



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HELEN CALIMOSO, MARILYN P.
CALIMOSO and LIBY P. CALIMOSO,
Petitioners,

G.R. No. 198594

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

- versus -

Promulgated:

AXEL D. ROULLO,
Respondent.

25 JAN 2016

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DECISION

BRION, J.:

Before us is a petition for review on *certiorari*¹ assailing the December 15, 2010 decision² and the August 23, 2011 resolution³ of the Court of Appeals (CA), Cebu City, in CA-G.R. CEB CV No. 00834. The CA affirmed the decision of the Regional Trial Court (RTC), Branch 29, Iloilo City, in Civil Case No. CEB-23858 that ordered the establishment of an “easement of right of way” in favor of respondent Axel D. Roullo.

Facts of the Case

In his Complaint⁴ for Easement of Right of Way, the respondent mainly alleged: that he is the owner of Lot 1462-C-1⁵ situated in Brgy. Sambag, Jaro, Iloilo City; that his lot is isolated by several surrounding estates, including Lot 1454-B-25⁶ owned by petitioners Helen, Marilyn, and

¹ Filed under Rule 45 of the Rules of Court.

² Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Portia Aliño Hormachuelos and Socorro B. Inting, concurring; *rollo*, pp. 51-58.

³ *Id.* at 60-62.

⁴ Docketed as Civil Case No. CEB-23858.

⁵ Covered by Transfer of Certificate of Title (TCT) No. T-6788.

⁶ Covered by TCT No. T-61058.

Liby, all surnamed Calimoso; that he needs a right-of-way in order to have access to a public road; and that the shortest and most convenient access to the nearest public road, *i.e.*, Fajardo Subdivision Road, passes through the petitioners' lot.

The petitioners objected to the establishment of the easement because it would cause substantial damage to the two (2) houses already standing on their property. They alleged that the respondent has other right-of-way alternatives, such as the existing wooden bridge over *Sipac* Creek bounding the respondent's lot on the northeast; that the bridge, if made concrete, could provide ingress or egress to the Fajardo Subdivision Road.

Due to the respondent's allegedly malicious and groundless suit, the petitioners claimed entitlement to the following awards: ₱100,000.00 as moral damages, ₱30,000.00 as exemplary damages, ₱50,000.00 as attorney's fees, ₱1,000.00 as appearance fee, and ₱15,000.00 as litigation expenses.

In a decision dated September 29, 2003, the RTC granted the respondent's complaint and ordered the petitioners to provide the respondent an easement of right-of-way "measuring 14 meters in length and 3 meters in width (42 square meters, more or less) over Lot 1454-B-25, specifically at the *portion adjoining the bank of Sipac Creek.*" Accordingly, the RTC ordered the respondent to pay the petitioners proper indemnity in the amount of "Php1,500.00 per square meter of the portion of the lot subject of the easement." The petitioners appealed the RTC's decision to the CA.

The CA, in its assailed December 15, 2010 decision, affirmed *in toto* the RTC's decision and held that all the requisites for the establishment of a legal or compulsory easement of right-of-way were present in the respondent's case: ***first***, that the subject lot is indeed surrounded by estates owned by different individuals and the respondent has no access to any existing public road; ***second***, that the respondent has offered to compensate the petitioners for the establishment of the right-of-way through the latter's property; ***third***, that the isolation of the subject lot was not caused by the respondent as he purchased the lot without any adequate ingress or egress to a public highway; and, ***fourth and last***, given the available options for the right-of-way, **the route that passes through the petitioners' lot requires the shortest distance to a public road and can be established at a point least prejudicial to the petitioners' property.**

The petitioners moved to reconsider the CA's decision arguing that, while the establishment of the easement through their lot provided for the shortest route, the adjudged right-of-way would cause severe damage not only to the *nipa* hut situated at the corner of the petitioners' lot, but also to the bedroom portion of the other concrete house that stood on the property. The CA, however, did not consider the petitioners' arguments on the ground that the matters alleged were not raised or proven before the trial court, thus, it denied the petitioners' motion for reconsideration.

The petitioners filed the present petition for review on *certiorari* raising the issues of: (a) whether the respondent has met all the requisites for the establishment of a legal easement of right-of-way on Lot 1454-B-25 owned by the petitioners, (b) whether the establishment of the right-of-way on the petitioners' lot is at the point least prejudicial to the servient estate, and (c) whether a right-of-way can be established through other lots surrounding the respondent's property other than through the petitioners' property.

OUR RULING

We disagree with the CA finding that all the requisites for the valid establishment of an easement of right-of-way are present in this case.

To be entitled to an easement of right-of-way, the following requisites should be met:

- “1. The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway;
2. There is payment of proper indemnity;
3. The isolation is not due to the acts of the proprietor of the dominant estate; and
4. The right-of-way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.”⁷

The immovable in whose favor the easement is established is called the dominant estate, and the property subject to the easement is called the servient estate.⁸ Here, the respondent's lot is the dominant estate and the petitioners' lot is the servient estate.

That the respondent's lot is surrounded by several estates and has no access to a public road are undisputed. The only question before this Court is whether the right-of-way passing through the petitioners' lot satisfies the fourth requirement of being **established at the point least prejudicial to the servient estate**.

Three options were then available to the respondent for the demanded right-of-way: the *first option* is to traverse directly through the petitioners' property, which route has an approximate distance of fourteen (14) meters from the respondent's lot to the Fajardo Subdivision Road; the *second option* is to pass through two vacant lots (Lots 1461-B-1 and 1461-B-2)

⁷ *Quintanilla v. Abangan*, 568 Phil. 456, 462 (2008); *Cristobal v. CA*, 353 Phil. 318, 327 (1998); *Spouses Sta. Maria v. CA*, 349 Phil. 275, 283 (1998).

⁸ Article 613, CIVIL CODE.

located on the southwest of the respondent's lot, which route has an approximate distance of forty-three (43) meters to another public highway, the Diversion Road; and the *third option* is to construct a concrete bridge over *Sipac* Creek and ask for a right-of-way on the property of a certain Mr. Basa in order to reach the Fajardo Subdivision Road.

Among the right-of-way alternatives, the CA adopted the first option, *i.e.*, passing through the petitioner's lot, because it offered the *shortest distance* (from the respondent's lot) to the Fajardo Subdivision Road and the right-of-way would only affect the "*nipa* hut" standing on the petitioners' property. The CA held that the establishment of the easement through the petitioners' lot was more practical, economical, and less burdensome to the parties.

Article 650 of the Civil Code provides that the easement of right-of-way shall be established *at the point least prejudicial to the servient estate*, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the *shortest*. Under this guideline, whenever there are several tenements surrounding the dominant estate, the right-of-way must be established on the tenement where the distance to the public road or highway is shortest *and* where the least damage would be caused. If these two criteria (shortest distance and least damage) do not concur in a single tenement, *we have held in the past that the least prejudice criterion must prevail over the shortest distance criterion.*⁹

In this case, the establishment of a right-of-way through the petitioners' lot would cause the destruction of the wire fence and a house on the petitioners' property.¹⁰ Although this right-of-way has the shortest distance to a public road, it is not the least prejudicial considering the destruction pointed out, and that an option to traverse two vacant lots without causing any damage, albeit longer, is available.

We have held that "mere convenience for the dominant estate is not what is required by law as the basis of setting up a compulsory easement,"¹¹ that "a longer way may be adopted to avoid injury to the servient estate, such as when there are constructions or walls which can be avoided by a round-about way."¹²

WHEREFORE, we hereby **GRANT** the present petition for review on *certiorari* and **REVERSE and SET ASIDE** the decision dated December 15, 2010, and resolution dated August 23, 2011, of the Court of Appeals in CA-G.R. CEB CV No. 00834. The complaint for the easement of right-

⁹ *Quimen v. Court of Appeals*, 326 Phil. 969, 979 (1996); *Costabella Corporation v. Court of Appeals*, 271 Phil. 350, 361 (1991).

¹⁰ The records show pictures of the semi-concrete house on the petitioners' property enclosed by a wire fence; RTC records, p. 180.

¹¹ *Cristobal v. CA*, *supra* note 7, at 328.

¹² *Supra* note 9, at 969.

of-way is **DISMISSED** without prejudice to another complaint that the respondent may file against the proper party or parties based on the terms of this Decision.

Costs against respondent Axel D. Roullo.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice