

## SECOND DIVISION

**[ G.R. No. 116100, February 09, 1996 ]**

**SPOUSES CRISTINO AND BRIGIDA CUSTODIO AND SPOUSES LITO AND MARIA CRISTINA SANTOS, PETITIONERS, VS. COURT OF APPEALS, HEIRS OF PACIFICO C. MABASA AND REGIONAL TRIAL COURT OF PASIG, METRO MANILA, BRANCH 181, RESPONDENTS.**

### DECISION

**REGALADO, J.:**

This petition for review on certiorari assails the decision of respondent Court of Appeals in CA-G.R. CV No. 29115, promulgated on November 10, 1993, which affirmed with modification the decision of the trial court, as well as its resolution dated July 8, 1994 denying petitioner's motion for reconsideration.<sup>[1]</sup>

On August 26, 1982, Civil Case No. 47466 for the grant of an easement of right of way was filed by Pacifico Mabasa against Cristino Custodio, Brigida R. Custodio, Rosalina R. Morato, Lito Santos and Maria Cristina C. Santos before the Regional Trial Court of Pasig and assigned to Branch 22 thereof.<sup>[2]</sup>

The generative facts of the case, as synthesized by the trial court and adopted by the Court of Appeals, are as follows:

Perusing the record, this Court finds that the original plaintiff Pacifico Mabasa died during the pendency of this case and was substituted by Ofelia Mabasa, his surviving spouse [and children].

The plaintiff owns a parcel of land with a two-door apartment erected thereon situated at Interior P. Burgos St., Palingon, Tipas, Taguig, Metro Manila. The plaintiff was able to acquire said property through a contract of sale with spouses Mamerto Rayos and Teodora Quintero as vendors last September 1981. Said property may be described to be surrounded by other immovables pertaining to defendants herein. Taking P. Burgos Street as the point of reference, on the left side, going to plaintiff's property, the row of houses will be as follows: That of defendants Cristino and Brigido Custodio, then that of Lito and Maria Cristina Santos and then that of Ofelia Mabasa. On the right side (is) that of defendant Rosalina Morato and then a Septic Tank (Exhibit "D"). As an access to P. Burgos Street from plaintiffs property, there are two possible passageways. The first passageway is approximately one meter wide and is about 20 meters distant from Mabasa's residence to P. Burgos Street. Such path is passing in between the previously mentioned row of houses. The second passageway is about 3 meters in width and length

from plaintiff Mabasa's residence to P. Burgos Street; it is about 26 meters. In passing thru said passageway, a less than a meter wide path through the septic tank and with 5-6 meters in length has to be traversed.

When said property was purchased by Mabasa, there were tenants occupying the premises and who were acknowledged by plaintiff Mabasa as tenants. However, sometime in February, 1982, one of said tenants vacated the apartment and when plaintiff Mabasa went to see the premises, he saw that there had been built an adobe fence in the first passageway making it narrower in width. Said adobe fence was first constructed by defendants Santoses along their property which is also along the first passageway. Defendant Morato constructed her adobe fence and even extended said fence in such a way that the entire passageway was enclosed (Exhibit "1-Santoses and Custodios," Exh. "D" for plaintiff, Exhs. "1-C", "1-D" and "I -E") And it was then that the remaining tenants of said apartment vacated the area. Defendant Ma. Cristina Santos testified that she constructed said fence because there was an incident when her daughter was dragged by a bicycle pedalled by a son of one of the tenants in said apartment along the first passageway. She also mentioned some other inconveniences of having (at) the front of her house a pathway such as when some of the tenants were drunk and would bang their doors and windows. Some of their footwear were even lost. x x x<sup>[3]</sup> (Italics in original text; corrections in parentheses supplied)

On February 27, 1990, a decision was rendered by the trial court, with this dispositive part:

Accordingly, judgment is hereby rendered as follows:

- 1) Ordering defendants Custodios and Santoses to give plaintiff permanent access - ingress and egress, to the public street;
- 2) Ordering the plaintiff to pay defendants Custodios and Santoses the sum of Eight Thousand Pesos (P8,000) as indemnity for the permanent use of the passageway.

The parties to shoulder their respective litigation expenses.<sup>[4]</sup>

Not satisfied therewith, therein plaintiff represented by his heirs, herein private respondents, went to the Court of Appeals raising the sole issue of whether or not the lower court erred in not awarding damages in their favor. On November 10, 1993, as earlier stated, the Court of Appeals rendered its decision affirming the judgment of the trial court with modification, the decretal portion of which disposes as follows:

**WHEREFORE,** the appealed decision of the lower court is hereby **AFFIRMED WITH**

**MODIFICATION** only insofar as the herein grant of damages to plaintiffs-appellants. The Court hereby orders defendants-appellees to pay plaintiffs-appellants the sum of Sixty Five Thousand (P65,000) Pesos as Actual Damages, Thirty Thousand (P30,000) Pesos as Moral Damages, and Ten Thousand (P10,000) Pesos as Exemplary Damages. The rest of the appealed decision is affirmed to all respects.<sup>[5]</sup>

On July 8, 1994, the Court of Appeals denied petitioner's motion for reconsideration.<sup>[6]</sup> Petitioners then took the present recourse to us, raising two issues, namely, whether or not the grant of right of way to herein private respondents is proper, and whether or not the award of damages is in order.

With respect to the first issue, herein petitioners are already barred from raising the same. Petitioners did not appeal from the decision of the court *a quo* granting private respondents the right of way, hence they are presumed to be satisfied with the adjudication therein. With the finality of the judgment of the trial court as to petitioners, the issue of propriety of the grant of right of way has already been laid to rest.

For failure to appeal the decision of the trial court to the Court of Appeals, petitioners cannot obtain any affirmative relief other than those granted in the decision of the trial court. That decision of the court below has become final as against them and can no longer be reviewed, much less reversed, by this Court. The rule in this jurisdiction is that whenever an appeal is taken in a civil case, an appellee who has not himself appealed may not obtain from the appellate court any affirmative relief other than what was granted in the decision of the lower court. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed, and he can assign errors in his brief if such is required to strengthen the views expressed by the court *a quo*. These assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of reversing or modifying the judgment in the appellee's favor and giving him other affirmative reliefs.<sup>[7]</sup>

However, with respect to the second issue, we agree with petitioners that the Court of Appeals erred in awarding damages in favor of private respondents. The award of damages has no substantial legal basis. A reading of the decision of the Court of Appeals will show that the award of damages was based solely on the fact that the original plaintiff, Pacifico Mabasa, incurred losses in the form of unrealized rentals when the tenants vacated the leased premises by reason of the closure of the passageway.

However, the mere fact that the plaintiff suffered losses does not give rise to a right to recover damages. To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.<sup>[8]</sup>

There is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the