

SPOUSES LEON CASIMIRO AND PILAR PASCUAL, DOING BUSINESS UNDER THE NAME AND STYLE “CASIMIRO VILLAGE SUBDIVISION”, SUBSTITUTED BY THEIR HEIRS: EMILIO, TEOFILO AND GABRIEL, ALL SUR...

G.R. No. 136911. February 11, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This resolves the Motion for Reconsideration filed by petitioners, seeking to set aside our Decision dated July 3, 2002, which affirmed the assailed decision of the Court of Appeals in CA-G.R. CV No. 16165.

The facts as set forth in the Decision are as follows:

Respondents were the registered owners of a 25,000 square meter parcel of land situated in Pamplona, Las Piñas City, covered by Transfer Certificate of Title No. S-74375. Adjoining their property on the northern side was petitioners' land, covered by Original Certificate of Title No. 5975.

Sometime in 1979, during a relocation survey conducted by Geodetic Engineer Emilio Paz at the instance of respondents, it was discovered that the Casimiro Village Subdivision, owned by petitioners, encroached by 3,110 square meters into respondents' land. Respondents notified petitioners and demanded that they desist from making further development in the area. Subsequently, on March 13, 1980, respondents demanded that petitioners remove all constructions in the area.

Failing in their efforts to regain possession of the disputed premises, respondents filed with the Court of First Instance of Pasay City an action for recovery of possession with damages against petitioners and the latter's lot buyers, docketed as Civil Case No. LP-8840-P. Respondents alleged that 3,110 square meters of their property, which has a market value of P640,000.00, computed at the then prevailing price of P200.00 per square meter, have been encroached upon and fenced in by petitioners as part of the Casimiro Village Subdivision, and subdivided and sold to lot buyers. In support of their contention, respondents presented the geodetic engineer who conducted the actual ground relocation survey.

In their defense, petitioners denied that there was an encroachment in respondents' land. They presented Geodetic Engineers Lino C. Reyes and Felipe Venezuela from the Bureau of Lands. Meanwhile, defendant-lot buyers interposed a cross-claim against petitioners spouses Casimiro, averring that they were innocent purchasers in good faith and for value of their respective lots.

On December 29, 1982, the Court of First Instance, Branch XXVIII, Pasay City, rendered a decision in favor of respondents, the dispositive portion of which reads: WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants Casimiro sentencing the latter to pay the former the sum of P640,000.00 with interest thereon at the legal rate from March 13, 1980 until the same is fully paid and to pay attorney's fees equivalent to 25% of the total amount due and the costs. On the cross-claim, cross defendants Casimiro are ordered to pay cross plaintiffs the sum of P5,000.00 as attorney's fees.

SO ORDERED.

Ruling on petitioners motion for reconsideration, the Regional Trial Court of Pasay City, Branch CXI, set aside its earlier decision, and held that the report of the engineers from the Bureau of Lands were more credible and accurate, and enjoy the presumption of regularity and accuracy.

On July 15, 1987, respondents moved for reconsideration of the above Order, but the same was denied on January 19, 1988.

Respondents appealed to the Court of Appeals on the sole question of the proper location of the common boundary separating the adjoining lots of petitioners and respondents. The Court of Appeals ordered that a relocation survey be conducted by a team of surveyors composed of a surveyor designated by the respondents, a surveyor designated by the petitioners, and a third member-surveyor chosen by the said two surveyors. Petitioners designated Engr. Nicolas Bernardo, while respondents designated Engr. Manuel P. Lopez. Upon agreement of the parties that the third member shall be from the Land Registration Commission, Engr. Felino Cortez, Chief, Ordinary and Cadastral Division, Land Registration Commission, was designated third member and chairman of the relocation survey.

Petitioners complained of irregularities in the conduct of the relocation survey, namely, (a) the actual field work was conducted by a separate survey team composed of employees of the LRC without the knowledge and presence of Engr. Bernardo; (b) the relocation plan and computations were done without consultation and coordination among the members of the survey team; and (c) the relocation plan that was prepared by Engr. Cortez did not conform to the verification plan earlier approved by the Bureau of Lands in January 1982.

However, the Court of Appeals found nothing irregular in the conduct of the relocation survey. Petitioners' representative, Engr. Bernardo, admitted that he was furnished copies of the field notes and data gathered by the LRA team, but did not enter any objection thereto. If at all, Engr. Bernardo's exclusion from the actual field work was rectified by the opportunity given him to comment on the final report prepared by Engr. Cortez, which Engr. Bernardo did not do.

After the survey, the Court of Appeals found that the final relocation survey report yielded the "indisputable and inevitable conclusion" that petitioners encroached on a portion of the respondents' property comprising an area of 3,235 square meters. On November 11, 1996, a judgment was rendered as follows:

The foregoing considered, We hereby REVERSE and SET ASIDE the order of the trial court dated June 25 1987 and REINSTATE the decision dated December 29, 1982 as prayed for by the Appellants [spouses Paulin].

SO ORDERED.

Petitioners' motion for reconsideration was denied for lack of merit. Hence, the instant petition for review.[1]

In denying the petition for review, we upheld the factual findings of the Court of Appeals, citing the rule that we are not a trier of facts,[2] and that factual findings of the Court of Appeals, when supported by substantial evidence, are conclusive and binding on the parties and are not reviewable by this Court.[3]

In their Motion for Reconsideration, petitioners argue that this case falls within the exceptions when review of the factual findings of the Court of Appeals is proper. According to them, the findings of fact of the appellate court were contrary to those of the trial court. Moreover, it was alleged that there was grave abuse of discretion on the part of the Court of Appeals when it approved the Report of the Relocation Survey Team without the signature of petitioner's representative therein, Engr. Nicolas Bernardo. Likewise, the inference of the Court of Appeals as to

the conclusiveness of the survey report was manifestly mistaken because the same were arrived at without the participation and conformity of Engr. Bernardo. Finally, the assailed Decision was based on the assumption that Engr. Bernardo was furnished copies of the field notes and data gathered by the team of surveyors.

In their Comment, respondents countered that this Court is not tasked with the duty to review findings of fact; that the findings of fact of the Court of Appeals and the Regional Trial Court are not contrary to each other; and that the Court of Appeals did not commit grave abuse of discretion.[4]

Considering the seriousness of the allegation of irregularity in the manner of the resurvey, we resolved to take a second look at the evidence on record of this case, particularly those before the Court of Appeals pertaining to the composition of the resurvey team and the conduct of the resurvey field work.

As narrated above, the Court of Appeals, upon agreement of both parties, ordered that a relocation survey on the questioned properties be conducted by a team of surveyors. The Court of Appeals' Resolution reads:

Finding the proposal well-taken as the only issue in this controversy is the correctness of the relocation survey to determine the true location of the common boundary between the lot of the plaintiffs and the lot of the defendants, the Court pursuant to Section 9 (3) of B.P. 129, hereby directs that a relocation survey of the strip of land in question in this case, be conducted by a team of surveyors composed of (1) a surveyor designated by the appellants, (2) a surveyor designated by the appellees and (3) a surveyor to be chosen by the said two surveyors. The resurvey shall be conducted in the presence of both parties or their authorized representatives. In view of the manifestation of defendants-appellees that they are willing to advance the cost of said relocation survey, reimbursable to them contingently as part of the costs of this action, should they win, the costs of such relocation survey shall be advanced by the defendants appellees.[5]

Subsequently, the Court of Appeals designated the following as members of the survey team:

- (1) Engr. Manuel P. Lopez (for respondents);
- (2) Engr. Nicolas R. Bernardo (for petitioners);
- (3) Engr. Felino M. Cortez of the Land Registration Commission.[6]

On July 10, 1992, Engr. Cortez submitted a report stating, among others, that the members of the resurvey team have agreed that the actual field work will be undertaken by five technical personnel, three of whom shall come from the Land Registration Authority and the remaining two shall be Engrs. Lopez and Bernardo or their respective representatives.[7]

By February 9, 1993, the field work had already been completed, pursuant to the Report of Engr. Cortez to the Court of Appeals.[8] On May 10, 1993, petitioners filed a "Motion to Require Engineer Cortez to Comply with the Terms and Conditions of this Honorable Court's Resolution of March 21, 1990,"[9] wherein they complained that the actual survey field work was done without the knowledge and presence of their representative, Engr. Bernardo, in contravention of the appellate court's directive that the resurvey shall be conducted in the presence of both parties or their authorized representatives.

Subsequently, Engr. Cortez submitted his Report which states that the actual field work was undertaken by a survey team created by the Administrator of the LRA composed of Engrs. Cortez, Ildefonso Padigos, Jr., Porfirio Encisa, Jr., and Alexander Montemayor. The team found that petitioners' property encroached on respondents' property by 3,235 square meters. The Report was signed by Engrs. Cortez and Lopez. Engr. Bernardo did not sign above his typewritten name.[10]

Engr. Bernardo filed a Comment, setting forth the alleged irregularities in the relocation survey. According to

him, he never received notice of the time and exact date of the field survey, as agreed upon by the team; that the designation of the LRA engineers who undertook the field work was not authorized by the court; and that the official survey team appointed by the Court of Appeals never met to perform the survey.[11]

On January 17, 1994, the Court of Appeals denied petitioners' motion to require the chairman of the relocation survey team to comply with the resolution of the court dated March 20, 1990.[12] Subsequently, it rendered judgment in favor of respondents, finding that the Report submitted by the Relocation Survey Team was arrived at after a careful and deliberate process of survey, computation and assessment of its technical findings. Hence, it sustained the finding that petitioners' property encroached on respondents' property by 3,235 square meters.[13]

The reason for the requirement of representation of both parties in the resurvey team is to ensure that the interests of both sides are protected. If this requirement is breached, then serious prejudice can result. This is especially true in this case where the purpose of the resurvey is to determine the boundaries of the parties' adjacent lots. The placing of boundary lines and demarcation points on the soil must be precise, and the smallest error in alignment may result in the loss of a large portion of one's property. Hence, it is crucial that each party must have a representative present to ensure that the fixing of the metes and bounds on the soil is accurately performed.

Indeed, the requirement of notice and representation in the proceedings is an essential part of due process of law. In *Roxas & Co., Inc. v. Court of Appeals*,^[14] we held:

Respondent DAR, on the other hand, avers that surveys on the land covered by the four titles were conducted in 1989, and that petitioner, as landowner, was not denied participation therein. The results of the survey and the land valuation summary report, however, do not indicate whether notices to attend the same were actually sent to and received by petitioner or its duly authorized representative. To reiterate, Executive Order No. 229 does not lay down the operating procedure, much less the notice requirements, before the VOS is accepted by respondent DAR. Notice to the landowner, however, cannot be dispensed with. It is part of administrative due process and is an essential requisite to enable the landowner himself to exercise, at the very least, his right of retention guaranteed under the CARL. (emphasis ours)^[15]

Poring over the records of the Court of Appeals regarding the resurvey of the subject properties, it appears that the actual field work was performed by engineers from LRA, without the representatives of petitioners and respondents being present. There was no clear showing that notices of the field work were sent to petitioners and respondents. Worse, the actual field work was undertaken by only four engineers, all of whom were designated from the LRA. This is in violation of the agreement of the parties that the actual field work should be done by five technical personnel, three of whom shall come from the Land Registration Authority and the remaining two shall be Engrs. Lopez and Bernardo or their respective representatives.^[16]

As stated above, the representatives of petitioners and respondents were not notified of and thus failed to participate in the survey. This is evident from the Report submitted by Engr. Cortez himself, stating that the actual field work was undertaken by a survey team created by the Administrator of the LRA composed of Engrs. Cortez, Ildefonso Padigos, Jr., Porfirio Encisa, Jr., and Alexander Montemayor.^[17] It is clear that Engrs. Lopez and Bernardo were not present at the field survey.

The failure of Engr. Cortez, as chairman of the resurvey team, to notify Engr. Bernardo of the actual field work to enable him to participate therein constituted as serious violation of petitioners' right to due process, especially considering that it resulted in a deprivation of their property to the extent of 3,235 square meters. The actual survey proceedings must, therefore, be conducted anew, ensuring this time that the interests of both parties are adequately protected. Hence, this case must be remanded to the Court of Appeals for the retaking of the survey of the boundaries on the parties' respective properties.

WHEREFORE, based on the foregoing, the Decision dated July 3, 2002 in G.R. No. 136911 is SET ASIDE. The instant petition is REMANDED to the Court of Appeals, which is ordered to forthwith cause the resurvey the boundaries on the parties' respective properties by the team of surveyors agreed upon by the parties, and thereafter to decide the case accordingly.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Austria-Martinez, JJ., concur.

[1] Decision, pp. 1-4; Rollo, pp. 476-479; citations omitted.

[2] *Spouses Uy v. Court of Appeals*, G.R. No. 109197, June 21, 2001, citing *Valmonte v. Court of Appeals*, 303 SCRA 278 [1999].

[3] *Atillo v. Court of Appeals*, 334 Phil. 546 [1997].

[4] Rollo, pp. 501-510.

[5] Resolution dated September 1, 1989; CA Record, p. 54.

[6] Resolution dated May 4, 1990; *Ibid.*, p. 81.

[7] *Id.*, p. 117.

[8] *Id.*, p. 131.

[9] *Id.*, pp. 139-142.

[10] *Id.*, pp. 144-147.

[11] *Id.*, pp. 173-180.

[12] *Id.*, pp. 186-190.

[13] *Id.*, pp. 264-275.

[14] 312 SCRA 106 [1999].

[15] *Ibid.*, at p. 149.

[16] *Op. cit.*, note 7.

[17] *Op. cit.*, note 10.

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