

CAMBRIDGE REALTY AND RESOURCES CORP., PETITIONER, VS. ERIDANUS DEVELOPMENT, INC. AND CHITON REALTY CORP., RESPONDENTS.

G.R. No. 152445. July 04, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This Petition for Review on Certiorari[1] assails the October 17, 2001 Decision[2] of the Court of Appeals in CA-G.R. CV No. 51967 reversing and setting aside the October 10, 1995 Decision[3] of the Regional Trial Court of Quezon City, Branch 96 in Civil Case Nos. Q-89-2636 and Q-89-2750, which dismissed the complaints filed by respondents Eridanus Development Inc. (ERIDANUS) and Chiton Realty Corporation (CHITON) against petitioner Cambridge Realty and Resources Corporation (CAMBRIDGE). Also assailed is the March 1, 2002 Resolution[4] denying the Motion for Reconsideration.[5]

The antecedent facts are as follows:

Petitioner CAMBRIDGE is the registered owner of a 9,992-square meter lot, covered by Transfer Certificate of Title No. (TCT) 367213 (the CAMBRIDGE title/property),[6] in the Registry of Deeds of Quezon City.

Respondent ERIDANUS is the registered owner of a 2,794 square meter parcel of land covered by Transfer Certificate of Title No. (TCT) RT-38481 (the ERIDANUS title/property),[7] in the Registry of Deeds of Quezon City. A portion of the covering title thereof partially reads, as follows:

IT IS FURTHER CERTIFIED that said land was originally registered on the ____23[rd]__ day of _____, in the year nineteen hundred and ____Veinte____ in the Registration Book of the Office of the Register of Deeds of ____Rizal____, Volume ____T-27____, page ____, as Original Certificate of Title No. _____, pursuant to Decree No. ____Case no. 917____, issued in L.R.C. _____ Record No. _____, in the name of _____.

This certificate is a transfer from __Trans.____ Certificate of Title No. __346380/T-1736__ which is cancelled by virtue hereof in so far as the above-described land is concerned.

On the other hand, respondent CHITON is the registered owner of a 2,563 square meter lot, covered by Transfer Certificate of Title No. (TCT) 12667 (the CHITON title/property),[8] in the Registry of Deeds of Quezon City. A portion of the covering title thereof reads in part, as follows:

IT IS FURTHER CERTIFIED that said land was originally registered on the ____23[rd]__ day of ____Sept.____, in the year nineteen hundred and ____veinte____ in the Registration Book of the Office of the Register of Deeds of ____Rizal____, Volume ____T-27____, page __6__, as Original Certificate of Title No. _____, pursuant to Decree No. ____Case no. 917____, issued in L.R.C. _____ Record No. _____, in the name of _____.

This certificate is a transfer from __Trans.____ Certificate of Title No. __346381/T-1736__ which is cancelled

by virtue hereof in so far as the above-described land is concerned.

The CAMBRIDGE title has a covering title that reads in part, thus -

IT IS FURTHER CERTIFIED that said land was originally registered on the ___21st___ day of ___August___, in the year nineteen hundred and ___seven___ in the Registration Book of the Office of the Register of Deeds of ___RIZAL___, Volume ___A-4___, page ___56___, as Original (sic) of Title No. ___355___, pursuant to Decree No. ___1425___, issued in L.R.C. Rec. No. ___917___.

This certificate is a transfer from ___Trans.___ Certificate of Title No. ___363717/T-1823___ which is cancelled by virtue hereof in so far as the above-described land is concerned.[9]

The foregoing properties are adjoining lots located in Barangay Valencia, Quezon City, and constitute the subject matter of the present controversy.

Original Certificate of Title No. (OCT) 362[10] was issued under Act 496 (The Land Registration Act) by virtue of Decree of Registration 1425, GLRO No. 917, based on the original survey conducted on November 17, 1906. It was subdivided into three portions: Lots 27-A, 27-B and 27-C. Lot 27-C was titled in the name of Rafael Reyes, under Transfer Certificate of Title No. (TCT) 5506[11] issued on September 23, 1920. TCT 5506, in turn, appears to have been transferred in the name of Susana Realty, Inc. (SUSANA) under Transfer Certificate of Title No. (TCT) 18250.[12] TCT 18250 was then subdivided into eight (8) lots, of which the ERIDANUS lot is claimed to be Lot 3 thereof and CHITON's is Lot 4.

The subdivision of TCT 18250 (or Lot 27-C) was claimed to have been made by geodetic surveyor Jaime V. Nerit (Nerit). Nerit said he began computing the boundaries based on the SUSANA title. He noticed that the tie point[13] of the property was not fixed and there were no fixed or permanent markers, so he conducted research and obtained from the Bureau of Lands the approved consolidated subdivision plan of an adjoining property, Gilmore Townhouses[14] - located on the western side and owned by Ayala Investments and Development Corporation (the AYALA property) - which had fixed monuments to which Nerit could establish and connect with those of TCT 18250. He found a fixed tie point therein, BLLM 1, Marikina[15] ("S. 68'19 W. Pt. 6785 from BLLM Marikina I, Marikina, Rizal"), and from there he next computed the relation between corner 1 as described in the technical description of TCT 18250, and corner 1 as described in that of the Ayala property. In this manner, Nerit said he was able to establish the position of respondents' property and prepare the subdivision plan of TCT 18250, which was subsequently approved by the Land Registration Commission.[16]

Original Certificate of Title No. (OCT) 355[17] was registered under Act 496 on August 21, 1907, based on the original survey conducted on June 16 to August 16, 1907. It was registered in the name of La Compania Agricola de Ultramar (AGRICOLA). Lot 21 thereof was subdivided and a portion thereof - Lot 21-A - was covered by Transfer Certificate of Title No. (TCT) 578,[18] from which TCT 367213, the CAMBRIDGE title, was allegedly derived.

On May 30, 1989, ERIDANUS filed Civil Case No. Q-89-2636 to enjoin CAMBRIDGE from pursuing the planned subdivision and development of its property, which ERIDANUS claims encroached upon its own. The Complaint prays for a writ of injunction; the removal of an alleged encroaching wall CAMBRIDGE constructed; that the encroached portion be vacated and surrendered to it; that it be paid P3,500.00 per month, from the time of filing of the complaint to surrender of possession, as reasonable value for the use and occupation by CAMBRIDGE of the encroached portion; and litigation expenses, attorney's fees and costs of suit.

On June 15, 1989, CHITON instituted Civil Case No. Q-89-2750, with a similar prayer for relief as in Civil Case No. Q-89-2636, except that CHITON seeks a lower monthly charge of P1,700.00 for the use and occupation of

the alleged encroached portion, and a lesser amount for attorney's fees.

Both complaints were subsequently consolidated in Civil Case No. Q-89-2636 upon motion of CHITON.

The civil complaints were triggered by a previous verification survey conducted on respondents' respective properties, where the results allegedly showed that the CAMBRIDGE property encroached or overlapped upon respondents' lots, to the extent of 357 square meters for ERIDANUS and 177 square meters for CHITON.

Upon motion of the respondents, surveyors from the Survey Division of the Department of Environment and Natural Resources (DENR) Lands Management Services conducted a relocation survey of the subject properties, pursuant to an Order of the trial court dated May 8, 1992. On February 10, 1993, they prepared a two-page Report,[19] finding in part thus -

- That the Verification/Relocation Survey has been conducted on October 1, 2 and November 5, 1992.
- At the outset, corresponding Technical Descriptions along the two (2) properties TCT 18250 and TCT 367213, supposedly common to both has already a difference of 3 degrees 10 minutes (3-0-00) as described on their respective titles inspite of the deficiency of TCT No. 18250 (Susana Realty Inc.) for not having any tie line.
- That a subdivision of the lot covered by TCT No. 18250 under (LRC) Psd-335633 had been approved, June 19, 1986 referring to Lot 27-C, Psd -13458 as the source which records when researched could not be made available at hand, has established its tie line.
- That the lot covered by TCT No. 367213 (Cambridge Realty and Resource Corporation) has also been subdivided under Psd-13-005784 approved by the Lands Management Services of this Region last May 3, 1988.
- That the Technical Descriptions of TCT No. 367213 under Psd-13-005784 boundary referred from Lot 1, Sub-Block 1-A, Psd-225 was also researched and could not be made available at hand.

x x x x

- 8. Party litigants has not paid corresponding survey deposit in the amount of ONE THOUSAND SIX HUNDRED PESOS (P1,600.00).

x x x x

(signed)

ELPIDIO T. DE LARA

Chief, Technical Services Section

The trial court received the evidence of both parties, which in the main consisted of the expert testimonies of practicing private geodetic surveyors. Thus, respondents, as plaintiffs a quo, presented Nerit, who claimed to have conducted a survey of the respondents' properties, as well as a study of the CAMBRIDGE property and its alleged predecessor title (TCT 578). He testified that in the course of his work, he found out that the CAMBRIDGE property overlapped that of ERIDANUS at the north with a distance of eight (8) linear meters;[20] that although the CAMBRIDGE property was formerly a portion of TCT 578, the former does not conform to the latter;[21] that when it was segregated from TCT 578, the bearings on the side abutting the respondents' property were altered;[22] that TCT 578 was issued in 1907, yet the original survey of the property covered by the CAMBRIDGE title was made in 1920;[23] that there is no record of the subdivision plan of the CAMBRIDGE lot;[24] and that it does not appear that the CAMBRIDGE lot came from TCT 578 (despite stating previously that the former used to be a portion of the latter).[25]

On cross-examination, Nerit stated that there is no basis for him to say that the CAMBRIDGE lot came from TCT 578,[26] because there is nothing in the title thereof that indicates that it was derived from the latter;[27] that when he first surveyed the SUSANA property (TCT 18250) in 1960, he did not discover any overlapping, and he did so only in 1990;[28] that he found out that there was a discrepancy between the tie point in the respondents' titles and their predecessor's, the SUSANA title;[29] that the tie point of the SUSANA property was just a PLS monument (i.e., technically, there is no tie point - meaning that the property's geographical position could not be found, such that there could be no starting point for the conduct of a survey), which he could not rely on for the survey;[30] so, he had to find a solution by creating a new one, BLLM 1 Marikina.[31]

Likewise, Nerit testified on cross-examination that there is no evidence to show that the CAMBRIDGE property was derived from OCT 355 (the AGRICOLA property, or the mother title);[32] that the CAMBRIDGE property came from TCT 578 but the common azimuth of the two titles do not conform to each other;[33] that the overlapping of titles could have occurred during the original survey of the CAMBRIDGE property on November 10, 1920;[34] that when he conducted the subdivision survey of the SUSANA property (TCT 18250), he certified that he did not find any overlapping;[35] that the blank spaces in the SUSANA title[36] were mere typographical errors or inadvertent mistakes;[37] that, knowing that these blank spaces existed, he did not endeavor to determine the reasons or causes thereof.[38]

On re-direct examination, Nerit testified that as to the respondents' properties, notwithstanding that they have no tie points, the boundaries thereof may still be determined and identified.[39] Nerit made a sketch of how he went about changing the floating (or "not fixed") tie point to a fixed one.[40]

Respondents next presented Engineer Oliver A. Morales, a licensed appraiser of real estate properties, for the purpose of establishing the fair market value of the ERIDANUS and CHITON properties in connection with the prayer for indemnification of fair rental value for the use of the alleged encroached property.

Respondents thereafter presented Ernesto Vidal, Clerk III of the Registry of Deeds of Rizal, who testified that he was specifically sent to testify in court by the Register of Deeds of Rizal, and he brought with him the original copies of OCTs 362 and 355 on file with the Registry. Said titles, however, have been rendered, by the passage of time, incapable of being read and deciphered for the most part.

Another witness, Elpidio T. De Lara, geodetic engineer and Chief (Engineer IV) of the Technical Services Sector of the Land Management Services, DENR, has been with the office since 1960 and had served as chief of the Technical Services Sector for five (5) years at the time of the taking of his testimony. He testified that he conducted an actual verification survey of the CAMBRIDGE, ERIDANUS and CHITON properties on October 1, 2, and November 5, 1992;[41] in connection therewith, he prepared a relocation/verification plan[42] which was duly approved by his superiors; he found out that there is an overlapping of the boundaries of the petitioner and respondents' properties.[43]

De Lara likewise testified that in the preparation of the relocation plan, he used as basis the SUSANA title for the respondents' properties, and for the petitioner, the CAMBRIDGE title;[44] but that with regard to the SUSANA title, there is no tie point;[45] there being no tie point, it would be difficult and impossible to make a relocation plan;[46] being so, respondents' properties were plotted on the basis of the technical descriptions in the title of an adjoining property, the AYALA property;[47] that if he plotted the respondents' properties on the basis of the common boundary (lines 1 to 2) between the adjacent AYALA and SUSANA properties as stated in the technical description of the SUSANA title, there would be no overlapping of boundaries between petitioner and respondents' titles;[48] on the other hand, if the survey were conducted based on the respondents' respective titles which do not have a tie line or tie point, there would be an overlap;[49] interestingly, he claims that he discovered

an overlapping but that it is a "technical overlapping." Thus:

Atty. Bilog:

Did you research on the title of the plaintiffs and defendant, have you examined this title TCT No. 18250?

A

Yes, your honor.

x x x x

Q

This TCT No. 18250, showing to you this copy of TCT No. 18250 which has been previously marked as Exhibit "O" for the plaintiffs and as Exhibit "1" for the defendant, will you look at this title and point to us, what is the reference point of the property described on this title?

x x x x

Q

Is there a reference point or tie point?

A

Well, actually, there is no reference point..

Q

So, if you had used this title, Exhibit "O", for the plaintiff in the plotting of this relocation plan, marked as Exhibit "11" for the defendant, you would not be able to plot on this Exhibit "11", the property of the plaintiff because the title of the plaintiff has no reference point or tie point?

Witness:

A

But you can do this through its adjoining properties, on the basis of this title.

Q

Witness did not answer my question, your honor...

Court What is the purpose of having reference or tie point?...Is it essential?

Atty. Bilog:

Very essential, your honor.

Court (to the witness)

Q

Without it, as the Court gathers from your answer, it would be difficult and impossible for you to make the relocation plan?

A

Yes, sir.

Q

When you make a relocation plan, as you did in this Exhibit "11", you used the technical description of other properties?

A

Yes, your honor.

Q

Is that an accepted alternative?

A

Yes, your honor, this determine the corresponding relations...

Atty. Bilog

Q

Without thinking of the question of overlapping, when you are supposed to plot in the relocation plan the property of the plaintiff, the plaintiff's property is not connected to any tie line or tie point in the description of the title?

A

I cannot use the common point, this is connected with the corresponding tie line, sir.

Q

The technical descriptions which you narrated belong to other surveys?

A

Yes, sir.

Q

And that survey which is now in your possession, the plaintiff's property is adjacent to other property?

A

It is not actually adjacent to this property except this portion, sir.

Court:

Witness pointing to lines between 1 and 2 on Exhibit "Y" and "11" within the plan of plaintiff's property.

Q

Now, these lines between 1 and 2, representing perimeter or boundary, that is adjacent to the boundary of an adjoining property and this survey was used for plotting this relocation plan?

A

Yes, sir.

Q

Now, is this line between 1 and 2 of plaintiff's property, in any way described in the technical description of

the property, this survey is also used in this relocation plan?

A

It is prescribed, sir.

Q

Now, you are talking about common boundary line, what do you mean by common boundary line, will you point in this plan, what is this common boundary line?

A

The two surveys coincide with each other or tangent with each other, sir.

Q

Can you point out to this plan, what is the common boundary?

A

1 and 2 of the plaintiff's technical description and 16 and 15, sir.

(Witness pointing to the figure on the plan...)

Q

Why do you say it is a common boundary?

A

Well, the technical description of the plaintiff's title and the adjacent property which is the Ayala property are the same...

Q

You are saying that they are common?

A

Yes, common sir.

x x x x

A

It is a common boundary as the survey stated, sir.

x x x x

Q

Can you say, in a reasonable certainty that the boundaries, which you are referring to point 1 and 2 of plaintiff's TCT No. 18250 is a common boundary with that of Ayala property that you are stating?

A

It is a common boundary otherwise, you will not...

Q

Now, Mr. Witness, if you will only plotted (sic) the plaintiff's property on the basis of the technical description of TCT 18250, in this relocation plan, there would be no overlapping of boundaries between plaintiff's and defendant's properties?

Atty. Barcelona

Objection, your honor.

Atty. Bilog

Assuming, your honor, he is an expert...

Court

Yes, he is an expert, he knows that...

Atty. Bilog

There would be no overlapping, is it not?

A

As stated in the survey, the overlapping of the property has already been discovered but it is a technical overlapping, sir.

Atty. Bilog

I move that the testimony be stricken off the record, your honor, it is not responsive...

Court

Just answer yes or no?

A

Yes, sir.

Q

When the intention is to determine the degrees of overlapping of the two adjoining properties, can you not use the technical descriptions contained in their respective TCT's for that purpose?

A If we use it...

Court

They will overlap, is that what you want to say?

A

They will overlap, your honor because the plaintiff's property does not carry the tie line or tie point, your honor.[50]

Another geodetic engineer, William G. Lim, was presented by the respondents. He stated that he performed a verification survey of the respondents' properties, using as basis the SUSANA title, TCT 578, and the technical description of the CAMBRIDGE property.[51] He likewise testified that, for the survey of respondents' properties, he used as tie point "1 Marikina Rizal." [52] He prepared a verification survey plan (Exh. "BB") duly approved by the proper government authority.[53]

On cross-examination, Lim testified that the reference point for the respondents' properties for purposes of survey was "N. 60 gds. 23'30'E., 23.69 m.s. de un mojon de concreto marcado PLS yes mismo punto 86 de la parcela No. 21";[54] that said reference point was located "in the intersection of the road" and could no longer be located, or it could have been lost or destroyed, and because the BLLM reference point already exists;[55] that in surveying the respondents' properties, he used instead as reference point BLLM 1, not the PLS monument, because the government has been requiring that all subdivisions or surveys now should be tied with approved tie lines of the BLLM;[56] that if the property has no tie point or reference point, the surveyor may tie the same to the nearest reference point of other adjoining lots that have a tie point;[57] that even if the property has no reference point, its exact location could be determined in a survey;[58] that even if there is no reference point or BLLM monument, an overlapping of properties could still be detected on the basis of the title alone.[59]

On re-direct examination, Lim testified that he conducted at least two surveys on the ERIDANUS and CHITON properties, and for the first survey he found a difference in the overlap by the CAMBRIDGE lot of about 21 or 22 square meters compared to the 552 square meter overlap found by De Lara;[60] that with regard to the tie line, a change thereof does not affect the location of the surveyed property;[61] that when the reference point or tie point is changed, the azimuth lines and azimuth tie lines of the property are likewise changed, but not the location thereof.[62] In his written report, however, Lim computes the CAMBRIDGE overlap at 541 sq. m.[63]

The petitioner, as defendant a quo, presented geodetic engineer Emilia Rivera Sison, who testified that the ERIDANUS and CHITON titles lack material data in their covering titles, such that it appears that they did not undergo proper registration proceedings and that they do not have a mother title;[64] the CAMBRIDGE title, on the other hand, has a complete covering title, showing that it has a mother title (OCT 355) and that it underwent registration proceedings;[65] that it is impossible to plot the relative position of the ERIDANUS and CHITON properties using the SUSANA title because the tie point appearing in the latter title is a PLS which has no known geographic position, or is "floating", which means that the property could not be located in a fixed place;[66] that Engr. Lim's verification survey plan (Exh. "BB") did not use tie points, nor did it indicate what titles were plotted therein as to show the fact of overlapping, since the said plan could not be compared with the titles plotted therein.[67]

Sison further testified that when she conducted a fixed survey of the properties in question, she found CAMBRIDGE to be in possession of the alleged overlapping portion, and that there was an existing adobe stone wall, which appeared to be old, within the claimed overlapping portion. She also saw townhouse units belonging to CAMBRIDGE on said portion.[68]

On cross-examination, Sison testified that as a surveyor, she would tie the properties she surveys to a BLLM reference (tie) point by computing the same to the nearest property that already has a reference (tie) point, in cases where the property she is surveying has no tie (reference) point;[69] but that when a tie point is changed, an overlapping is caused;[70] that it was error for the respondents' surveyors to have conducted their respective surveys without thorough research and without securing the titles to adjoining properties, as well as following certain processes of computation;[71] that she conducted these processes of computation on the SUSANA title, and she found that the technical description thereof contains an error, such that its actual area is either smaller or bigger, making reference to the said SUSANA title as an "open polygon" in surveying parlance, which means that the technical description is not correct (i.e., the "polygon" should "close", and when it does, the technical description is then presumed to be correct).[72]

On October 10, 1995, the Regional Trial Court of Quezon City, Branch 96 rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

- Dismissing the complaints;
- Dismissing the counterclaim, except that plaintiffs shall pay to defendant attorney's fees of P50,000.00; and
- Ordering the plaintiffs to pay the costs of the suit.

SO ORDERED.[73]

On appeal, the Court of Appeals reversed and set aside the Decision of the trial court, thus:

WHEREFORE, based on the foregoing premises and finding the appeal to be meritorious, the judgment appealed from is REVERSED and SET ASIDE. The case is remanded to the lower court with the direction to:

(1)

allow the plaintiffs-appellants to elect whether to (a) appropriate as its own the buildings and improvements on the encroached property, subject to payment of indemnity or (b) oblige the defendant-appellee to pay the fair market value of the encroached property, within the time the lower court shall fix;

(2)

if the plaintiffs-appellants shall elect to oblige the defendant-appellee to pay the fair market value of the encroached property, to refer the matter to a commissioner who shall be appointed by the lower court to receive evidence on the fair market value of the encroached property;

(3)

if the value of the land is considerably more than that of the building and improvements, and the defendant-appellee cannot be obliged to buy the land pursuant to Article 448 of the New Civil Code, and the plaintiffs-appellants also do not choose to appropriate the buildings or improvements after proper indemnity, the lower court shall order the defendant-appellee to pay reasonable rent as agreed upon by the parties. In case of disagreement on the terms of the lease, the lower court shall fix the terms thereof; and

(4)

to render judgment on the basis of the election of the plaintiffs-appellants.

SO ORDERED.[74]

On March 1, 2002, the appellate court denied the Motion for Reconsideration; hence, this petition based on the following grounds:

I

WHETHER OR NOT RESPONDENTS WERE ABLE TO PROVE OVERLAP AND ENCROACHMENT OF PETITIONER'S PROPERTY ON RESPONDENTS' PROPERTIES.

II

WHETHER OR NOT THE TIE POINT OF A REGISTERED PROPERTY MAY BE ALTERED WITHOUT NOTICE TO THE ADJOINING OWNERS AND WITHOUT OBSERVING THE REQUIREMENTS OF SECTION 389 OF THE MANUAL OF LAND SURVEYS IN THE PHILIPPINES, SECTION 108 OF P.D.

1529, AND JURISPRUDENCE.

III

WHETHER OR NOT THE PRESUMPTION OF REGULARITY AND/OR THE APPROVAL OF GOVERNMENT AUTHORITIES IS SUFFICIENT TO VALIDATE A SURVEY PLAN AND/OR AMENDED TECHICAL DESCRIPTION WHICH DID NOT COMPLY WITH THE REQUIREMENTS OF LAW.

IV

WHETHER OR NOT RESPONDENTS ARE GUILTY OF LACHES.

V

WHETHER OR NOT A TORRENS CERTIFICATE OF TITLE, COMPLETE AND VALID ON ITS FACE MAY BE DEFEATED BY ANOTHER TORRENS CERTIFICATE OF TITLE WHICH, ON ITS FACE, IS IRREGULAR, AND WHICH CONTAINS DEFECTIVE TECHNICAL DESCRIPTION.

A review of the factual backdrop is proper for the resolution of the issues presented. The findings of fact of the Court of Appeals are ordinarily not subject to review by this Court as they are deemed conclusive; but not when the findings of fact of the trial and appellate courts are conflicting.[75]

There is one serious flaw that the trial court committed: its failure to require the court-appointed surveyors - considering that there are quite a number of irregularities in the certificates of title of the parties - to conduct an extensive investigation of the titles of the parties.

The case of overlapping of titles necessitates the assistance of experts in the field of geodetic engineering. The very reason why commissioners were appointed by the trial court, upon agreement of the parties, was precisely to make an evaluation and analysis of the titles in conflict with each other. Given their background, expertise and experience, these commissioners are in a better position to determine which of the titles is valid. Thus, the trial court may rely on their findings and conclusions.[76]

It was the duty of the trial court, considering the magnitude and extent of the issues presented and the questions that arose from a careful examination of the parties' respective certificates of title, to have required the appointed surveyors of the DENR to investigate and trace the parties' respective titles, conduct a comprehensive survey, study and analysis of the boundaries, distances and bearings thereof, and submit an exhaustive report thereon. Given their expertise and experience, they would have been able to satisfactorily perform the required task. Yet the court did not. As a matter of fact, the services of the government surveyors were not even secured by court initiative; the trial court even threatened to do away with the testimonies of the state surveyors when their presence in court could not be guaranteed. It was through the auspices of the respondents that they were brought to court. To make matters worse, the parties did not even pay the required fees for the survey; the court did not compel them.

In overlapping of titles disputes, it has always been the practice for the court to appoint a surveyor from the government land agencies - the Land Registration Authority or the DENR - to act as commissioner. Given that the trial court here did not, we are now left to make do with the two-page report of the state surveyors and decide the case with what evidence is made available to us by the parties' respective expert witnesses as well, which - for the most part - must be received with caution as their testimonies are understandably self-serving.

The crux of the matter, however, lies in ascertaining whether there really is overlapping of boundaries of the properties of the movants for intervention and that of the private respondent. As We scrutinize carefully the claim of each party based on survey readings and plottings appearing on the plans submitted as annexes, We

find that the same have not passed the rigid test of accuracy and authenticity as should be determined by precision instruments duly verified by accredited surveyors. Indeed, each claim may appear to be as good and self-serving as the other. And since the Supreme Court is not a trier of facts, the veracity and correctness of the alleged overlapping is better left to those scientifically qualified, trained and experienced and whose integrity is beyond question and dispute.[77] (*Italics supplied*)

The present petition calls only for the settlement of the overlapping issue, barring direct and collateral attacks on each of the parties' respective certificates of title, which require different proceedings for the ventilation thereof.[78]

The trial court, in dismissing the case, held primarily that respondents failed to overcome the burden of establishing their claim of overlapping. It stated that the respondents' titles - whose tie points are based on mere PLS monuments (which are not fixed, and are therefore not in accordance with Sec. 36 of the Manual for Land Surveys in the Philippines[79]) cannot prevail as against the petitioner's, which has a fixed tie or reference point. Simply put, a PLS monument is not one of the reference points enumerated in Section 36 of the Manual, and cannot be used to defeat petitioner's title. Secondly, the trial court held that Nerit, given his training and expertise as surveyor, should have detected the overlap - if there was one - in his 1960 survey of TCT 18250, and not suddenly discover it only in 1990. Thirdly, the presence of the old adobe wall as early as the 1960s and the absence of any protest or objection from Nerit or the Madrigals (then owner of the SUSANA title) militate against the present claim of overlap and encroachment.

The appellate court, however, found that there is an encroachment, and the cause thereof may be traced to a change in the technical description of the petitioner's title (which was derived from TCT 578) when it was subdivided on November 10, 1920. The appellate court held that the respective northeastern boundaries of the ERIDANUS, CHITON and CAMBRIDGE titles should be "S.21'deg.56'55"E" but the CAMBRIDGE title indicates "N.25 deg. 07'W". Yet TCT 578 carries the same bearing as the ERIDANUS and CHITON properties, "S.21'deg.56'55"E". This change in the technical description, according to the appellate court, caused the encroachment by the petitioner's property on the respondents' land. The appellate court ratiocinated that it was precisely for this reason that in 1960, Nerit found no encroachment during his subdivision survey of the SUSANA lot: because TCT 578 still carried the bearing "S.21'deg.56'55"E". When he conducted his 1990 survey, which among others included the petitioner's title (with the new and different bearing "N.25 deg. 07'W") as basis, he naturally found an overlap.

What the trial and appellate courts overlooked, however, was that out of the four expert witnesses presented, three of them (the government surveyor De Lara, respondents' witness Lim, and petitioner's witness Sison) categorically admitted that a change in the tie or reference point results in an overlap; or, more accurately, that a change in the tie or reference point has a corresponding effect on the survey.

What has been made clear by the law and practice is that PLS monuments have given way to Bureau of Lands Location Monument (BLLM) No. 1, which shall "always be used as the tie point." [80] In so doing (disregarding PLS monuments for the BLLM), such process somehow affects the integrity of the survey.

Thus, De Lara testified that if he plotted the respondents' properties on the basis of the common boundary (lines 1 to 2) between the adjacent AYALA and SUSANA properties as stated in the technical description of the SUSANA title, there would be no overlapping of boundaries between petitioner's and respondents' titles; [81] on the other hand, if the survey were conducted based on the respondents' respective titles which do not have a tie line or tie point, there would be an overlap. [82] De Lara claims, moreover, that the alleged encroachment is really a "technical overlapping." [83] Lim, on the other hand, testified - on re-direct examination - that when the reference point or tie point is changed, the azimuth lines and azimuth tie lines of the (respondents') property are

likewise changed, but not the location thereof.[84] Sison, witness for the petitioner, testified on cross-examination that when a tie point is changed, an overlapping is caused.[85]

A case of overlapping of boundaries or encroachment depends on a reliable, if not accurate, verification survey; barring one, no overlapping or encroachment may be proved successfully, for obvious reasons. In the wake of the majority expert opinion that by changing the tie or reference point from a PLS to a BLLM 1 monument, a corresponding effect on the survey occurs - which can include a change in boundaries and, at worst, an overlap - the Court is not prepared to declare that an accurate survey of the respondents' properties has been made as to be a proper basis of the present claim of encroachment or overlap.

Likewise, we cannot see how a change in the bearings of the CAMBRIDGE property from "S.21'deg.56'55"E" in TCT 578 to "N.25 deg. 07'W" in the CAMBRIDGE title can cause an overlap of respondents' properties. This has not been sufficiently shown by respondents' evidence to be the cause of the overlap. Respondents' key witness Nerit does not believe that the CAMBRIDGE title was a derivative of TCT 578, because there is nothing in the title thereof which indicates that it was derived from the latter; he was ambivalent, if not ambiguous, and definitely far from categorical, in this respect.[86] State surveyor De Lara's testimony and Report - inconclusive and incomplete as it is - does not help or indicate any. Likewise, a thorough examination of TCT 578 shows that it has no similar boundary and bearings with the CAMBRIDGE title. Finally, the CAMBRIDGE title explicitly declares that it is derived from TCT No. 363717/T-1823, and not TCT 578.

Thus, for failure of the respondents to prove that the CAMBRIDGE title is a derivative of TCT 578, the conclusion that a change in the technical description of the former - as compared to that of the latter - is the reason for the overlap, simply does not follow. The appellate court is in clear error.

Finally, we agree with the trial court's observation that the continuous presence of the old adobe wall diminishes the case for the respondents. It was only in 1989 that the wall became an ungainly sight for respondents. Previous owners of what now constitutes the respondents' respective lots did not complain of its presence. The wall appears to have been built in the 1960s, and yet the Madrigals (SUSANA title owners) did not complain about it; if they did, Nerit would have known and testified to the same since he was responsible for the subdivision of the lot. Only respondents complain about it now. In one overlapping of boundaries case,[87] the Court held that a land owner may not now claim that his property has been encroached upon when his predecessor did not register any objections at the time the monuments were being placed on the claimed encroached area; nor did the latter make any move to question the placement of said monuments at the time.

Courts exist to dispense justice through the determination of the truth to conflicting claims. A party comes to court equipped with the tools that will convince the court that his position is more viable than the other's. He may not hesitate to employ any method, means or artifice of persuasion that will sway the sympathies of the court in his favor. As we have said before, indeed, each claim may appear to be as good and self-serving as the other.[88]

In the quest for truth, a court often encounters concerns that necessitate not only the application of the various principles of law, but likewise precepts of the exact sciences, various disciplines of study or fields of human endeavour about which the judge may not be knowledgeable or skilled, and which concerns he is not prepared to resolve, unless with the aid and intervention of or through the medium of learned and experienced disinterested experts.

An example lies precisely in the area of land boundary disputes. The first step in the resolution of such cases is for the court to direct the proper government agency concerned (the Land Registration Authority,[89] or LRA, or the Department of Environment and Natural Resources, or DENR) to conduct a verification or relocation survey and submit a report to the court,[90] or constitute a panel of commissioners for the purpose.[91]

In every land dispute, the aim of the courts is to protect the integrity of and maintain inviolate the Torrens system of land registration, as well as to uphold the law; a resolution of the parties' dispute is merely a necessary consequence. Taking this to mind, we cannot grant the respondents' prayer without violating the very principles of the Torrens system. They have failed to lay the proper foundation for their claim of overlap. This is precisely the reason why the trial court should have officially appointed a commissioner or panel of commissioners and not leave the initiative to secure one to the parties: so that a thorough investigation, study and analysis of the parties' titles could be made in order to provide, in a comprehensive report, the necessary information that will guide it in resolving the case completely, and not merely leave the determination of the case to a consideration of the parties' more often than not self-serving evidence.

WHEREFORE, the petition is GRANTED. The appealed Decision and Resolution of the Court of Appeals are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Quezon City, Branch 96, in Civil Case Nos. Q-89-2636 and Q-89-2750 dismissing the complaints filed by respondents is REINSTATED and AFFIRMED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 11-58.

[2] Id. at 63-74; penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Perlita J. Tria Tirona and Amelita G. Tolentino.

[3] Id. at 75-93; penned by Judge (now Associate Justice of the Court of Appeals) Lucas P. Bersamin.

[4] Id. at 61.

[5] Id. at 94-117.

[6] Exhibit "L", respondents' Folder of Exhibits, p. 35.

[7] Exhibit "A", id. at 20.

[8] Exhibit "G," id. at 26.

[9] Exhibit "L," id. at 35.

[10] Exhibit "W", id. at 106.

[11] Exhibit "I", id. at 33-A.

[12] Exhibit "O", id. at 39.

[13] The Manual for Land Surveys in the Philippines, issued under Lands Administrative Order No. 4 (July 3, 1980) of the Ministry of Environment and Natural Resources, took effect on September 2, 1980. Section 36 thereof provides:

Land surveys shall be definitely fixed in position on the surface of the earth by monuments of permanent nature marking selected points of said surveys and by azimuths and distances to "points of reference" of known geographic positions or Philippine Plane Coordinates. These points of reference shall be as follows:

- Bureau of Lands Location Monuments (BLLM);

- Political Boundary Monuments:
- Provincial and city boundary monuments,
- Municipal boundary monuments,
- Barangay boundary monuments;
- Triangulation stations of:
 - The Bureau of Lands,
 - The Bureau of Coast and Geodetic Survey,
 - The United States Army Corp of Engineers,
 - Other organizations, the work of which is of acknowledged standard;
- Primary stations of cadastral surveys;
- Church towers, historical monuments and other prominent permanent structures of known geographic or Philippine plane coordinates;
- Doppler, Hiran, Loran and other similar stations of at least third order accuracy. (Emphasis supplied)

[14] Exhibit "M," Folder of Exhibits, p. 37.

[15] Exhibit "L," id. at 35. The Manual for Land Surveys in the Philippines. Section 760 thereof states:

The Bureau of Lands Location Monument No. 1 (BLLM No. 1) of the cadastral survey shall always be used as the tie point of all cadastral lots in the project. The grid coordinates of this tie point shall be placed in the proper column of the lot data computation sheet. (Emphasis supplied)

[16] TSN, Nerit, August 2, 1991, pp. 8-18.

[17] Exhibit "X", respondents' Folder of Exhibits, p. 107.

[18] Exhibit "J", id. at 33-C.

[19] Exhibit "Z", id. at 111-112.

[20] TSN, Nerit, September 13, 1991, p. 6.

[21] Id. at 8-9.

[22] Id. at 10.

[23] Id. at 11.

[24] Id. at 11.

[25] Id. at 14.

[26] TSN, Nerit, March 5, 1992, page 5.

[27] Id. at 7.

[28] Id. at 7-9.

[29] Id. at 10.

[30] Id.

[31] Id. at 12, 22; TSN, Nerit, April 30, 1992, pp. 23-24.

[32] TSN, Nerit, April 30, 1992, p. 3.

[33] Id. at 6.

[34] Id. at 7.

[35] Id. at 8, 17-18, 22.

[36] The covering title of TCT 18250 reads in part, as follows:

It is further certified that said land was originally registered in the __23[rd]__ day of __Sept.__, in the year nineteen hundred and __viente__, in the Registration Book of the Office of the Register of Deeds of RIZAL, Volume __I-27__ Page __6__, as Original Certificate of Title No. _____ pursuant to Decree No. __Case No. 917__, issued in L.R.C. Record No. _____.

This certificate is a transfer from __Trans.__ Certificate of Title No. __6326/T-35__ which is cancelled by virtue in so far as the above described land is concerned.

[37] TSN, Nerit, April 30, 1992, pp. 9-11.

[38] Id. at 11.

[39] TSN, Nerit, May 22, 1992, p. 9.

[40] Id. at 5-9; Exhibit "U", respondents' Folder of Exhibits, p. 81.

[41] TSN, De Lara, June 11, 1993, p. 6; Exhibit "Z", respondents' Folder of Exhibits, pp. 111-112.

[42] Exhibit "Y", respondents' Folder of Exhibits, p. 110.

[43] TSN, De Lara, June 11, 1993, pp. 10, 12.

[44] TSN, De Lara, September 24, 1993, p. 7.

[45] Id. at 14.

[46] Id. at 15.

[47] Id. at 14-16, 26.

[48] Id. at 18-19.

[49] Id. at 19.

[50] Id. at 13-19.

[51] TSN, Lim, November 4, 1993, pp. 13-14, 21.

[52] Id. at 26.

[53] Id. at 11.

[54] TSN, Lim, December 3, 1993, p. 7.

[55] Id. at 7-8, 11.

[56] Id. at 15, 17.

[57] Id. at 17.

[58] Id. at 26.

[59] Id. at 27.

[60] Id. at 35.

[61] Id. at 36.

[62] Id. at 40.

[63] Exhibit "CC," Folder of Exhibits, pp. 115-116.

[64] TSN, Sison, April 11, 1994, pp. 9-14. See covering titles of the ERIDANUS and CHITON properties.

[65] Id. at 14-16.

[66] Id. at 22-23.

[67] Id. at 35-38.

[68] Id. at 38-41.

[69] TSN, Sison, May 13, 1994, pp. 4-5.

[70] Id. at 22.

[71] Id. at 27-28.

[72] Id. at 28-29.

[73] Rollo, pp. 92-93.

[74] Id. at 73-74.

[75] Manila Electric Company v. Hua Kim Peng, G.R. No. 109389, June 26, 2006, 492 SCRA 485, 493.

[76] Manotok Realty, Inc. v. CLT Realty Development Corp., G.R. No. 123346, November 29, 2005, 476 SCRA 305, 335-336.

[77] Director of Lands v. Court of Appeals, G.R. No. L-45168, September 25, 1979, 93 SCRA 238, 248-249.

[78] Presidential Decree No. 1529 (1978), Sec. 48:

Certificate not subject to collateral attack. - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

[79] Supra note 13.

[80] As required under Section 760, Manual for Land Surveys in the Philippines, supra note 15.

[81] TSN, De Lara, September 24, 1993, pp. 18-19.

[82] Id. at 19.

[83] Id.

[84] TSN, Lim, December 3, 1993, p. 40.

[85] TSN, Sison, May 13, 1994, p. 22.

[86] Supra note 21 et seq.

[87] Golloy v. Court of Appeals, G.R. No. 47491, May 4, 1989, 173 SCRA 26.

[88] Director of Lands v. CA, supra note 77.

[89] Formerly the Land Registration Commission. The LRA is charged with the task of guaranteeing the integrity of the Torrens system of land registration, and is the central repository of all records concerning registered or titled lands. Part of its mandate is to keep the title history of records of transactions involving registered or titled lands, and provide legal and technical assistance to the courts on land registration cases.

[90] Sapida v. Villanueva, G.R. No. L-27673, November 24, 1972, 48 SCRA 19; Sta.Ana v. Suñga, G.R. No. L-32642, November 26, 1973, 54 SCRA 36; Director of Lands v. Court of Appeals, G.R. No. L-45168, September 25, 1979, 93 SCRA 238; Verdant Acres, Inc. v. Hernandez, G.R. No. L-51352, January 29, 1988, 157 SCRA 495; De Vera v. Court of Appeals, G.R. No. 97761, April 14, 1999, 305 SCRA 624; De Guzman v. Court of Appeals, G.R. No. 120004, December 27, 2002, 394 SCRA 302; De Pedro v. Romasan Development Corp., G.R. No. 158002, February 28, 2005, 452 SCRA 564; Banaga v. Majaducon, G.R. No. 149051, June 30, 2006, 494 SCRA 153.

[91] Angara v. Fedman Development Corp., G.R. No. 156822, October 18, 2004, 440 SCRA 467.

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