

## THIRD DIVISION

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

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

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.**

Assailed in this petition for review on *certiorari* are the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> 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.<sup>[3]</sup> 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 ½ 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.