

## SECOND DIVISION

[ G.R. No. 110067, August 03, 1998 ]

**MA. LINDA T. ALMENDRAS, PETITIONER, VS. THE COURT OF APPEALS, URCICIO TAN PANG ENG AND FABIANA YAP, RESPONDENTS.**

### RESOLUTION

**MENDOZA, J.:**

Private respondents seek a reconsideration of the decision in this case remanding it to the trial court so that private respondents may file a third-party complaint against parties through whose property they claim a right of way in favor of petitioner should pass since it would be the property least prejudiced by the establishment of such easement.

*First.* Private respondents contend that the Court should have dismissed the complaint in view of its finding that petitioner "failed to prove that she has a right to the establishment of such an easement through private respondents' property." The contention has no merit.

While it is undisputed that a right of way through private respondents' property is the shortest distance to the provincial road, there is no proof that making the easement pass that way will cause the least damage as provided in Art. 650 of the Civil Code. Hence, the Court said in its decision:

Thus, it has been held that "where the easement may be established on any of several tenements surrounding the dominant estate, the one where the way is shortest and will cause the least damage should be chosen. However, . . . if these two (2) circumstances do not concur in a single tenement, the way which will cause the least damage should be used, even if it will not be the shortest. [2 Arturo M. Tolentino, Civil Code 374 (1974)]" [*Quimen v. Court of Appeals*, G.R. No. 112331, May 29, 1996]

In the case at bar, the trial court ruled that the easement should be constituted through the land of private respondents on the eastern side because it would be the shortest way to the provincial road, being only 17.45 meters long, compared to 149.22 meters if the easement was constituted on the Opone and Tugtud roads on the western and southern sides of petitioner's land.

On the other hand, as already pointed out, the Court of Appeals, in pointing to the longer way, considered the fact that this was already existing and does not preclude its use by other parties than the individual owners of Lot 1-A to Lot 1-G and the owners of the land on which the connecting Tugtud road is found.

. . . It is not possible to determine whether the estates which would be least prejudiced by the easement would be those of the owners of the