

SECOND DIVISION

[G.R. No. 175510, July 28, 2008]

**SPOUSES VICTOR VALDEZ AND JOCELYN VALDEZ, REPRESENTED
BY THEIR ATTORNEY-IN-FACT, VIRGILIO VALDEZ,
PETITIONERS, VS. SPOUSES FRANCISCO TABISULA AND
CARIDAD TABISULA, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioner-spouses Victor and Jocelyn Valdez purchased via a January 11, 1993 Deed of Absolute Sale^[1] (the deed) from respondent-spouses Francisco Tabisula and Caridad Tabisula a 200 square meter (sq.m.) portion (the subject property) of a 380 sq. m. parcel of land located in San Fernando, La Union, which 380 sq.m. parcel of land is more particularly described in the deed as follows:

A parcel of land classified as residential lot, bounded on the North by Lot No. 25569, on the East, by Lot No. 247, 251, **on the South, by a Creek** and on the West, by Lot No. 223-A, declared under Tax Decl. No. 52820, with an area of 380 square meters, more or less, and assessed at P 17100.00 for the current year. It is not registered under Act 496 nor under the Spanish Mortgage Law. (Emphasis and underscoring supplied)

The pertinent portions of the deed read:

x x x x

That for and in consideration of the sum of SEVENTY THOUSAND (P70,000.00) PESOS, Philippine Currencyp [*sic*] paid to us at our entire satisfaction by spouses VICTOR and JOECELYN [*sic*] VALDEZ, both of legal age, Filipinos and residents of 148 P. Burgos St., San Fernando, La Union, receipt of which is hereby acknowledged, do hereby SELL, CONVEY and TRANSFER by way of absolute sale unto the said spouses Victor and Joecelyn Valdez, their heirs and assigns, the **TWO HUNDRED (200) SQUARE METERS, EASTERN PORTION** of the parcel of land above-described, free from all liens and encumbrances.

x x x x

That now and hereinafter, said VENDEE-SPOUSES VICTOR and JOECELYN [*sic*] VALDEZ shall be the absolute owners of the said 200 sq. meters, eastern portion and that we shall warrant and forever defend their ownership of the same against the claims of all persons whomsoever; **they shall be provided a 2 1/2 meters [*sic*] wide road right-of-way on the western side** of their lot but which is not included in this sale.

x x x.x (Emphasis and underscoring supplied)

Respondents subsequently built a concrete wall on the western side of the subject property.^[2] Believing that that side is the intended road right of way mentioned in the deed, petitioners, through their representative, reported the matter to the barangay for mediation and conciliation. Respondents failed to attend the conferences scheduled by the barangay, however, drawing petitioners to file in April 1999 or more than six years after the execution of the deed a Complaint for Specific Performance with Damages^[3] against respondents before the Regional Trial Court (RTC) of San Fernando City, La Union.

In their complaint, petitioners alleged that they purchased the subject property on the strength of respondents' assurance of providing them a road right of way. They thus prayed that respondents be ordered to provide the subject property with a 2½-meter wide easement and to remove the concrete wall blocking the same.^[4]

Respondents, in their Answer with Compulsory Counterclaim (for damages and attorney's fees),^[5] averred that the 2 ½-meter easement should be taken from the western portion of the subject property and not from theirs;^[6] and petitioners and their family are also the owners of two properties adjoining the subject property, which adjoining properties have access to two public roads or highways - the bigger one which adjoins P. Burgos St. on the north, and the smaller one which abuts an existing barangay road on the north.^[7]

Respondents further averred that they could not have agreed to providing petitioners an easement "on the western side of their lot" as there exists a two-storey concrete house on their lot where the supposed easement is to be located, which was erected long before the subject property was sold to petitioners.^[8] In support of this claim, respondents submitted a February 20, 2003 letter from the City Engineer's Office.^[9]

Branch 26 of the RTC of San Fernando dismissed petitioners' complaint and granted respondents' Counterclaim by Decision^[10] of March 18, 2005, the dispositive portion of which reads:

WHEREFORE, and in view of all the foregoing, judgment is hereby rendered finding the defendants as against the plaintiffs and hereby orders the Complaint dismissed for being unmeritorious and plaintiffs are hereby ordered to pay the defendants, the following:

- 1) P100,000.00 as moral damages;
- 2) P50,000.00 as exemplary damages;
- 3) P50,000.00 as attorney's fees;
- 4) P30,000.00 as expenses of litigation; and
- 5) To pay the costs.

SO ORDERED.^[11] (Underscoring supplied)

On appeal by petitioners, the Court of Appeals, by Decision of May 29, 2006,^[12] affirmed that of the trial court, it holding that the deed only conveyed ownership of the subject property to petitioners, and that the reference therein to an easement in favor of petitioners is not a definite grant-basis of a voluntary easement of right of way.^[13]

The appellate court went on to hold that petitioners are neither entitled to a legal or compulsory easement of right of way as they failed to present circumstances justifying their entitlement to it under Article 649 of the Civil Code.^[14]

Petitioners' motion for reconsideration^[15] having been denied by the Court of Appeals by Resolution of November 15, 2006, they filed the present petition for review on certiorari faulting the trial [*sic*] court

I. . . . IN RULING THAT THE RIGHT OF WAY IS NOT PART OF THE
ABSOLUTE DEED OF SALE DATED JANUARY 11, 1993;

II. . . . IN RULING THAT THE PROVISION OF THE ABSOLUTE DEED OF
SALE GRANTING A RIGHT OF WAY IS VAGUE AND OBSCURE;

III. . . . IN AWARDING MORAL AND EXEMPLARY DAMAGES TO THE
RESPONDENTS.^[16] (Underscoring supplied)

An easement or servitude is "a real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person."^[17] The statutory basis of this right is Article 613 of the Civil Code which reads:

Art. 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.

The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

There are two kinds of easements according to source - by law or by the will of the owners. So Article 619 of the Civil Code provides:

Art. 619. Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements.

From the allegations in petitioners' complaint, it is clear that what they seek to enforce is an alleged grant in the deed by respondents of an easement reading: "*they shall be provided a 2 ½ meters wide road right-of-way on the western side of their lot but which is not included in this sale.*"

Article 1358 of the Civil Code provides that any transaction involving the sale or disposition of real property must be in writing.^[18] The stipulation harped upon by

petitioners that they "shall be provided a 2 ½ meters wide road right-of-way on the western side of their lot but which is not included in this sale" is not a disposition of real property. The proviso that the intended grant of right of way is "not included in this sale" could only mean that the parties would have to enter into a separate and distinct agreement for the purpose.^[19] The use of the word "shall," which is imperative or mandatory in its ordinary signification, should be construed as merely permissive where, as in the case at bar, no public benefit or private right requires it to be given an imperative meaning.^[20]

Besides, a document stipulating a voluntary easement must be recorded in the Registry of Property in order not to prejudice third parties. So Articles 708 and 709 of the Civil Code call for, *viz*:

Art. 708. The Registry of Property has for its object the inscription or annotation of acts and contracts relating to the ownership and other rights over immovable property.

Art. 709. The titles of ownership, or of other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons.

Petitioners are neither entitled to a legal or compulsory easement of right of way. For to be entitled to such kind of easement, the preconditions under Articles 649 and 650 of the Civil Code must be established, *viz*:

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.

x x x x

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts. (Underscoring supplied)

Art. 650. 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. (Underscoring supplied)

Thus, to be conferred a legal easement of right of way under Article 649, the following requisites must be complied with: (1) the property is surrounded by other immovables and has no adequate outlet to a public highway; (2) proper indemnity must be paid; (3) the isolation is not the result of the owner of the dominant estate's own acts; (4) the right of way claimed is at the point least prejudicial to the servient estate; and (5) to the extent consistent with the foregoing rule, the distance from the dominant estate to a public highway may be the shortest.^[21] The onus of proving the existence of these prerequisites lies on the owner of the dominant estate,^[22] herein petitioners.

As found, however, by the trial court, which is supported by the Sketch^[23] (Exhibit