

COSTABELLA CORPORATION, PETITIONER, VS. COURT OF APPEALS, KATIPUNAN LUMBER CO., INC., AURORA BUSTOS LOPEZ, MANUEL S. SATORRE, JR., JOSEFA C. REVILLES, FELIX TIUKINHOY, JR., PERF...*G.R. No. 80511. January 25, 1991*

Ponente: SARMIENTO, J.

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The principal issue raised in this petition for review on certiorari of the decision[1] dated May 30, 1986 of the Court of Appeals,[2] which modified the decision[3] rendered by the Regional Trial Court of Lapu-Lapu City in Cebu, is whether or not the private respondents had acquired an easement of right of way, in the form of a passageway, on the petitioner's property.

It is admitted that the petitioner owns the real estate properties designated as Lots Nos. 5122 and 5124 of the Opon Cadastre, situated at Sitio Buyong, Maribago, Lapu-Lapu City, on which it had constructed a resort and hotel. The private respondents, on the other hand, are the owners of adjoining properties more particularly known as Lots Nos. 5123-A and 5123-C of the Opon Cadastre.

Before the petitioner began the construction of its beach hotel, the private respondents, in going to and from their respective properties and the provincial road, passed through a passageway which traversed the petitioner's property. In 1981, the petitioner closed the aforementioned passageway when it began the construction of its hotel, but nonetheless opened another route across its property through which the private respondents, as in the past, were allowed to pass. (Later, or sometime in August, 1982, when it undertook the construction of the second phase of its beach hotel, the petitioner fenced its property thus closing even the alternative passageway and preventing the private respondents from traversing any part of it.)

As a direct consequence of these closures, an action for injunction with damages was filed against the petitioner by the private respondents on September 2, 1982 before the then Court of First Instance of Cebu.[4] In their complaint, the private respondents assailed the petitioner's closure of the original passageway which they (private respondents) claimed to be an "ancient road right of way" that had been existing before World War II and since then had been used by them, the community, and the general public, either as pedestrians or by means of vehicles, in going to and coming from Lapu-Lapu City and other parts of the country. The private respondents averred that by closing the alleged road right of way in question, the petitioner had deprived them access to their properties and caused them damages.

In the same complaint, the private respondents likewise alleged that the petitioner had constructed a dike on the beach fronting the latter's property without the necessary permit, obstructing the passage of the residents and local fishermen, and trapping debris and flotsam on the beach. They also claimed that the debris and flotsam that had accumulated prevented them from using their properties for the purpose for which they had acquired them. The complaint thus prayed for the trial court to order the re-opening of the original passageway across the petitioner's property as well as the destruction of the dike.[5]

In its answer[6], the petitioner denied the existence of an ancient road through its property and counter-averred, among others, that it and its predecessors-in-interest had permitted the temporary, intermittent, and gratuitous use of, or passage through, its property by the private respondents and others by mere tolerance and purely as an act of neighborliness. It justified the walling in of its property in view of the need to insure the safety and security of its hotel and beach resort, and for the protection of the privacy and convenience of its hotel patrons and guests. At any rate, the petitioner alleged, the private respondents were not entirely dependent on the subject passageway as they (private respondents) had another existing and adequate access to the public road through other properties. With respect to the dike it allegedly constructed, the petitioner stated that what it built was a breakwater on the foreshore land fronting its property and not a dike as claimed by the private respondents. Moreover, contrary to the private respondents' accusation, the said construction had benefitted the community especially the fishermen who used the same as mooring for their boats during low tide. The quantity of flotsam and debris which had formed on the private respondents' beach front on the other hand were but the natural and unavoidable accumulations on beaches by the action of the tides and movement of the waves of the sea. The petitioner's answer then assailed the private respondents' complaint for its failure to implead as defendants the owners of the other properties supposedly traversed by the alleged ancient road right of way, indispensable parties without whom no final adjudication of the controversy could be rendered.[7]

After trial, the court a quo rendered a decision on March 15, 1984 finding that the private respondents had acquired a vested right over the passageway in controversy based on its long existence and its continued use and enjoyment not only by the private respondents, but also by the community at large. The petitioner in so closing the said passageway, had accordingly violated the private respondents' vested right. Thus, the trial court ordered the petitioner:

1. To open and make available the road in question to the plaintiffs and the general public at all times free of any obstacle thereof, unless the defendant shall provide another road equally accessible and convenient as the road or passage closed by the defendant;
2. To pay the plaintiff Katipunan Lumber Company, Inc. the amount of FIVE THOUSAND PESOS (P5,000.00) a month beginning January, 1983, and the plaintiff Perfecto Guangco the sum of TWO HUNDRED PESOS (P200.00) a month beginning September, 1982, representing their respective expenditures they had incurred in other beach resorts after the road was closed, until the passageway claimed by them is opened and made available to them, or if the defendant chooses to provide another road, until such road is made available and conveniently passable to the plaintiffs and the general public; and
3. To pay the sum of FIFTEEN THOUSAND PESOS (P15,000.00) attorney's fees, and to pay the costs.[8]

Both parties elevated the trial court's decision to the Court of Appeals, with the petitioner questioning the alleged "vested right" of the private respondents over the subject passageway, and the private respondents assailing the dismissal of their complaint insofar as their prayer for the demolition of the petitioner's "dike" is concerned.

In its decision, the respondent Appellate Court held as without basis the trial court's finding that the private respondents had acquired a vested right over the passageway in question by virtue of prescription.[9] The appellate court pointed out that an easement of right of way is a discontinuous one which, under Article 622 of the New Civil Code, may only be acquired by virtue of a title and not by prescription.[10] That notwithstanding, the appellate court went on to rule that "x x x in the interest of justice and in the exercise by this Court of its equity jurisdiction, there is no reason for Us in not treating the easement here sought by appellees Katipunan Lumber Co., Inc. and Perfecta Guangco as one that is not dependent upon the claims of the parties but a compulsory one that is legally demandable by the owner of the dominant estate from the owner of the servient estate." [11] Thus the appellate court: (1) granted the private respondents the right to an easement of way on the petitioner's property

using the passageway in question, unless the petitioner should provide another passageway equally accessible and convenient as the one it closed; (2) remanded the case to the trial court for the determination of the just and proper indemnity to be paid to the petitioner by the private respondents for the said easement; and (3) set aside the trial court's award of actual damages and attorney's fees.[12]

On petitioner's motion for partial reconsideration, the respondent court issued on October 27, 1987 a resolution[13] denying the said motion. The Appellate Court however in denying the petitioner's motion for reconsideration stated that:

x x x While it is true that there is another outlet for the plaintiff to the main road, yet such outlet is a new road constructed in 1979, while the road closed by defendant existed since over 30 years before. Legally, the old road could be closed; but since the existing outlet is inconvenient to the plaintiff, equitably the plaintiff should be given a chance to pay for a more convenient outlet through the land of the defendant at a point least prejudicial to the latter. In any event, the plaintiff shall pay for all damages that defendant corporation may sustain and the defendant regulates the manner of use of the right of way to protect defendant's property and its customers. This is the gist of Our decision.[14]

Now before us, the petitioner contends that the decision of the respondent appellate court is grossly erroneous and not in accord with the provisions of Articles 649 and 650 of the Civil Code on easements and the prevailing jurisprudence on the matter.

The petition is meritorious.

It is already well-established that an easement of right of way, as is involved here, is discontinuous[15] and as such can not be acquired by prescription.[16] Insofar therefore as the appellate court adhered to the foregoing precepts, it stood correct. Unfortunately, after making the correct pronouncement, the respondent Appellate Court did not order the reversal of the trial court's decision and the dismissal of the complaint after holding that no easement had been validly constituted over the petitioner's property. Instead, the Appellate Court went on to commit a reversible error by considering the passageway in issue as a compulsory easement which the private respondents, as owners of the "dominant" estate, may demand from the petitioner the latter being the owner of the "servient" estate.

It is provided under Articles 649 and 650 of the New Civil Code that:

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.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

Art. 650. The easement of right of way shall be established 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.

Based on the foregoing, the owner of the dominant estate may validly claim a compulsory right of way only after

he has established the existence of four requisites, to wit: (1) the (dominant) estate is surrounded by other immovables and is without adequate outlet to a public highway; (2) after payment of the proper indemnity; (3) the isolation was not due to the proprietor's own acts; and (4) the right of way claimed is at a point least pre-judicial to the servient estate. Additionally, the burden of proving the existence of the foregoing pre-requisites lies on the owner of the dominant estate.[17]

Here, there is absent any showing that the private respondents had established the existence of the four requisites mandated by law. For one, they failed to prove that there is no adequate outlet from their respective properties to a public highway. On the contrary, as alleged by the petitioner in its answer to the complaint, and confirmed by the appellate court, "there is another outlet for the plaintiffs (private respondents) to the main road." [18] Thus, the respondent Court of Appeals likewise admitted that "legally the old road could be closed." [19] Yet, it ordered the re-opening of the old passageway on the ground that "the existing outlet (the other outlet) is inconvenient to the plaintiff." [20] On this score, it is apparent that the Court of Appeals lost sight of the fact that the convenience of the dominant estate has never been the gauge for the grant of compulsory right of way. [21] To be sure, the true standard for the grant of the legal right is "adequacy." Hence, when there is already an existing adequate outlet from the dominant estate to a public highway, even if the said outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified. For to justify the imposition of an easement of right of way, "there must be a real, not a fictitious or artificial necessity for it." [22]

Further, the private respondents failed to indicate in their complaint or even to manifest during the trial of the case that they were willing to indemnify fully the petitioner for the right of way to be established over its property. Neither have the private respondents been able to show that the isolation of their property was not due to their personal or their predecessors-in-interest's own acts. Finally, the private respondents failed to allege, much more introduce any evidence, that the passageway they seek to be re-opened is at a point least prejudicial to the petitioner. Considering that the petitioner operates a hotel and beach resort in its property, it must undeniably maintain a strict standard of security within its premises. Otherwise, the convenience, privacy, and safety of its clients and patrons would be compromised. That indubitably will doom the petitioner's business. It is therefore of great importance that the claimed right of way over the petitioner's property be located at a point least prejudicial to its business.

Hence, the private respondents' properties can not be said to be isolated, for which a compulsory easement is demandable. Insofar therefore as the Appellate Court declared the case to be proper as a controversy for a compulsory right of way, this Court is constrained to hold that it was in error.

Servitudes of right of way are an ancient concept, which date back to the *iter*, *actus*, and *via* of the Romans. [23] They are demanded by necessity, that is, to enable owners of isolated estates to make full use of their properties, which lack of access to public roads has denied them. [24] Under Article 649 of the Civil Code, they are compulsory and hence, legally demandable, subject to indemnity and the concurrence of the other conditions above-referred to.

As also earlier indicated, there must be a real necessity therefor, and not mere convenience for the dominant estate. Hence, if there is an existing outlet, otherwise adequate, to the highway, the "dominant" estate can not demand a right of way, although the same may not be convenient. Of course, the question of when a particular passage may be said to be "adequate" depends on the circumstances of each case. Manresa, however, says: "In truth, not only the estate which absolutely does not possess it should be considered in this condition, but also that which does not have one sufficiently safe or serviceable; an estate bordering a public road through an inaccessible slope or precipice, is in fact isolated for all the effects of the easement requested by its owner. On the other hand, an estate which for any reason has necessarily lost its access to a public road during certain periods of the year is

in the same condition. x x x There are some who propound the query as to whether the fact that a river flows between the estate and the public road should be considered as having the effect of isolating the estate. x x x If the river may be crossed conveniently at all times without the least danger, it cannot be said that the estate is isolated; in any other case, the answer is in the affirmative." [25]

The isolation of the dominant estate is also dependent on the particular need of the dominant owner, and the estate itself need not be totally landlocked. What is important to consider is whether or not a right of way is necessary to fill a reasonable need therefor by the owner. [26] Thus, as Manresa had pointed out, if the passageway consists of an "inaccessible slope or precipice," [27] it is as if there is no passageway, that is, one that can sufficiently fulfill the dominant owner's necessities, although by the existence of that passageway the property can not be truly said that the property is isolated. So also, while an existing right of way may have proved adequate at the start, the dominant owner's need may have changed since then, for which Article 651 of the Code allows adjustments as to width. [28]

But while a right of way is legally demandable, the owner of the dominant estate is not at liberty to impose one based on arbitrary choice. Under Article 650 of the Code, it shall be established upon two criteria: (1) at the point least prejudicial to the servient state; and (2) where the distance to a public highway may be the shortest. According, however, to one commentator, "least prejudice" prevails over "shortest distance." [29] Yet, each case must be weighed according to its individual merits, and judged according to the sound discretion of the court. "The court," says Tolentino, "is not bound to establish what is the shortest; a longer way may be established to avoid injury to the servient tenement, such as when there are constructions or walls which can be avoided by a roundabout way, or to secure the interest of the dominant owner, such as when the shortest distance would place the way on a dangerous decline." [30]

It is based on these settled principles that we have resolved this case.

WHEREFORE, the decision dated May 30, 1986, and the resolution dated October 27, 1987, of the respondent Court of Appeals are SET ASIDE and the private respondents' complaint is hereby DISMISSED. Costs against the private respondents.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Ejercito, *Bienvenido C., J., ponente, Coquia, Jorge R., and Castro-Bartolome, Florelia, JJ., concurring*; Rollo, 52-59.

[2] The Court of Appeals was impleaded as a party respondent by virtue of the Court Resolution dated September 11, 1989.

[3] Penned, by Judge Teodoro K. Risos; Rollo, *id.*, 44-50.

[4] Rollo, *id.*, 11.

[5] *Id.*, 28-31.

[6] *Id.*, 12.

[7] *Id.*, 33-42.

[8] *Id.*, 50.

[9] Id., 57.

[10] Id.

[11] Id., 58.

[12] Id., 59.

[13] Id., 61.

[14] Id.

[15] Ronquillo vs. Roco, 103 Phil. 84 (1958); Cuaycong vs. Benedicto, 37 Phil. 781 (1918).

[16] CIVIL CODE, art. 622; Ronquillo vs. Roco, supra, Cuaycong vs. Benedicto, supra.

[17] Locsin vs. Climaco, No. L-27319, January 31, 1969, 26 SCRA 816; Angela Estate, Inc. vs. Court of First Instance of Negros Occidental, No. L-27084, July 31, 1968, 24 SCRA 500; Bacolod-Murcia Milling Co., Inc. vs. Capitol Subdivision, No. L-25887, July 26, 1966, 17 SCRA 731.

[18] Rollo, id., 61.

[19] Id.

[20] Id.

[21] Rivera vs. Intermediate Appellate Court, No. 74249, January 20, 1989, 169 SCRA 307; Ramos, Sr. vs. Gatchalian Realty, Inc., No. 75905, October 12, 1987, 154 SCRA 703.

[22] Ramos, Sr. vs. Gatchalian Realty, Inc., supra, 712; see also, II TOLENTINO, CIVIL CODE OF THE PHILIPPINES 371. (1972 ed.)

[23] II FRANCISCO, CIVIL CODE OF THE PHILIPPINES, 787.

[24] Id.

[25] Id., 789.

[26] Id., 790.

[27] Id., 789.

[28] Id., 790.

[29] TOLENTINO, id., 373.

[30] Id., 374.

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