

GUILLERMO AND LOURDES BERNALDEZ, PETITIONERS, VS. CONCHITA FRANCIA, RESPONDENT.

G.R. No. 143929. February 28, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision of the Court of Appeals dated January 19, 2000 in CA-G.R. CV No. 52388[1] and its Resolution dated June 28, 2000 which denied petitioners' motion for reconsideration of the decision.

Respondent Conchita Francia is the registered owner of a residential lot in Sampaloc, Manila with an area of 1,000 square meters and covered by Transfer Certificate of Title (TCT) No. 180199.[2] Located beside said lot is a parcel of land owned by petitioners Guillermo and Lourdes Bernaldez, with an area of 114 square meters and covered by TCT No. 157000.[3]

On October 8, 1988, the building and other improvements erected on respondent's lot were destroyed by fire. Subsequently, petitioners built their kitchen and in the process encroached upon a portion of respondent's lot. Respondent had her property resurveyed by a geodetic engineer and as a result, she was able to confirm that petitioners had encroached upon some nineteen square meters of her lot.[4]

Respondent made several demands upon petitioners to vacate the portion of her lot which they were occupying, but petitioners did not comply therewith. Respondent then filed with the Regional Trial Court (RTC) of Manila a complaint against petitioners, praying that the court determine the rightful owner of the area in dispute.[5] The case was raffled to Branch 33 thereof.

The trial court ordered a resurvey of the lots owned respectively by respondent and petitioners. Respondent nominated Engr. Honorio Santamaria as surveyor of her lot, while petitioners chose Engr. Rosario Mercado as their surveyor. In the course of the trial, Santamaria reported that petitioners had encroached upon respondent's lot by an area of nineteen square meters.[6] Santamaria's survey plan was duly approved by the Bureau of Lands. On the other hand, Mercado's report did not contain a similar finding. His plan was still pending approval by the Bureau of Lands.[7]

While the trial court was able to establish a common boundary of respondent's and petitioners' lots from the reports filed by Santamaria and Mercado, it still could not conclusively determine whether the disputed area belonged to respondent's lot or to that of petitioners. On September 10, 1990, the trial court issued an order calling for another resurvey of the two lots and directing the Director of the Bureau of Lands to appoint a competent geodetic engineer to undertake the resurvey of petitioners' and respondent's properties in the presence of representatives of the RTC and of the parties. A survey team under Engr. Elpidio de Lara, Chief of the Technical Services Division of the Land Management Services (National Capital Region) of the Department of Environment and Natural Resources resurveyed the properties pursuant to the aforesaid Order of the trial court. Thereafter, Engr. De Lara submitted a survey report with a verification plan, stating that petitioners had

encroached upon seventeen square meters of respondent's lot.[8]

On August 18, 1995, the RTC rendered its decision holding that petitioners had encroached on respondent's lot by an area of seventeen square meters.[9]

Petitioners filed with the trial court a motion for new trial on the ground of newly discovered evidence. They claimed that the TCT covering respondent's lot referred to another lot owned by Nolasco and Editha Tupaz. However, the RTC denied the motion for lack of merit.[10]

Petitioners appealed the decision of the trial court to the Court of Appeals. On January 19, 2000, the appellate court promulgated its Decision affirming in toto the decision of the trial court. The Court of Appeals ruled that the factual findings of the RTC were supported by the evidence presented before it. It, likewise, held that the trial court did not err in denying the motion for new trial, since petitioners had not satisfactorily shown that they exercised reasonable diligence in producing or locating a copy of TCT No. 180189 in the name of Nolasco and Editha Tupaz before or during trial but had nonetheless failed to secure it.[11]

The appellate court also denied petitioners' motion for reconsideration of its decision in a Resolution dated June 28, 2000.[12]

Hence, this petition.

Petitioners argue that the Court of Appeals erred in upholding the trial court's reliance on the survey made by Engr. De Lara despite the fact that said survey has not been verified and approved by the Bureau of Lands, and is therefore nothing but a private writing. Petitioners further claim that there is no preponderance of evidence to deprive them of the seventeen square meters which, according to both the trial and appellate courts, formed part of respondent's lot.[13]

In her Comment, respondent maintains that the appellate court did not err in affirming the decision of the trial court since the evidence supports the factual findings of the RTC.[14] Respondent points out that the trial court considered not only the report of Engr. De Lara, but all the evidence presented before it in resolving the ownership of the area in dispute. Moreover, she states that petitioners failed to present evidence to controvert De Lara's report, despite having been given the chance by the trial court to have the properties resurveyed again after De Lara had presented his report.[15]

There is no merit in the petition.

The issues raised by petitioners are issues of fact which are not reviewable by this Court in a petition for review on certiorari. Section 1, Rule 45 of the Revised Rules of Civil Procedure is clear on this point:

Filing of petition with the Supreme Court. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Italics supplied.)

In a petition for review on certiorari, the Supreme Court is limited to reviewing errors of law absent any showing that the findings of fact of the appellate court are not supported by the records. Moreover, when factual findings of the trial court are confirmed by the Court of Appeals, said facts are final and conclusive on this Court, unless the same are not supported by the evidence on record.[16]

In the present case, the findings of fact of the Court of Appeals are supported by the records. The Court agrees with the observation of the appellate court that the conclusion of the RTC that petitioners had encroached on respondent's lot was substantiated by the similar findings of both Engr. Santamaria and Engr. De Lara; and that

petitioners' allegation that De Lara's report was technically and grossly ineffective was unsupported by any evidence.[17]

Although the survey report of Engr. De Lara was not verified, and therefore cannot be considered a public document, the Court notes that the due execution and genuineness thereof was established during the trial. De Lara testified before the RTC that he submitted a survey report and plan, and properly identified said documents and his signature thereon.[18] Hence, there was no error in the admission of said pieces of evidence, for the due execution and authenticity thereof were proven in accordance with Section 20, Rule 132 of the Revised Rules of Court which states that "[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) by anyone who saw the document executed or written; (b) by evidence of the genuineness of the signature or handwriting of the maker or (c) by a subscribing witness." It must be emphasized that as found by the Court of Appeals, the trial court did not rely merely on De Lara's findings in resolving the case; it also considered all other evidence presented by the parties.

The Court, likewise, sustains the findings of the appellate court that petitioners' motion for new trial was correctly denied by the trial court.

We have previously ruled that a motion for new trial on the ground of newly discovered evidence shall be granted when the concurrence of the following requisites is established: (a) the evidence is discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (c) the evidence is material and not merely corroborative, cumulative or impeaching and is of such weight that if admitted, would probably change the judgment.[19] In order that a particular piece of evidence may be regarded as "newly discovered" for purposes of granting a new trial, it is essential to show that the offering party exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it.[20]

The evidence offered by petitioners, TCT No. 180189 issued by the Registry of Deeds of Manila not to respondent, but to "Spouses Nolasco E. Tupaz and Editha L. Tupaz,"[21] does not satisfy the aforementioned requisites. The Court notes that although petitioners found out about the existence of said TCT only after trial, they could have easily discovered the same before or during the trial of the case had they bothered to check the TCT of respondent's lot to ascertain whether or not it overlapped with their own lot. In any case, TCT No. 180189 is hardly material to their case, considering that respondent's TCT is of a different number: TCT No. 180199. Hence, it is not difficult to see why the two certificates of title refer to different parcels of land and owners. Such piece of evidence would certainly not have affected, much less, altered the outcome of the case.

WHEREFORE, in view of the foregoing, the petition is hereby DENIED for lack of merit. The Decision of the Court of Appeals dated January 19, 2000 in CA-G.R. CV No. 52388 is AFFIRMED.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing and Austria-Martinez, JJ., concur.

[1] Conchita Francia, Petitioner, v. Guillermo Bernaldez and Lourdes Bernaldez, Respondents.

[2] Exhibit "A," see Folder of Exhibits, p. 1.

[3] Decision of the Court of Appeals, p. 3; Rollo, p. 72.

[4] Id.

[5] Id. at 70-A and 72.

[6] Id. at 72; Report of Engr. H.R. Santamaria, Original Records, p. 77.

[7] Id. at 73-74.

[8] Exhibits “D,” “D-1,” “D-1-A,” “D-1-B,” “D-1-C” and “D-1-D,” Folder of Exhibits, pp. 5-6.

[9] Rollo, pp. 47-60.

[10] Decision of the Court of Appeals, p. 5; *supra*, p. 74.

[11] Id. at 73-74.

[12] Id. at 91-92.

[13] Petition, *supra*, pp. 22-28.

[14] Comment, *supra*, pp. 101-103.

[15] Id. at 103.

[16] Bañas, Jr. v. Court of Appeals, 325 SCRA 259 (2000); Philippine National Construction Corporation v. Mars Construction Enterprises, Inc., 325 SCRA 624 (2000).

[17] Decision of the Court of Appeals, pp.5-6; Rollo, pp. 74-75.

[18] TSN, De Lara, November 4, 1992, pp. 4-5.

[19] People v. Ebias, 342 SCRA 675 (2000).

[20] Colinares v. Court of Appeals, 339 SCRA 609 (2000).

[21] See Records, p. 208.

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