7 Phil. 596

[G.R. No. 3148. March 05, 1907]

ENRIQUE MARIA BARRETTO, PLAINTIFF AND APPELLEE, VS. THE MUNICIPAL BOARD OF MANILA, DEFENDANT AND APPELLANT.[1]

D E C I S I O N

PER CURIAM:

This is a written exception of the appellee wherein exception is entered against the final decision of this court together with appellee's petition for a rehearing of this cause. After review of the grounds upon which this last petition is based we find:

Against the first ground: That the conditions under which the donor made the donation are not precedent. Such conditions are: (*a*) Not to erect any building on the lot donated; (*b*) not to use the said lot for any other purpose than in beautifying the city, *to which end he imposed* upon the municipality the *obligation* of acquiring the lots adjoining the lot donated in sufficient number to form, together with the lot donated, a public plaza with gardens and streets. (Complaint IV, p. 2, bill of exceptions.)

If the two conditions (*a*) and (*b*) were precedent the delivery of the lot would have been delayed and retarded *until* such time as the donee had complied with such conditions, which conditions are certainly negative and not consistent with a failure to perform or comply with the same; and it would not have been possible to have complied with such conditions without the delivery of the lot having first been made by the donor and the donee put in possession of the same, and without perfecting and consummating the gift or donation. In contracts containing a condition precedent, no right or action is given or acquired until such condition is complied with; before the compliance with the condition is accomplished there exists nothing but the hope of acquiring such right, and this notwithstanding that the donor delivered to the donee the land donated. The two conditions are, therefore, *"resolutorias."*

Against the second ground: It is not proven that the two conditions (*a*) and (*b*) have not been complied with; it has not been proven that the donee erected any building on the lot

donated or that the lot has been used for any other object. The compliance with the *obligation* to acquire the adjoining lots in sufficient numbers to form or make a public plaza can be considered even less. This is a burden or obligation rather than a condition precedent and it is indefinite in that the number of lots to be acquired are not determined, nor what lots, that is to say, in what location said lots are to be or in what direction they shall run in forming, with the lot donated, the public plaza; nor could the value of such lots be determined so that the donee might judge whether such donation or gift was an act of liberality or a reciprocal contract, and this is burdensome enough, it being an obligation or promise to accomplish a thing of more value in itself than the value of the thing donated, all of which is not convenient to comply with by reason of being burdensome and onerous, and more convenient and practicable, *when the time arrives*, to rescind and cancel the said donation. It is evident that such obligation could only be considered a condition or obligation in a *resolutoria* sense of the donation or gift when not complied with in its place and time.

The supreme court of Spain in a judgment of January 7, 1861, hands down a decision entirely applicable to the donation, the subject-matter in question herein, made on June 16, 1885, and establishes this doctrine of jurisprudence: "That when a conditional donation is made, imposing in addition thereto a burden on the donee, this should not be taken into consideration as a condition but as a mere obligation, the nonfulfillment of which can not be taken advantage of by the person interested in the inefficacy of said donation."

Against the third and fourth grounds: The donor, appellee herein, with respect to the donation the subject-matter herein, claims that he is in the exercise of two rights, one to compel the donee to comply with the conditions imposed in the donation or gift, and the other the right to revoke or rescind that donation; and the court in its decision has not denied to the appellee the option of exercising either one or the other of the two rights, and the court understood perfectly well that the actor (donor) chose that option, that is, for the revocation of the donation and the recovery of the thing donated, and this having been so understood by the court, it was not proper to impose upon the actor (donor) the burden or obligation of selecting as one of the alternative rights, one not elected or selected by said donor. The court is completely in error wherein it, in its decision, has deprived the actor (donor) of the right of option and has imposed upon him the exercise of one of the alternative rights which are given to him by law.

What the actor (donor) has done is to elect his right in the revocation of the donation, basing this revocation on the failure to comply with the conditions imposed; and in the

decision of the court it is stated that there were no fit terms in law to value or consider this cause of action, that is to say, if there was or was not a failure to comply with the conditions imposed in the donation, inasmuch as the only thing appearing in the record of the case was from what time the donee should comply with such obligations or conditions, but not until when or within what time or period the donee had to comply with the same, if within a year, within ten or within twenty; and, when the debtor (obligated party) has no fixed time within which he should comply with an obligation, it is not possible to determine the moment he becomes delinquent, and in failing to comply with the obligation becoming liable therefor by reason of the nonexecution of the obligation. It is not possible then for the courts to find the obligation not complied with, in such case, without being arbitrary, and such finding can be arrived at only when it is known from what time the obligation has not been complied with and from what date the creditor has the right of action. It was necessary, in all events, according to law, to have expressed a precise period or time from which the fact of failure to comply with the obligation could have been made known and from which an action could have been made effective. Therefore, while not expressed in the decision of the court it is implied that the actor (donor) worked without being with right of action, because in obligations calling for the fulfillment of certain things, although the action is born from the date of the contract yet it is not effective until the falling due of the obligation, and, where there is no stipulation as to the maturity of an obligation, the courts will then fix such maturity or time; in other words, there are no fit terms or conditions expressed whereby it can be found or seen that such obligation has not been complied with or from what time an obligation of an indefinite term and having no maturity has not been fulfilled or complied with.

The court is also in error in granting a thing not prayed for by the defendant, inasmuch as the court has not given a time or period within which the obligations or conditions as imposed by the plaintiff can now be complied with and this against the claims of plaintiff. What the court has done is to put the things in a state or condition whereby the parties could say what they can not say at this time—one thing is that the conditions have not been complied with, the other, that the conditions have been complied with—a thing, one or the other can not be determined but from a given moment, that is from the falling due of the obligation to perform a given act. If the defendant has alleged that he has complied with the conditions imposed, it is because that, throughout the litigation or case, he has shown that he understood that there were no more than two conditions imposed, which in reality is true, without taking into consideration the obligation imposed, in accordance with the terms and conditions of the offer of the donor, but with respect to which, whatever may be its true

nature, it can not be argued that the obligated party has not complied with such condition, the obligated party being at this time still with the power and right to comply within an indefinite time with said condition, during the time that judicial remedy is not had providing for the improvidence or omission of the parties or mutual trust or confidence, or the deference of the one to the other. Judgment or relief can not be had revoking or taking away a condition or a right without it having first been evidenced or proven that an obligation has not been complied with, and it is impossible, in any way or manner, to establish or find in a judgment, when it is simply known from what time the obligation should be complied with, but not known within what time or when such obligation should be complied with in full accomplishment of the same.

And it is not rigorously or absolutely certain that law 6 of title 4 of the fifth *Partida*, the only law applicable to this case, grants an alternative or optional right, taking into consideration the decision of the supreme court of Spain of October 12, 1858, which says: "A donation can not be revoked for the reason or because the donee be delinquent in the compliance of the accepted obligations, if the donor *does not compel the compliance of the same judicially*." So the phrase of the law, "and in case of noncompliance or in case of bad performance of the same, he can be compelled to do that which he agreed or promised to do, or cancel and rescind the donation made," does not authorize that one or another thing be done, but that both should be done. According to the terms of the said decision: "He should have demanded the compliance therewith, and that *only in case of denial* to so do, should proceed with the cancellation of the donation, *in accordance with the provisions* of law 6 of the same title and *Partida*." (Title 4, *Partida* 5.) In accordance with this decision the complaint should have been drawn in the sense of asking that the donee be compelled to comply with the obligation to purchase the adjoining lots in sufficient number to form a public plaza, and, in the event of the donee not doing so, that the donation be rescinded and canceled.

By this is seen the manifest necessity of a term or period within which the donee should comply with such a burdensome, vague, indeterminate, and indefinite obligation.

Against the fifth and sixth grounds: From the fact that the court has not declared the donation null or rescinded by reason of the nonexistence of a public instrument, it, the court, has not infringed or violated article 633 of the Civil Code, for the reason that the Civil Code with respect to the *form* of this donation could not prevail or govern a similar act carried out and executed in June, 1885, not having been in force and effect at that time but after; that is to say, from and after October, 1889.

Law 9, title 4 of the fifth *Partida*, is the law applicable to the form of the donation, which law exacts and requires a *letter* (*carta*) or *holding* or *knowledge* of a higher court, that is to say, a written *document* and the *exhibition of a public instrument* for proper judicial approbation when the thing donated has for its value more than 500 *maravedises* (old Spanish coins) in gold; and there is not the least proof in this record that the land donated was worth more that 500 *maravedises* in gold, or this sum's equivalent in money of the country, an equivalent which should be determined judicially in accordance with the many decisions of the supreme court of Spain.

If it is expressed with all precision in the Civil Code as to the necessity of a public instrument for certain donations referred to in the former legislation, in order to judge the donation, the subject-matter herein, "it can not be affirmed with certainty," says Manresa, "that a public instrument would be required as necessary, except for the purpose of effecting the inscription or registry in the office of the registrar of properties. There is no doubt," he continues, "that the *Partidas* required and exacted a letter (instrument) for these donations (those donations exceeding in value more than 500 *maravedises* in gold); but it is not very clear as to whether this word alluded or referred only to the written form or particularly to the public document or instrument." (5 Manresa, 100.) Nor can the authorities Laserna and Montalban, Sanchez Roman, and others accept the opinion of other authorities who interpret the word *carta* (letter) to mean a public instrument, when, according to law 1 of title 18 of the third *Partida*, *carta* (letter) is, in generic conception, that which is defined in said law as *a public instrument*, and that which is a public instrument, and the sort or kind is not of any of the classes or species included or intended under that law.

That which is certain is that the exhibition of the public instrument or judicial approbation or approval was necessary for that class of donations. More than that, according to the decision of the supreme court of Spain, of October 14, 1884, "law 9, title 4 of the fifth *Partida* is not violated or infringed if it does not appear that the sum donated exceeds that of 500 *maravedises* in gold, which said law permits a donation without the necessity of exhibiting a public instrument before a court and for not having verified the price or value of the wheat donated at the time or period of the contract, which value, as is the case with all merchandise, is subject to alteration and change according to quality and the needs or exigencies of the market." And it must be taken into consideration in this decision that the party who interposed an abrogation or annulment under the direction and advice of a very reputable attorney, did not allege the absence of a public instrument (the donation having been made and consummated by means of a private document) but alleged only the

necessity of the judicial approval or approbation, “the only thing that appears clear in the law,” according to Manresa.

Against the last ground relative to the acceptance, the facts are evident in the record. We can not conceive how the appellee could have made the delivery of the land, and, as he pretends and alleges, the delivery of the titles of the property, or how the thing donated came to be in the possession of the donee for the large space or period of time as is alleged and set forth in the same complaint, if there had been no acceptance and notification of the acceptance and mutual consent and understanding between donor and donee. It is not logical to infer in these premises that the donation was never accomplished, but, to the contrary, that the donation was made and accomplished, and that the domain and ownership of the thing donated was transmitted and transferred, and this, the thing donated possessed by the donee under a title of ownership and it is his, the donee’s, at the present time beyond all dispute; the only thing disputable being the compliance of one obligation imposed in the donation in a *resolutorio* manner, the only point to be considered in this decision.

Therefore, we find, after taking into consideration the protest and exception against the decision herein, and the petition praying for a rehearing, that there are no grounds or sufficient reason for the granting of this petition. The petition is denied with the costs against the petitioner.

Arellano, C. J., Torres, Mapa, Johnson, Carson, Willard, and *Tracey, JJ.,* concur.

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[1] For the original case see p. 416, *supra*.

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