

IN THE MATTER OF CORRECTION OF ENTRIES IN THE BIRTH CERTIFICATE IN THE CIVIL REGISTRY OF MANILA, ADELINA C. VIRAY, ET AL., PETITIONERS-APPELLEES, VS. REPUBLIC OF THE PHILIPPINES...

G.R. No. L-26588. September 30, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal by the Government from the order of the Court of First Instance of Manila, Branch XXII, granting the petition of herein appellee for the correction of certain entries in the record of her birth in the Civil Registry of Manila. The case was submitted for decision without appellee's brief in reply to that of appellant.

In a verified petition filed with the lower court on October 12, 1965 Adelina C. Viray alleged, among other things, that on June 17, 1946 the Medical Office of the Bureau of Health (then in charge of the Maternity and Children's Hospital) reported to the Civil Registry of Manila the fact of the petitioner's birth in said hospital on June 11, 1946; that the corresponding entry in the said registry shows "Adelaide Kwong" and "Servillano Kwong" as her name and the name of her father, respectively; that her real name is Adelina C. Viray and his father's, Servillano Viray y Concepcion; that the said entries are clerical errors and are not in accordance with the information given by her mother; and that since birth she has been using the name Adelina C. Viray. Petitioner prayed that the erroneous entries be corrected accordingly. On February 21, 1966 the Solicitor General filed an opposition on the ground that the petition states no cause of action for the reason that the errors sought to be corrected are substantial in nature, since they involve a change of names. On June 25, 1966 the trial court granted the petition. Hence the instant appeal.

The order appealed from must be reversed and the petition denied. In the first place, as far as the petitioner is concerned, the proper petition should be one for change of name under Rule 103 and not for mere correction of a clerical error in the registry under Article 412 of the Civil Code. The error certainly is not clerical but substantial in nature, and is not patent or visible on the face of the record. The summary proceedings under Article 412 "only justify an order to correct innocuous or clerical errors that are visible to the eyes or obvious to the understanding." (Black vs. Republic, L-10869, Nov. 28, 1958; Ansaldo vs. Republic, L-10226, Feb. 14, 1958; Tan Su vs. Republic, L-12140, April 29, 1959; Bentoto vs. Republic, L-14978, May 23, 1961; De Castro vs. Republic, L-17431, April 30, 1963; Lui Lin vs. Republic, L-18213, Dec. 24, 1963.)

Even granting that the requirements of Rule 103 as to publication and notice of hearing have been complied with and therefore the petition may be treated as one for change of name, still the same is fatally defective in that the name "Adelina Kwong" sought to be corrected does not appear in the caption of the petition nor in the notice of hearing which was published. In Ng Yao Siong vs. Republic, L-20306, March 31, 1966, reiterated in Chan Chin vs. Local Civil Registrar of Manila, L-27159, September 17, 1969, it was held:

"It is our view that his failure in the heading of the application to give the true name sought to be changed is

fundamental; such failure is non-compliance with the strict requirements of publication; it is fatal; and the court did not acquire jurisdiction to hear the case.

“x x x Notices in the newspapers, like the one under consideration, usually appear in the back pages. The reader, as is to be expected, merely glances at the title of the petition. It is only after he has satisfied himself that the title interests him, that he proceeds to read down further. The probability is that the portions in the publication heretofore quoted will escape the reader's notice. The purpose for which the publication is made, that is, to inform, may thus be unserved.”

And as far as the petitioner's father is concerned, the order of correction is unjustified since he does not appear as one of the petitioners, nor is his name included in the publication of the notice of hearing.

WHEREFORE, the order appealed from is reversed and the petition is denied, without pronouncement as to costs.

Reyes, J.B.L., Acting C.J., Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., took no part.

Concepcion, C.J., on leave.

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