

SECOND DIVISION

[G.R. No. 110067, March 13, 1997]

MA. LINDA T. ALMENDRAS, PETITIONER, VS. THE COURT OF APPEALS, URCICIO TAN PANG ENG AND FABIANA YAP, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition to review the decision of the Court of Appeals, reversing the decision of the Regional Trial Court and dismissing petitioner's complaint for the establishment of a right of way.

Petitioner is the registered owner of a parcel of land, covered by TCT No. 91180 of the Register of Deeds of Cebu and designated as Lot-B of the subdivision plan Psd-163902, in Banilad, Cebu. The land is bounded on the north and on the east by lots owned by private respondents Tan Pang Eng and Fabiana Yap, on the south by the lot owned by Celedonio Bongo, and on the west by the properties of Tomas Opone and Zosimo Opone.

About 9.74 meters of the western boundary of petitioner's land abuts an existing private road, 6.00 meters wide, which passes through the lots of Tomas Opone, Vicente Lao, Manuel Opone, Luis Sison, and Silvestre Opone and leads to another private road located on the property of Bienvenido Tudtud which in turn connects to the provincial road.

Sometime in September, 1987, private respondents began building a concrete wall on his property on the northern and eastern sides of petitioner's lot. For this reason, petitioner wrote private respondents on September 15, 1987 offering to buy a portion of the latter's lot, 17.45 meters long and 3 meters wide, so that petitioner could have access to the provincial road. But her request was denied by private respondents on the ground that there was an existing private road on the western side of petitioner's property providing adequate outlet to the provincial road. Private respondents claimed that granting petitioner's request would greatly reduce the value of his property, as the proposed right of way cuts across the middle of the property.

Shortly thereafter, in January 1988, Celedonio Bongo also fenced his property, thus closing off the southern boundary of petitioner's lot.

On January 29, 1988, petitioner brought this action in the Regional Trial Court of Cebu, Branch 16 for the establishment of a right of way (CEB-6607) through private respondents' land.

Zosimo Opone subsequently closed off the western side of petitioner's property by

erecting a fence on his lot, with the result that petitioner's property became inaccessible.

After trial, the trial court rendered judgment for petitioner, granting her a right of way through 57.35 square meters of private respondents' property, upon payment by her of P11,470.00 as indemnity. Although there was a private road on the western and southern sides of her lot, the trial court ruled that the easements were constituted for the owners of the lots through which the private road passes and petitioner would have to negotiate with them individually to be allowed to use the private road herself. Moreover, the road had been closed on petitioner's western boundary by Zosimo Opone.

Private respondents appealed. On January 29, 1993, the Court of Appeals rendered its decision, reversing the trial court and holding that the road around petitioner's lot on its western and southern boundaries was an adequate outlet for petitioner to the provincial road. This private road has a width of 6.0 meters, which allows the passage of a cargo truck, and a length of only 149 meters. Although the road is a private one, the appellate court ruled that the designation of the beneficiaries of the easement in the titles of the lots was neither specific nor exclusive, that there was no reason for petitioner not to negotiate with Zosimo Opone before bringing this case, and that the closure by Zosimo Opone of the western side of petitioner's lot was contrary to P.D. No. 1529, §50 because it was done without the approval of the Regional Trial Court as required therein. In any event, it was held that mere inconvenience to the petitioner in negotiating with numerous parties for whose benefit the easement was established was not a reason for granting petitioner an easement through private respondents' property.

Petitioner filed a motion for reconsideration but her motion was denied for having been filed late and for lack of merit. Hence this petition.

The preliminary question is whether petitioner's motion for reconsideration was filed within the 15-day period prescribed by the Rules for filing such motion or appealing the decision of the Court of Appeals to this Court. It appears that a copy of the decision of the appellate court was served on petitioner's counsel on February 10, 1993, so that she had until February 25 within which to file a motion for reconsideration. However, February 25, 1993 had been declared a special holiday in commemoration of the EDSA people power revolution. Hence, petitioner, in accordance with §28 of the Administrative Code of 1987, had until the next day, February 26, 1993, to file her motion, which she did. Her motion was thus timely filed.

Petitioner contends that the appellate court erred in dismissing her complaint because both the Opone and Tudtud roads are private roads which were built for the benefit only of those lots through which the roads pass and, as such, cannot be considered adequate outlets within the contemplation of Art. 649 of the Civil Code. The roads not being adequate outlets, Tan was bound under the law to open up a right of way for her through his property.

The issue in this case is whether or not petitioner is entitled to a right of way through private respondents' property. We hold that she has failed to prove that she has a right to the establishment of such an easement through private respondents' property.