway. For the jeep to reach the level of the highway, it must literally jump four (4) to five (5) meters up. Moreover, during the rainy season, the river bed is impassable due to the flood. Thus, it can only be used at certain times of the year. With the inherent disadvantages of the river bed which make passage difficult, if not impossible, it is if there were no outlet at all.

Where a private property has no access to a public road, it has the right of easement over adjacent servient estates as a matter of law.[4]

With the non-availability of the dried river bed as an alternative route to the highway, we transfer our attention to the existing pathway which straddles the adjoining properties of the De Sagun heirs and Mamerto Magsino.

The courts below have taken against petitioner his candid admission in open court that he needed a wider pathway

for the convenience of his business and family. (TSN, August 2, 1985, pp. 24-26). We cannot begrudge petitioner for wanting that which is convenient. But certainly that should not detract from the more pressing consideration that there is a real and compelling need for such servitude in his favor.

Article 651 of the Civil Code provides that "(t)he width of the easement of right of way shall be that which is sufficient for the needs of the dominant estate, and may accordingly be changed from time to time." This is taken to mean that under the law, it is the needs of the dominant property which ultimately determine the width of the passage. And these needs may vary from time to time. When petitioner started out as a plant nursery operator, he and his family could easily make do with a few pushcarts to tow the plants to the national highway. But the business grew and with it the need for the use of modern means of conveyance or transport. Manual hauling of plants and garden soil and use of pushcarts have become extremely cumbersome and physically taxing. To force petitioner to leave his jeepney in the highway, exposed to the elements and to the risk of theft simply because it could not pass through the improvised pathway, is sheer pigheadedness on the part of the servient estate and can only be counterproductive for all the people concerned. Petitioner should not be denied a passageway wide enough to accommodate his jeepney since that is a reasonable and necessary aspect of the plant nursery business.

We are well aware that an additional one and one-half (1 1/2) meters in the width of the pathway will reduce the servient estate to only about 342.5 square meters. But petitioner has expressed willingness to exchange an equivalent portion of his land to compensate private respondents for their loss. Perhaps, it would be well for respondents to take the offer of petitioner seriously.[5] But unless and until that option is considered, the law decrees that petitioner must indemnify the owners of the servient estate including Mamerto Magsino from whose adjoining lot 1/2 meter was taken to constitute the original path several years ago. Since the easement to be established in favor of petitioner is of a continuous and permanent nature, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate pursuant to Article 649 of the Civil Code which states in part:

"Art. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

"Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

"x x x x x x x x . "

WHEREFORE, in conformity with the foregoing discussion, the appealed decision of the Court of Appeals dated January 28, 1987 is REVERSED and SET ASIDE. Petitioner Tomas Encarnacion is hereby declared entitled to an additional easement of right of way of twenty-five (25) meters long by one and one-half (1 1/2) meters wide over the servient estate or a total area of 62.5 square meters after payment of the proper indemnity.

So ordered.

Gutierrez, Jr., Feliciano, Bidin, and Davide., Jr., JJ., concur.

[*] The name "Aniceta de Sagun Viuda de Magsino" in the original caption of the instant petition is erroneous. See the captions in the Complaint and the subsequent Decision of the trial court. (Original Records, pp. 1 and 103).

[**] The servient estate originally belonged to Eusebio de Sagun, the son of Aniceta Magsino Vda. de Sagun.

After Eusebio's death, his widow Elena sold her share of the estate to her mother-in-law and co-heir Aniceta. During the pendency of the civil case for the grant of easement, Aniceta also died leaving six children as her heirs. None of the children resides in the estate which as of 1985 is being administered by Anicetas brother, Mamerto Magsino. (Original Record, pp. 77-78; TSN, August 9, 1985, pp. 22, 30-31).

[1] TSN, August 9, 1985, pp. 17-19; July 19, 1985, p. 30.

[2] Civil Case No. T-392.

[3] Rollo, p. 33.

[4] Jariol vs. Court of Appeals, G.R. No. 57641, October 23, 1982, 117 SCRA 913.

[5] See Original Record, pp. 44-45.

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