

SENEN B. AGUILAR, PETITIONER, VS. VIRGILIO B. AGUILAR AND ANGEL B. AGUILAR, RESPONDENTS, ALEJANDRO C. SANGALANG, INTERVENOR-RESPONDENT.

G.R. NO. 141613. December 16, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.

Assailed in this petition for review on certiorari are the Decision[1] and Resolution[2] of the Court of Appeals, dated June 11, 1999 and January 11, 2000, respectively, in CA-G.R. CV No. 55750.

The parties in this case are brothers, except Alejandro Sangalang, herein intervenor-respondent. As will be subsequently discussed, this is the second time that the brothers Aguilar seek the intervention of this Court regarding the same facts and the same subject matter. The first was in *Aguilar v. Court of Appeals*, G.R. No. 76351 decided on October 29, 1993 against Senen B. Aguilar.[3] It is time to writ finis to this family wrangling.

On October 28, 1993, Senen and Virgilio purchased a house and lot located in Parañaque City, Metro Manila for the benefit of their father, Maximiano Aguilar (now deceased). The brothers wanted their father to enjoy his retirement in a quiet neighborhood. On February 23, 1970, they executed a written agreement stipulating that their shares in the house and lot would be equal; and that Senen would live with their father on condition that he would pay the Social Security System (SSS) the remaining loan obligation of the former owners.

In 1974, their father died. Virgilio then demanded that Senen vacate the house and that the property be sold, the proceeds to be divided between them. Senen refused to comply with Virgilio's demand.

On January 12, 1979, Virgilio filed a complaint with the Court of First Instance (now Regional Trial Court) of Rizal at Pasay City for specific performance. Virgilio prayed that Senen be compelled to sell the property so that the proceeds could be divided between them.

However, during the pre-trial, neither Senen nor his counsel appeared. Thus, Senen was declared as in default by the trial court and Virgilio was allowed to present his evidence ex-parte.

On July 26, 1979, the trial court rendered its Decision, declaring the brothers co-owners of the house and lot and are entitled to equal shares; and ordering that the property be sold, the proceeds to be divided equally between them. The trial court also ordered Senen to vacate the property and to pay Virgilio rentals with interests corresponding to the period from January 1975 until he leaves the premises.

On appeal, docketed as CA-G.R. CV No. 03933, the Court of Appeals reversed the trial court's Decision.

Virgilio then filed with this Court a petition for review on certiorari, docketed as G.R. No. 76351.

On October 29, 1993, this Court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals dated 16 October

1986 is REVERSED and SET ASIDE. The decision of the trial court in Civil Case No. 6912-P dated 26 July 1971 is REINSTATED, with the modification that respondent Senen B. Aguilar is ordered to vacate the premises in question within ninety (90) days from receipt of this decision, and to pay petitioner Virgilio B. Aguilar, a monthly rental of P1,200.00 with interest at the legal rate from the time he received the decision of the trial court directing him to vacate until he effectively leaves the premises.

The trial court is further directed to take immediate steps to implement this decision, conformably with Art. 498 of the Civil Code and the Rules of Court. This decision is final and executory.

SO ORDERED."

On March 27, 1995, Senen filed with the Regional Trial Court, Branch 260, Parañaque City, an action for legal redemption against Virgilio and another brother, Angel, docketed as Civil Case No. 95-039. In his complaint, Senen alleged that while he knows that Virgilio sold his $\frac{1}{2}$ share of the property to Angel in January 1989, however, he (Senen) was not furnished any written notice of the sale. Consequently, as a co-owner, he has the right to redeem the property.

Meanwhile, on November 27, 1995, pursuant to this Court's Decision in G.R. No. 76351, the property was sold at public auction to Alejandro C. Sangalang, intervenor-respondent herein. Virgilio then received his share of the proceeds as well as the rental payments due from Senen.

By then, Virgilio had moved to California, USA. It was only on January 25, 1997 that he was served, through the Philippine Consulate in San Francisco, a copy of Senen's complaint in Civil Case No. 95-039.

On February 24, 1997, Virgilio filed a motion to dismiss the complaint for lack of cause of action and forum shopping.

In an Order dated June 27, 1997, the trial court dismissed Civil Case No. 05-039 on the ground of laches, holding that Senen incurred a delay of seven (7) years before asserting his right to redeem the property in question.

On appeal, the Court of Appeals affirmed the assailed Order of the trial court.

Hence, the instant petition for review on certiorari.

The sole issue for our resolution is whether the Court of Appeals erred in holding that Senen's complaint for legal redemption in Civil Case No. 05-039 is barred by laches.

Legal redemption (*retracto legal de comuneros*) is a privilege created by law, partly by reason of public policy and partly for the benefit of the redemptioner to afford him a way out of a disagreeable or inconvenient association into which he has been thrust.[4]

With respect to redemption by co-owners, in case the share of a co-owner is sold to a third person, the governing law is Article 1620 of the Civil Code which provides:

"ART. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable rate.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common."

The purpose behind Article 1620 is to provide a method for terminating the co-ownership and consolidating the dominion in one sole owner.[5]

Article 1623 of the same Code also provides:

"ART. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendee, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendee that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners."

From the above provisions, the following are the requisites for the exercise of legal redemption: (1) There must be a co-ownership; (2) one of the co-owners sold his right to a stranger; (3) the sale was made before the partition of the co-owned property; (4) the right of redemption must be exercised by one or more co-owners within a period of thirty days to be counted from the time that he or they were notified in writing by the vendee or by the co-owner vendor; and (5) the vendee must be reimbursed for the price of the sale.

In this case, the sale took place in January 1989. Petitioner admits that he has actual knowledge of the sale. However, he only asserted his right to redeem the property in March 1995 by filing the instant complaint. Both the trial court and the Appellate Court ruled that this was seven (7) years late.

Petitioner, however, now contends that there being no written notice to him of the sale by the vendee or vendor, the thirty-day redemption period has not prescribed.

Petitioner's contention lacks merit. The old rule is that a written notice of the sale by the vendor to his co-owners is indispensable for the latter to exercise their retracto legal de comuneros.[6] More recently, however, we have relaxed the written notice requirement. Thus, in *Si v. Court of Appeals*, [7] we ruled that a co-owner with actual notice of the sale is not entitled to a written notice for such would be superfluous. The law does not demand what is unnecessary.

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which could or should have been done earlier through the exercise of due diligence.[8] Otherwise stated, laches is the negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it has either abandoned or declined to assert it.[9] Its elements are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which he bases his suit; and (4) injury or prejudice to the defendant in the event, relief is accorded to the complainant, or the suit is not held barred.[10]

Petitioner has actual knowledge of the sale of Virgilio's share to Angel in 1989. As provided by Article 1623, he has thirty days from such actual knowledge within which to exercise his right to redeem the property. Inexplicably, petitioner did not take any action. He waited for seven (7) years before filing his complaint. Definitely, such an unexplained delay is tantamount to laches. To be sure, to uphold his right would unduly cause injury to respondent-intervenor, a purchaser in good faith and for value.

Moreover, by the time Senen filed Civil Case No. 95-039 for legal redemption, his right was no longer available to him. We have held that after a property has been subdivided and distributed among the co-owners, the community has terminated and there is no reason to sustain any right of pre-emption or redemption.[11]

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 55750 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 27-47. The court's opinion was written by Associate Justice Corona Ibay-Somera and concurred in by Associate Justices Oswaldo D. Agcaoili and Bernardo P. Abesamis (all retired).

[2] Rollo, p. 48.

[3] Reported in 227 SCRA 472 (1993).

[4] Villasor v. Medel, 81 Phil. 546, 550 (1948).

[5] Estrada v. Reyes, 33 Phil. 31, 35 (1915).

[6] Butte v. Manuel Uy & Sons, Inc., G.R. No. 15499, February 28, 1962, 4 SCRA 526, 533.

[7] G.R. No. 122047, October 12, 2000, 342 SCRA 463.

[8] Larena v. Mapili, G.R. No. 146341, August 7, 2003, 408 SCRA 484, 493, citing Ramos v. Heirs of Honoro Ramos, Sr., 381 SCRA 594 (2002).

[9] Reyes v. Reyes, G.R. No. 150913, February 20, 2003, 398 SCRA 24, 35, citing Reyes v. Court of Appeals, 315 SCRA 626 (1999).

[10] Felix Gochan & Sons Realty Corp. v. Heirs of Raymundo Baba, G.R. No. 138945, August 19, 2003, 409 SCRA 306, 315, citing Santos v. Santos, 366 SCRA 395 (2001).

[11] Del Rosario v. Bansil, G.R. No. 51665, November 29, 1989, 179 SCRA 662, 666, citing Caro v. Court of Appeals, 113 SCRA 17 (1982), Caram v. Court of Appeals, 101 Phil. 315 (1957).

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