

## **EIGHTEENTH DIVISION**

**[ CA-G.R. CV. NO. 04181, February 18, 2015 ]**

**SPOUSES GREGORIO C. BUSCATO AND ROSARIO P. BUSCATO,  
PLAINTIFFS-APPELLEES, VS. SPOUSES GALO CALOPE AND LEAH  
AQUINO-CALOPE\*, DEFENDANTS-APPELLANTS.**

### **D E C I S I O N**

**LOPEZ, J.:**

#### **The Case**

Before the Court is an ordinary appeal filed under Rule 41 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision<sup>[1]</sup> of the Regional Trial Court, Branch 47 of Tagbilaran City, dated 8 September 2011, granting a compulsory easement of right of way in favor of Plaintiffs-Appellees and ordering the latter to pay the proper indemnity due to Defendants-Appellants.

#### **FACTUAL ANTECEDENTS**

The present case arose out of a claim for an easement of right of way by Plaintiffs-Appellees, invoking the application of Articles 649 and 650 of the Civil Code, over Lot No. 985-B owned by Defendants-Appellants.

Plaintiff-Appellee Rosario Buscato (herein referred to as "Rosario" for brevity) and Defendant-Appellant Leah Calope (herein referred to as "Leah" for brevity) are close blood relatives, they being first cousins. Leah inherited Lot No. 985-B, the servient estate, from her mother Senobia Aquino which lot is abutting the national road.

Located on the interior portion and behind Leah's property, is the property of Plaintiffs-Appellees denominated as Lot No. 1029. The Spouses Buscato erected their conjugal house on the said property. Their lot has no adequate access to a public road since it is surrounded by other estates. In order for Plaintiffs-Appellees to get to the national road, they have utilized a passageway traversing Lot No. 984, owned by Rosario's mother and Lot No. 985-B, owned by Leah, it being the shortest route from their house. This passageway is an undeveloped dirt road located just beside the barangay hall and accessible only by foot. However, it becomes muddy and difficult to traverse during rainy season. Due to the lack of adequate access to a public road, Plaintiffs-Appellees used to park their vehicle at Defendants-Appellants' garage.

Subsequently, Plaintiffs-Appellees requested from Defendants-Appellants that they be granted an easement of right of way with a width of three (3) meters so as to allow the passage of their vehicle. The said right of way claimed by Plaintiffs-Appellees is the same passageway which is located just beside the barangay hall. However, Defendants-Appellants refused to grant the said request. Instead, they

offered an alternative right of way located within the boundary of their lot.

Plaintiffs-Appellees refused to accept the said alternative route because it does lead directly to the public road but will have to go through another lot, Lot No. 982 owned by Rosario's sister, which makes the proposed alternative right of way circuitous. On 8 May 2009, Plaintiffs-Appellees referred their complaint to the Lupon of Barangay Del Carmen Norte, Balilihan, Bohol however, the parties failed to reach an amicable settlement.

On 27 August 2009, Plaintiffs-Appellees filed a Complaint<sup>[2]</sup> with the trial court for *Easement of Right of Way*. They alleged that their lot, Lot No. 1029, has no adequate access to a public highway.<sup>[3]</sup> Their only access to a public highway is through a passageway traversing the lot of Defendants-Appellants but which passageway is inadequate as it is accessible only by foot and cannot accommodate the passage of their motor vehicle.<sup>[4]</sup> They added that they are willing to introduce improvements on the said passageway like cementing the same and that they are willing to pay the proper indemnity for the grant of a right of way and the amount of damages that Defendants-Appellants may suffer by reason thereof.<sup>[5]</sup>

They also averred that the isolation of their property is not due to their own acts or fault.<sup>[6]</sup> Moreover, the portion of Defendants-Appellants' lot where the right of way is to be established provides the shortest distance from their house to the public road and no significant structures would be affected thereby.<sup>[7]</sup>

On 25 September 2009, Defendants-Appellants filed their Answer with Counterclaim<sup>[8]</sup>. They countered that Plaintiffs-Appellees' complaint states no cause of action.<sup>[9]</sup> They added that the location of the proposed easement of right of way provides for the shortest route in going to the public road, however, it is not enough that the easement be where the way is shortest. It is more important that it be where it will cause the least prejudice to the servient estate, according to Defendants-Appellants.<sup>[10]</sup> They claimed that the establishment of the easement is prejudicial to them as it will leave their lot divided, thus, depriving them of the optimum use of their property as a contiguous estate.<sup>[11]</sup>

Furthermore, they have offered an alternative right of way which is free of charge but Plaintiffs-Appellees rejected it.<sup>[12]</sup> They added that mere convenience for the dominant estate is not what is required by law as the basis for setting up a compulsory easement.<sup>[13]</sup>

Thereafter, trial on the merits ensued. On 8 September 2011, the trial court rendered the assailed decision. It ruled that all the requisites for the grant of an easement of right of way are present. It added that Defendants-Appellants' reason in denying the claim for an easement of right of way, that their land will be divided and it will affect the usage thereof, is simply flimsy and untenable. Defendants-Appellants' lot will not be adversely affected because the proposed road right of way will be established on an already existing passageway, it added. Moreover, the trial court found that the alternative right of way offered by Defendants-Appellants is circuitous and not appropriate for passage.

Thus, the trial court ordered the establishment of a permanent easement of right of way upon payment of the proper indemnity in the amount of P12,835.00, in accordance with the Report<sup>[14]</sup> prepared by the Commissioner appointed by it, representing the value of the land occupied plus the amount of P3,000.00 representing the value of the fruit-bearing trees that will have to be cut down as a result thereof.

Aggrieved, Defendants-Appellants filed a Notice of Appeal<sup>[15]</sup> on 27 September 2011. In an Order<sup>[16]</sup> dated 11 November 2011, the trial court gave due course to the notice of appeal and the records of this case were ordered elevated to this Court.

On 28 January 2013, Defendants-Appellants filed their Appellants' Brief<sup>[17]</sup> raising several assignments of error which can be summarized into one pivotal issue, to wit:

WHETHER OR NOT THE TRIAL COURT FAILED TO APPRECIATE WITH RESOLVE THE CRITERIA LAID DOWN BY SUBSISTING JURISPRUDENCE AND SUPPORTED BY SUBSANTIVE LAW ON THE GRANT OF RIGHT OF WAY.

### **RULING**

We **DENY** the present appeal for lack of merit.

Pending resolution of their appeal filed with this Court, Defendant-Appellant Leah Aquino-Calope died on 7 October 2013. She was properly substituted by her surviving heirs namely: Mary Lou A. Calope, Mary Lee A. Calope, Lindey Mark A. Calope, and Lindon Joseph A. Calope.

Defendants-Appellants maintained in their brief that the portion of their property where the easement of right of way will be established is located almost at the middle section.<sup>[18]</sup> This will cause great prejudice to them since it will break the contiguity of their property.<sup>[19]</sup> They argued that the trial court only considered the criteria of the shortest distance however, such is not the only criteria for declaring a right of way.<sup>[20]</sup> It is equally important that the right of way claimed is at the point least prejudicial to the servient estate, they added.

Defendants-Appellants also questioned the findings of the court appointed commissioner as the zonal valuation used by the latter is not correct, according to them.<sup>[21]</sup>

On the other hand, Plaintiffs-Appellees countered that all the elements for the grant of a compulsory easement of right of way under Articles 649 and 650 of the Civil Code are present in this case. Moreover, they alleged that Defendants-Appellants' claim that the proposed right of way is located almost at the middle portion of their lot is not true. The Commissioner's Report<sup>[22]</sup> would show that the proposed right of way is located at the northernmost portion of Lot No. 985-B, they added.<sup>[23]</sup> They also argued that the establishment of the easement will not cause great prejudice to Defendants-Appellants' lot since it will only affect a small portion thereof.<sup>[24]</sup>

Upon a careful consideration of all the evidence and the testimonies of both parties,

We are convinced that Defendants-Appellants' contentions do not hold water.

### ***Right of Way; Requisites***

The conferment of a legal easement of right of way is governed by Articles 649 and 650 of the Civil Code, quoted below for easy reference:<sup>[25]</sup>

**Article 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 damages caused by such encumbrance.

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

**Article 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.

The following requisites should be met to be entitled to an easement of right of way:

1. The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway;
2. There is payment of proper indemnity;
3. The isolation is not due to the acts of the proprietor of the dominant estate; and
4. 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.<sup>[26]</sup>

All the above requisites are present here.

Anent the first requisite, it is evident from an examination of the Sketch Plan<sup>[27]</sup> prepared by Engr. Jose L. Yu, the court appointed commissioner, that Plaintiffs-Appellees' lot is surrounded by other estates belonging to different owners and it has no adequate access to a public highway. Even Defendants-Appellants admitted this fact during the conduct of the pre-trial and preliminary conference.<sup>[28]</sup> Plaintiffs-Appellees' only adequate access to a public road is through the proposed right of way traversing the lot of Defendants-Appellants.