

GREGORIO ARANETA, INC., PETITIONER, VS. THE PHILIPPINE SUGAR ESTATES DEVELOPMENT CO., LTD., RESPONDENT.

G.R. No. 22558. May 31, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari to review a judgment of the Court of Appeals, in its CA-G.R. No. 28249-R, affirming with modification, an amend-atory decision of the Court of First Instance of Manila, in its Civil Case No. 36303, entitled "Philippine Sugar Estates Development Co., Ltd., plaintiff, versus J.M. Tuason & Co., Inc. and Gregorio Araneta, Inc., defendants".

As found by the Court of Appeals, the facts of this case are:

J.M. Tuason & Co., Inc. is the owner of a big tract of land si-tuated in Quezon City, otherwise known as the Sta. Mesa Heights Subdivision, and covered by a Torrens title in its name. On July 28, 1950, through Gregorio Araneta, Inc., it (Tuason & Co.) sold a portion thereof with an area of 43,034.4 square meters, more or less, for the sum of P430,514.00, to Philippine Sugar Estates Development Co., Ltd. The parties stipulated, among others, in the contract of purchase and sale with mortgage, that the buyer will -

"Build on the said parcel of land the Sto Domingo Church and Convent;"

while the seller for its part will -

"Construct streets on the NE and NW and SW sides of the land herein sold so that the latter will be a block surrounded by streets on all four sides; and the street on the NE side shall be named 'Sto. Domingo Avenue';"

The buyer, Philippine Sugar Estates Development Co., Ltd., finished the construction of Sto. Domingo Church and Convent, but the seller, Gregorio Araneta, Inc., which began constructing the streets, is unable to finish the construction of the street in the Northeast side (named Sto. Domingo Avenue) because a certain third party, by the name of Manuel Abundo, who has been physically occupying a middle part thereof, refused to vacate the same; hence, on May 7, 1958, Philippine Sugar Estates Development Co., Ltd. filed its complaint against J.M. Tuason & Co., Inc. and Gregorio Araneta, Inc., in the above stated court of first instance, seeking to compel the latter to comply with their obligation, as stipulated in the above-mentioned deed of sale, and/or to pay damages in the event they failed or refused to perform said obligation.

Both defendants J. M. Tuason and Co. and Gregorio Araneta, Inc. answered the complaint, the latter particularly setting up the principal defense that the action was premature since its obligation to construct the streets in question was without a definite period which needs to be fixed first by the court in a proper suit for that purpose before a complaint for specific performance will prosper.

The issues having been joined, the lower court proceeded with the trial, and upon its termination, it dismissed plaintiff's complaint (in a decision dated May 31, 1960), upholding the defenses interposed by defendant Gregorio

Araneta, Inc.

Plaintiff moved to reconsider and modify the above decision, praying that the court fix a period within which defendants will comply with their obligation to construct the streets in question.

Defendant Gregorio Araneta, Inc. opposed said motion, maintaining that plaintiff's complaint did not expressly or impliedly allege and pray for the fixing of a period to comply with its obligation and that the evidence presented at the trial was insufficient to warrant the fixing of such a period.

On July 16, 1960, the lower court, after finding that "the proven facts precisely warrants the fixing of such a period", issued an order granting plaintiff's motion for reconsideration and amending the dispositive portion of the decision of May 31, 1960, to read as follows:

"WHEREFORE, judgment is hereby rendered giving defendant Gregorio Araneta, Inc., a period of Two (2) Years from notice hereof, within which to comply with its obligation under the contract, Annex A."

Defendant Gregorio Araneta, Inc. presented a motion to reconsider the above quoted order, which motion, plaintiff opposed.

On August 16, 1960, the lower court denied defendant Gregorio Araneta, Inc.'s motion; and the latter perfected its appeal to the Court of Appeals.

In said appellate court, defendant-appellant Gregorio Araneta, Inc. contended mainly that the relief granted, i.e., fixing of a period, under the amendatory decision of July 16, 1960, was not justified by the pleadings and not supported by the facts submitted at the trial of the case in the court below and that the relief granted in effect allowed a change of theory after the submission of the case for decision.

Ruling on the above contention, the appellate court declared that the fixing of a period was within the pleadings and that there was no true change of theory after the submission of the case for decision since defendant-appellant Gregorio Araneta, Inc. itself squarely placed said issue by alleging in paragraph 7 of the affirmative defenses contained in its answer which reads -

"7. Under the Deed of Sale with Mortgage of July 28, 1950, herein defendant has a reasonable time within which to comply with its obligations to construct and complete the streets on the NE, NW and SW sides of the lot in question; that under the circumstances, said reasonable time has not elapsed;

Disposing of the other issues raised by appellant which were ruled as not meritorious and which are not decisive in the resolution of the legal issues posed in the instant appeal before us, said appellate court rendered its decision dated December 27, 1963, the dispositive part of which reads -

"IN VIEW WHEREOF, judgment affirmed and modified; as a consequence, defendant is given Two (2) years from the date of finality of this decision to comply with the obligation to construct streets on the NE, NW and SW sides of the land sold to plaintiff so that the same would be a block surrounded by streets on all four sides."

Unsuccessful in having the above decision reconsidered, defendant-appellant Gregorio Araneta, Inc. resorted to a petition for review by certiorari to this Court. We gave it due course.

We agree with the petitioner that the decision of the Court of Appeals, affirming that of the Court of First Instance is legally untenable. The fixing of a period by the courts under Article 1197 of the Civil Code of the Philippines is sought to be justified on the basis that petitioner (defendant below) placed the absence of a pe-riod in issue by pleading in its answer that the contract with respondent Philippine Sugar Estates Development Co., Ltd. gave petitioner Gregorio Araneta, Inc. "reasonable time within which to comply with its obligation to construct and complete the streets." Neither of the courts below seems to have noticed that, on the hypothesis stated, what the

answer put in issue was not whether the court should fix the time of performance, but whether or not the parties agreed that the petitioner should have reasonable time to perform its part of the bargain. If the contract so provided, then there was a period fixed, a "reasonable time"; and all that the court should have done was to determine if that reasonable time had already elapsed when suit was filed. If it had passed, then the court should declare that petitioner had breached the contract, as averred in the complaint, and fix the resulting damages. On the other hand, if the reasonable time had not yet elapsed, the court performance was bound to dismiss the action for being premature. But in no case can it be logically held that under the plea above quoted, the intervention of the court to fix the period for performance was warranted, for Article 1197 is precisely predicated on the absence of any period fixed by the parties.

Even on the assumption that the court should have found that no reasonable time or no period at all had been fixed (and the trial court's amended decision nowhere declared any such fact) still, the complaint not having sought that the Court should set a period, the court could not proceed to do so unless the complaint was first amended; for the original decision is clear that the complaint proceeded on the theory that the period for performance had already elapsed, that the contract had been breached and defendant was already answerable in damages.

Granting, however, that it lay within the Court's power to fix the period of performance, still the amended decision is defective in that no basis is stated to support the conclusion that the period should be set at two years after finality of the judgment. The last paragraph of Article 1197 is clear that the period can not be set arbitrarily. The law expressly prescribes that -

"the Courts shall determine such period as may under the circumstances have been probably contemplated by the parties."

All that the trial court's amended decision (Rec. on Appeal, p. 124) says in this respect is that "the proven facts precisely warrant the fixing of such a period", a statement manifestly insufficient to explain how the two-year period given to petitioner herein was arrived at.

It must be recalled that Article 1197 of the Civil Code involves a two-step process. The Court must first determine that "the obligation does not fix a period" (or that the period is made to depend upon the will of the debtor)," but from the nature and the circumstances it can be inferred that a period was intended" (Art. 1197, pars. 1 and 2). This preliminary point settled, the Court must then proceed to the second step, and decide what period was "probably contemplated by the parties" (Do., par. 3). So that, ultimately, the Court can not fix a period merely because in its opinion it is or should be reasonable, but must set the time that the parties are shown to have intended. As the record stands, the trial Court appears to have pulled the two-year period set in its decision out of thin air, since no circumstances are mentioned to support it. Plainly, this is not warranted by the Civil Code.

In this connection, it is to be borne in mind that the contract shows that the parties were fully aware that the land described therein was occupied by squatters, because the fact is expressly mentioned therein (Rec. on Appeal, Petitioner's Appendix B, pp. 12-13). As the parties must have known that they could not take the law into their own hands, but must resort to legal processes in evicting the squatters, they must have realized that the duration of the suits to be brought would not be under their control nor could the same be determined in advance. The conclusion is thus forced that the parties must have intended to defer the performance of the obligations under the contract until the squatters were duly evicted, as contended by the petitioner Gregorio Araneta, Inc.

The Court of Appeals objected to this conclusion that it would render the date of performance indefinite. Yet, the circumstances admit no other reasonable view; and this very indefiniteness is what explains why the agreement did not specify any exact periods or dates of performance.

It follows that there is no justification in law for the setting of the date of performance at any other time than that

of the eviction of the squatters occupying the land in question; and in not so holding, both the trial Court and the Court of Appeals committed reversible error. It is not denied that the case against one of the squatters, Abundo, was still pending in the Court of Appeals when its decision in this case was rendered.

IN VIEW OF THE FOREGOING, the decision appealed from is re-versed, and the time for the performance of the obligations of petitioner Gregorio Araneta, Inc. is hereby fixed at the date that all the squatters on affected areas are finally evicted therefrom.

Costs against respondent Philippine Sugar Estates Development, Co., Ltd.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

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