

FIRST DIVISION

[G.R. NO. 151797, October 11, 2007]

**SPOUSES MANUEL MEJORADA AND ROSALINDA P. MEJORADA,
PETITIONERS, VS. GLORIFICACION VERTUDAZO, SOL
VERTUDAZO, SPS. JIMMY GALVIZO AND GLOSITA T. GALVIZO,
SPS. FERMIN CABRERA AND ELLEN CABRERA, SPS. FELIXTO
ARIATE AND RENA ARIATE, AND SPS. RAUL ARLALEJO AND
ARCILA ARLALEJO, RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a Petition for Review on *Certiorari*^[1] assailing the Decision^[2] dated December 4, 2001 of the Court of Appeals in CA-G.R. CV No. 62900, entitled "*Glorificacion Vertudazo et al. v. Spouses Manuel and Rosalinda Mejorada.*"

The undisputed facts are:

Sometime in 1981, Glorificacion and Sol Vertudazo and their co-respondents established their permanent residence on a 300-square meter lot located at Telaje, Tandag, Surigao del Sur. Their property is landlocked being bordered on all sides by different lots. As an access route going to Quiñones Street and the public highway, they utilized a proposed undeveloped *barangay* road on the south side of their property owned by Rosario Quiñones.

In 1988, spouses Manuel and Rosalinda Mejorada, petitioners, bought Rosario's 646-square meter lot adjacent to respondents' property. Included therein is an area measuring 55.5 square meters which serves as an adequate outlet to Quiñones Street, now the subject of the present controversy. For several years, respondents and the general public have been using that area as a passageway to and from Quiñones Street.

On July 2, 1997, petitioners closed the passageway by building a new garage for their service jeep. Hence, respondents brought the matter to the *barangay* concerned but no settlement was reached by the parties. Respondents then filed a complaint^[3] with the Regional Trial Court, Branch 27, Tandag, Surigao del Sur praying for a grant of easement of right of way over petitioners' property with an application for writ of preliminary mandatory injunction.

In their answer, petitioners claimed that there is an alternate route which respondents have been using although it was long, circuitous and muddy; that the isolation of respondents' property was due to their construction of a fence fronting the house of the petitioners; that this made it difficult for petitioners to maneuver their service jeep, hence, they were constrained to construct a new garage; that respondents never offered to pay compensation for the right of way; and that they

failed to show that the easement is at the point least prejudicial to the servient estate.

During the hearing, the trial court ordered that the passageway be opened during the day and closed in the evening during the pendency of the case. Petitioners agreed to open it everyday from five o'clock in the morning until nine o'clock in the evening and even volunteered their service jeep to be used in case of any emergency during the rest of the night. Respondents' application for injunction was then declared moot and the case was archived to allow the parties to settle the matter amicably.

Nevertheless, petitioners did not abide with their commitment. Thus, on March 5, 1998, respondents filed with the trial court joint motions to cite petitioners in contempt of court and to revive their application for preliminary mandatory injunction. On June 8, 1998, the trial court denied the motion for contempt but granted an injunctive relief, ordering petitioners "to keep open at all times of the day and night for respondents to pass through in going to Quiñones Street and in returning to their respective houses, unhampered and unvexed, during the pendency and until the resolution of the case." Respondents were ordered to post a bond of P5,000.00. On June 16, 1998, the trial court issued a writ of preliminary mandatory injunction.

After the trial on the merits, or on December 7, 1998, the trial court rendered a Decision in favor of respondents, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Decreeing the establishment of a compulsory easement of right of way in favor of the plaintiffs over the passageway in question, namely, the 55.5 square meter lot located at Telaje, Tandag, Surigao del Sur, covered by Tax Declaration No. 02030 in the name of defendant Rosalinda P. Mejorada, and ordering the defendants to open and make available the passageway to the plaintiffs and the general public as access road to Quiñones Street;
2. Ordering the plaintiffs, jointly and severally, to pay the defendants the value of the 55.5 square meter passageway, the exact amount to be determined by a committee of three assessors, with the Acting Clerk of Court, this Court, or his duly authorized deputy sheriff as Chairman, and with one member to be proposed by the plaintiffs, and the other member, by the defendants, the committee to finish the assessment and submit to this Court its report within fifteen (15) days from their assumption to duty as such assessors; and
3. Declaring the preliminary mandatory injunction heretofore issued permanent.

No pronouncement as to cost.

IT IS SO ORDERED."