

PETITION TO BE ALLOWED TO FOLLOW OR TO ACQUIRE PHIL-IPPINE CITIZENSHIP BY VIRTUE OF MARRIAGE TO A FILIPINO CITIZEN. WONG SAU MEI AND ANASTACIO RABO (TA CHING TA), PETITIONERS-AP...

G.R. No. L-22551. March 16, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The Solicitor General appealed from the decision of the Judge of Court of First Instance of Camarines Norte.

It is established that on December 29, 1961, petitioner Wong Sau Mei, then seventeen years old and a citizen of Nation-alist China, was admitted into the country as a temporary visi-tor authorized to stay until March 15, 1962 and was issued ACR B-6239 on the basis of her representation that her Chinese father, Wong Sum alias Jose King, is a permanent resident of this country with whom she lived in Camarines Norte until she married her present husband and co-petitioner, Anastacio Rabo, on February 4, 1962 at St. Jude Catholic Church, San Miguel, Manila.

She claims that her husband, co-petitioner Anastacio Rabo, bearing Chinese name Ta Ching Ta, is a natural born Filipino citizen, although he was born in Ching kang, Amoy, China, of a Chinese mother named Tee Lin now known as Emma Rabo, because his father Benito Rabo is allegedly a Filipino citizen, allegedly a native of Sta. Catalina, Ilocos Sur; and that he was brought to the Philippines when he was about one year old and baptized in the Catholic Church of Talisay, Camarines Norte.

Contending that she is now a Filipino citizen by virtue of her marriage to a Filipino citizen, petitioner Wong Sau Mei filed, on February 16, 1962, with the Bureau of Immigration a petition praying that her alien registration be cancelled on the ground that she possesses no disqualification to become a Filipino citizen.

On February 23, 1962, the Commissioner of Immi-gration, without hearing, denied her petition, because her marriage to a Filipino citizen does not automatically confer upon her Filipino citizenship, invoking the case of Lee Suan Ay.[1]

On March 14, 1962, the petitioner filed a petition for mandamus and prohibition with preliminary injunction against the acting Commissioner of Immigration before the Court of First Instance of Manila docketed as Civil Case No. 49865 (see Annex B of Annex D, appellants brief).

In their petition for mandamus and prohibition with preliminary injunction filed in the Manila Court of First In-stance, petitioners recited the foregoing facts and argued that the statement of this Court in the Lee Suan Ay case is merely obiter dictum for the simple reason that the issue of citizenship was not raised therein; that the clause "who might herself be lawfully naturalized", has been consistently construed by the Supreme Court and the Secretary of Justice to mean that the alien wife need not possess all the qualifications for natural-ization, for it is enough that she does not labor under any of the disqualifications enumerated in Sec. 4 of Com. Act 473 (citing

Opinions of the Secretary of Justice Nos. 176 of 1940 and 111 of 1953, as well as *Ly Giok Ha vs. Galang*, L-10760, May 17, 1957); and prayed that the order of the Commissioner of Immigration denying her petition to cancel her ACR be declared illegal and void ab initio and that the Commissioner of Immigration be re-strained from instituting deportation proceedings against her.

In his decision dated November 13, 1962, then Presiding Judge, now Court of Appeals Justice, Edilberto Soriano upheld the decision of the Commissioner of Immigration and dismissed the petition, holding among others that, while petitioners have adduced evidence tending to show that petitioner Anastacio Rabo (Ta Ching Ta) is a Filipino citizen, still his admitted marriage to co-petitioner Wong Sau Mei does not automatically confer Filipino citizenship upon the latter, relying on *Lee Suan Ay vs. Galang*,^[2] where the Supreme Court ruled that the alien wife must possess all the qualifications and none of the disqualifications for naturalization; and that the salutary purpose of such requirement is to "prevent making the said marriage a subterfuge for conferring Filipino citizenship upon alien wives who are not otherwise qualified to become Filipino citizens." (See Annex B-1 of appellant's brief.)

From said decision of the Manila Court of First Instance, petitioners-appellees herein appealed to the Court of Appeals, which however dismissed the said appeal on July 31, 1963 for failure on the part of petitioners-appellees to file their brief. (See Annex A and p. 9 of appellant's brief.)

After appealing from the decision of the Manila Court of First Instance of November 13, 1962 and before the dismissal of their appeal by the Court of Appeals on July 31, 1963, petitioners spouses, on December 20, 1962, filed before the Court of First Instance of Camarines Norte the present petition subject of the present appeal, praying that petitioner Wong Sau Mei be allowed to "follow or to acquire Filipino citizenship by virtue of her marriage to a Filipino citizen".

On January 28, 1963, the Solicitor General filed an opposition on the ground that under sec. 15 of Com. Act No. 473, an alien woman married to a Filipino citizen "shall be deemed a citizen of the Philippines" only if she might be lawfully naturalized; that the marriage alone to a Filipino citizen does not automatically make her a Filipino citizen and that her petition does not allege that she does not possess any of the eight disqualifications under Sec. 4 of Com. Act No. 473.

After said opposition was filed, petitioners spouses filed an amended petition alleging among others that she is not among those disqualified to be naturalized under Sec. 4 of Com. Act No. 473; without alleging that she possesses all the qualifications under Sec. 2 of Com. Act No. 473.

After trial, Judge Melquiades G. Ilao rendered, on February 2, 1963, a decision declaring that petitioner Wong Sau Mei is a citizen of the Philippines by reason of her marriage to her co-petitioner Anastacio Rabo.

On February 8, 1963, the Provincial Fiscal of Camarines Norte filed a notice of appeal for and in behalf of the Republic of the Philippines.

Petitioners filed an opposition dated March 13, 1963 to the approval of appeal on the ground that no factual or legal question was raised during the trial and therefore nothing could be raised on appeal and that the appeal is frivolous and intended for delay.

In an order dated April 22, 1963, the court dismissed the appeal.

In a motion dated April 26, 1963, the Provincial Fiscal prayed for the reconsideration of the order dated April 22, 1963 dismissing the appeal, on the ground that the notice of appeal was filed on time, that the record on appeal was perfected within the reglementary period, and that the appeal raises a question of law which only the Supreme

Court can decide.

In a motion dated August 26, 1963, the Solicitor General prayed for the setting aside of the decision rendered on February 2, 1963 and/or for a reconsideration of the order dated April 22, 1963 dismissing the appeal on the ground that the trial court did not acquire jurisdiction in this case for under our laws, there can be no action or proceeding for the judicial declaration of citizen-ship; that the instant case as well as the decision rendered therein is barred by a prior judgment of the Court of First Instance of Manila dealing with the same subject matter and involving the same parties; and that the appeal interposed by the Provincial Fiscal was perfected within the reglementary period.

On September 2, 1963, petitioners filed an opposition to the aforesaid motion to set aside the decision and/or supplementary motion for reconsideration.

In an order dated December 4, 1963, the court granted the aforesaid motions to dismiss and for reconsideration filed by the Solicitor General, set aside its decision dated February 2, 1963, and dismissed the case.

In a motion dated December 13, 1963, petitioners spouses moved for the reconsideration of the order of December 4, 1963 on the ground that the motion for reconsideration and motion to dismiss were filed by the Solicitor General out of time and that the Solicitor General, having perfected his appeal, all that the trial court can do is to approve the record on appeal and certify the case to the Supreme Court.

In an order dated December 23, 1963, the trial court set aside its order dated December 4, 1963 dismissing the case and approved the record on appeal filed by the Provincial Fiscal.

It has been the consistent ruling of this Tribunal that there is no proceeding authorized by law or by the Rules of Court for the judicial declaration of citizenship of an individual. The last restatement of this principle was pronounced in the case *Soria vs. Commissioner of Immigration*.^[3] Such judicial declaration of citizenship cannot even be decreed pursuant to an alternative prayer therefor in a naturalization proceeding.^[4]

The petition of the appellees, which is the subject of the present appeal, is in the nature of a petition for declaratory judgment; because it prays that petitioner Wong Sau Mei "be allowed to follow or to acquire Philippine Citizenship by virtue of her marriage to a Filipino citizen" (see original petition and amended petition in the record of appeal).

The defense of *res judicata* is tenable. The dismissal by the Court of Appeals on July 31, 1963 of Civil Case No. 49865 filed March 14, 1962 by the petitioners for mandamus and prohibition with preliminary injunction against the acting Commissioner of Immigration before the Court of First Instance of Manila, fore-closes the right of petitioners to file this petition before the Court of First Instance of Camarines Norte.

There can be no dispute that both cases involve the same issues. As a matter of fact, the allegations in Civil Case No. 49865 before the Manila Court of First Instance are substantially the same as those in the original as well as the amended petitions petitioners filed in the Court of First Instance of Camarines Norte. The petitioners in the said Civil Case before the Manila Court of First Instance are the same petitioners in this case. The respondent or oppositor in both cases is the Republic of the Philippines represented by the Solicitor General. The acting Commissioner of Immigration was merely a nominal party respondent in Civil Case No. 49865 before the Manila Court of First Instance, since the acting Immigration Commissioner represented and was an agent of the Republic of the Philippines.⁶

WHEREFORE, the judgment appealed from is hereby reversed and the petition is hereby denied. With costs against petitioners-appellees.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] L-11855, Dec. 23, 1959.

[2] L-11855, Dec. 23, 1959.

[3] L-24102, Jan. 30, 1971.

[4] Soria vs. Commissioner, *supra*; Tan Pong vs. Republic, L-21010, Nov. 28, 1969, 30 SCRA 380, 388; Chua Tan Chuan vs. Republic, L-25439, March 28, 1969, 27 SCRA 447, 449; Dy Poco vs. Com., L-22313, March 31, 1966, 16 SCRA 615, 617; Lao, et. al. vs. Republic, L-19107 & 19109, Sept. 30, 1964, 12 SCRA 107-111; Palaran vs. Re-public, L-15047, Jan. 30, 1962, 4 SCRA 79, 82-83; Tan vs. Republic, L-16108, Oct. 31, 1961, 3 SCRA 407, 410-11.

6 Santos vs. Mojica, etc., et. al., L-25450, Jan. 31, 1969, 26 SCRA 703, 706; Gonzales vs. Gonzales, et. al., L-22717, Nov. 27, 1968, 26 SCRA 72, 77; Roxas vs. Bermudez, et. al., L-25051, Sept. 30, 1968, 25 SCRA 413-14; Marcos vs. De Banuvar, L-22110, Sept. 28, 1968, 25 SCRA 316; 320-22; Cruz vs. Mossesgeld, L-20495, Aug. 31, 1968, 24 SCRA 1006, 1011; Aguila vs. Tuason, L-24223, Feb. 22, 1968, 22 SCRA 690, 693-4.

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