Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NAGA CENTRUM, INC., represented by AIDA KELLY YUBUCO,
Petitioner,

- versus -

SPOUSES RAMON J. ORZALES and NENITA F. ORZALES,
Respondents.

G.R. No. 203576

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

Promulgated:
14 SEP 2016

x - x

DECISION

DEL CASTILLO, *J.*:

A party cannot be allowed to influence and manipulate the courts' decisions by performing acts upon the disputed property – during the pendency of the case – which would allow it to achieve the objectives it desires.

This Petition for Review on *Certiorari*[1] seeks to set aside: a) the May 23, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 93926 affirming the December 23, 2008 Decision[3] of the Regional Trial Court of Naga City, Branch 22 in Civil Case No. 2004-0036, which in turn granted herein respondents – spouses Ramon and Nenita Orzales – an easement of right of way; and b) the CA's August 28, 2012 Resolution[4] denying herein petitioner Naga Centrum Inc.'s Motion for Reconsideration.

Factual Antecedents

The undisputed facts of this case involving easement of right of way are

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1 *Rollo*, pp. 9-22.
2 Id. at 24-37; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Samuel H. Gaerlan.
3 Records, pp. 348-364; penned by Pairing Judge Pablo Cabillan Formaran III.
4 *Rollo*, pp. 39-40.

best summed up by the appellate court, as follows:

> The plaintiffs-appellees[5] own a house and lot situated at No. 28-B Valentin Street, Sabang, Naga City which is surrounded on the North by the property of Aurora dela Cruz; on the West, by the property of Bernardo Tawagon; and on the East and South, by the property of the defendant-appellant.[6] The plaintiffs-appellees alleged that when they acquired their property in 1965, their access to the public highway (Valentin Street) was through Rizal Street, which forms part of a property now owned by the defendant-appellant. But when the squatters inhabiting said place were evicted, the defendant-appellant caused Rizal Street to be closed by enclosing its property with a concrete fence. Although the plaintiffs-appellees were allowed to pass through the steel gate of the defendant-appellant, the same is subject to the schedule set by the latter. This prompted the plaintiffs-appellees to ask for a permanent right of way through the intervention of the court after the defendant-appellant refused their offer to buy the portion where the proposed right of way is sought to be established.
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> The defendant-appellant, however, alleged that there is an existing passageway leading to Valentin Street along Lot 1503 of Cad-290 which is available to the plaintiffs-appellees. Accordingly, it argued that the plaintiffs-appellees' cause of action should be against the owner of the said property. But since the said owner of Lot 1503 was not impleaded, the instant complaint is defective for failure to implead indispensable party. It also denied that it granted the plaintiffs-appellees right of way on its property stating that the use by the latter of Rizal Street as access to Valentin Street is unauthorized and illegal. Moreover, it said that the property of the plaintiffs-appellees became isolated due to their own acts. As a counterclaim, the defendant-appellant asked for damages in the form of litigation expenses, attorney's fees, and nominal damages.
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> In the course of the proceedings, the trial court, through an order dated August 26, 2005, granted the plaintiffs-appellees' petition for the issuance of a writ of preliminary injunction and ordered the defendant-appellant 'to clear the [plaintiffs-appellees'] access from the latter's residence towards the former Rizal Street to Valentin Street of junks and other materials or vehicles for repair that blocks [sic] or obstructs [sic] the same during the pendency of the instant case' after it found out during an ocular inspection that:
>
> > '[I]ndeed,… the plaintiffs['] property is surrounded by other persons' properties and has no other access from their residence except through the defendant[']s property going to Valentin Street. Plaintiffs' residence and main gate faces the east. Previously,… a cemented path walk extends towards what used to be Rizal Street which appears as a long stretch [of] cemented road inside the defendant's property… Upon ocular inspection, however, the path walk from the plaintiffs' main gate is now covered by earth fill or gravel which is about one (1) foot high from the level ground inside the plaintiffs' property. The earth-fill or gravel covers the whole of the path walk such that the said path walk have [sic] totally disappeared. Truck-loads of earth-fill or gravel appears to have been dumped thereat without leveling the same making it extremely difficult to pass through it

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5 Herein respondents.

6 Herein petitioner, represented by Aida Kelly Yubuco.

> considering that some junks have also been scattered at the place not to mention the fact that it has been converted into a parking space for vehicles under repair. At the time of the ocular inspection, a jeep, a speed boat, an old mushroom-like *bahay kubo* and the junks were found at the place which used to be the plaintiffs [sic] access towards Valentin Street.'

On December 23, 2008, the trial court rendered judgment in favor of the plaintiffs-appellees. The trial court found based on the two ocular inspections conducted that the property of the plaintiffs-appellees is indeed isolated, and that an outlet to a public road could be most conveniently and practically established along the property of the defendant-appellant which is considerably bigger in size at 1.9 hectares than that of the other surrounding adjacent owners, like Bernardo Tawagon, whose property measures only 140 square meters, Felisa Estela, 90 square meters, and Aurora dela Cruz, 116 square meters, and which would provide the shortest route from the public road to the former's property[; t]hat the isolation of their property was not due to their own act[; t]hat the easement would be established on the portion least prejudicial to the property of the defendant-appellant, that is, alongside the boundary of its property and that of Felisa Estela and Aurora dela Cruz[; and t]hat the plaintiffs-appellees were willing to pay the corresponding damages provided for by law if the right of way would be granted.

The trial court held that since the plaintiffs-appellees have an existing sufficient outlet to a public road through Rizal Street when they bought their property in 1965, it was not necessary for them to demand a right of way from the vendor of their property as suggested by the defendant-appellant. It opined that had the plaintiffs-appellees known that Rizal Street would someday be closed by the defendant-appellant, they 'would never built [sic] a house whose access would be towards the skies'. As to the concrete structure constructed by the defendant-appellant along the proposed right of way, the trial court held that the portion which extends or obstructs the said proposed right of way should be considered an illegal structure because it was placed after the instant complaint had already been filed.[7]

Ruling of the Regional Trial Court

The trial court's December 23, 2008 Decision decreed, thus:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

1. GRANTING unto plaintiffs spouses Ramon and Nenita Orzales a LEGAL EASEMENT OF RIGHT OF WAY with a width of two (2) meters and length of Twenty (20) meters, or a total area of Forty (40) square meters, to be established as defendant Naga Centrum, Inc.'s property covered by Transfer Certificate of Title (TCT) No. 45221 and Tax Declaration No. 010200772, particularly alongside its boundary line and the properties of Felisa Estela and Aurora de la Cruz towards Valentin Street as proposed and indicated in the sketch (Exhibits E and 17 found in page 191 of the records) and specially marked as Exhibit E-4;

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7 *Rollo*, pp. 25-28.

> 2. ORDERING the said plaintiffs to PAY the defendant the amount of Two Hundred Thousand Pesos (₱200,000.00), as and by way of the reasonable indemnity for the value of the said land affected by the easement of right of way, plus Ten Thousand Pesos (₱10,000.00) representing the reasonable amount to answer for the damages to be suffered by the said servient estate as a consequence of such easement; and
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> 3. ORDERING the defendant to VOLUNTARILY REMOVE and/or DEMOLISH all the portion of its building on the subject property which extends or obstructs the said easement of right of way at its expense within fifteen (15) days upon compliance [by] the plaintiffs of the immediately preceding paragraph.
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> SO ORDERED.[8]

Ruling of the Court of Appeals

Petitioner filed an appeal before the CA, docketed as CA-G.R. CV No. 93926. It argued that the trial court's December 23, 2008 Decision was void as it was issued by a pairing judge even after the regular judge for the sala had already been appointed; that even assuming that the pairing judge had jurisdiction to render the decision, he should have held that respondents should have sought a right of way from the seller when they bought the property; that the judge disregarded the fact that Felisa Estela (Estela) and Aurora dela Cruz (Dela Cruz) should have also been impleaded in the case, since respondents were using their properties for ingress and egress as well; that for failing to implead Estela and Dela Cruz, Civil Case No. 2004-0036 should have been dismissed instead; and that it was error for the trial court to have ordered the establishment of the easement at the boundary of petitioner, Estela, and Dela Cruz's respective lots.

On May 23, 2012, the CA rendered the assailed Decision containing the following pronouncement:

> As it appears, Judge Pablo Formaran III was the Presiding Judge of RTC-Naga City, Branch 21 and the Pairing Judge of Branch 22. After the case was submitted for decision, Judge Efren G. Santos was appointed as the new Presiding Judge of Branch 22. However, he inhibited himself from deciding the case. Hence, the case was raffled anew to Branch 26. But the Presiding Judge of Branch 26 refused to take cognizance of the case, instead he remanded it to the Raffle Committee and suggested that the case should be decided upon by Judge Pablo Formaran III pursuant to OCA Circular No. 20-2004, which governs the *Guidelines In The Inventory And Adjudication Of Cases Assigned To Judges Who Are Promoted Or Transferred To Other Branches In The Same Court Level Of The Judicial Hierarchy*, specifically paragraph 5 thereof which states:
>
> > *'5. Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the*

[8] Id. at 24-25; Records, pp. 363-364.

> *inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is that he/she desires that the case be decided by the transferred judge.'*

Pursuant to the said memorandum, the plaintiffs-appellees were ordered to manifest in writing whether they want their case to be decided by Judge Pablo Formaran III who was the one who heard the case until it was submitted for decision. In their manifestation, the plaintiffs-appellees opted for Judge Pablo Formaran III to decide their case.

But Judge Pablo Formaran III himself had expressed his apprehensions about the coverage of OCA Circular No. 90-2004 stating that the same only applies to judges who were transferred, detailed or assigned to another branch and not to a pairing judge like him. So for clarification, the matter was brought *en consulta* to the Office of the Court Administrator. In a memorandum issued by the Office of the Court Administrator dated November 9, 2008 and addressed to Judge Pablo Formaran III, the latter was directed to decide the case with dispatch clarifying that OCA Circular No. 90-2004 equally applies to a pairing judge, hence, the case is within his competence to decide. Having been confirmed that he has the authority to decide the case, Judge Pablo Formaran III issued an order declaring that he would now resolve the merits of the case.

On February 2, 2009, or after Judge Pablo Formaran III issued the assailed decision on December 23, 2008, the defendant-appellant filed a *Motion To Vacate Judgment And Supplement To Opposition To The Motion for Execution Pending Appeal* on the ground of lack of authority of the said judge, but which was denied by the trial court in its *Omnibus Order* dated April 16, 2009. x x x

x x x x

This Court could not agree more with the trial court. Indeed, the defendant-appellant did not file any motion for reconsideration on the order issued by Judge Pablo Formaran III regarding the confirmation of his authority to decide the case. The same therefore became final and executory. Hence, it is too late for the defendant-appellant to still make issue about it now. The defendant-appellant was fully aware, even before the judgment is (sic) rendered, that the authority of Judge Pablo Formaran III to render judgment on the case was being clarified. But when it was finally made known that Judge Pablo Formaran III would be the one to decide the case, the defendant-appellant did not think that it was wrong or irregular. But when the decision proved to be adverse to the defendant-appellant, only then did it realize that Judge Pablo Formaran III is [sic] not clothed with power to decide the case. The wait-and-see stance exhibited by the defendant-appellant is something that this Court should not countenance. Only the vigilantes [sic] deserve the sympathy of the court.

Moving on to the merits of the case, the defendant-appellant maintains that the plaintiffs-appellees bought their property knowing fully well that it was surrounded by other properties, and that it has no adequate outlet to a public highway. That being the case, a right of way should have been asked from the seller and not from the defendant-appellant which was not in any way privy to the said contract of sale. It contends that the plaintiffs-appellees cannot feign ignorance that Rizal Street is a private road within a private property which may be closed at anytime by the actual owner.

As for the plaintiffs-appellees, they stressed that when they bought their property, Rizal Street was already existing. That was before the defendant-appellant could even buy the property where the said Rizal Street was laid. That it never occurred to them that Rizal Street would be closed in the future as part of the defendant-appellant's property.

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.

Easement of right of way finds its bearing under Articles 649 and 650 of the Civil Code which thus provide:

> 'Art. 649. The owner, or any person who by virtue of a legal 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
>
> '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.'

Pursuant to the above provisions, the owner of an estate may claim a legal or compulsory right of way only after he has established the existence of these four (4) requisites: (a) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (b) after payment of the proper indemnity; (c) the isolation was not due to the proprietor's own acts; and (d) the right of way claimed is at a point least prejudicial to the servient estate.

Here, we find that these four requisites have been satisfied.

First, the defendant-appellant does not dispute the fact that when it closed Rizal Street, the property of the plaintiffs-appellees has become isolated depriving them of any outlet to the public road. The contention of the defendant that there are other available outlets to the public road from their property is belied by the ocular inspections conducted on the place by the trial court. The defendant-appellant had consistently insisted from the beginning that a right of way traversing the properties of Felisa Estela and Aurora de la Cruz was being used by the plaintiffs-appellees. But nothing of such sort surfaced during the ocular inspections. Hence, the said two adjacent owners need not be impleaded in the case as the defendant-appellant would want to impress upon the court.

Second, the plaintiffs-appellees have expressed their willingness to pay the proper indemnity for the easement of right of way.

Third, we agree with the trial court that the isolation of the property of the plaintiffs-appellees could not be attributable to them. On the contrary, it was the closure of the Rizal Street by the defendant-appellant which was being used by the plaintiffs-appellees since 1965 that caused their property to be isolated.

Fourth, the easement would prove least prejudicial if established on the property of the defendant-appellant. The condition of the properties of the adjacent owners would show that the easement could be best established along the property of the defendant-appellant. It is not disputed that the property of Bernardo Tawagon is only 140 square meters; that of Aurora de la Cruz, 116 square meters; Felisa Estela, 90 square meters; and that of the defendant-appellant, 1.9 hectares. Verily, an improvident imposition of the easement on the lots of Bernardo Tawagon, Aurora de la Cruz, and Felisa Estela may unjustly deprive them of the optimum use and enjoyment of their properties, considering that their already small areas would be further reduced by the easement. Worse, it may even render the property useless for the purpose for which the said adjacent owners purchased the same. It is also observed by the trial court that:

> '…in the case of Felisa Estela and Aurora de la Cruz, their respective two-storey concrete residential houses stand tall and cover almost entirely their own individual small lots. While in the case of Bernardo Tawagon, his property, which is completely divided by a high rise fire wall at the back of plaintiff's property, extends up to P. Garcia Street with an adjoining property belonging to the Cecilio family.'

The trial court also found out that the easement sought is the shortest outlet to the public road from the property of the plaintiffs-appellees. Moreover, the easement, which would consist of 20 square meters by 40 square meters [sic],[9] would be established alongside the boundary line of the property of the defendant-appellant so it would not entail great damage to the property of the latter.

It is worthy to note that the owner of a landlocked property has the right to demand a right of way through the neighboring estates. The easement must be established at the point which is least prejudicial to the servient estate and, whenever possible, the shortest to the highway. If these two conditions exist on different properties, the land where the establishment of the easement will cause the least prejudice, should be chosen. Thus, it has been held that 'where the easement may be established on any of several tenements surrounding the dominant estate, the one where the way is shortest and will cause the least damage should be chosen. However,… if these two (2) circumstances do not concur in a single tenement, the way which will cause the least damage should be used, even if it will not be the shortest.'[10]

The conditions of 'least damage' and 'shortest distance' are both established in one estate – the defendant-appellant's property.

Verily, we see no reason to reverse the assailed decision of the trial court.

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[9] Should be 20 meters (length) by 2 meters (width).

[10] Citing *Almendras v. Court of Appeals*, 336 Phil. 506 (1997).

> WHEREFORE, premises considered, the instant appeal is DISMISSED. Accordingly, the assailed judgment of the trial court is AFFIRMED.
>
> SO ORDERED.[11]

Petitioner filed a Motion for Reconsideration, which the CA denied in its subsequent August 28, 2012 Resolution. Hence, the present Petition.

Issues

In a November 12, 2014 Resolution,[12] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

> WHETHER [THEN] HONORABLE PAIRING JUDGE OF BRANCH 22 HAS JURISDICTION TO RENDER THE ASSAILED DECISION[.]
>
> WHETHER X X X PLAINTIFF HAS THE RIGHT TO DEMAND RIGHT OF WAY[.]
>
> ASSUMING THERE IS THE RIGHT TO DEMAND RIGHT OF WAY, WHETHER X X X THE CHOSEN RIGHT OF WAY IS THE LEAST PREJUDICIAL TO THE PETITIONER[.]
>
> THE HONORABLE COURT OF APPEALS ERRONEOUSLY APPLIED ART. 650 OF THE NEW CIVIL CODE TO THE FACTS PROVEN IN THE CASE.[13]

Petitioner's Arguments

In its Petition and Reply,[14] petitioner seeks reversal of the assailed CA dispositions as well as the trial court's December 23, 2008 Decision, and the consequent dismissal of Civil Case No. 2004-0036. Alternatively, it asks the Court to require the parties to mediate with a view to settling the dispute, citing its willingness to provide an "alternative outlet" within its property.

Petitioner argues that Judge Formaran III, then RTC Branch 22 pairing judge, had no jurisdiction to issue the December 23, 2008 Decision since a regular judge (Judge Santos) for the sala had already been appointed and in fact assumed office; that for this reason, the December 23, 2008 Decision is null and void; that since respondents are at fault for failing to secure a right of way from the seller when they bought the property knowing that it was surrounded by private properties and thus had no means of ingress and egress, then petitioner should not

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11 *Rollo*, pp. 29-36.
12 Id. at 78-79.
13 Id. at 13-14.
14 Id. at 72-75.

be obliged to provide the easement; that on account of Article 649 of the Civil Code, which provides in part that "easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts," respondents cannot demand an easement since they are responsible for isolating their property from the highway; that if an easement should be established, it ought to be on Estela and Dela Cruz's properties, which are nearest to the highway and were freely used in the past by respondents owing to the fact that Estela and Dela Cruz are respondents' aunts; that the real reason why respondents are trying to secure an easement from petitioner is that they are no longer in good terms with their aunts; that since they failed to implead Estela and Dela Cruz, who are indispensable parties, the trial court should have dismissed Civil Case No. 2004-0036 – and for this, all the court's actions in said case are rendered void for want of authority to act;[15] that despite the fact that there are unobstructed portions within petitioner's property where an easement could have been established, the trial court and CA designated another where a building stood; and that petitioner offered an alternative portion of its property where no permanent structure would be demolished – although it is a longer route to the public highway, but respondents refused the offer.

Respondents' Arguments

Pleading affirmance, respondents argue in their Comment[16] that prior to the issuance of the trial court's Decision on December 23, 2008 in Civil Case No. 2004-0036, the authority of the pairing judge – Judge Formaran III – to decide the case had been questioned before the Office of the Court Administrator (OCA) on *consulta*, and on November 9, 2008, the OCA issued a memorandum affirming Judge Formaran III's authority to decide the case based on OCA Circular No. 90-2004; that petitioner did not question the OCA's findings, and it was only on February 2, 2009, or after the unfavorable December 23, 2008 Decision came out, that it filed a motion to vacate the same on the pretense that Judge Formaran III was not authorized to decide the case; and that petitioner's actions in this regard are a mere afterthought which the trial court and the CA themselves did not fail to notice.

Respondents add that there is no basis for the application of Article 649 of the Civil Code, in that the isolation of their property is not of their own doing but of petitioner's, since it unduly closed Rizal Street, blocked the same, and built concrete structures thereon even when Civil Case No. 2004-0036 was already pending; that the right of way sought via the old Rizal Street, which already existed even before petitioner bought the property from its previous owner, who allowed the creation of said street for the benefit of the residents within the vicinity, including the previous owner of the property which respondents bought, is located at a point nearest to the public road, Valentin Street; that petitioner's claim that respondents may claim a right of way on the properties of Estela and

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15 Citing *Carandang v. Heirs of Quirino A. de Guzman*, 538 Phil. 319 (2006).
16 *Rollo*, pp. 40-68.

Dela Cruz since they used to pass through their lands to get to Valentin Street is a blatant misrepresentation as it has been established during trial through the testimonies of respondents' witnesses, who are longtime residents of the area, and the testimony of petitioner's witness Aida Kelly Yubuco that respondents have never used these lots as a means to access Valentin Street, and for this reason, there should be no need to implead them in the case; that contrary to petitioner's claim, it has been established by the evidence and from the two ocular inspections conducted during trial that there is no other feasible alternative location where a right of way from respondents' property to Valentin Street may be created other than through the court-approved route, which is the shortest route to Valentin Street; that the improvements constructed by petitioner right upon the very right of way granted by the court were built in bad faith as they were intentionally constructed during the pendency of Civil Case No. 2004-0036 knowing that the area was then the proposed right of way and despite the fact that petitioner's land was large enough (1.9 hectares) to accommodate these improvements within any portion thereof other than the area for the proposed right of way; and that to establish a right of way other than through the court-approved route would result in tension between the parties as this would entail respondents' passing through petitioner's property instead of at the boundary thereof.

Our Ruling

The Court denies the Petition.

On the procedural issue raised, the Court finds the CA's following pronouncement to be sound:

> As it appears, Judge Pablo Formaran III was the Presiding Judge of RTC-Naga City, Branch 21 and the Pairing Judge of Branch 22. After the case was submitted for decision, Judge Efren G. Santos was appointed as the new Presiding Judge of Branch 22. However, he inhibited himself from deciding the case. Hence, the case was raffled anew to Branch 26. But the Presiding Judge of Branch 26 refused to take cognizance of the case, instead he remanded it to the Raffle Committee and suggested that the case should be decided upon by Judge Pablo Formaran III pursuant to OCA Circular No. 20-2004, which governs the *Guidelines In The Inventory And Adjudication Of Cases Assigned To Judges Who Are Promoted Or Transferred To Other Branches In The Same Court Level Of The Judicial Hierarchy*, specifically paragraph 5 thereof which states:
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> > *'5. Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the*

> *defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is that he/she desires that the case be decided by the transferred judge.'*
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> Pursuant to the said memorandum, the plaintiffs-appellees were ordered to manifest in writing whether they want their case to be decided by Judge Pablo Formaran III who was the one who heard the case until it was submitted for decision. In their manifestation, the plaintiffs-appellees opted for Judge Pablo Formaran III to decide their case.
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> But Judge Pablo Formaran III himself had expressed his apprehensions about the coverage of OCA Circular No. 90-2004 stating that the same only applies to judges who were transferred, detailed or assigned to another branch and not to a pairing judge like him. So for clarification, the matter was brought *en consulta* to the Office of the Court Administrator. In a memorandum issued by the Office of the Court Administrator dated November 9, 2008 and addressed to Judge Pablo Formaran III, the latter was directed to decide the case with dispatch clarifying that OCA Circular No. 90-2004 equally applies to a pairing judge, hence, the case is within his competence to decide. Having been confirmed that he has the authority to decide the case, Judge Pablo Formaran III issued an order declaring that he would now resolve the merits of the case.[17]

The Court finds no irregularity in the assumption of the case by Judge Formaran III. On the contrary, he decided the case after his colleagues recused themselves. His re-assumption of the case is not without valid reason. Even assuming, but only for the sake of argument, that there is a hint of validity in petitioner's legal argument in this respect, Judge Formaran III's Decision cannot be nullified, as it is deemed accepted by petitioner. It did not take issue with the OCA's findings when they came out. Moreover, if petitioner did not agree with Judge Formaran III's continued handling of the case, it should have registered its timely objection, that is, after receiving the pairing judge's order declaring that he will resolve the case. And, when Judge Santos inhibited himself from deciding the case and the new judge to whom the case was raffled likewise refused to take over, nothing was heard from petitioner even at this juncture. And even after the case was finally accepted by Judge Formaran III, but not without the sanction of the November 9, 2008 OCA Memorandum citing OCA Circular No. 90-2004 as basis for Judge Formaran III to decide the case, petitioner kept silent. It was only after the unfavorable December 23, 2008 Decision came out that it moved to vacate the same on the ostensible ground that Judge Formaran III had no authority as pairing judge to decide the case. In short, petitioner had multiple opportunities to quell its doubts; by not seizing upon these opportunities, it confirmed that it did not have any.

> ... a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same

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[17] Id. at 29-31.

> jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated – obviously for reasons of public policy.
>
> Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court ... And in Littleton vs. Burges, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

Elaborating on this ruling, the Court in *Crisostomo v. CA*, G.R. No. L-27166, March 25, 1970, 32 SCRA 54, 60, stated that:

> x x x x
>
> The petitioners, to borrow the language of Mr. Justice Bautista Angelo (People vs. Archilla, G.R. No. L-15632, February 28, 1961, 1 SCRA 699, 700-701), cannot adopt a posture of double-dealing without running afoul of the doctrine of estoppel. The principle of estoppel is in the interest of a sound administration of the laws. It should deter those who are disposed to trifle with the courts by taking inconsistent positions contrary to the elementary principles of right dealing and good faith (People vs. Acierto, 92 Phil. 534, 541 [1953]). For this reason, this Court closes the door to the petitioners' challenge against the jurisdiction of the Court of Appeals and will not even honor the question with a pronouncement.

A reading of the above-quoted statements may give the impression that the doctrine applies only to the plaintiff or the party who, by bringing the action, initially invoked but later repudiated the jurisdiction of the court. But while the rule has been applied to estop the plaintiff from raising the issue of jurisdiction [Tolentino v. Escalona, G.R. No. L-26886, January 24, 1969, 26 SCRA 613; Rodriguez v. Court of Appeals, G.R. No. L- 29264, August 29, 1969, 29 SCRA 419; Crisostomo v. Reyes, G.R. No. L-27166, March 25, 1970, 32 SCRA 54; Ong Ching v. Ramolete, G.R. No. L-35356, May 18, 1973, 51 SCRA 13; Capilitan v. Dela Cruz, G.R. Nos. L-29536-7, February 28, 1974, 55 SCRA 706; Florendo v. Coloma, G.R. No. 60544, May 19, 1984, 129 SCRA 304; Solicitor General v. Coloma, Adm. Matter No. 84-3-886-0, July 7, 1986, 142 SCRA 511; Sy v. Tuvera, G.R. No. L-76639, July 16, 1987, 152 SCRA 103] it has likewise been applied to the defendant [Carillo v. Allied Worker's Association of the Phils., G.R. No. L-23689, July 31, 1968, 24 SCRA 566; People v. Munar, G.R. No. L-37642, October 22, 1973, 53 SCRA 278; Solano v. Court of Appeals, G.R. No. L-41971, November 29,1983,126 SCRA 122; Royales v. Intermediate Appellate Court, G.R. No. 65072, January 31, 1984, 127 SCRA 470] and more specifically, to the respondent employer in a labor case x x x. The active participation of the party against whom the action was brought, coupled with his

> failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction.[18]

Indeed, far from nullifying his actions, the Court lauds Judge Formaran III for his prudence and careful handling of his affairs in general, and the instant case in particular.

Regarding the substantive issues raised, the Court finds that they involve a review of the trial and appellate courts' factual findings, which are conclusive to this Court. Only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure; this principle applies just as well in easement cases.[19]

> x x x The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing errors of law, the findings of fact of the appellate court being conclusive. We have emphatically declared that it is not the function of this Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that may have been committed by the lower court.[20]

At any rate, even assuming that the errors raised in this Petition may be passed upon, the Court finds that there is nothing wrong with the assailed dispositions of the lower courts.

The evidence shows that when respondents bought their property in 1965,[21] they passed through the open spaces within Estela and Dela Cruz's lots to get from their lot to the public road, Valentin Street.[22] When Rizal Street was created as a passageway to and from Valentin Street by informal settlers who occupied portions of the subject 1.9-hectare property, which was then owned by Felix Ledda,[23] respondents began using the same as well, after having personal disagreements with Estela and Dela Cruz.[24] Petitioner acquired the property from the Leddas only on July 7, 1980.[25] In 2003, petitioner evicted the informal settlers and closed Rizal Street,[26] except to respondents, who were allowed to use the same as access to and from Valentin Street, although on a limited schedule, or from 6:00 a.m. to 9:00 p.m. daily.[27] Burdened by this imposition, respondents made a formal demand to acquire a portion of petitioner's property to serve as

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18 *Marquez v. Secretary of Labor*, 253 Phil. 329, 334-336 (1989).
19 *Spouses Sta. Maria v. Court of Appeals*, 349 Phil. 275 (1998).
20 *Cristobal v. Court of Appeals*, 353 Phil. 320, 326 (1998).
21 *Rollo*, pp. 10, 51.
22 Id. at 11, 107.
23 Id. at 11-12, 106.
24 Id. at 11, 107.
25 Id. at 11, 106.
26 Id. at 11, 51-52,
27 Id. at 11, 25, 52, 106.

access to Valentin Street, which petitioner rejected.[28] Respondents then instituted Civil Case No. 2004-0036.

The evidence further indicates that during the pendency of Civil Case No. 2004-0036, petitioner unduly blocked Rizal Street by deliberately constructing a residential building thereon, dumping filling materials and junk on the main gate of respondents' home, and converting portions of the street into an auto repair shop and parking space.[29] For this reason, the trial court was constrained to issue injunctive relief against it.[30]

The records also reveal that respondents' landlocked property is bounded on the north by Dela Cruz's 116-square meter lot and Estela's 90-square meter lot; on the west, by Bernardo Tawagon's (Tawagon) 140-square meter lot and a lot owned by the Cecilio family; and on the northeast, east, and south, by petitioner's 1.9-hectare lot. Dela Cruz's property has been sealed by a firewall; the same is true with Tawagon's.[31] Dela Cruz and Estela's respective two-storey homes, on the other hand, cover their respective lots almost entirely.[32]

To be entitled to an easement of right of way, the following requisites should be met:

> 1. An immovable is surrounded by other immovables belonging to other persons, and is without adequate outlet to a public highway;
>
> 2. Payment of proper indemnity by the owner of the surrounded immovable;
>
> 3. The isolation of the immovable is not due to its owner's acts; and
>
> 4. The proposed easement of right of way is established at the point least prejudicial to the servient estate, and insofar as consistent with this rule, where the distance of the dominant estate to a public highway may be the shortest.[33]

The only issues raised by petitioner in this case relate to the third and fourth requisites. It claims that respondents should be faulted for the isolation of their property, as they failed to secure a right of way from their seller when they bought the same in 1965; that respondents should obtain their right of way from Estela and Dela Cruz instead; and that the designated right of way granted by the trial court to respondents already contains permanent structures, which thus requires the appointment of another; and in this regard, petitioner is willing to negotiate

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28 Id. at 10-11, 52.
29 Records, pp. 206-212.
30 *Rollo*, pp. 26-27, 53.
31 Id. at 62.
32 Id. at 35; Records, 208-212.
33 *Reyes v. Valentin*, G.R. No. 194488, February 11, 2015, 750 SCRA 379, 390.

with respondents as to location and price.

However, respondents may not be blamed for the isolation they are now suffering. By its very location, their property is isolated, and this is not their fault. Suffice it to say further that the Court agrees with the findings of the lower courts that the closure of Rizal Street by the petitioner caused their property to be isolated.

On the second claim that respondents should seek a right of way from Estela and Dela Cruz instead, the Court finds this to be unnecessary. As they are, Dela Cruz's 116-square meter lot and Estela's 90-square meter lot are not sizeable enough to accommodate a road right of way for respondents; besides, their homes almost entirely cover their lots, such that there is none left for a road. On the other hand, petitioner's land is large enough, at 19,000 square meters; a reduction thereof by 40 square meters – 2 meters wide by 20 meters long for respondents' road right of way, would hardly be felt by it.

All in all, the location of the easement as depicted and illustrated in the sketch approved by the trial court (Exhibit "17")[34] appears to be legal, reasonable, and just.

Significantly, respondents have been using Rizal Street for so long; petitioner knew of this, and it even granted access to respondents. At the very least, respondents have been using Rizal Street for 23 years (or from 1980 up to 2003). While petitioner may have allowed access by the informal settlers to Rizal Street through tolerance, the same cannot be said of respondents; they are not informal settlers on petitioner's land.

> In the case at bar, TCT No. 96886, issued in the name of Joaquin Limense, does not contain any annotation that Lot No. 12-D was given an easement of right of way over Lot No. 12-C. However, Joaquin Limense and his successors-in-interests are fully aware that Lot No. 12-C has been continuously used and utilized as an alley by respondents and residents in the area for a long period of time.
>
> Joaquin Limense's Attorney-in-Fact, Teofista L. Reyes, testified that respondents and several other residents in the area have been using the alley to reach Beata Street since 1932. Thus:
>
> x x x x
>
> In *Mendoza v. Rosel*, this Court held that:
>
> > Petitioners claim that inasmuch as their transfer certificates of title do not mention any lien or encumbrance on their lots, they are purchasers in good faith and for value, and as

[34] Records, p. 191.

> such have a right to demand from respondents some payment for the use of the alley. However, the Court of Appeals found, as a fact, that when respondents acquired the two lots which form the alley, they knew that said lots could serve no other purpose than as an alley. ***The existence of the easement of right of way was therefore known to petitioners who must respect the same, in spite of the fact that their transfer certificates of title do not mention any burden or easement. It is an established principle that actual notice or knowledge is as binding as registration.***
>
> Every buyer of a registered land who takes a certificate of title for value and in good faith shall hold the same free of all encumbrances except those noted on said certificate. It has been held, however, that 'where the party has knowledge of a prior existing interest that was unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him.'
>
> In the case at bar, Lot No. 12-C has been used as an alley ever since it was donated by Dalmacio Lozada to his heirs. It is undisputed that prior to and after the registration of TCT No. 96886, Lot No. 12-C has served as a right of way in favor of respondents and the public in general. We quote from the RTC's decision:
>
> > x x x It cannot be denied that there is an alley which shows its existence. It is admitted that this alley was established by the original owner of Lot 12 and that in dividing his property the alley established by him continued to be used actively and passively as such. Even when the division of the property occurred, the non-existence of the easement was not expressed in the corresponding titles nor were the apparent sign of the alley made to disappear before the issuance of said titles.
> >
> > The Court also finds that when plaintiff acquired the lot (12-C) which forms the alley, he knew that said lot could serve no other purpose than as an alley. That is why even after he acquired it in 1969 the lot continued to be used by defendants and occupants of the other adjoining lots as an alley. x x x
>
> Thus, petitioners are bound by the easement of right of way over Lot No. 12-C, even though no registration of the servitude has been made on TCT No. 96886.[35]

Petitioner thus acknowledged respondents' right to use Rizal Street. It should have known from familiarity not only with its own land, but with those adjoining it, and from the ongoing proceedings in the case, that respondents had no other way to and from Valentin Street than through its property. For this reason, it is guilty of gross and evident malice and bad faith when, even while Civil Case No. 2004-0036 was pending, it deliberately blocked respondents' access to Rizal Street by constructing a building thereon, dumping filling materials and junk on the main gate of respondents' home, and converting portions of the road into an auto repair shop and parking space, making it difficult and

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[35] *Heirs of the late Joaquin Limense v. Rita Vda. De Ramos*, 619 Phil. 592, 606-609 (2009).

inconvenient, if not humiliating, for respondents to traverse the path to and from their home. Under Article 19 of the Civil Code, "(e)very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." Under Article 26, "(e)very person shall respect the dignity, personality, privacy and peace of mind of his neighbors." Petitioner's action betrays a perverse and deliberate intention to hurt and punish respondents for legally demanding a right of way which it nevertheless knew was forthcoming, and which, considering the size of its land, it may give without the least prejudice to its own rights.

The Court cannot therefore accept petitioner's argument that since there are permanent structures already erected on the appointed right of way, then the parties should negotiate a different location therefor. To allow this would be tantamount to rewarding malice, cunning, and bad faith. Quite the contrary, petitioner deserves a lesson in not trifling with the rights of others, the law, and the courts. A party cannot be allowed to influence and manipulate the courts' decisions by performing acts upon the disputed property during the pendency of the case, which would allow it to achieve the objectives it desires.

WHEREFORE, the Petition is **DENIED**. The May 23, 2012 Decision and August 28, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 93926 are **AFFIRMED**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice