

## SECOND DIVISION

[ G.R. No. 185240, January 21, 2010 ]

**SPS. MANUEL AND VICTORIA SALIMBANGON, PETITIONERS, VS.  
SPS. SANTOS AND ERLINDA TAN, RESPONDENTS.**

### DECISION

**ABAD, J.:**

This case is about the admissibility of testimony that tends to modify a written agreement among the parties and the extinction of the easement of right of way upon consolidation in one person of the ownership of the dominant and the servient estates.

#### The Facts and the Case

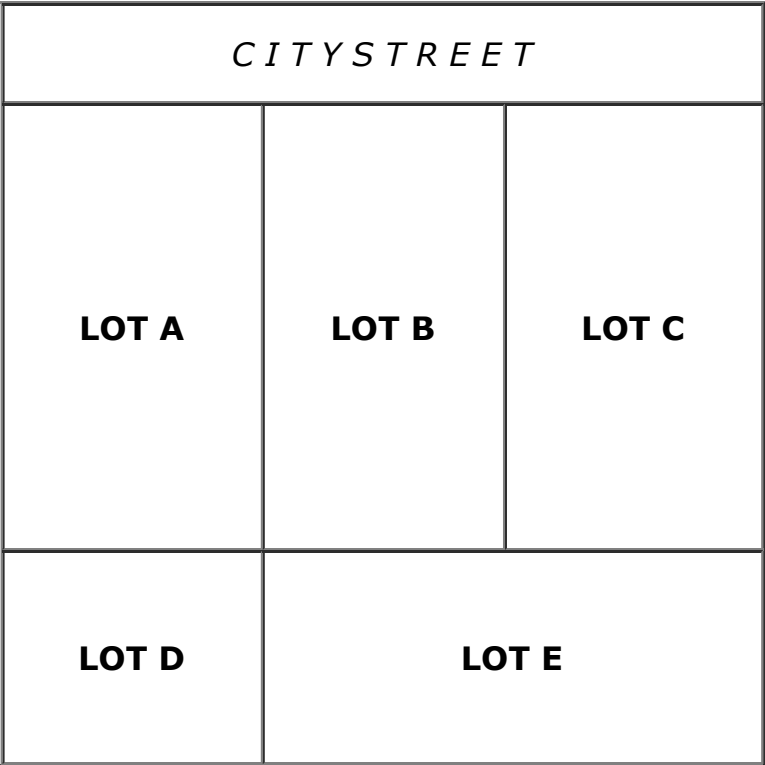
Guillermo Ceniza died intestate on July 11, 1951, leaving a parcel of land at Poblacion, Mandaue City. Twenty years later on July 17, 1973 his children Benedicta, Guillermo, Jr., Victoria, Eduardo, and Carlos executed an extrajudicial declaration of heirs and partition, adjudicating and dividing the land among themselves as follows:

- 1. To Benedicta T. Cabahug, Lot A subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its NW. boundary in favor of Lots B, E, and D, of the subdivision;**
- 2. To Eduardo Ceniza, Lot B subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its SW. boundary in favor of Lots A, D & E of the subdivision;**
- 3. To Carlos Ceniza, Lot C;**
- 4. To Guillermo Ceniza Jr., Lot D subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its NE. boundary in favor of Lot B and E of the subdivision; and**
- 5. To Victoria Ceniza, Lot E, subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its SW. boundary in favor of Lot D of the subdivision.<sup>[1]</sup>**

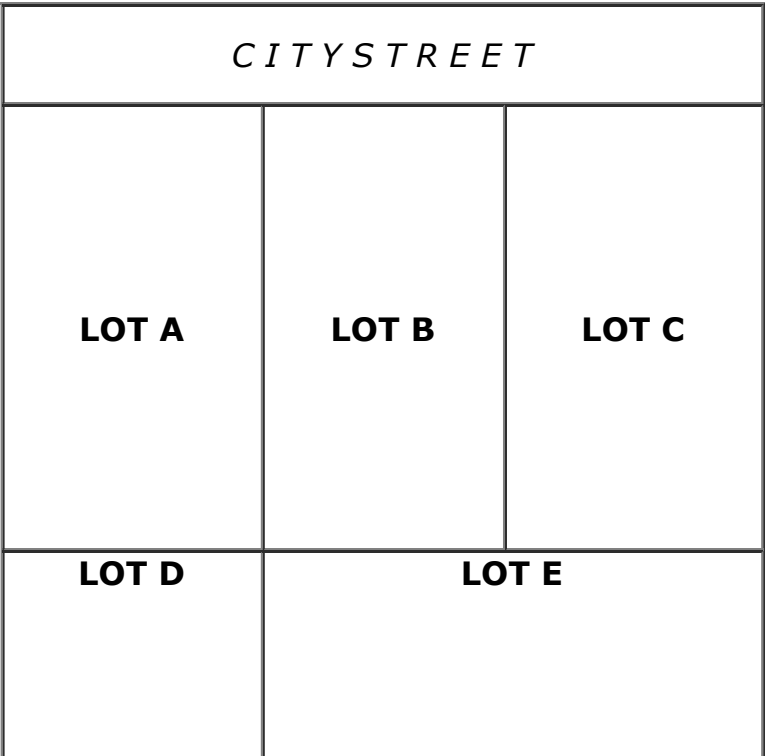
Lots A, B, and C were adjacent to a city street. But Lots D and E were not, they being interior lots. To give these interior lots access to the street, the heirs established in their extrajudicial partition an easement of right of way consisting of a 3-meter wide alley between Lots D and E that continued on between Lots A and B and on to the street. The partition that embodied this easement of right of way was

annotated on the individual titles issued to the heirs.

Roughly, the lots including the easement of right of way would take the following configurations,<sup>[2]</sup> not drawn here to accurate size and proportion but illustrative of their relative locations:



But, realizing that the partition resulted in an unequal division of the property, the heirs modified their agreement by eliminating the easement of right of way along Lots A, D, and E, and in its place, imposed a 3-meter wide alley, an easement of right of way, that ran exclusively along the southwest boundary of Lot B from Lots D and E to the street.<sup>[3]</sup> Thus:



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Victoria (now petitioner Victoria Salimbangon) later swapped lots with Benedicta with the result that Victoria became the owner of Lot A, one of the three lots adjacent to the city street. Victoria and her husband (the Salimbangons) constructed a residential house on this lot and built two garages on it. One garage abutted the street while the other, located in the interior of Lot A, used the alley or easement of right of way existing on Lot B to get to the street. Victoria had this alley cemented and gated.

Subsequently, however, respondent spouses Santos and Erlinda Tan (the Tans) bought Lots B, C, D, and E from all their owners. The Tans built improvements on Lot B that spilled into the easement area. They also closed the gate that the Salimbangons built. Unable to use the old right of way, the Salimbangons lodged a complaint with the City Engineer of Mandaue against the Tans. For their part, the Tans filed an action with the Regional Trial Court (RTC) of Mandaue against the Salimbangons in Civil Case MAN-3223 for the extinguishment of the easement on Lot B and damages with application for preliminary injunction.<sup>[4]</sup> The Salimbangons filed their answer with counterclaims.

After hearing on February 9, 2001 the RTC rendered judgment, upholding the Salimbangons' easement of right of way over the alley on Lot B, the lot that belonged to the Tans. The court pointed out that the easement in this case was established by agreement of the parties for the benefit of Lots A, D, and E. Consequently, only by mutual agreement of the parties could such easement be extinguished. The RTC declined, however, to award damages to the Salimbangons.

Both parties appealed to the Court of Appeals (CA) in CA-G.R. CV 73468. On July 27, 2007 the CA<sup>[5]</sup> reversed the RTC decision, extinguished the easement of right of way established on the alley in Lot B of the Tans, and denied the Salimbangons' claim for damages. The court ruled that based on the testimony of one of the previous owners, Eduardo Ceniza, the true intent of the parties was to establish that easement of right of way for the benefit of the interior lots, namely, Lots D and E. Consequently, when ownership of Lots B, D, and E was consolidated into the Tans, the easement ceased to have any purpose and became extinct. The Salimbangons filed a motion for reconsideration but the CA denied the same in its resolution of October 14, 2008. This prompted them to file the present petition.

### **Questions Presented**

Two questions are presented:

1. Whether or not the CA erred in admitting in evidence contrary to the parol evidence rule Eduardo Ceniza's testimony respecting the true intent of the heirs in establishing the easement of right of way as against what they stated in their written agreement; and
2. Whether or not the CA erred in ruling that the easement of right of way established by the partition agreement among the heirs for the benefit of Lot A has been extinguished.