

FIRST DIVISION

[G.R. No. 149023, September 27, 2007]

**LEO WINSTON BRIN LEE, PETITIONER, VS. SPOUSES AMADEO
AND ADELAIDA CARREON, RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Challenged in the instant Petition for Review on *Certiorari*^[1] are the Decision^[2] of the Court of Appeals dated March 12, 2001 and its Resolution dated June 21, 2001 in CA-G.R. CV No. 60511.

Spouses Amadeo and Adelaida Carreon, respondents, are the owners of a house and Lots Nos. 8-B and 8-C located in Cebu City covered by Transfer Certificates of Title (TCT) Nos. 61049 and 56745, respectively, of the Registry of Deeds, same city.

On the other hand, Anita Linda Rodriguez is the owner of Lot No. 6213-A-2 covered by TCT No. 93402. It is situated within the vicinity of respondent spouses' lots.

As there is no existing way from their property to the nearest road, respondents filed with the Regional Trial Court (RTC), Branch 22, Cebu City a complaint for easement of right of way against Rodriguez, docketed as Civil Case No. CEB-7426. During the pre-trial, the RTC found that there is another servient estate, owned by Mr. and Ms. Anselmo Jardin which could be used by respondents as a right of way. Respondents then filed a Motion for Leave to Admit Amended Complaint to include spouses Jardin as co-defendants, the latter being owners of Lots Nos. 6213-A-3, 6213-A-4 and 8-A located on the eastern side of respondents' property. On June 9, 1989, the RTC issued an Order admitting the Amended Complaint.

However, the lots of spouses Jardin were sold *pendente lite* to Leo Winston Brin Lee, petitioner. As a result, respondents filed a Motion for Leave to Admit Second Amended Complaint impleading petitioner as additional defendant. On September 10, 1993, the RTC granted the motion.

After trial, the RTC rendered Judgment in favor of respondents and against petitioner, the dispositive portion of which reads:

FOR ALL THE FOREGOING, judgment is hereby rendered for the plaintiffs as follows:

1. Ordering defendant Mr. Leo Winston Brin Lee to grant plaintiffs a right of way on the northern portion of his properties as indicated in Exh.9-Lee measuring "one-meter wide and thirteen meters long;
2. Ordering Mr. Leo Winston Brin Lee to demolish the fence/structure to the extent obstructing the right of way hereinabove constituted;

3. Ordering plaintiffs to solidarily pay defendant Lee the amount of THREE THOUSAND PESOS (P3,000.00) per sq. m. or a total of THIRTY NINE THOUSAND PESOS (P39,000.00) as payment of indemnity, on or before the complete establishment thereof;

4. Further ordering plaintiffs to solidarily pay defendant Lee the amount of TWENTY FIVE THOUSAND PESOS (P25,000.00) as the value of the wall/fence to be demolished likewise on or before the complete establishment of the easement; and

5. All counterclaims are hereby dismissed for lack of merit.

NO PRONOUNCEMENT AS TO COSTS.

SO ORDERED.

On appeal by petitioner, the Court of Appeals, in its assailed Decision, affirmed the RTC Judgment, thus:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED, for lack of merit. The appealed Decision dated June 24, 1997 of the Regional Trial Court of Cebu City, Branch 22 in Civil Case No. CEB-7426 is hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Petitioner filed a motion for reconsideration but it was denied by the appellate court in its Resolution of June 21, 2001.

Hence, the present petition.

Petitioner contends that respondents have an existing right of way; and that had the trial court considered certain testimonial evidence and respondents' admissions, its conclusion and that of the Court of Appeals would have been different.

Respondents, on the other hand, pray that the petition be denied for lack of merit.

The issue for our resolution is whether the Court of Appeals erred in ruling that respondents are entitled to an easement of right of way on petitioner's property. This issue is both factual and legal in nature.

The conferment of a legal easement of right of way is governed by Articles 649 and 650 of the Civil Code reproduced as follows:

ART. 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.