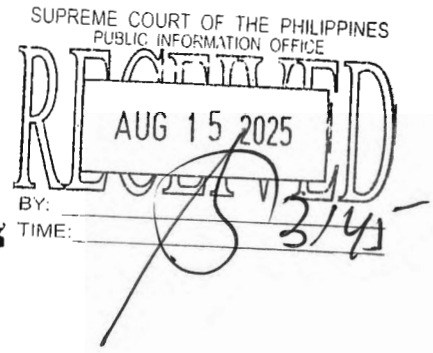




Republic of the Philippines
Supreme Court
 Manila



THIRD DIVISION

SPOUSES ROSEMARY* D. GABATAN AND ALEXANDER N. GABATAN, **G.R. No. 248685**
 Present:

Petitioners,

-versus-

CAGUIOA, J., *Chairperson*,
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.***

DOMINGA B. AHLGREN,**
 Respondent.

Promulgated:
 JUL 07 2025
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X -----X

DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Decision² dated September 27, 2018 and Resolution³ dated June 28, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 05248. The CA reversed and set aside the Decision⁴ dated May 28, 2014 issued by Branch 38, Regional Trial Court of Negros Oriental, Dumaguete City (RTC) in Civil Case No. 2007-14081, and declared that petitioners Spouses Rosemary D. Gabatan and Alexander N. Gabatan (petitioners) were not entitled to the legal easement of right-of-way (ROW) on the property of respondent Dominga Ahlgren (Ahlgren). Consequently, the CA dismissed petitioners' Complaint⁵ for Injunction and Damages with

* Also referred to as "Rosemarie" in some parts of the *rollo*.
 ** Also referred to as "Dominga Ahlgren" in some parts of the *rollo*.
 *** On leave.
¹ *Rollo*, pp. 11–25.
² *Id.* at 28–38. Penned by Associate Justice Dorothy P. Montejo-Gonzaga and concurred in by Associate Justices Edward B. Contreras and Louis P. Acosta.
³ *Id.* at 39–40. Penned by Associate Justice Dorothy P. Montejo-Gonzaga and concurred in by Associate Justices Edgardo L. Delos Santos and Edward B. Contreras.
⁴ *Id.* at 69–77. Penned by Presiding Judge Cenon Voltaire B. Repollo.
⁵ *Id.* at 41–47. Docketed as Civil Case No. 2007-14081 dated March 5, 2007.

Prayer for Writs of Preliminary Mandatory Injunction and Restraining Order (Complaint).

Facts and Antecedent Proceedings

The controversy relates to the alleged existence of a ROW in favor of petitioners on Ahlgren's land, which is a portion of a parcel of land originally designated as Lot No. 2561, covered by Original Certificate of Title (OCT) No. O-V-3583, and registered in the name of Spouses Mamerto Divinagracia and Susana Orozca.⁶

As found by both the RTC and CA: on October 5, 1948, by virtue of a Deed of Sale, a ROW was voluntarily created on Lot No. 2561 in favor of the Board of Foreign Missions of the Presbyterian Church in the United States of America (U.S.A). The annotation under OCT No. O-V-3583 provides:

“Entry No. 19634: Kind: Road Right of Way: Executed in favor of: The Board of Foreign Missions of the Presbyterian Church in the U.S.A.

CONDITIONS: The parcel of land described in this title is subject to a Road Right of Way, in favor of the Board of Foreign Missions of the Presbyterian Church in the U.S.A. per deed on file in this office.”⁷

On February 20, 1987, the encumbrance under Entry No. 19634 was then cancelled by virtue of a court order dated January 30, 1979 in favor of “Conrado O. Divinagracia [(Conrado)], et al.”⁸ The relevant annotation on OCT No. O-V-3583 reads:

“Entry No. 100107: Kind-Court Order: Executed in favor of Conrado O. Divinagracia, et al.

CONDITIONS: Per order of the Court of First Instance of Negros Oriental, 12th Judicial District, Branch II, *the Road Right [of] Way in favor of the Board of Foreign Missions of the Presbyterian Church in the U.S.A. c/o Silliman University inscribed in this Title under entry no. 19634, is hereby cancelled. Said Order on File in this Office.*”⁹ (Emphasis supplied)

Earlier, on August 18, 1986, the heirs of Conrado executed an Extrajudicial Settlement and divided Lot No. 2561 into 12 sublots. One of the sublots, which was denominated as Lot No. 2561-L, was adjudicated to one Eufresen O. Divinagracia (Eufresen). Lot No. 2561-L is covered by Transfer Certificate of Title (TCT) No. T-24142. Inscribed on TCT No. T-24142 is a ROW granted by Eufresen in favor of his siblings and co-heirs. The annotation dated April 3, 1987 under Entry No. 100340 on TCT No. T-24142 reads:

Entry No. 100340: Kind-Easement of Right of Way: Executed in favor of: Teofila Divinagracia, et al[.]

⁶ *Id.* at 29, CA Decision.

⁷ *Id.*

⁸ *Id.*; see also *id.* at 88, Ahlgren's Brief dated March 21, 2015.

⁹ *Id.*; see also *id.* at 87-88, Ahlgren's Brief dated March 21, 2015.

CONDITIONS: Eufresen O. Divinagracia, for and in consideration of his kindness and benevolent act, agrees and permits Teofila, Alfredo, Felix and Ester, all surnamed Divinagracia, to have permanent easement of right of way over the parcel of land covered by this title, limited to a path or passageway enough for any motor vehicle to pass, per deed described as Doc. No. 391; Page No. 80; Book No. III; Series of 1987 of Notary Public Nereo V. Catan on file.¹⁰

The ROW annotated on TCT No. T-24142 covering Lot No. 2561-L pertains to the same road previously described as a ROW annotated under Entry No. 19634 on OCT No. O-V-3583 covering Lot No. 2561 granted to the Board of Foreign Missions of the Presbyterian Church in the U.S.A. but was subsequently cancelled as stated earlier.¹¹

Petitioners are owners of Lot No. 2554-D—a parcel of land which is an adjoining lot to Lot No. 2561-L and bounded on the north by Lot No. 2561.¹² Sometime in 2001, petitioners constructed a residential house on Lot No. 2554-D and erected a fence around their house with their main gate facing the ROW previously established and annotated on OCT No. O-V-3583 and now under TCT No. T-24142.¹³

Thereafter, Ahlgren purchased a portion of Lot No. 2561-L from Eufresen.¹⁴ In 2006, Ahlgren then erected a garage and fence on the location that petitioners assert a ROW was created in their favor—referring to the ROW covered by Entry No. 100340. Petitioners also assert that because of Ahlgren's newly constructed garage, they were deprived access to and from the National Highway.

On March 15, 2007, petitioners filed a Complaint against Ahlgren to compel the latter to remove a structure she allegedly constructed on the former's road right of way to serve as a garage.

Ahlgren asserted that no ROW over Lot No. 2561 was created in favor of petitioners. The ROW imposed on Lot No. 2561 in favor of the Board of Foreign Missions of the Presbyterian Church in the U.S.A. had long been cancelled and the ROW granted to Eufresen and annotated on his title over Lot No. 2561-L only applied to the latter's siblings and was only large enough for any motor vehicle to pass.¹⁵

After due proceedings, the RTC rendered a Decision dated May 28, 2014 in favor of the petitioners, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiffs. Defendant DOMINGA AHLGREN is hereby ordered:

¹⁰ RTC records, p. 182 (dorsal portion).

¹¹ *Rollo*, p. 30, CA Decision.

¹² *Id.* at 48, Deed of Donation dated February 19, 2007.

¹³ *Id.* at 30, CA Decision.

¹⁴ *Id.*

¹⁵ *Id.* at 31.

1. To DEMOLISH her garage and fence constructed on the road right of way which is a portion of Lot 2661-L (Exhibit "B") within Forty (40) days from the date this Decision becomes final and executory;
2. To CEASE AND DESIST from obstructing the free passage of the same road right of way;
3. To PAY the plaintiffs the amount of Twenty Thousand Pesos (P20,000.00) representing attorney's fees; and
4. To PAY the plaintiffs the costs of the suit in the amount of Five Thousand Eight Hundred Fifty Eight (Php5,858.00) Pesos.

SO ORDERED.¹⁶

The RTC's reasoning was as follows:

In the case at bar, a portion of Lot 2561, now a portion of Lot 2561-L has been used as a road ever since it was sold by the parents of Eufre[s]en Divinagracia to the Board of Foreign Missions of the Presbyterian Church in the U.S.A. (Exhibit "D"). It is undisputed that prior to and after the subdivision of Lot 2561, a portion thereof has served as a right of way in favor of the plaintiffs and plaintiffs' predecessors-in-interest and the public in general. Thus, defendant is bound by the easement of right of way over Lot No. 2561-L, even though no registration of the servitude has been made on TCT No. 24142. In the case of *Limense et. (sic) al. vs. De Ramos et al.* (G.R. No. 152319, October 28, 2009), the Supreme Court ruled as follows:

"Petitioners contend that respondents are not entitled to an easement of right of way over Lot No. 12-C, because their Lot No. 12-D is not duly annotated at the back of TCT No. 96886 which would entitle them to enjoy the easement, unlike Lot Nos. 12-A-1, 12-A-2, 12-A-3, 12-A-4, 12-A-5, and 12-A-6. Respondents, on the other hand, allege that they are entitled to an easement of right of way over Lot No. 12-C, which has been continuously used as an alley by the heirs of Dalmacio Lozada, the residents in the area and the public in general from 1932 up to the present. Since petitioners are fully aware of the long existence of the said alley or easement of right of way, they are bound to respect the same.

[...]

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."¹⁷

¹⁶ *Id.* at 77.

¹⁷ *Id.* at 76.



On appeal, the CA reversed and set aside the RTC Decision. In a Decision dated September 27, 2018, the CA held that petitioners failed to prove: (i) the existence of a voluntary easement of ROW in their favor and (ii) their entitlement to the legal easement of ROW. In sum, the CA held that the voluntary easement annotated under TCT No. T-24142 covering Lot No. 2561-L was granted only in favor of four (4) specifically identified individuals, namely: Teofila Divinagracia (Teofila), Alfredo Divinagracia (Alfredo), Felix Divinagracia (Felix), and Ester Divinagracia (Ester). The CA thus concluded that the voluntary easement of ROW was only “effective between the parties, their heirs, and assigns.”¹⁸ Having ruled out petitioners’ entitlement to the voluntary easement, the CA also concluded that the elements for a legal easement of ROW were not established.

Petitioners’ Motion for Reconsideration was denied in a Resolution dated June 28, 2019.

Hence, this Rule 45 Petition.

In compliance with the Court’s Resolution¹⁹ dated January 15, 2020, Ahlgren filed her Comment²⁰ dated March 29, 2021.

Issue

The main issue to be resolved is whether or not petitioners are entitled to a ROW on Ahlgren’s land.

The Court’s Ruling

Petitioners assert that a ROW exists in their favor on Ahlgren’s property. In their Complaint dated March 5, 2007 in Civil Case No. 2007-14081, petitioners assert that a road on Ahlgren’s property (i.e., a portion of Lot No. 2561-L containing the ROW) “has been in existence for more than 50 long years, utilized and used as such by the public.”²¹

Petitioners thus had the burden to prove their entitlement to a ROW, whether as a voluntary easement granted to them by the landowner or as a servitude established by law, over Ahlgren’s property. It is settled that a ROW, which is an apparent and discontinuous easement, may only be acquired by title.²² Moreover, “a duly-registered certificate of title is considered a public document and the entries found in it are presumed correct, unless the party who contests its accuracy can produce evidence establishing otherwise.”²³

¹⁸ *Id.* at 35, CA Decision.

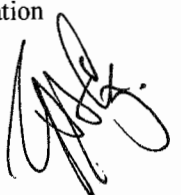
¹⁹ *Id.* at 122.

²⁰ *Id.* at 139–146.

²¹ *Id.* at 42.

²² See CIVIL CODE, art. 620 and 622. See also *Heirs of the late Joaquin Limense v. Rita Vda. De Ramos*, 619 Phil. 592, 606 (2009) [Per J. Peralta, Third Division].

²³ *Lasquite v. Victory Hills, Inc.*, 608 Phil. 418, 432 (2009) [Per J. Quisumbing, Second Division]. (Citation omitted)



Here, it is not disputed that a ROW was voluntarily granted and annotated under Ahlgren's title. The relevant annotation on TCT No. T-24142 provides that a voluntary easement of a ROW was established in favor of only four (4) individuals namely: Teofila, Alfredo, Felix, and Ester, and their successors-in-interest, to wit:

Entry No. 100340: Kind-Easement of Right of Way: Executed in favor of:
Teofila Divinagracia, et al[.]

CONDITIONS: Eufresen O. Divinagracia, for and in consideration of his kindness and benevolent act, agrees and permits *Teofila, Alfredo, Felix, and Ester, all surnamed Divinagracia, to have permanent easement of right of way over the parcel of land covered by this title, limited to a path or passageway enough for any motor vehicle to pass*, per deed described as Doc. No. 391; Page No. 80; Book No. III; Series of 1987 of Notary Public Nereo V. Catan on file.²⁴ (Emphasis supplied)

The CA's analysis focused on the fact that petitioners are not named in Entry No. 100340 on Ahlgren's title, and that they do not allege that they are the heirs, assignees, or successors-in-interest of Teofila, Alfredo, Felix, and Ester. The CA declared that the easement under Entry No. 100340 was only "effective between the parties, their heirs, and assigns." Consequently, since petitioners are neither Teofila, Alfredo, Felix and Ester nor are they the latter's heirs or assigns, they have no right to avail themselves of the easement.

However, the CA failed to appreciate the nature of an easement as an encumbrance upon an immovable for the benefit of another immovable, and not simply a personal or contractual right granted to an individual. Article 613 of the Civil Code provides that: "[a]n easement or servitude is an encumbrance imposed upon an immovable *for the benefit of another immovable* belonging to a different owner."²⁵ And while Article 614 provides that: "[s]ervitudes may also be established for the benefit of a community, *or of one or more persons* to whom the encumbered estate does not belong,"²⁶ this does not mean that all voluntary easements are purely contractual obligations. In connection with Article 614, one legal commentator, notes:

In Whose Favor Created.—The servitude may exist either for the benefit of a particular tenement, or for the benefit of persons without a dominant tenement. In the first case, it is a real servitude, defined in article 613; in the second case, it is a personal servitude, recognized in [article 614].²⁷ (Emphasis in the original, citation omitted)

Petitioners' case thus turns on whether Teofila, Alfredo, Felix, and Ester were owners of a dominant tenement when the easement under Entry No. 100340 was created. If Teofila, Alfredo, Felix, and Ester were owners of a dominant tenement, then the easement under Entry No. 100340 is a real

²⁴ RTC records, p. 182 (dorsal portion).

²⁵ Emphasis supplied.

²⁶ Emphasis supplied.

²⁷ 2 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 356 (1992).

servitude that follows the servient estate the enjoyment of which is not limited to specific persons. In the negative, however, if Entry No. 100340 is a personal servitude, then it can only be enjoyed by Teofila, Alfredo, Felix, and Ester and their heirs and assigns.

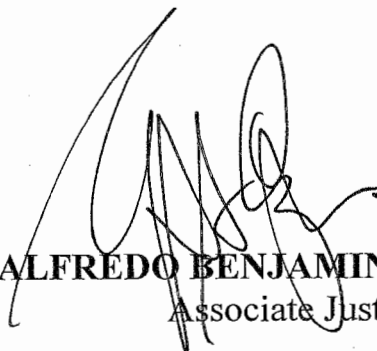
In this connection, there is no evidence on record of the land ownership, if any, of Teofila, Alfredo, Felix, and Ester in relation to Lot No. 2561. While it was established by the RTC that Lot No. 2561 was divided into 12 sublots by the heirs of Conrado through an Extrajudicial Settlement, the record is bereft of any evidence pertaining to the location of the heirs' lots in relation to Lot 2561-L, which belonged to Eufresen.

Accordingly, the CA erred in automatically concluding that the easement under Entry No. 100340 was a personal servitude in favor of Teofila, Alfredo, Felix, and Ester without inquiring into whether the said persons were owners of a dominant tenement. That said, there is also no basis in the record for the Court to rule that the easement under Entry No. 100340 is a real servitude and that petitioners, as owners of the lot adjoining Lot No. 2561-L, are entitled to the same.

In the interest of substantial justice, therefore, the Court finds that it is necessary to remand the instant case to the CA for the latter to receive evidence on the crucial factual issue discussed above, i.e., whether Teofila, Alfredo, Felix, and Ester were owners of a dominant tenement when the easement under Entry No. 100340 was created.

ACCORDINGLY, the Petition is hereby **REMANDED** to the Court of Appeals, which is directed to receive evidence and resolve the issue of whether Teofila Divinagracia, Alfredo Divinagracia, Felix Divinagracia, and Ester Divinagracia were owners of a dominant tenement when the easement under Entry No. 100340 in TCT No. T-24142 was created.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



HENRI JEAN PAUL B. INTING
Associate Justice



SAMUEL H. GAERLAN
Associate Justice




JAPAR B. DIMAAMPAO
Associate Justice

(On leave)
MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

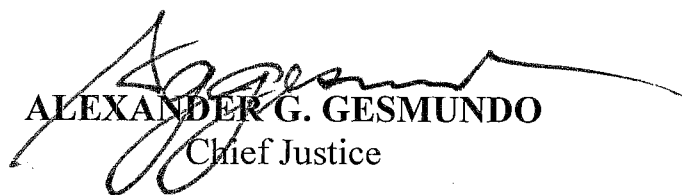
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.


ALEXANDER G. GESMUNDO
Chief Justice

