

SECOND DIVISION

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

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

D E C I S I O N

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