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SECOND DIVISION

[G.R. NO. 137882, February 04, 2005]

SPS. ELIZABETH DE LA CRUZ AND ALFREDO DE LA CRUZ, PETITIONERS, VS. OLGA RAMISCAL REPRESENTED BY ENRIQUE MENDOZA, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This petition for review assails (1) the Resolution[1] dated 11 September 1998 of the Court of Appeals which dismissed the appeal filed by petitioners from the Decision dated 31 July 1997 of the Regional Trial Court (RTC), Branch 91, Quezon City, for Demolition of Illegally Constructed Structure, and (2) the Resolution[2] dated 05 March 1999 denying the subsequent motion for reconsideration.

The following facts, as recapitulated by the trial court, are undisputed.

Respondent OLGA RAMISCAL is the registered owner of a parcel of land located at the corner of 18th Avenue and Boni Serrano Avenue, Murphy, Quezon City, covered by Transfer Certificate of Title (TCT) No. 300302 of the Register of Deeds for Quezon City.[3] Petitioners SPS. ELIZABETH and ALFREDO DE LA CRUZ are occupants of a parcel of land, with an area of eighty-five (85) square meters, located at the back of Ramiscal's property, and covered by TCT No. RT-56958 (100547) in the name of Concepcion de la Peña, mother of petitioner Alfredo de la Cruz.[4]

The subject matter of this case is a 1.10-meter wide by 12.60-meter long strip of land owned by respondent which is being used by petitioners as their pathway to and from 18th Avenue, the nearest public highway from their property. Petitioners had enclosed the same with a gate, fence, and roof.[5]

In 1976, respondent leased her property, including the building thereon, to Phil. Orient Motors. Phil. Orient Motors also owned a property adjacent to that of respondent's. In 1995, Phil. Orient Motors sold its property to San Benito Realty. After the sale, Engr. Rafael Madrid prepared a relocation survey and location plan for both contiguous properties of respondent and San Benito Realty. It was only then that respondent discovered that the aforementioned pathway being occupied by petitioners is part of her property.[6]

Through her lawyer, respondent immediately demanded that petitioners demolish the structure constructed by them on said pathway without her knowledge and consent. As her letter dated 18 February 1995 addressed to petitioners went unheeded, the former referred the matter to the *Barangay* for conciliation proceedings, but the parties arrived at no settlement. Hence, respondent filed this complaint with the RTC in Civil Case No. Q-95-25159, seeking the demolition of the

structure allegedly illegally constructed by petitioners on her property. Respondent asserted in her complaint that petitioners have an existing right of way to a public highway other than the current one they are using, which she owns. She prayed for the payment of damages.[7]

In support of the complaint, respondent presented TCT No. RT-56958 (100547) covering the property denominated as Lot 1-B in the name of Concepcion de la Peña, mother of petitioner herein Alfredo de la Cruz. The aforesaid TCT reveals that a portion of Lot 1-B, consisting of 85 square meters and denominated as Lot 1-B-2, is being occupied by petitioners. To prove that petitioners have an existing right of way to a public highway other than the pathway which respondent owns, the latter adduced in evidence a copy of the plan of a subdivision survey for Concepcion de la Peña and Felicidad Manalo prepared in 1965 and subdivision plan for Concepcion de la Peña prepared in 1990. These documents establish an existing 1.50-meter wide alley, identified as Lot 1-B-1, on the lot of Concepcion de la Peña, which serves as passageway from the lot being occupied by petitioners (Lot 1-B-2), to Boni Serrano Avenue.[8]

On the other hand, petitioners, in their Answer, admitted having used a 1.10-meter wide by 12.60-meter long strip of land on the northern side of respondent's property as their pathway to and from 18th Avenue, the nearest public highway from their property, but claimed that such use was with the knowledge of respondent.[9]

Petitioners alleged in their Answer that in 1976, respondent initiated the construction on her property of a motor shop known as Phil. Orient Motors and they, as well as the other occupants of the property at the back of respondent's land, opposed the construction of the perimeter wall as it would enclose and render their property without any adequate ingress and egress. They asked respondent to give them a 1.50-meter wide and 40.15-meter long easement on the eastern side of her property, which would be reciprocated with an equivalent 1.50-meter wide easement by the owner of another adjacent estate. Respondent did not want to give them the easement on the eastern side of her property, towards Boni Serrano Avenue but, instead, offered to them the said 1.10-meter wide passageway along the northern side of her property towards 18th Avenue, which offer they had accepted. [10]

Petitioners additionally averred in their Answer that they were made to sign a document stating that they waived their right to ask for an easement along the eastern side of respondent's property towards Boni Serrano Avenue, which document was among those submitted in the application for a building permit by a certain "Mang Puling,"[11] the person in charge of the construction of the motor shop. That was why, according to petitioners, the perimeter wall on respondent's property was constructed at a distance of 1.10-meters offset and away from respondent's property line to provide a passageway for them to and from 18th Avenue. They maintained in their Answer that respondent knew all along of the 1.10-meter pathway and had, in fact, tolerated their use thereof.

On 31 July 1997, the RTC handed down a decision,[12] giving probative weight to the evidence adduced by respondent. The decretal portion enunciates:

> Plaintiff's claim for moral damages must be denied as no evidence in support thereof was presented at all by her. Consequently, plaintiff is not entitled to exemplary damages.[13] However, for having been compelled to file this suit and incur expenses to protect her interest, plaintiff is entitled to an attorney's fees in the amount of P10,000.00.
>
> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and ordering the defendants to demolish the structure built by them along the pathway on the eastern side of plaintiff's property towards 18th Avenue, Murphy, Quezon City and to pay [the] plaintiff the amount of P10,000.00 as and by way of attorney's fees.
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> Costs against the defendants.[14]

The Court of Appeals dismissed the appeal filed by petitioners from the RTC decision for failure to file brief within the reglementary period. The *fallo* of the Court of Appeals decision, provides:

> WHEREFORE, for failure of the defendants-appellants to file brief within the reglementary period, the instant appeal is hereby DISMISSED pursuant to Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure.
>
> The Compliance/Explanation filed by defendants-appellants, submitting the Letter-withdrawal of Atty. Judito Tadeo addressed to the said defendants-appellants is NOTED.
>
> Let a copy of this Resolution be likewise served on defendants-appellants themselves.[15]

The motion for reconsideration filed by petitioners met the same fate in the Resolution of the Court of Appeals dated 05 March 1999.

Petitioners now lay their cause before us through the present petition for review, raising the following issues:

A. WHETHER OR NOT THE DENIAL OF THE COURT OF APPEALS OF THE PETITIONERS' MOTION FOR RECONSIDERATION OF ITS RESOLUTION DATED SEPTEMBER 11, 1998 IS SANCTIONED BY THE RULINGS AND LEGAL PRONOUNCEMENTS OF THE HONORABLE SUPREME COURT?

B. WHETHER OR NOT THE PETITIONERS ARE NONETHELESS ENTITLED TO A LEGAL EASEMENT OF RIGHT OF WAY, ASSUMING NO VOLUNTARY RIGHT OF WAY WAS GRANTED THEM BY THE RESPONDENT?

C. WHETHER OR NOT OPERATIVE EQUITABLE PRINCIPLE OF LACHES TO BAR THE RESPONDENT FROM DEPRIVING THE PETITIONERS CONTINUED USE OF THE SAID RIGHT OF WAY?[16]

The issues rivet on the adjective as well as on the substantive law, specifically: (1) whether or not the Court Appeals erred in dismissing the appeal filed by petitioners for failure to file appellants' brief on time, (2) whether or not petitioners are entitled to a voluntary or legal easement of right of way, and (3) whether or not

respondent is barred by laches from closing the right of way being used by petitioners.

On the first issue, petitioners assert positively that the petition was filed on time on 30 April 1998, which is well within the 45-day period reckoned from 17 March 1998, when the secretary of their former counsel received the notice to file appeal.

Petitioners' arguments fail to persuade us.

Press earnestly as they would, the evidence on record, nevertheless, evinces contrariety to petitioners' assertion that they have beat the 45-day period to file appellants' brief before the appellate court. It is clear from the registry return receipt card[17] that the Notice to File Brief was received on 12 March 1998 by one May Tadeo from the Office of Atty. Judito Angelo C. Tadeo, petitioners' previous counsel. Thus, on 30 April 1998, when their new counsel entered his appearance and at the same time filed an appellants' brief, the 45 days have run out. For failure of petitioners to file brief within the reglementary period, the Court of Appeals correctly dismissed said appeal pursuant to Section 1(b), Rule 50 of the 1997 Rules of Civil Procedure.[18]

Neither can the members of this Court lend credence to petitioners' contention that the written note of Atty. Tadeo's office on the face of the Order reads that the said office received it on 17 March 1998.[19]

It is a rule generally accepted that when the service is to be made by registered mail, the service is deemed complete and effective upon actual receipt by the addressee as shown by the registry return card.[20] Thus, between the registry return card and said written note, the former commands more weight. Not only is the former considered as the official record of the court, but also as such, it is presumed to be accurate unless proven otherwise, unlike a written note or record of a party, which is often self-serving and easily fabricated. Further, this error on the part of the secretary of the petitioners' former counsel amounts to negligence or incompetence in record-keeping, which is not an excuse for the delay of filing.

Petitioners' justification that their former counsel belatedly transmitted said order to them only on 20 March 1998 is not a good reason for departing from the established rule. It was the responsibility of petitioners and their counsel to devise a system for the receipt of mail intended for them.[21] Rules on procedure cannot be made to depend on the singular convenience of a party.

Petitioners next take the stand that even assuming the brief was filed late, the Court of Appeals still erred in dismissing their petition in light of the rulings of this Court allowing delayed appeals on equitable grounds.[22] Indeed, in certain special cases and for compelling causes, the Court has disregarded similar technical flaws so as to correct an obvious injustice made.[23] In this case, petitioners, however, failed to demonstrate any justifiable reasons or meritorious grounds for a liberal application of the rules. We must remind petitioners that the right to appeal is not a constitutional, natural or inherent right - it is a statutory privilege and of statutory origin and, therefore, available only if granted or provided by statute.[24] Thus, it may be exercised *only in the manner prescribed by, and in accordance with, the*

provisions of the law.[25]

Anent the second issue, an easement or servitude is a real right, constituted on the corporeal immovable property of another, by virtue of which the owner has to refrain from doing, or must allow someone to do, something on his property, for the benefit of another thing or person.[26] The statutory basis for this right is Article 613, in connection with Article 619, of the Civil Code, which states:

> 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.
>
> 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.

Did respondent voluntarily accord petitioners a right of way?

We rule in the negative. Petitioners herein failed to show by competent evidence other than their bare claim that they and their tenants, spouses Manuel and Cecilia Bondoc and Carmelino Masangkay, entered into an agreement with respondent, through her foreman, Mang Puling, to use the pathway to 18th Avenue, which would be reciprocated with an equivalent 1.50-meter wide easement by the owner of another adjacent estate. The hands of this Court are tied from giving credence to petitioners' self-serving claim that such right of way was voluntarily given them by respondent for the following reasons:

First, petitioners were unable to produce any shred of document evidencing such agreement. The Civil Code is clear that any transaction involving the sale or disposition of real property must be in writing.[27] Thus, the dearth of corroborative evidence opens doubts on the veracity of the naked assertion of petitioners that indeed the subject easement of right of way was a voluntary grant from respondent. *Second*, as admitted by the petitioners, it was only the foreman, Mang Puling, who talked with them regarding said pathway on the northern side of respondent's property. Thus, petitioner Elizabeth de la Cruz testified that she did not talk to respondent regarding the arrangement proposed to them by Mang Puling despite the fact that she often saw respondent.[28] It is, therefore, foolhardy for petitioners to believe that the alleged foreman of respondent had the authority to bind the respondent relating to the easement of right of way. *Third*, their explanation that said Mang Puling submitted said agreement to the Quezon City Engineer's Office, in connection with the application for a building permit but said office could no longer produce a copy thereof, does not inspire belief. As correctly pointed out by the trial court,[29] petitioners should have requested a subpoena *duces tecum* from said court to compel the Quezon City Engineer's Office to produce said document or to prove that such document is indeed not available.

The fact that the perimeter wall of the building on respondent's property was constructed at a distance of 1.10 meters away from the property line, does not by itself bolster the veracity of petitioners' story that there was indeed such an