767 Phil. 594

SECOND DIVISION

[G.R. No. 201405, August 24, 2015]

LIWAYWAY ANDRES, RONNIE ANDRES, AND PABLO B. FRANCISCO, PETITIONERS, VS. STA. LUCIA REALTY & DEVELOPMENT, INCORPORATED, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

Not all may demand for an easement of right-of-way. Under the law, an easement of right-of-way may only be demanded by the owner of an immovable property or by any person who by virtue of a real right may cultivate or use the same.

This Petition for Review on *Certiorari* assails the November 17, 2011 Decision[1] of the Court of Appeals in CA-G.R. CV No. 87715, which reversed and set aside the May 22, 2006 Decision[2] of the Regional Trial Court (RTC), Binangonan, Rizal, Branch 68 granting petitioners Pablo B. Francisco (Pablo), Liwayway Andres (Liwayway), Ronnie Andres (Ronnie) and their co-plaintiff Liza Andres (Liza) a 50-square meter right-of-way within the subdivision of respondent Sta. Lucia Realty and Development, Incorporated (respondent).

Likewise assailed is the March 27, 2012 CA Resolution[3] which denied petitioners and Liza's Motion for Reconsideration thereto.

Factual Antecedents

Petitioners and Liza filed a Complaint[4] for Easement of Right-of-Way against respondent before the RTC on November 28,2000. They alleged that they are co-owners and possessors for more than 50 years of three parcels of unregistered agricultural land in Pag-asa, Binangonan, Rizal with a total area of more or less 10,500 square meters (subject property). A few years back, however, respondent acquired the lands surrounding the subject property, developed the same into a residential subdivision known as the Binangonan Metropolis East, and built a concrete perimeter fence around it such that petitioners and Liza were denied access from subject property to the nearest public road and vice versa. They thus prayed for a right-of-way within Binangonan Metropolis East in order for them to have access to Col. Guido Street, a public road.

In its Answer,[5] respondent denied knowledge of any property adjoining its subdivision owned by petitioners and Liza. At any rate, it pointed out that petitioners and Liza failed to sufficiently allege in their complaint the existence of the requisites for the grant of an easement of right-of-way.

During trial, Pablo testified that he bought a 4,000-square meter-portion of the

subject property from Carlos Andres (Carlos), the husband of Liwayway and father of Ronnie and Liza.[6] According to Pablo, he and his co-plaintiffs are still in possession of the subject property as evidenced by an April 13, 1998 Certification[7] issued by the *Barangay* Chairman of Pag-asa.[8] Further, Pablo clarified that the easement of right-of-way that they are asking from respondent would traverse the latter's subdivision for about 50 meters from the subject property all the way to another subdivision that he co-owns, Victoria Village, which in turn, leads to Col. Guido Street.[9] He claimed that the prevailing market value of lands in the area is about P600.00 per square meter. Pablo also explained that the subject property is still not registered under the Land Registration Act since no tax declaration over the same has been issued to them despite application with the Municipal Assessor of Binangonan.[10] When required by the court to submit documents regarding the said application,[11] Pablo attached in his Compliance,[12] among others, Carlos' letter[13] of Maty 18, 1998 to the Municipal Assessor of Binangonan requesting for the issuance of a tax declaration and the reply thereto dated August 5, 1998[14] of the Provincial Assessor of Rizal. In the aforesaid reply, the Provincial Assessor denied the request on the ground that the subject property was already declared for taxation purposes under the name of Juan Diaz and later, in the name of Juanito[15] Blanco, et al. (the Blancos).

Liwayway testified next. According to her, she and her children Ronnie and Liza are the surviving heirs of the late Carlos who owned the subject property.[16] Carlos acquired ownership over the same after he had been in continuous, public and peaceful possession thereof for 50 years,[17] the circumstances of which he narrated in a *Sinumpaang Salaysay*[18] that he executed while he was still alive. Carlos stated therein that even before he was born in 1939, his father was already in possession and working on the subject property; that in 1948, he started to help his father in tilling the land; that when his father became weak and eventually died, he took over the land; and, that he already sought to register his ownership of the property with the Department of Environment and Natural Resources (DENR) and to declare the same for taxation purposes.

For its part, respondent presented as a lone witness the then Municipal Assessor of Binangonan, Virgilio Flordeliza (Flordeliza). Flordeliza confirmed that Carlos wrote him a letter-request for the issuance of a tax declaration.[19] He, however, referred the matter to the Provincial Assessor of Rizal since the property for which the tax declaration was being applied for was already declared for taxation purposes in the name of one Juan Diaz.[20] Later, the tax declaration of Juan Diaz was cancelled and in lieu thereof, a tax declaration in the name of the Blancos was issued.[21] For this reason, the Provincial Assessor of Rizal denied Carlos' application for issuance of tax declaration.[22]

Ruling of the Regional Trial Court

The RTC rendered its Decision[23] on May 22, 2006. It observed that petitioners and Liza's allegation in their Complaint that they were in possession of the subject property for more than 50 years was not denied by respondent in its Answer. Thus, the same is deemed to have been impliedly admitted by the latter. It then

ratiocinated that based on Article 1137[24] of the Civil Code, petitioners and Liza are considered owners of the subject property through extraordinary prescription. Having real right over the same, therefore, they are entitled to demand an easement of right-of-way under Article 649[25] of the Civil Code.

The RTC further held that Pablo's testimony sufficiently established: (1) that the subject property was surrounded by respondent's property; (2) the area and location of the right-of-way sought; (3) the value of the land on which the right-of-way is to be constituted which was P600.00 per square meter; and (4) petitioners and Liza's possession of the subject property up to the present time.

In the ultimate, said court concluded that petitioners and Liza are entitled to an easement of right-of-way, thus:

> WHEREFORE, judgment is hereby rendered giving the plaintiffs a right of way of 50 square meters to reach Victoria Village towards Col. Guido Street. Defendant Sta. Lucia is hereby ordered to grant the right of way to the plaintiffs as previously described upon payment of an indemnity equivalent to the market value of the [50-square meter right of way].
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> SO ORDERED.[26]

Respondent filed a Notice of Appeal[27] which was given due course by the RTC in an Order[28] dated June 27, 2006.

Ruling of the Court of Appeals

On appeal, respondent argued mat petitioners and Liza were neither able to prove that they were owners nor that they have any real right over the subject property intended to be the dominant estate. Hence, they are not entitled to demand an easement of right-of-way. At any rate, they likewise failed to establish that the only route available from their property to Col. Guido Street is through respondent's subdivision.

In a Decision[29] dated November 17, 2011, the CA held that the evidence adduced by petitioners and Liza failed to sufficiently establish their asserted ownership and possession of the subject property. Moreover, it held that contrary to the RTC's observation, respondent in fact denied in its Answer the allegation of petitioners and Liza that they have been in possession of subject property for more than 50 years. In view of these, the CA concluded that petitioners and Liza have no right to demand an easement of right-of-way from respondent, thus:

> WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. Accordingly, the May 22, 2006 Decision of the Regional Trial Court of Binangonan, Rizal, Branch 68 is REVERSED and SET ASIDE. Civil Case No. 00-037-B is ordered DISMISSED.
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> SO ORDERED.[30]

Petitioners and Liza's Motion for Reconsideration[31] was denied in the CA Resolution[32] dated March 27, 2012.

Hence, petitioners seek recourse to this Court through this Petition for Review on *Certiorari*.

Issue

Whether petitioners are entitled to demand an easement of right-of-way from respondent.

Our Ruling

The Petition has no merit.

Under Article 649 of the Civil Code, an easement of right-of-way may be demanded by the owner of an immovable or by any person who by virtue of a real right may cultivate or use the same.

Here, petitioners argue that they are entitled to demand an easement of right-of-way from respondent because they are the owners of the subject property intended to be the dominant estate. They contend that they have already acquired ownership of the subject property through ordinary acquisitive prescription.[33] This is considering that their possession became adverse as against the Blancos (under whose names the subject property is declared for taxation) when Carlos formally registered his claim of ownership with the DENR and sought to declare the subject property for taxation purposes in 1998. And since more than 10 years[34] had lapsed from that time without the Blancos doing anything to contest their continued possession of the subject property, petitioners aver that ordinary acquisitive prescription had already set in their favor and against the Blancos.

In the alternative, petitioners assert that they have already become owners of the subject property through extraordinary acquisitive prescription since (1) they have been in open, continuous and peaceful possession thereof for more than 50 years; (2) the subject property, as depicted in the Survey Plan they caused to be prepared is alienable and disposable; (3) Carlos filed a claim of ownership over the property with the DENR, the agency charged with the administration of alienable public land; and (4) Carlos' manifestation of willingness to declare the property for taxation purposes not only had the effect of giving notice of his adverse claim on the property but also strengthened his *bona fide* claim of ownership over the same.

It must be stressed at the outset that contrary to petitioners' allegations, there is no showing that Carlos filed a claim of ownership over the subject property with the DENR. His April 13, 1998 letter[35] to the said office which petitioners assert to be an application for the registration of such claim is actually just a request for the issuance of certain documents and nothing more. Moreover, while Carlos indeed attempted to declare the subject property for taxation purposes, his application, as previously mentioned, was denied because a tax declaration was already issued to the Blancos.

Anent petitioners' invocation of ordinary acquisitive prescription, the Court notes that the same was raised for the first time on appeal. Before the RTC, petitioners based their claim of ownership on extraordinary acquisitive prescription under Article

1137 of the Civil Code[36] such that the said court declared them owners of the subject property by virtue thereof in its May 22, 2006 Decision.[37] Also with the CA, petitioners initially asserted ownership through extraordinary acquisitive prescription.[38] It was only later in their Motion for Reconsideration[39] therein that they averred that their ownership could also be based on ordinary acquisitive prescription.[40] "Settled is the rule that points of law, theories, issues and arguments not brought to the attention of the lower court need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule."[41]

Even if timely raised, such argument of petitioners, as well as with respect to extraordinary acquisitive prescription, fails. "Prescription is one of the modes of acquiring ownership under the Civil Code."[42] There are two modes of prescription through which immovables may be acquired - ordinary acquisitive prescription which requires possession in good faith and just title for 10 years and, extraordinary prescription wherein ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for 30 years without need of title or of good faith.[43] However, it was clarified in the *Heirs of Mario Malabanan v. Republic of the Philippines*,[44] that only lands of the public domain subsequently classified or declared as no longer intended for public use or for the development of national wealth, or removed from the sphere of public dominion and are considered converted into patrimonial lands or lands of private ownership, may be alienated or disposed through any of the modes of acquiring ownership under the Civil Code.[45] And if the mode of acquisition is prescription, whether ordinary or extraordinary, it must first be shown that the land has already been converted to private ownership prior to the requisite acquisitive prescriptive period. Otherwise, Article 1113 of the Civil Code, which provides that property of the State not patrimonial in character shall not be the subject of prescription, applies.[46]

Sifting through petitioners' allegations, it appears that the subject property is an unregistered *public agricultural* land. Thus, being a land of the public domain, petitioners, in order to validly claim acquisition thereof through prescription, must first be able to show that the State has -

> expressly declared through either a law enacted by Congress or a proclamation issued by the President that the subject [property] is no longer retained for public service or the development of the national wealth or that the property has been converted into patrimonial. Consequently, without an express declaration by the State, the land remains to be a property of public dominion and hence, not susceptible to acquisition by virtue of prescription.[47]

In the absence of such proof of declaration in this case, petitioners' claim of ownership over the subject property based on prescription necessarily crumbles. Conversely, they cannot demand an easement of right-of-way from respondent for lack of personality.

All told, the Court finds no error on the part of the CA in reversing and setting aside the May 22, 2006 Decision of the RTC and in ordering the dismissal of petitioners' Complaint for Easement of Right-of-Way against respondent.