

SOLID MANILA CORPORATION, PETITIONER, VS. BIO HONG TRADING CO., INC. AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 90596. April 08, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal filed by way of a petition for review on certiorari under Rule 45 of the Rules of Court.

The petitioner raises two questions: (1) whether or not the Court of Appeals[1] erred in reversing the trial court which had rendered summary judgment; and (2) whether or not it erred in holding that an easement had been extinguished by merger.

We rule for the petitioner on both counts.

It appears that the petitioner is the owner of a parcel of land located in Ermita, Manila, covered by Transfer Certificate of Title No. 157750 of the Register of Deeds of Manila. The same lies in the vicinity of another parcel, registered in the name of the private respondent corporation under Transfer Certificate of Title No. 128784.

The private respondent's title came from a prior owner, and in their deed of sale, the parties thereto reserved as an easement of way:

x x x a portion thereof measuring NINE HUNDRED FOURTEEN SQUARE METERS, more or less, had been converted into a private alley for the benefit of neighboring estates, this being duly annotated at the back of the covering Transfer Certificate of Title per regulations of the Office of the City Engineer of Manila and that the three meter-wide portion of said parcel along the Pasig River, with an area of ONE HUNDRED SEVENTY NINE (179) SQUARE METERS, more or less, had actually been expropriated by the City Government and developed pursuant to the beautification drive of the Metro Manila Governor. (p. 3, Record).[2]

As a consequence, an annotation was entered in the private respondent's title, as follows:

Entry No. 7712/T-5000 — CONSTRUCTION OF PRIVATE ALLEY — It is hereby made of record that a construction of private alley has been undertaken on the lot covered by this title from Concepcion Street to the interior of the aforesaid property with the plan and specification duly approved by the City Engineer subject to the following conditions to wit: (1) That the private alley shall be at least three (3) meters in width; (2) That the alley shall not be closed so long as there's a building exists thereon (sic); (3) That the alley shall be open to the sky; (4) That the owner of the lot on which this private alley has been constituted shall construct the said alley and provide same with concrete canals as per specification of the City Engineer; (5) That the maintenance and upkeep of the alley shall be at the expense of the registered owner; (6) That the alley shall remain open at all times, and no obstructions whatsoever shall be placed thereon; (7) That the owner of the lot on which the alley has been constructed shall allow the public to use the same, and allow the City to lay pipes for sewer and drainage purposes, and shall not act (sic) for any indemnity for the use thereof; and (8) That he shall impose upon the vendee or new owner of the property the conditions abovementioned; other conditions set forth in Doc. No. 4236,

Page No. 11, Book No. 84 of Nicasio P. Misa, Not. Pub. of Manila.[3]

The petitioner claims that ever since, it had (as well as other residents of neighboring estates) made use of the above private alley and maintained and contributed to its upkeep, until sometime in 1983, when, and over its protests, the private respondent constructed steel gates that precluded unhampered use.

On December 6, 1984, the petitioner commenced suit for injunction against the private respondent, to have the gates removed and to allow full access to the easement.

The court a quo shortly issued ex parte an order directing the private respondent to open the gates. Subsequently, the latter moved to have the order lifted, on the grounds that: (1) the easement referred to has been extinguished by merger in the same person of the dominant and servient estates upon the purchase of the property from its former owner; (2) the petitioner has another adequate outlet; (3) the petitioner has not paid any indemnity therefor; and (4) the petitioner has not shown that the right-of-way lies at a point least prejudicial to the servient estate.

The private respondent's opposition notwithstanding, the trial court issued a "temporary writ of preliminary injunction to continue up to the final termination of the case upon its merits upon the posting of a P5,000.00 bond by the plaintiff"[4] (the petitioner herein).

Thereafter, the respondent corporation answered and reiterated its above defenses.

On April 15, 1986, the petitioner moved for summary judgment and the court a quo ruled on the same as follows:

In view of the foregoing, this Court finds it unnecessary to try this case on the merit (sic) and hereby resolve (sic) to grant the plaintiff's motion for summary judgment. (pp. 15-107, Record).[5]

On January 19, 1987, the trial court rendered judgment against the private respondent, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered making permanent the temporary mandatory injunction, that had been issued against the defendant, and for the defendant to pay the plaintiff the costs of this suit.

The defendant's counterclaim against the plaintiff is hereby dismissed, for lack of merit. (Summary Judgment, p. 6).[6]

The private respondent appealed to the respondent Court of Appeals.

Meanwhile, the private respondent itself went to the Regional Trial Court on a petition for the cancellation of the annotation in question. The court granted cancellation, for which the petitioner instituted CA-G.R. SP. No. 13421 of the respondent Court of Appeals which ordered the restoration of the annotation "without prejudice [to] the final outcome of"[7] the private respondent's own appeal (subject of this petition).

In reversing the trial court which had, as earlier mentioned, rendered summary judgment, the respondent Court of Appeals held that the summary judgment was improper and that the lower court erroneously ignored the defense set up by the private respondent that the easement in question had been extinguished. According to the Appellate Court, an easement is a mere limitation on ownership and that it does not impair the private respondent's title, and that since the private respondent had acquired title to the property, "merger" brought about an extinguishment of the easement.

The petitioner submits that the respondent Court of Appeals erred, because the very deed of sale executed between the private respondent and the previous owner of the property "excluded" the alley in question, and that in any event, the intent of the parties was to retain the "alley" as an easement notwithstanding the sale.

As already stated at the outset, the Court finds merit in the petition.

There is no question that an easement, as described in the deed of sale executed between the private respondent and the seller, had been constituted on the private respondent's property, and has been in fact annotated at the back of Transfer Certificate of Title No. 128784. Specifically, the same charged the private respondent as follows: "(6) That the alley shall remain open at all times, and no obstructions whatsoever shall be placed thereon; (7) That the owner of the lot on which the alley has been constructed shall allow the public to use the same, and allow the City to lay pipes for sewer and drainage purposes, and shall not [ask] for any indemnity for the use thereof..."[8] Its act, therefore, of erecting steel gates across the alley was in defiance of these conditions and a violation of the deed of sale, and, of course, the servitude of way.

The Court then is of the opinion that injunction was and is proper and in denying injunctive relief on appeal, the respondent Appellate Court committed an error of judgment and law.

It is hardly the point, as the Court of Appeals held, that the private respondent is the owner of the portion on which the right-of-way had been established and that an easement can not impair ownership. The petitioner is not claiming the easement or any part of the property as its own, but rather, it is seeking to have the private respondent respect the easement already existing thereon. The petitioner is moreover agreed that the private respondent has ownership, but that nonetheless, it has failed to observe the limitation or encumbrance imposed on the same.

There is therefore no question as to ownership. The question is whether or not an easement exists on the property, and as we indicated, we are convinced that an easement exists.

It is true that the sale did include the alley. On this score, the Court rejects the petitioner's contention that the deed of sale "excluded" it, because as a mere right-of-way, it can not be separated from the tenement and maintain an independent existence. Thus:

Art. 617. Easements are inseparable from the estate to which they actively or passively belong.[9]

Servitudes are merely accessories to the tenements of which they form part.[10] Although they are possessed of a separate juridical existence, as mere accessories, they can not, however, be alienated[11] from the tenement, or mortgaged separately.[12]

The fact, however, that the alley in question, as an easement, is inseparable from the main lot is no argument to defeat the petitioner's claims, because as an easement precisely, it operates as a limitation on the title of the owner of the servient estate, specifically, his right to use (*jus utendi*).

As the petitioner indeed hastens to point out, the deed itself stipulated that "a portion thereof [of the tenement] measuring NINE HUNDRED FOURTEEN SQUARE METERS, more or less, had been converted into a private alley for the benefit of the neighboring estates..."[13] and precisely, the former owner, in conveying the property, gave the private owner a discount on account of the easement, thus:

WHEREAS, to compensate for the foregoing, the parties hereto agreed to adjust the purchase price from THREE MILLION SEVEN HUNDRED NINETY THOUSAND FOUR HUNDRED FORTY PESOS (P3,790,440.) to THREE MILLION FIVE HUNDRED THREE THOUSAND TWO HUNDRED FORTY PESOS (P3,503,240.00)[14]

Hence, and so we reiterate, albeit the private respondent did acquire ownership over the property—including the disputed alley—as a result of the conveyance, it did not acquire the right to close that alley or otherwise put up obstructions thereon and thus prevent the public from using it, because as a servitude, the alley is supposed to be

open to the public.

The Court is furthermore of the opinion, contrary to that of the Court of Appeals, that no genuine merger took place as a consequence of the sale in favor of the private respondent corporation. According to the Civil Code, a merger exists when ownership of the dominant and servient estates is consolidated in the same person.[15] Merger then, as can be seen, requires full ownership of both estates.

One thing ought to be noted here, however. The servitude in question is a personal servitude, that is to say, one constituted not in favor of a particular tenement (a real servitude) but rather, for the benefit of the general public.

Personal servitudes are referred to in the following article of the Civil Code:

Art. 614. Servitudes may also be established for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong.[16]

In a personal servitude, there is therefore no "owner of a dominant tenement" to speak of, and the easement pertains to persons without a dominant estate,[17] in this case, the public at large.

Merger, as we said, presupposes the existence of a prior servient-dominant owner relationship, and the termination of that relation leaves the easement of no use. Unless the owner conveys the property in favor of the public—if that is possible—no genuine merger can take place that would terminate a personal easement.

For this reason, the trial court was not in error in rendering summary judgment, and insofar as the respondent Court of Appeals held that it (the trial court) was in error, the Court of Appeals is in error.

Summary judgments under Rule 34 of the Rules of Court are proper where there is no genuine issue as to the existence of a material fact, and the facts appear undisputed based on the pleadings, depositions, admissions, and affidavits of record.[18] In one case, this Court upheld a decision of the trial court rendered by summary judgment on a claim for money to which the defendant interposed the defense of payment but which failed to produce receipts.[19] We held that under the circumstances, the defense was not genuine but rather, sham, and which justified a summary judgment. In another case, we rejected the claim of acquisitive prescription over registered property and found it likewise to be sham, and sustained consequently, a summary judgment rendered because the title challenged was covered by a Torrens Certificate and under the law, Torrens titles are imprescriptible.[20]

We also denied reconveyance in one case and approved a summary judgment rendered thereon, on the ground that from the records, the plaintiffs were clearly guilty of laches having failed to act until after twenty-seven years.[21] We likewise allowed summary judgment and rejected contentions of economic hardship as an excuse for avoiding payment under a contract for the reason that the contract imposed liability under any and all conditions.[22]

In the case at bar, the defense of merger is, clearly, not a valid defense, indeed, a sham one, because as we said, merger is not possible, and secondly, the sale unequivocally preserved the existing easement. In other words, the answer does not, in reality, tender any genuine issue on a material fact and can not militate against the petitioner's clear cause of action.

As this Court has held, summary judgments are meant to rid a proceeding of the ritual of a trial where, from existing records,[23] the facts have been established, and trial would be futile.

What, indeed, argues against the posturing of the private respondent--and consequently, the challenged holding of the respondent Court of Appeals as well--is the fact that the Court of Appeals itself had rendered judgment, in its CA-G.R. No. 13421, entitled *Solid Manila Corporation v. Ysrael*, in which it nullified the cancellation of the easement annotated at the back of the private respondent's certificate of title ordered by Judge Ysrael in LRC Case No. 273. As the petitioner now in fact insists, the Court of Appeals' judgment, which was affirmed by this Court

in its Resolution dated December 14, 1988, in G.R. No. 83540, is at least, the law of the case between the parties, as "law of the case" is known in law, e.g.:

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"Law of the case" has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. (21 C.J.S. 330) (*Italics supplied*).

It may be stated as a rule of general application that, where the evidence on a second or succeeding appeal is substantially the same as that on the first or preceding appeal, all matters, questions, points, or issues adjudicated on the prior appeal are the law of the case on all subsequent appeals and will not be considered or readjudicated therein. (5 C.J.S. 1267) (*Italics supplied*.)

In accordance with the general rule stated in Section 1821, where, after a definite determination, the court has remanded the cause for further action below, it will refuse to examine question other than those arising subsequently to such determination and remand, or other than the propriety of the compliance with its mandate; and if the court below has proceeded in substantial conformity to the directions of the appellate court, its action will not be questioned on a second appeal.

As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing." (5 C.J.S. 1276-77). (*Italics supplied*.)

Questions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion. (5 C.J.S. 1286-87). (*Italics supplied*).[24]

CA-G.R. No. 13421 is the law of the case because clearly, it was brought to determine the rights of the parties regarding the easement, subject of the controversy in this case, although as a petition for "cancellation of annotation" it may have, at a glance, suggested a different cause of action.

And for reasons of fair play, the private respondent can not validly reject CA-G.R. No. 13421 as the law of the case, after all, it was the one that initiated the cancellation proceedings with the Regional Trial Court in LRC No. 273 that precipitated that appeal. In the second place, the proceedings for cancellation of annotation was in fact meant to preempt the injunction decreed by the lower court in this case. Plainly and simply, the private respondent is guilty of forum-shopping, as we have described the term:

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There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling. This is specially so, as in this case, where the court in which the second suit was brought, has no jurisdiction.[25]

to which contempt is a penalty.[26]

As it happened, in its effort to shop for a friendly forum, the private respondent found an unfriendly court and it can not be made to profit from its act or malpractice by permitting it to downgrade its finality and deny its

applicability as the law of the case.

As a personal servitude, the right-of-way in question was established by the will of the owner.

In the interesting case of *North Negros Sugar Co., Inc. v. Hidalgo*,^[27] this Court, speaking through Justice Claro Recto, declared that a personal servitude (also a right of way in that case) is established by the mere "act"^[28] of the landowner, and is not "contractual in nature,"^[29] and a third party (as the petitioner herein is a third party) has the personality to claim its benefits. In his separate opinion, however, Justice Jose Laurel maintained that a personal or voluntary servitude does require a contract and that "[t]he act of the plaintiff in opening the private way here involved did not constitute an offer..."^[30] and "[t]here being no offer, there could be no acceptance; hence no contract."^[31]

The Court sees no need to relive the animated exchanges between two legal titans (they would contend even more spiritedly in the "larger" world of politics) to whom present scholars perhaps owe their erudition and who, because of the paths they have taken, have shaped history itself; after all, and coming back to the case at bar, it is not disputed that an easement has been constituted, whereas it was disputed in *North Negros'* case. Rather, the question is whether it is still existing or whether it has been extinguished. As we held, our finding is that it is in existence and as a consequence, the private respondent can not bar the public, by erecting an obstruction on the alley, from its use.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals is SET ASIDE and the decision of the Regional Trial Court is hereby REINSTATED. The petitioner and its counsel are hereby required to SHOW CAUSE why they should not be punished for contempt of court, and also administratively dealt with in the case of counsel, for forum shopping.

IT IS SO ORDERED.

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

[1] Herrera, Manuel, J., Ponente; Reyes, Minerva and Sempio Diy, Alicia, JJ., Concurring.

[2] Rollo, 31.

[3] *Id.*, 31-32.

[4] *Id.*, 34.

[5] *Id.*, 15, 37.

[6] *Id.*, 96.

[7] *Id.*

[8] *Id.*, 32.

[9] CIVIL CODE, art. 617.

[10] II TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 343-344. (1972 ed.)

[11] *Id.*, 344.

[12] *Id.*

[13] Rollo, id., 31; emphasis supplied.

[14] Id., 21; emphasis in the original.

[15] CIVIL CODE, supra, art. 631(1).

[16] Supra, art. 614.

[17] TOLENTINO, id., 340.

[18] RULES OF COURT, Rule 34; Natalia Realty Corporation v. Valley, G.R. Nos. 78290-94, May 23, 1989, 173 SCRA 534.

[19] Carcon Development Corporation v. Court of Appeals, G.R. No. 88218, December 19, 1989, 180 SCRA 348.

[20] Natalia Realty Corporation v. Valley, supra.

[21] Arradaza v. Court of Appeals, G.R. No. 50422, February 8, 1989, 170 SCRA 12.

[22] Garcia v. Court of Appeals, Nos. 82282-83, November 24, 1988, 167 SCRA 815.

[23] Supra; also Arradaza v. Court of Appeals, supra.

[24] People v. Pinuila, 103 Phil. 992, 999 (1958); emphasis in the original.

[25] Villaneuva v. Adre, G.R. No. 80863, April 27, 1989, 172 SCRA 876, 882.

[26] Supra.

[27] 63 Phil. 664 (1936).

[28] Supra, 684. Under Article 619 of the Civil Code, voluntary easements and established "by the will of the owner."

[29] Supra.

[30] Supra, 696.

[31] Supra.

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