

## **SPECIAL FIRST DIVISION**

**[ G.R. No. 136911, February 11, 2003 ]**

**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 SURNAMED CASIMIRO, PETITIONERS, VS. COURT OF APPEALS, FORMER THIRTEENTH DIVISION, NILDA A. PAULIN, MANOLITO A. PAULIN, SUSAN P. MARTIN, SYLVIA P. FARRES, CYNTHIA P. LAZATIN, CELESTINO P. PAULIN AND UNIWIDE SALES REALTY AND RESOURCES CORPORATION, RESPONDENTS.**

### **R E S O L U T I O N**

**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 Casimiros 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 Casimiros 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.<sup>[1]</sup>

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,<sup>[2]</sup> 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.<sup>[3]</sup>

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.<sup>[4]</sup>

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.