

FIRST DIVISION

[G.R. No. 112331, May 29, 1996]

**ANASTACIA QUIMEN, PETITIONER, VS. COURT OF APPEALS AND
YOLANDA Q. OLIVEROS, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

IN EASEMENT OF RIGHT OF WAY that easement where the way is shortest and will cause least prejudice shall be chosen. However, if the two circumstances do not concur in a single tenement, the way where damage will be least shall be used even if not the shortest route.^[1] This is so because *least prejudice* prevails over shortest distance. This means that the court is not bound to establish what is the *shortest distance*; a longer way may be adopted to avoid injury to the servient estate, such as when there are constructions or walls which can be avoided by a round about way, or to secure the interest of the dominant owner, such as when the shortest distance would place the way on a dangerous decline.

Thus we conclude from the succeeding facts: Petitioner Anastacia Quimen together with her brothers Sotero, Sulpicio, Antonio and sister Rufina inherited a piece of property situated in Pandi, Bulacan. They agreed to subdivide the property equally among themselves, as they did, with the shares of Anastacia, Sotero, Sulpicio and Rufina abutting the municipal road. The share of Anastacia, located at the extreme left, was designated as Lot No. 1448-B- 1. It is bounded on the right by the property of Sotero designated as Lot. No. 1448-B-2. Adjoining Sotero's property on the right are Lots Nos. 1448-B-3 and 1448-B-4 originally owned by Rufina and Sulpicio, respectively, but which were later acquired by a certain Catalina Santos. Located directly behind the lots of Anastacia and Sotero is the share of their brother Antonio designated as Lot No. 1448-B-C which the latter divided into two (2) equal parts, now Lots Nos. 1448-B-6-A and 1448-B-6-B, each with an area of 92 square meters. Lot No. 1448-B-6-A is located behind Anastacia's Lot No. 1448-B-1, while Lot No. 1448-B-6-B is behind the property of Sotero, father of respondent Yolanda.

In February 1982 Yolanda purchased Lot No. 1448-B-6-A from her uncle Antonio through her aunt Anastacia who was then acting as his administratrix. According to Yolanda, when petitioner offered her the property for sale she was hesitant to buy as it had no access to a public road. But Anastacia prevailed upon her to buy the lot with the assurance that she would give her a right of way on her adjoining property for P200.00 per square meter.

Thereafter, Yolanda constructed a house on the lot she bought using as her passageway to the public highway a portion of Anastacia's property. But when Yolanda finally offered to pay for the use of the pathway Anastacia refused to accept the payment. In fact she was thereafter barred by Anastacia from passing through her property.^[2]

In February 1986 Yolanda purchased the other lot of Antonio Quimen, Lot No. 1448-B-6-B, located directly behind the property of her parents who provided her a pathway *gratis et amore* between their house, extending about nineteen (19) meters from the lot of Yolanda behind the *sari-sari* store of Sotero, and Anastacia's perimeter fence. The store is made of strong materials and occupies the entire frontage of the lot measuring four (4) meters wide and nine meters (9) long. Although the pathway leads to the municipal road it is not adequate for ingress and egress. The municipal road cannot be reached with facility because the store itself obstructs the path so that one has to pass through the back entrance and the facade of the store to reach the road.

On 29 December 1987 Yolanda filed an action with the proper court praying for a right of way through Anastacia's property. An ocular inspection upon instruction of the presiding judge was conducted by the branch clerk of court. The report was that the proposed right of way was at the extreme right of Anastacia's property facing the public highway, starting from the back of Sotero's *sari-sari* store and extending inward by one (1) meter to her property and turning left for about five (5) meters to avoid the store of Sotero in order to reach the municipal road^[3] and the way was unobstructed except for an avocado tree standing in the middle.^[4]

But on 5 September 1991 the trial court dismissed the complaint for lack of cause of action, explaining that the right of way through Sotero's property was a straight path and to allow a detour by cutting through Anastacia's property would no longer make the path straight. Hence the trial court concluded that it was more practical to extend the existing pathway to the public road by removing that portion of the store blocking the path as that was the shortest route to the public road and the least prejudicial to the parties concerned than passing through Anastacia's property.^[5]

On appeal by respondent Yolanda, the Court of Appeals reversed the lower court and held that she was entitled to a right of way on petitioner's property and that the way proposed by Yolanda would cause the least damage and detriment to the servient estate.^[6] The appellate court however did not award damages to private respondent as petitioner did not act in bad faith in resisting the claim.

Petitioner now comes to us imputing ERROR to respondent Court of Appeals: (a) in disregarding the agreement of the parties; (b) in considering petitioner's property as a servient estate despite the fact that it does not abut or adjoin the property of private respondent; and, (c) in holding that the one-meter by five-meter passage way proposed by private respondent is the least prejudicial and the shortest distance to the public road.

Incidentally, petitioner denies having promised private respondent a right of way. She claims that her agreement with private respondent was to provide the latter with a right of way on the other lot of Antonio Quimen under her administration when it was not yet sold to private respondent. Petitioner insists that passing through the property of Yolanda's parents is more accessible to the public road than to make a detour to her property and cut down the avocado tree standing thereon.

Petitioner further argues that when Yolanda purchased Lot No. 1448-B-6-B in 1986 the easement of right of way she provided her (petitioner) was *ipso jure*

extinguished as a result of the merger of ownership of the dominant and the servient estates in one person so that there was no longer any compelling reason to provide private respondent with a right of way as there are other surrounding lots suitable for the purpose. Petitioner strongly maintains that the proposed right of way is not the shortest access to the public road because of the detour and that, moreover, she is likely to suffer the most damage as she derives a net income of P600.00 per year from the sale of the fruits of her avocado tree, and considering that an avocado has an average life span of seventy (70) years, she expects a substantial earning from it.^[7]

But we find no cogent reason to disturb the ruling of respondent appellate court granting a right of way to private respondent through petitioner's property. In fact, as between petitioner Anastacia and respondent Yolanda their agreement has already been rendered moot insofar as it concerns the determination of the principal issue herein presented. The voluntary easement in favor of private respondent, which petitioner now denies but which the court is inclined to believe, has in fact become a legal easement or an easement by necessity constituted by law.^[8]

As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement.^[9] It is *jus in re aliena*, inseparable, indivisible and perpetual, unless extinguished by causes provided by law. A right of way in particular is a privilege constituted by covenant or granted by law^[10] to a person or class of persons to pass over another's property when his tenement is surrounded by realties belonging to others without an adequate outlet to the public highway. The owner of the dominant estate can demand a right of way through the servient estate provided he indemnifies the owner thereof for the beneficial use of his property.^[11]

The conditions *sine qua non* for a valid grant of an easement of right of way are: (a) the dominant estate is surrounded by other immovables without an adequate outlet to a public highway; (b) the dominant estate is willing to pay the proper indemnity; (c) the isolation was not due to the acts of the dominant estate; and, (d) the right of way being claimed is at a point least prejudicial to the servient estate.^[12]

A cursory examination of the complaint of respondent Yolanda for a right of way^[13] readily shows that-

[E]ven before the purchase of the said parcels of land the plaintiff was reluctant to purchase the same for they are enclosed with permanent improvements like a concrete fence and store and have (sic) no egress leading to the road but because of the assurance of the defendant that plaintiff will be provided one (1) meter wide and five (5) meters long right of way in the sum of P200.00 per square meter to be taken from Anastacia's lot at the side of a concrete store until plaintiff reach(es) her father's land, plaintiff was induced to buy the aforesaid parcels of land x x x. That the aforesaid right of way is the shortest, most convenient and the least onerous leading to the road and being used by the plaintiff's predecessors-in-interest from the very inception x x x.