

**SPOUSES SOCRATES PILAPIL AND ROSARIO PILAPIL, PETITIONERS,
VS. THE COURT OF APPEALS, REGIONAL TRIAL COURT OF CEBU,
BRANCH 17, AND SPOUSES GORGONIO COLOMIDA AND GLORIA
COLOMIDA, ...**

G.R. No. 97619. November 26, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

From the denial of 13 February 1991 of their motion for the reconsideration of the 26 October 1990 decision of the Court of Appeals, in CA-G.R. CV No. 17235,[1] which affirmed the 8 February 1988 decision of Branch 17 of the Regional Trial Court (RTC) of Cebu, petitioners filed this petition for review under Rule 45 of the Rules of Court.

The kernel issue in this case is whether or not there exists in sitio Bahak, barangay Poblacion, Municipality of Liloan, Province of Cebu a camino vecinal;[2] and if so, whether the same traverses the property belonging to the petitioners.

The pleadings disclose the antecedents of this controversy.

The petitioners-spouses (hereinafter, Pilapils) own a 6,598 square meter[3] parcel of land situated in Bahak, Poblacion, Liloan, Cebu and covered by Tax Declaration No. 15067.[4] The said parcel corresponds to Lot No. 320 and Lot No. 323[5] and that portion covered by Plan Psu-07-05-005007,[6] duly approved by the Regional Director of Region VII of the Bureau of Lands. The land formerly belonged to Marcelo Pilapil, the grandfather of petitioner Socrates Pilapil.

Private respondents (hereinafter, Colomidas), who are residents of Mandaue City, purchased on 4 June 1981 from Emeteria vda. de Ceniza and the heirs of Leoncio Ceniza a parcel of land, also located at Bahak, Poblacion, Liloan, Cebu, covered by Tax Declaration No. 19764 and described as follows:

"x x x Boundaries: N-Gregorio Longakit; S-Gregorio Longakit; E-Manglar; W-Gregorio Longakit; Area: 10,910 sq. meters; Kind of land: Pasture, cocal and wood; Improvements: 20 cocos prod.; Assessed Value: P1,360.00; Present Possessors: The herein petitioners."[7]

This parcel of land, per Plan Psu-07-01-002763,[8] was found to contain only 6,448 square meters. It is now covered by Free Patent No. (VII-1)-15448, issued on 23 March 1982, and Original Certificate of Title No. P-20588[9] of the Register of Deeds of the Province of Cebu issued in the name of the Colomidas and is located around 70 meters from the National Road. The Colomidas claim that they had acquired from Sesenando Longakit a road right of way which leads towards the National Road; this road right of way, however, ends at that portion of the property of the Pilapils where a camino vecinal exists all the way to the said National Road.[10]

In the early part of July of 1981, the Colomidas "tried to improve the road or 'camino vecinal', for the

convenience of the public," but the Pilapils harassed and threatened them with "bodily harm from making said improvement." The Pilapils also threatened to fence off the camino vecinal.[11]

Thus, on 16 July 1981, the Colomidas filed against the Pilapils a petition[12] for injunction and damages with a prayer for a writ of preliminary mandatory and/or prohibitory injunction with the Regional Trial Court of Cebu. Docketed as Civil Case No. R-20732, the petition was raffled off to Branch 17 thereof. The Colomidas specifically allege in paragraph IV of the petition that:

"x x x Granting arguendo, even in the very remote possibility that the 'camino vecinal' cannot be proved, the petitioners are entitled to the use of the same under Articles 649 to 651 of the Civil Code, it being their only access to public (sic) highway." [13]

and pray that upon the filing of the petition, a restraining order be issued directing the Pilapils or anyone acting in their behalf to cease and desist from preventing or harassing them (Colomidas) from using the camino vecinal and/or fencing off the same, and after hearing, a writ of preliminary injunction be issued commanding the Pilapils to cease and desist from proceeding with the acts complained of. They also asked that the injunction be made permanent and that the Pilapils be ordered to pay, jointly and severally, the sum of P100,000.00 as moral damages, P50,000.00 as exemplary damages, P10,000.00 as attorney's fees and other litigation expenses as may be duly proved. Consistent with the aforequoted allegation of paragraph IV of the petition, the Colomidas additionally pray that:

"6. In the remote possibility that the 'camino vecinal' cannot be proved, to consider the same as a right of way for the petitioners and to fix compensation for the sum (sic) at TEN PESOS (P10.00) per square meter." [14]

On the other hand, on 29 July 1981, the Pilapils filed against the Colomidas an action for damages in the Municipal Circuit Trial Court (MCTC) of Liloan-Compostela, Cebu which was docketed as Civil Case No. 93-R.[15]

On 18 August 1981, the Pilapils filed their Answer[16] in Civil Case No. R-20732. They specifically deny therein the existence of a "camino vecinal" on their property and allege, inter alia, that the enclosing of their property by a fence was done in the valid exercise of their right of ownership and that if the Colomidas were prejudiced thereby, they only have themselves to blame for buying said property without verifying its condition and existing easements. As affirmative and special defenses, the Pilapils aver that the petition does not state facts sufficient to constitute a valid cause of action; the Colomidas were the ones who employed threats and intimidation; and, to add insult to injury, the latter caused a heavy bulldozer to enter their (Pilapils) property and cause great damage to the plants and crops in the process. The Pilapils also set up a counterclaim for attorney's fees, reimbursement for the damages caused to their land and moral and exemplary damages as may be determined by the court.

During trial on the merits in Civil Case No. R-20732, the Colomidas presented the following witnesses: Gorgonio Colomida, Jr. himself, Sesenando Longakit and Florentino Pepito. They also offered in evidence documentary exhibits, the more relevant and material of which are (1) Resolution No. 106 of the Municipal Council of Liloan passed on 18 August 1973 and entitled "Authorizing the Residents of Bahak, Poblacion, Liloan to Repair and Improve a Camino Vecinal in their Sitio"[17] and (2) a sketch[18] prepared by witness Sesenando Longakit purportedly showing that the camino vecinal traverses the property of the Pilapils. Both Longakit and Pepito testified on the said camino vecinal, insisting that it traverses the property of the Pilapils.

Upon the other hand, the Pilapils presented the following as their witnesses: Ramon Sungahid, Engineer Epifanio Jordan (the Municipal Planning and Development Coordinator of the Municipality of Liloan) and petitioner Socrates Pilapil. Engineer Jordan testified on Liloan's Urban Land Use Plan[19] or zoning map which he prepared upon the instruction of then Municipal Mayor Cesar Bugtai and which was approved by the Sangguniang Bayan

of Liloan. Per the said plan, the camino vecinal in sitio Bahak does not traverse, but runs along the side[20] of the Pilapil property.[21]

On 8 February 1988, the trial court rendered its decision[22] in favor of the Colomidas the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of petitioners, and, accordingly, respondents are permanently enjoined from preventing or harassing petitioners from using the 'camino vecinal' across respondents' land at Bahak, Poblacion, Liloan, or from fencing the same or in any manner preventing its use by other people; and respondents are ordered to pay petitioners jointly and severally the sum of P4,500.00 as actual damages, the sum of P5,000.00 as attorney's fees, and the sum of P2,000.00 as litigation expenses. Costs against respondents.

SO ORDERED."[23]

This disposition is based on the following findings of fact and conclusions:

"Resolution No. 106 of the Municipal Council of Liloan, passed on August 18, 1973 and entitled 'Authorizing the Residents of Bahak, Poblacion, Liloan to Repair and Improve a Camino Vecina (sic) in Their Sitio' (Exh. "A") shows that there is a 'camino vecinal' at Bahak. It is true, as claimed by respondents, that Resolution No. 106 does not state that the 'camino vecinal' referred to therein traverses respondents' land; however, the following facts of record support petitioners' theory that the said 'camino vecinal' runs across respondents' land:

1. Resolution No. 106 (Exh. "A") states that upon inspection of the 'camino vecinal' by one of the councilors, it was established that the said 'camino vecinal' needed 'some improvements to make it usable,' but the Municipal Council did not have the necessary funds for the purpose, and that 'the residents of Bahak, headed by Mr. Sesenando Longakit, have signified to (sic) repair the camino vecinal on voluntary (sic) basis,' hence (sic), it was resolved 'to authorize the residents of Bahak to repair aforesaid road' provided the labor would be on a purely voluntary basis, the municipal government would not be liable for any expense, and there would be no discrimination in the use of the road.

The 'Mr. Sesenando Longakit' alluded to in Resolution No. 106 as heading the residents of Bahak who had asked for authority to repair the 'camino vecinal' at Bahak took the witness stand. His testimony has established that he has been residing at Bahak since birth on July 16, 1933, that he is the occupant of a lot (Exh. "B-5") not far from petitioners' lot, and that he and other residents in that area have been using the 'camino vecinal' as their access to the National Road.

It appears from the sketch (Exh. "B") drawn by Mr. Longakit that the 'camino vecinal' traverses the land of respondents (Exhs. "B-6" & "B-7"). Obviously, the 'camino vecinal' subject matter of Resolution No. 106 is the 'camino vecinal' running across respondents' land, somewhere at the back of which is the land occupied by Mr. Longakit, who for the reason that he and other residents were using that 'camino vecinal,' offered to the municipal government their services to improve it.

2. As testified to by Mr. Longakit, who has been living at Sitio Bahak since 1933, and whose testimony the Court finds credible, both sides of the 'camino vecinal' formerly belonged to the grandfather of respondent Socrates Pilapil, it was that 'camino vecinal' in connection with which he secured Resolution No. 106, and that before it was partly fenced by respondents, and when he was a child, everybody could use that 'camino vecinal' and carabao carts could pass through it, and later, 4-wheeled motor vehicles could pass through it.

3. Mr. Florentino Pepito, 79 years of age when he took the witness stand in 1982, and who was a councilor in

Liloan from 1955 to 1967, and was chairman of the Committee on Roads & Bridges, testified that the former owner of the lots now owned by respondents at Bahak was Marcelo Pilapil, grandfather of respondent Socrates Pilapil and close (sic) friend of his (witness Pepito) that the subject 'camino vecinal' is located between those lots, and in fact he has a parcel of land in that area covered by Tax Declaration No. 36168 (Exh. "E"), which shows that on the North it is bounded by a 'camino vecinal' (Exh. "E-1"), which passes between the two lots of respondents, proceeds to his (witness Pepito's) land, crosses the National Road up to Sitio Looc between Km. 19 and Km. 20, up to Martires Street, facing Camotes; and that when he was a child, he and his father used to pass through that 'camino vecinal' in a carabao cart. The Court finds no reason to disbelieve Mr. Pepito's testimony." [24]

It discredited the version of the Pilapils in this wise:

"4. Respondent Socrates Pilapil insisted on direct examination that there is no 'camino vecinal' traversing his lots. However, on cross-examination he declared that his two lots at Bahak, numbered 320 and 323, were formerly covered by two separate tax declarations, but later he had (sic) fused into one, namely Tax Declaration No. 15067 (Exh. "4"), which begins with the year 1985 (long after the present case was filed). Respondent Socrates Pilapil admitted that before the fusion of the two tax declarations covering Lots 320 and 323 owned by him, those tax declarations showed that there was a 'camino vecinal' at the South boundary of Lot 320 and at the North boundary of Lot 323, but after the fusion of the two tax declarations into one, the 'camino vecinal' no longer appears in the new tax declaration (Exh. "4").

In the face of the foregoing established facts, it would appear that the common testimony of respondent Socrates Pilapil and Ramon Sungahid to the effect that there is no 'camino vecinal' across respondents' lots is nothing more than an unsupported conclusion. Mr. Sungahid adamantly insisted that there was no such 'camino vecinal' despite the fact that he was confronted on cross-examination with tax declarations stating that there was a 'camino vecinal' across respondents' lot. Ironically, when respondent Socrates Pilapil later took the witness stand, as already stated, he himself admitted that the tax declarations previously covering his two lots showed that there was a 'camino vecinal' between the lots.

Respondents' other witness, Engr. Epifanio Jordan, Municipal Planning & Development Coordinator of Liloan, prepared a zoning map (Exh. "1") of Poblacion, Liloan. The map contains a portion (Exh. "1-F") which shows a 'camino vecinal' passing through the land of respondents at Bahak, but he declared that the 'camino vecinal' on the map is merely a proposal by his office to the Sangguniang Bayan of Liloan. The Court notes that in the map (Exh. "I") (sic) some streets and projects are labelled 'proposed,' but the 'camino vecinal' (Exh. "I-F") (sic) which Engr. Jordan admits to be passing through respondents' land is not so labelled. Besides, it is not clear whether or not he was authorized to prepare the map, and if he was, who authorized him. On direct examination he declared that the Sangguniang Bayan instructed him to prepare the map; but on cross-examination he stated, when asked whether the Sangguniang Bayan authorized him to prepare the map, that it was the Mayor who directed him to do so." [25]

The Pilapils appealed from the above decision to the public respondent Court of Appeals which docketed the case as CA-G.R. CV No. 17235. In support of their plea for the reversal of the decision, the Pilapils sought to convince the public respondent that the trial court erred in:

"I. X X X HOLDING THAT A CAMINO VECINAL EXISTED ACROSS THE LOT OF THE DEFENDANTS X X X.

II. X X X NOT APPRECIATING THE EVIDENCE PRESENTED BY THE DEFENDANTS X X X.

III. X X X CONDEMNING THE DEFENDANTS X X X TO PAY PLAINTIFFS X X X JOINTLY AND

SEVERALLY THE SUM OF P4,500.00 AS ACTUAL DAMAGES, THE SUM OF P5,000.00 AS ATTORNEY'S FEES, THE SUM OF P2,000.00 AS LITIGATION EXPENSES AND TO PAY THE COSTS.

IV. X X X NOT AWARDING TO DEFENDANTS X X X DAMAGES TO COMPENSATE FOR THE DAMAGED CONCRETE SLABS, COCONUTS, BANANAS AND OTHER FRUIT TREES THAT WAS (sic) CAUSED BY THE BULLDOZER HIRED BY THE PLAINTIFFS X X X, ATTORNEY'S FEES, LITIGATION EXPENSES AND COSTS."[26]

In its decision affirming in toto the 8 February 1988 ruling of the trial court, the public respondent opined that the arguments adduced in support of the assigned errors boil down to the question of credibility of the witnesses and the weight assigned by the lower court to their testimonies and the documentary exhibits. It then concluded that (a) there exists no exception to the deeply rooted rule that findings of fact of trial courts are entitled to great weight and respect and will not be disturbed on appeal; (b) while the 18 August 1973 Resolution of the Municipal Council of Liloan (Exhibit "A") does not state that the camino vecinal traverses the property of the Pilapils, the testimony of Sesenando Longakit, the person named therein who has knowledge of the surrounding facts and circumstances, and who was present during the deliberations, passage and signing thereof, confirmed the existence of the camino vecinal on the property of the Pilapils; (c) as to the claimed damages to the fruit trees and other plants belonging to the Pilapils, the same had been separately litigated on, at the latter's instance, before the Municipal Circuit Trial Court and had already been resolved against the Pilapils; besides, there is insufficient proof to indicate that damage was done to such plants or that the Pilapils planted trees and other plants on the camino vecinal; and (d) there is no merit in the claim that witnesses Longakit and Pepito, being private individuals, are incompetent to testify on the existence and location of the camino vecinal; both possess all the qualifications and none of the disqualifications for witnesses under Section 20, Rule 130 of the Rules of Court. As regards Exhibit "1" which the Pilapils relied upon in support of their theory that the camino vecinal does not traverse their property, the public respondent made the following disquisition:

"Respondents-appellants' Exhibit "1" is a zoning map for the Poblacion of the Municipality of Liloan (TSN, Epifanio Jordan, February 12, 1986, p. 6), prepared and testified to by Engineer Epifanio Jordan, Municipal Planning and Development Coordinator of Liloan. By this exhibit, respondents'appellants attempted to show that no 'camino vecinal' existed across their land, and that although there is a 'camino vecinal' illustrated therein, it is a proposed one and does not traverse, but only passes through the side of their land (TSN, Epifanio Jordan, November 5, 1985, p. 10; Exhibit "1-F").

After a thorough perusal of Exhibit "1", and a careful review of the transcript of stenographic notes taken on November 5, 1985 and February 12, 1986, We find that the 'camino vecinal' illustrated in Exhibit "1" and claimed by witness Engineer Epifanio Jordan as a proposed 'camino vecinal' (TSN, Epifanio Jordan, November 5, 1985, p. 10), is indeed not so labelled as the other proposed streets or passageways are. And more importantly, witness Engineer Epifanio Jordan did in fact admit and establish the existence of the 'camino vecinal' traversing respondents-appellants' land.

Respondents-appellants' witness, Engineer Epifanio Jordan produced before the lower court an old map of the Poblacion which was drawn and traced by a certain Atty. Sotero Auman, and from which said witnesses (sic) based his Exhibit "1". In Exhibit "1", witness Engineer Epifanio Jordan identified respondents-appellants' land as that encompassed in the circle, Exhibit "1-C" also Exhibit "G-1". On cross-examination, when confronted and asked to compare his zoning map (Exhibit "1") with the old map, it was shown that said Exhibit "1-A" also Exhibit "G-1", encompasses the figures '320' and '323' Lot numbers appearing in the old map, and (sic) consequently, was (sic) identified by said witness and marked as Exhibits "G-1-b" and "G-1-c" respectively, in Exhibit "1"; and that furthermore, the 'camino vecinal,' Exhibit "G-1-a", passess (sic) between Lot Nos. 320 and

323 which lots (sic) belong to respondents?appellants (TSN, Epifanio Jordan, February 12, 1986, pp. 1-13).

It is noted that on direct examination, witness Engineer Epifanio Jordan testified that the Sangguniang Bayan of Liloan, Cebu, instructed him to prepare the zoning map (Exhibit "1") (TSN, Epifanio Jordan, November 5, 1985, p. 9) but on cross-examination, stated (sic) that he did so upon oral orders of the mayor (TSN, Epifanio Jordan, February 12, 1986, pp. 6-7). Also on cross?examination, said witness testified that the zoning map (Exhibit "1") prepared by him was based on an old map drawn and traced by Atty. Sotero Auman, a casual worker in the Municipality of Liloan (Ibid., pp. 8 and 14) yet on redirect examination testified (sic) that he did not know who authorized said Atty. Sotero Auman to draw the map which served as his basis for Exhibit "1", or if it was approved by the Sangguniang Bayan of Liloan (Ibid., pp. 14-15)."[27]

Their motion for the reconsideration of the above decision having been denied by the public respondent Court of Appeals in its Resolution of 13 February 1991,[28] the Pilapils filed by mail on 8 April 1991 the instant petition. They interpose the following ground for the allowance thereof:

"4. The respondent Court, in affirming the Decision of the respondent RTC and in denying petitioners' motion for reconsideration, acted in a manner so patently and grossly contrary to law and jurisprudence, resulting in a miscarriage of justice to the prejudice and detriment of petitioners, by:

4.1 disregarding the official act of the Sangguniang Bayan of the Municipality of Lilo-an, Cebu;

4.2 quoting merely a portion of the testimony of a witness and not the totality of his testimony;

4.3 considering documentary exhibits not formally offered in evidence;

4.4 affirming the award of damages to the private respondent, and

4.5 affirming the denial of the award of damages to the petitioners."[29]

In a Manifestation[30] posted on 17 May 1991, the Colomidas pray for the dismissal of the petition on the basis of the rule on conclusiveness of findings of fact of the Court of Appeals; they further aver that the petition is but another attempt on the part of the Pilapils to unjustly delay the final resolution of the case.

Petitioners moved to expunge[31] the Manifestation on the ground that it was filed without prior leave of the Court and that it is not one of the pleadings allowed by the Rules of Court or required by this Court. We denied this motion, considered the Manifestation as the Colomidas' Comment to the petition and required the Pilapils to file a reply thereto,[32] which they subsequently complied with.[33]

We then gave due course to the petition and required the parties to submit their respective Memoranda.[34]

The core issue in this case, as already stated, is whether or not the Municipality of Liloan has a camino vecinal in sitio Bahak of barangay Poblacion, and if it does, whether such road traverses the property of the Pilapils or only passes along its side. While both parties agree that a camino vecinal actually exists, the Colomidas assert that the same traverses the property of the Pilapils. The latter, on the other hand, vigorously maintain that it does not. By any standard, the issue is quite simple and could have been easily resolved without much procedural fanfare if the trial court either took full advantage of the rule on pre-trial,[35] or conducted an ocular inspection of the premises. Such inspection would have been a wise course of action[36] to take in view of the divergent versions of the parties as to the location of the camino vecinal. Even the Colomidas, as petitioners below, could have expedited the resolution of the controversy by moving for the appointment of a commissioner who could determine the exact location of the camino vecinal and submit a vicinity map or plan indicating the same; and, if the parties cannot agree on its location, the latter could indicate its relative locations on the basis of the parties' respective versions. The trial court's decision does not even make any reference to a pre-trial conference being held. Neither

does it appear that the appointment of a commissioner, allowed by the Rules of Court,[37] was sought. As a consequence thereof, it took the trial court more than six (6) long years to decide the case. And even then, it had to contend with conflicting testimonial evidence and draw conclusions from a sketch prepared by witness Sesenando Longakit, the zoning map prepared by Engineer Jordan and various tax declarations.

The above issue has been further obscured by the unnecessary quibbling on whether or not the testimonies of Sesenando Longakit and Florentino Pepito should be accorded full faith and credit. To this Court's mind, the issue of their credibility has been rendered moot by the unrebutted evidence which shows that the Municipality of Liloan, through its Sangguniang Bayan, had approved a zoning plan, otherwise called an Urban Land Use Plan.[38] This plan indicates the relative location of the camino vecinal in sitio Bahak,[39] Poblacion, Liloan, Cebu.

It is beyond dispute that the establishment, closure or abandonment of the camino vecinal is the sole prerogative of the Municipality of Liloan. No private party can interfere with such a right. Thus, even if We are to agree with both the trial court and public respondent that Longakit and Pepito were telling the truth, the decision of the Municipality of Liloan with respect to the said camino vecinal in sitio Bahak must prevail. It is thus pointless to concentrate on the testimonies of both witnesses since the same have, for all intents and purposes, become irrelevant.

The property of provinces, cities and municipalities is divided into property for public use and patrimonial property.[40] The first consists of the provincial roads, city streets, municipal streets, squares, fountains, public waters, promenades, and public works for public service paid for by the said provinces, cities or municipalities.[41] They are governed by the same principles as property of public dominion of the same character.[42] Under the applicable law in this case, Batas Pambansa Blg. 337 (The Local Government Code), the Sangguniang Bayan, the legislative body of the municipality,[43] had the power to adopt zoning and subdivision ordinances or regulations subject to the provisions of existing laws, and to provide for the construction, improvement, repair and maintenance of municipal streets, avenues, alleys, sidewalks, bridges, parks and other public places, regulate the use thereof and prohibit the construction or of obstacles or encroachments on them.[44] Section 10, Chapter 2, Title One, Book I of said Code provided:[45]

"SEC. 10. Closure of roads. -- A local government unit may likewise, through its head acting pursuant to a resolution of its sanggunian and in accordance with existing law and the provisions of this Code, close any barangay, municipal, city or provincial road, street, alley, park or square. No such way or place or any part thereof shall be closed without indemnifying any person prejudiced thereby. A property thus withdrawn from public use may be used or conveyed for any purpose for which other real property belonging to the local unit concerned might be lawfully used or conveyed."

A camino vecinal is a municipal road. It is also property for public use. Pursuant, therefore, to the above powers of a local government unit, the Municipality of Liloan had the unassailable authority to (a) prepare and adopt a land use map, (b) promulgate a zoning ordinance which may consider, among other things, the municipal roads to be constructed, maintained, improved or repaired and (c) close any municipal road.

In the instant case, the Municipality of Liloan, through the Sangguniang Bayan, approved the Urban Land Use Plan; this plan was duly signed by the Municipal Mayor (Exhibit "1"). By doing so, the said legislative body determined, among others, the location of the camino vecinal in sitio Bahak. The following unrebutted testimony of Engineer Epifanio Jordan shows that the same was approved by the Sangguniang Bayan:

"ATTY. CAÑETE:

x x x

Q - After you prepared this map, what did you do with this?

A - I submitted the map to the Sangguniang Bayan of Liloan, Cebu for approval and action.

Q - What action was taken by the Sangguniang Bayan of Liloan, Cebu in (sic) this map that you prepared and submitted?

A - It approved the map.

Q - Why do you know that this map was approved by the Sangguniang Bayan of Liloan, Cebu?

A - I was present during the session.

COURT:

Q - You mean there was a resolution passed by the Sangguniang Bayan of Liloan, Cebu?

A - Yes, sir."^[46]

The reluctance of the trial court and public respondent to give due weight to the testimony of Engineer Jordan stemmed from a doubt as to his authority to prepare the plan. There is also some confusion regarding the party who directed him to do so. Both courts observed that while on direct examination, he testified that the Sangguniang Bayan instructed him to prepare the zoning map,^[47] during cross-examination, he stated that he prepared it upon the Mayor's oral order.^[48] Such inconsistency is quite trivial and hence, did not affect the preparation and subsequent approval of the zoning map. In the first place, under the applicable law, the mayor was both a member and the presiding officer of the Sangguniang Bayan.^[49] Secondly, what invested the zoning map with legal effect was neither the authority of the person who ordered its preparation nor the authority of the person who actually prepared it, but its approval by the Sangguniang Bayan. Furthermore, with or without the order of the Mayor or Sangguniang Bayan, Engineer Jordan, as the then Municipal Planning and Development Coordinator, had the authority to prepare the plan and submit it to the Sangguniang Bayan for approval. Among his functions under the governing law at the time was to formulate an integrated economic, social, physical and other development objectives and policies for the consideration and approval of the sangguniang bayan and the municipal mayor, and prepare municipal comprehensive plans and other development planning documents.^[50] Thus, even if he had not been instructed by anyone to prepare the map, he could nevertheless, on his own initiative and by virtue of his functions, make one. The trial court and public respondent then failed to appreciate the role and function of a Municipal Planning and Development Coordinator.

As further declared by Engineer Jordan, this camino vecinal in sitio Bahak "passes the side of the land of Socrates Pilapil. This is the proposed road leading to the national highway."^[51] The Colomidas presented no rebuttal witness to show that by the approval of the zoning map by the Sangguniang Bayan, they were effectively deprived of access to the national highway from their property. Of course, they may argue that the zoning map was prepared for and approved by the Sangguniang Bayan after the filing of their petition in Civil Case No. R-20732. Be that as it may, this preparation and approval, clearly a supervening event, was relied upon, introduced in evidence without objection on the part of the Colomidas and evaluated by the trial court. In short, the latter allowed the issue raised by the supervening event to be tried. There was nothing procedurally objectionable to this; on the contrary, Section 5, Rule 10 of the Rules of Court allows it. Said section reads:

"SEC. 5. Amendment to conform to or authorize presentation of evidence. -- When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but

failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation on the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Such supervening fact, duly proved to be an official act of the Municipality of Liloan, binds not only the Pilapils and the Colomidas, but also the general public. The solemn declarations of old people like Sesenando Longakit and Florentino Pepito cannot overturn the decision of the Municipality of Liloan.

The foregoing exposition renders unnecessary further discussion on the other issues raised by the petitioners.

WHEREFORE, the instant Petition is GRANTED. The challenged Decision of 26 October 1990 and Resolution of 13 February 1991 of public respondent Court of Appeals in CA-G.R. CV No. 17235, as well as the Decision of 8 February 1988 of Branch 17 of the Regional Trial Court of Cebu in Civil Case No. R-20732 are hereby SET ASIDE. Said Civil Case No. R-20732 is hereby DISMISSED with costs against the private respondents.

SO ORDERED.

Gutierrez, Jr., (Chairman), Romero, and Melo, JJ., concur.

Bidin, J., no part.

[1] Entitled "Spouses Gorgonio Colomida and Gloria Colomida, Petitioners-Appellees, vs. Spouses Socrates Pilapil and Rosario Pilapil, Respondents-Appellants"; per Associate Justice Venancio D. Aldecoa, concurred in by Associate Justices Lorna S. Lombos-de la Fuente and Cezar D. Francisco; Rollo, 27-39.

[2] A barrio road (MORENO, F.B., Philippine Law Dictionary, Third ed., 129).

[3] Not 5,398 as found by the trial court; Rollo, 58. A portion consisting of 1,200 square meters is classified as residential while the rest is declared as cocal.

[4] Exhibit "4".

[5] Decision of the trial court, Civil Case No. R-20732, 2; Rollo, op. cit., 58.

[6] Exhibit "3".

[7] Paragraph II, Complaint; Rollo, op. cit., 44.

[8] Exhibit "5".

[9] Exhibit "F".

[10] Paragraph III, Complaint; Rollo, 45.

[11] Paragraph V, Id.; Id., 45-46.

[12] Id., 44-49.

[13] Rollo, 45.

[14] Id., 48.

- [15] Id., 30; 53.
- [16] Rollo, 52-56.
- [17] Annex "B", Petition in Civil Case No. R-20732.
- [18] Exhibit "B".
- [19] Exhibit "1".
- [20] Exhibit "1-B".
- [21] Exhibit "1-F".
- [22] Rollo, 57-61.
- [23] Id., 61.
- [24] Rollo, 58-60.
- [25] Rollo, 60-61.
- [26] Rollo, 30-31.
- [27] Rollo, 37-38.
- [28] Rollo, 41.
- [29] Id., 15-16.
- [30] Id., 78-83.
- [31] Rollo, 87.
- [32] Id., 120-A.
- [33] Id., 160.
- [34] Id., 167.
- [35] Rule 20, Rules of Court.
- [36] Sambrano vs. Arzaga, 22 Phil. 130 [1912].
- [37] Rule 33, Rules of Court.
- [38] Exhibit "1".
- [39] Exhibit "1-B".
- [40] Article 423, Civil Code.
- [41] Article 424, Id.
- [42] TOLENTINO, A., The Civil Code of the Philippines, vol. II, 1983 ed., 38.
- [43] Previously, Section 146, Batas Pambansa Blg. 337; now Section 446, R.A. No. 7160.
- [44] Section 149 (x) and (z), now Sections 447 (2) (vii) and (ix), and (5) (v) of R.A. No. 7160 (The Local Government Code of 1991). Under Section 3 of the previous law on local autonomy, R.A. No. 2264,

municipalities were authorized to adopt zoning and subdivision ordinances or regulations subject to the approval of the mayor. In *Ortigas & Co., Ltd. Partnership vs. Feati Bank and Trust Co.*, 94 SCRA 533 [1979], a zoning plan may be adopted by a resolution.

[45] Now Section 21, R.A. No. 7160.

[46] TSN, 5 November 1985, 7-8; Rollo, 97-98.

[47] TSN, 5 November 1985, 9.

[48] TSN, 12 February 1986, 6-7.

[49] Section 146, in relation to Section 141 (2) (e), B.P. Blg. 337.

[50] Section 161 (4) (a) and (e), B.P. Blg. 337; see also, Section 476 of R.A. No. 7160 for the qualifications, powers and duties of the Planning and Development Coordinator.

[51] TSN, 5 November 1985, 10; Rollo, 100.

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