

## THIRD DIVISION

[ G.R. No. 227917, March 17, 2021 ]

### **SPOUSES RUDY FERNANDEZ AND CRISTETA AQUINO, PETITIONERS, VS. SPOUSES MERARDO DELFIN AND ANGELITA DELFIN, RESPONDENTS.**

#### **DECISION**

##### **LEONEN, J.:**

When one person who owns two properties establishes an apparent sign of an easement between them, this gives rise to a title over an easement when either of the properties is transferred to another person. The exception is if the contrary is provided in the deed of transfer, or if before the deed is executed, the apparent sign is removed.

This Court resolves a Petition for Review on Certiorari<sup>[1]</sup> assailing the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals, which reversed the Regional Trial Court Decision<sup>[4]</sup> constituting a right of way over the two properties formerly owned by Spouses Cristeta Aquino and Rudy Fernandez (the Fernandez Spouses).

The Fernandez Spouses once owned five contiguous parcels of land in Bonuan Gueset, Dagupan City.<sup>[5]</sup> Two of their properties were located in front of their three other properties. These two front properties provided the other properties sole access to the national highway.<sup>[6]</sup>

In 1980, the Fernandez Spouses annotated on the transfer certificates of title of the front properties an easement of right of way in favor of the back properties:

(For TCT No. 41449)

Entry No. 97598/T-41449 – EASEMENT OF ROAD OF RIGHT OF WAY

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Sps. Cristeta Aquino and Rudy Fernandez, Juliet Aquino, single, has granted and constituted a Road Right of Way one (1) meter wide over the property described in this title, together with the property covered by TCT No. 41450, in favor of the properties covered by TCT Nos. 41451, 41453

...

Date of Document – Oct 6, 1980

Date of Inscription – October 6, 1980 at 2:00 p.m.

(For TCT No. 41450)

Entry No. 97598/T-53189 – EASEMENT OF ROAD OF RIGHT OF WAY

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Sps. Cristeta Aquino and Rudy Fernandez, Juliet Aquino, single, has granted and constituted a Road Right of Way one (1) meter wide over the property described in this title, together with the properties covered by TCT Nos. 41451, 41452 and 41453 ...

Date of Document – Oct 6, 1980

Date of Inscription – October 6, 1980 at 2:23 p.m.<sup>[7]</sup>

The Fernandez Spouses later obtained a loan from the Philippine National Bank and mortgaged the front properties. When they failed to pay their loan, the bank foreclosed and eventually acquired the front properties.<sup>[8]</sup>

Later on, Spouses Merardo and Angelita Delfin (the Delfin Spouses) purchased the front properties from the Philippine National Bank.<sup>[9]</sup> They were issued Transfer Certificate of Title Nos, 92271 and 92272, which bore the same annotations as those in the Fernandez Spouses' transfer certificates of title.<sup>[10]</sup> However, they refused to recognize the annotated right of way, enclosing the properties to prevent the Fernandez Spouses from accessing the national highway through the front properties.<sup>[11]</sup>

Thus, the Fernandez Spouses filed before the Regional Trial Court a Complaint for specific performance, right of way, and damages, arguing that they were entitled to use the right of way to access the national highway.<sup>[12]</sup>

The Delfin Spouses countered that they acted within their rights as the properties' owners. They claimed that despite the annotations, the right of way was invalid as it was constituted by the Fernandez Spouses for their own sake. They alleged that the easement had already been extinguished when the Philippine National Bank acquired the properties after foreclosure. They added that the bank would not have granted the Fernandez Spouses the loan if the security had such an easement.<sup>[13]</sup> Besides, they said, the Fernandez Spouses had other ways to access the national highway. They added that they were willing to grant a right of way if they would be indemnified.<sup>[14]</sup>

After the trial court had conducted an ocular inspection, the Delfin Spouses undertook to allocate one meter of the northeastern portion of the front properties as a right of way, provided that they would be indemnified. The Fernandez Spouses promised not to pass through the lots pending a final agreement on the right of way.<sup>[15]</sup>

In its July 28, 2014 Decision,<sup>[16]</sup> the Regional Trial Court held that the issue on the validity of the annotated easement has become moot because the Delfin Spouses have voluntarily constituted a right of way on the west side of the properties, different from the easement annotated on the titles.<sup>[17]</sup> As such, the trial court found no basis to indemnify the Delfin Spouses,<sup>[18]</sup> and constituted an easement on the west side of all five properties in favor of the Fernandez Spouses. The dispositive portion of its Decision reads:

**WHEREFORE**, judgment is hereby rendered constituting a road right of way on the west side of Lots 2, 3, 4, 5 and 6, passing through the

properties of the Vinluan family towards the highway on the south, where the Caimito tree is standing in favor of the lots covered by Transfer Certificates of Title Nos. 41452 and 41453 owned by plaintiffs-spouses Fernandez.

**SO ORDERED.**<sup>[19]</sup> (Emphasis in the original)

The Delfin Spouses appealed to the Court of Appeals, arguing that they were entitled to indemnity. They denied that an easement of right of way was constituted on the front properties. They maintained that they only agreed to refrain from touching a meter on the northeastern portion of the properties, thinking they might reach a settlement with the Fernandez Spouses, but as it turned out, they did not.<sup>[20]</sup>

In its January 25, 2016 Decision,<sup>[21]</sup> the Court of Appeals reversed the Regional Trial Court Decision.<sup>[22]</sup>

The Court of Appeals ruled that no easement of right of way was constituted on the front properties, as it was imposed when the five properties only had one owner, contrary to Article 613 of the Civil Code which required two distinct owners.<sup>[23]</sup> It also found that the annotations on the titles only served to notify non-parties to contracts on the properties, and were not modes of acquiring an easement. Holding that what properly applied was Article 649 of the Civil Code, it found that none of the requisites were met to constitute the easement of right of way. It found that there was no voluntary easement created on the properties, but rather, the offer for the easement was subject to the payment of an indemnity. Since the Fernandez Spouses rejected to pay the indemnity, the Court of Appeals ruled that there was no easement.<sup>[24]</sup> The dispositive portion of its Decision reads:

**WHEREFORE**, the instant appeal is **GRANTED**. The assailed Decision of the Regional Trial Court of Dagupan City, Branch 44, in Civil Case No. 2013-0115-D, is **REVERSED** and **SET ASIDE**. Judgment is rendered **DISMISSING** the complaint filed by the plaintiffs-appellees against the defendants-appellants.

**SO ORDERED.**<sup>[25]</sup> (Emphasis in the original)

When the Fernandez Spouses moved to reconsider, the Court of Appeals only denied them relief in its September 26, 2016 Resolution.<sup>[26]</sup> Thus, they filed this Petition for Review on Certiorari<sup>[27]</sup> against the Delfin Spouses.

Petitioners argue that an easement was validly constituted and Article 624<sup>[28]</sup> of the Civil Code applies considering that: (1) they had previously owned the front properties and used these to access the national road; (2) they annotated the easement on the titles of the contiguous properties; and (3) the annotations were never erased or removed. They allege that an owner of a property may impose an easement on their adjoining properties.<sup>[29]</sup> They point out that the properties were covered by separate titles.<sup>[30]</sup>

Moreover, citing Article 688<sup>[31]</sup> of the Civil Code, petitioners say that as the properties' owners, they may establish easements in the manner and form they deem best.<sup>[32]</sup> They argue that they cannot be compelled to indemnify respondents for the right of way as the easement was annotated on the titles and respondents never questioned it, even if the new titles have been issued in their names. They say that respondents, having been forewarned of the easement, must bear the cost of its enforcement.<sup>[33]</sup>

In their Comment,<sup>[34]</sup> respondents insist that as the Court of Appeals found, petitioners did not acquire a right of way.<sup>[35]</sup> They maintain that there was no voluntary easement because even if they offered one, it was subject to the condition that petitioners would indemnify them. Neither is there a legal or compulsory easement, respondents add, because petitioners failed to meet the requirements for it.<sup>[36]</sup> They maintain that the annotations on the titles did not create the easement of right of way, as they were registered when all the properties were owned by one person.<sup>[37]</sup> Finally, they contend that this case should not be compared to those cases that involve dissimilar facts, like that involving an easement of light and view, an easement of drainage, or a road lot in a subdivision project that did not push through.<sup>[38]</sup>

In their Reply,<sup>[39]</sup> petitioners reiterate their arguments as to the application of Article 624.<sup>[40]</sup> They likewise point out that Article 624 and the doctrine of apparent easements is not limited to particular kinds of easements, and may also apply to easements of right of way.<sup>[41]</sup>

The sole issue in this case is whether or not a valid easement of right of way was constituted on the front properties formerly owned by petitioners Spouses Rudy Fernandez and Cristeta Aquino, and now owned by respondents Spouses Merardo Delfin and Angelita Delfin.

We reverse the Court of Appeals' ruling. An easement of right of way in favor of petitioners was validly constituted.

An easement is an encumbrance on a property for the benefit of another property owned by another. It involves a grant to use a portion or aspect of the property, without relinquishing ownership or possession over it. The property on which the easement is imposed, and which will be used by the other, is called the servient estate. The property to which the use is granted is the dominant estate. The Civil Code provides:

ARTICLE 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.

The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate. (530)

In an easement of right of way, there is a portion of the servient estate dedicated to the passage of the dominant estate's owner. It is thus a discontinuous easement, used only in intervals and depending on whether a person needs to pass through another person's property. In *Bogo-Medellin Milling Company, Inc. v. Court of Appeals*:<sup>[42]</sup>

Under civil law and its jurisprudence, easements are either continuous or discontinuous according to the *manner they are exercised*, not according to the presence of apparent signs or physical indications of the existence of such easements. Thus, easement is continuous if its use is, or may be, incessant without the intervention of any act of man, like the easement of drainage; and it is discontinuous if it is used at intervals and depends on the act of man, like the easement of right of way.

The easement of right of way is considered discontinuous because it is exercised only if a person passes or sets foot on somebody else's land.

... In other words, the very exercise of the servitude depends upon the act or intervention of man which is the very essence of discontinuous easements.

. . . The presence of physical or visual signs only classifies an easement into *apparent or non-apparent*. Thus, a road (which reveals a right of way) and a window (which evidences a right to light and view) are apparent easements, while an easement of not building beyond a certain height is non-apparent.<sup>[43]</sup> (Emphasis in the original, citations omitted)

As a discontinuous easement, an easement of right of way is acquired only by title:

ARTICLE 622. Continuous nonapparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of a title. (539)

Generally, title over the use an easement of right of way is acquired voluntarily (by contract between the two estates) or legally (by filing a case in court for its conferment):

But when is a party deemed to acquire title over the *use* of such land (that is, title over the easement of right of way)? In at least two cases, we held that if: (a) it had subsequently entered into *contractual* right of way with the heirs for the continued use of the land under the principles of voluntary easements or (b) it had filed a case against the heirs for conferment on it of a legal easement of right of way under Article 629 of the Civil Code, then title over the *use* of the land is deemed to exist. The conferment of a legal easement of right of way under Article 629 is subject to proof of the following: