

IN THE MATTER OF THE PETITION FOR NATURALIZATION AS FILIPINO CITIZEN. TY MA SIU, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.

G.R. No. L-7797. September 15, 1955

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

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

On February 20, 1950, petitioner and appellee Ty Ma Siu filed with the Court of First Instance of Leyte a petition for naturalization as Filipino citizen. After publication of the petition but before trial, counsel for petitioner moved to dismiss the same on the ground that petitioner was no longer interested in its continuance. On May 23, 1952, the Court below entered an order dismissing the petition.

Nineteen months after the order of dismissal, that is, on December 23, 1953, counsel for petitioner filed with the lower Court a motion to reconsider the order of dismissal and to reinstate the petition in question, upon the ground that his previous motion to dismiss was made on the mistaken belief that petitioner had already lost interest in the prosecution of his petition because of his long stay in Manila; but that it appeared that petitioner had gone to Manila only for medical treatment and had returned to Leyte to take up his case again. The Provincial Fiscal opposed the motion for reinstatement, claiming that the same was filed beyond the time allowed by Rule 38, section 3, of the Rules of Court. The Court below, however, ruled that the provisions of section 3 of Rule 38 do not apply to naturalization cases which are in the nature of unilateral actions, and ordered the revival of the petition and its restoration in the court's calendar. Wherefore, the fiscal' filed a formal opposition to the petition for naturalization, based on more or less the same grounds as his opposition to its reinstatement. The case was then tried, after which the Court below rendered judgment declaring petitioner Ty Ma Siu a Filipino citizen. From this decision, the government, represented by the Solicitor General, has appealed to this Court, insisting that the motion for the reinstatement of the petition for naturalization was filed beyond the period allowed by Rule 38, and that consequently, the Court below had lost jurisdiction to reinstate and hear the same.

We agree with the Solicitor General that Rule 38 providing for relief against judgments or orders taken against a party through fraud, accident, or excusable negligence, applies to naturalization cases. As far back as 1918, this Supreme Court ruled that the provisions for relief under the then section 113 of Act 190 (reproduced in section 2 of Rule 38) applied to non-contentious proceedings.

"The use of the word 'judgment, order or other proceedings' in this section indicates an intention on the part of the legislature to give a wide latitude to the remedy here provided and in our opinion its operation is not be restricted to judgments or orders entered in ordinary contentious litigation where a plaintiff impleads a defendant and brings him into court by personal service of process. In other words, the utility of the provision is not limited to actions proper, but extends to all sorts of judicial proceedings." (In re Estate of Johnson, 39 Phil., 156, 164.)

And this rule was reaffirmed subsequently in Reyes vs. Gonzales, 47 Phil., 339; Panis vs. Yangco, 52 Phil., 499;

and Elviña vs. Filamor, 56 Phil., 505. We see no reason that would sanction a departure from the rule.

According to Rule 132, the provisions of Rule 38 of the Rules of Court may be given suppletory application in naturalization cases whenever practicable and convenient. Assuming that the grounds for the application of Rule 38 exist in this case, the relief asked for by petitioner can be granted only within the period prescribed therein; that is, the petition must be filed "within sixty days after the petitioner learns of the judgment, order or proceeding to be set aside, and not more than six months after such judgment or order was entered or such proceeding was taken" (section 2, Rule 38). Unless this period is given enforcement on this case, there would be no limitation to the right of petitioner to ask for the reinstatement of his petition no matter how long a time has elapsed from the date it was dismissed, to the date the reinstatement is asked for. The motion to reinstate his petition was filed by petitioner 19 months after the dismissal thereof. Clearly, his motion for reinstatement can not be sustained for having been filed out of time. The proper procedure for petitioner would be to file another petition, which should be published anew in accordance with the Naturalization Law.

Wherefore, the decision appealed from is vacated, and the present petition for naturalization dismissed, without prejudice to the filing of another petition by petitioner Ty Ma Siu. Costs against petitioner. So ordered.

Decision appealed from vacated and the present petition for naturalization dismissed, without prejudice to the filing of another petition by petitioner.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion,, JJ., concur.

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