

**SPOUSES AGUSTIN FLORES AND PURITA M. FLORES, PETITIONERS,
VS. THE HONORABLE INTERMEDIATE APPELLATE COURT AND
SALVADOR, MILAGROS AND CONRADA, ALL SURNAMED NICO,
RESPONDENTS.**

G.R. No. 74287. October 27, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This suit involves a boundary dispute between owners of adjoining lots situated in the poblacion of Miag-ao, Iloilo. Judgment was rendered by the former Court of First Instance of Iloilo, Branch III,[1] dismissing the Complaint filed by private respondents, the NICOS, as well as the Counterclaim of petitioners, the FLORESES. Said Trial Court was of the opinion that "neither the plaintiffs (the NICOS) nor the defendants (the FLORESES) were able to sufficiently establish that the areas claimed by them really belong to them."

On appeal by the NICOS, the then Intermediate Appellate Court[2] reversed stating that "the discrepancy in the area may not justify the position of the lower Court in refusing to declare who owns the disputed portion to check constant strifes between the neighbors." It then dispositively decreed:

WHEREFORE, the decision a quo is hereby REVERSED and set aside and another one is rendered declaring plaintiffs (the NICOS) as the owners of the disputed portion of 222 square meters, more or less, as indicated in the sketch (Exh. F); ordering the defendants (the FLORESES) to demolish the fence erected by them and intruding into the land of plaintiff, and directing defendants to surrender possession thereof and to desist from further disturbing or claiming possession of the disputed portion awarded to the plaintiffs. No damages and costs." (Emphasis ours).

Hence, this recourse by the FLORESES seeking a reversal of the aforesaid judgment.

On 30 July 1986, after receiving the Comment of the NICOS, we resolved to deny the Petition for lack of merit.

Upon motion for reconsideration of the FLORESES, on the ground that the Appellate Court findings with respect to the areas of the respective properties of the parties as well as the disputed portion were "totally without factual basis," we remanded the case on 21 September 1987 to respondent Appellate Court for determination of the exact area in dispute "in the interest of a more accurate determination of the controversy" and to "DECIDE the case accordingly." In effect, we had granted reconsideration and reinstated the Petition.

On 12 April 1988, the Appellate Court promulgated an Amended Decision[3] modifying the area of the disputed portion to 199 square meters only and maintaining the rest of its dispositions. The FLORESES moved for reconsideration urging that the Amended Decision affirm instead the judgment of the Trial Court in toto. This was denied by the Appellate Court stating that the issue of ownership of the disputed piece of land was before this Court; that in so far as it was concerned its finding thereon was final; and that it had already resolved the true area of the disputed portion as ordered by this Court.

Petitioners FLORESES then filed before the Appellate Court a Manifestation and Motion praying for the elevation of the case to this Court for proper disposition. This was opposed by respondents NICOS on the ground that the Petition for Certiorari with this Court had already been denied for lack of merit. On 25 August 1989 respondent Court rejected this contention and ordered the elevation of the records to us since it had already complied with our Resolution of 21 September 1987. We received the records on 1 September 1989, and the case was included in the Agenda of 18 September 1989.

With the area in controversy now accurately determined by respondent Appellate Court, the case is back with us for action on the Petition. We resolved to give due course and to decide the same.

The antecedent facts show that the NICOS own Assessors Lot No. 71, located at the corner of Delgado Street and the national highway, Miag-ao, Iloilo. The NICOS claim that the area of their lot is 689 square meters as shown by Tax Declarations (Exhibits "A", "A-1" and "B") and the sketch plans duly certified by the Office of the Provincial Assessor (Exhibits "C" and "D"); and that they have been in possession of that property since 1936. On the other hand, the FLORESES own the adjoining Assessors Lot No. 72. Their allegation is that this lot has an area of 3,173 square meters pursuant to the Deed of Sale in their favor dated 11 January 1967 (Exhibit "11") and as shown by Tax Declarations (Exhibits "1" to "5" inclusive). A sketch plan however, also indicates that the area is 3,083 square meters (Exhibit "7"). Both lots are unregistered properties.

Sometime in 1975, the FLORESES constructed a bamboo fence, and in 1978 March, a hollow-block fence to separate the two adjoining properties, over the strong protest of the NICOS who alleged that the construction encroached upon a portion of their property. As the FLORESES refused to heed the protest, on 19 April 1978, the NICOS filed an action for "Recovery of Real Property with Damages" before the Trial Court of Iloilo. During the pendency thereof, the predecessor-in-interest of the NICOS died and the latter, her children, were substituted in her stead.

As heretofore stated, the Appellate Court, even in its Amended Decision, ruled that the disputed area of 199 square meters belongs to the NICOS and that the FLORESES should demolish the fence they had erected as it intrudes into the NICOS property.

After a review of the evidence, which we had ordered elevated, we find some misapprehension of facts by the Appellate Court, sufficient to affect the outcome of the case.

We derive our bearings from Exhibit "N", the Report by the Commissioners appointed by the Court, and Exhibit "N-1", the plan they had submitted, both of which have been admitted by the parties. From those documents, we find the following as established: (1) the aggregate area disputed is, indeed, 199 square meters, Lot A of 55 square meters being claimed by the FLORESES, and Lot B of 144 square meters by the NICOS, (2) the uncontested area belonging to the NICOS is 419 square meters; while (3) the uncontested area for the FLORESES is 2,883 square meters (all per Exhibit "N-1").

Like the Trial Court, we find that neither party has proven its entitlement to the entire disputed portion of 199 square meters. Much less has either party convincingly shown the dividing line between their two properties. All contrary to the basic rule that in an action to recover, the person who claims that he has a better right to the property must prove both ownership and identity (*Laluan vs. Malpaya*, L-21231, July 30, 1975, 65 SCRA 494; Article 434, Civil Code). Accordingly, we deem it best to divide the disputed area between the parties equally, or 99.5 square meters for each of them. This will give the NICOS 518.5 square meters (419 sq. ms. + 99.5 sq. ms.), short by 170.5 square meters of their claimed 689 square meters. The FLORESES, for their part, will get 2,982.5 square meters (2,883 sq. ms. + 99.5 sq. ms.), also less by 190.5 square meters from their claim of 3,173 square meters. This, to the Court is the most equitable solution considering the attendant circumstances.

The Appellate Court theory of acquisitive prescription by the NICOS is not well taken. While the NICOS may have been in possession of their lot since 1936 in the concept of owners and planted trees thereon, these are insufficient to delineate boundaries. The bamboo fences respectively built by the parties (Exhibit "P"), relied upon by the Appellate Court, do not conclusively appear either as clear dividing lines. The sketch, Exhibit "F", neither unmistakably proves ownership by the NICOS of the disputed area of "222" square meters, as found by respondent Court.

The FLORESES will necessarily have to demolish their concrete fence and move it towards the resulting boundary, but they have only themselves to blame since they proceeded with its construction despite the verbal and written protests of the NICOS.

WHEREFORE, the judgment under review is hereby SET ASIDE and another one rendered declaring the NICOS the owners of Assessors Lot No. 1 with an area of 518.5 square meters, and the FLORESES, the owners of Assessors Lot No. 2, with an area of 2,982.5 square meters. The resulting boundary between the two lots will have to be adjusted accordingly, the expenses for survey and monumenting to be borne equally by the parties. The concrete fence that the FLORESES had constructed shall be demolished at their expense. No costs.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

Regalado, J., no part, did not participate in deliberation.

[1] Presided over by Judge Catalino Castaneda, Jr.

[2] Composed of Presiding Justice Ramon G. Gaviola, Jr., Justices Eduardo P. Caguioa, Ma. Rosario Quetulio-Losa and Leonor Ines Luciano (ponente).

[3] Penned by Justice Leonor Ines Luciano and concurred in by Justices Oscar M. Herrera and Justo P. Torres, Jr.

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