

IN RE: PETITION FOR THE CORRECTION OF ENTRIES IN THE CIVIL REGISTER. LEONCIO TAN, PETITIONER-APPELLEE, VS. THE LOCAL CIVIL REGISTRAR OF CEBU CITY, RESPONDENT. REPUBLIC OF THE...*G.R. No. L-29214. October 29, 1976*

Ponente: AQUINO, J.

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On April 29, 1967 Leoncio Tan filed in the Court of First Instance of Cebu a petition praying that the local civil registrar of Cebu City be ordered to correct his birth record by changing the name of his father from Ti Tiao Hack to Tan Tiao Hock and by changing his surname "Ti" to Tan (Spec. Proc. No. 2763-R).

The order setting the petition for hearing was published for three consecutive weeks in the Morning Times , a newspaper of general circulation in Cebu. The local civil registrar opposed the petition on the grounds that the corrections sought are not clerical in nature, that the petition is not the one contemplated in Rule 108 of the Rules of Court, and that Tan's remedy is to file a petition for change of name.

The First Assistant Solicitor General also filed a written opposition. He alleged that no valid grounds justify the correction of the entries in the birth record of Leoncio Tan.

Leoncio Tan testified at the hearing. He presented documentary evidence. The oppositors did not present any evidence. The trial court granted the petition. The State appealed on the ground that the decision "is contrary to law and the evidence". The trial court's summary of the evidence is as follows:

"Petitioner Leoncio Tan, 38 years of age, married, a businessman, and resident of No. 317-E Sikatuna St., Cebu City, testified, in substance, that he was born in Cebu City, to the Chinese spouses, Tan Tiao Hock and Yap Chin, on January 18, 1929; that he is the petitioner in this case; that he is a citizen of the Republic of Nationalist China and duly registered as an alien with the Bureau of Immigration, showing his Alien Certificate of Registration No. A-73463 issued in Cebu City on November 14, 1950 (Exh. E); that before he was issued his alien certificate of registration, he was investigated twice, first by the municipal treasurer of the then Municipality of Opon (now Lapulapu City), Cebu, where he was then residing, and second by the immigration officer in Cebu, Atty. Lorenzo Y. Encomienda; that he was born in the family residence on Juan Luna St., Cebu City, and was baptized with the name Leoncio at the Cebu Cathedral; that since he was small he was always known as Leoncio Tan and has been using the same name since he first went to school first in the Cebu City Central School, then to the Upon Elementary School, and then to the University of San Carlos in Cebu City (Exhs. G, G-1, H, H-1, H-1-A, and H-2); that when he married, he likewise used the name Leoncio Tan (Exhs. I and I-1), and this is also reflected in the Register of Marriages in the Office of the City Health Officer of Cebu City who is at the same time the local civil registrar (Exhs. J and J-1); that he has three sisters, and that the birth record of one of them, particularly Cresencia Tan, bears correctly all the entries according to the existing facts (Exhs. K, K-1 to K-2 and K-3), that is, the correct names of their father TAN TIAO HOCK and mother YAP CHIN; that he became aware for the first time that he is registered in the official birth records as Leoncio Ti only when his lawyer had secured for him a certified copy of his birth records preparatory to the filing of his intended petition for naturalization, which was suspended in view of the mistake in his registered

family name; that when he first enrolled in school, he was not required to present his birth certificate and neither was he so required in the subsequent schools he attended.

"On cross-examination, the petitioner stated that TI and TAN are two distinct Chinese family names, and that they are not equivalent to each other; that he does not know whether his father, who died in 1929 when he was barely six months old, had at one time or another, used the family name TI; and that the entries in the birth records of his sisters are all correct.

"The petition itself alleges that since it was only a neighbor of the parents of the petitioner who reported the fact of his birth to the authorities and since his father was likewise known by the name Ti Tiao Hock as an alias, it was this wrong report that was also the basis for the registration of the petitioner's name as Leoncio TI, and the 'O' in the name HOCK was even inadvertently changed to 'A', thus reading HACK, in the official records of petitioner's birth."

The appeal involves the issue of what conclusion should be drawn from petitioner's uncontroverted evidence or whether it is sufficient to support his petition. That is a legal issue. (*Cunanan vs. Lazatin*, 74 Phil. 719).

The State contends that the trial court erred in not dismissing the petition because the petitioner failed to adduce valid grounds in support thereof, in not finding that the petition is for a change of name, and in not dismissing it for lack of jurisdiction.

We hold that the evidence is not sufficient to justify the corrections sought by the petitioner. Generally, the summary procedure for the correction of entries in the civil register, as contemplated in Rule 108 of the Rules of Court and article 412 of the Civil Code, is confined to innocuous or clerical error (*Republic vs. Amores*, L-35232, January 31, 1973, 49 SCRA 361).

Petitioner's evidence does not conclusively indicate that a clerical error was committed when his surname as well as his alleged father's surname was recorded in the civil register as Ti and not Tan. He failed to prove that his father's true name was Tan Tiao Hock. He did not present the latter's alien certificate of registration or birth certificate.

In petitioner's elementary school record his father's name is recorded as Tan Tiao Ho (Exh. G and H). His high school record does not contain his father's name (Exh. H-1). Crescencia Tan, his alleged sister, whose "reconstructed" birth record mentions Tan Tiao Hock and Yap Chin as her parents, did not testify to corroborate petitioner's claim that his father was Tan Tiao Hock. Leoncio Tan did not present his baptismal certificate.

What petitioner's evidence shows is that he has been using the name, Leoncio Tan, and that his name in the civil register is Leoncio Ti. Under section one, Commonwealth Act No. 142, before it was amended by Republic Act No. 6085, a person was allowed to use the name "with which he was christened or by which he has been known since childhood". The use of aliases is regulated by Republic Act No. 6085 which was approved on August 4, 1969.

Since petitioner's correct name is Leoncio Ti, if he wants to change his surname, his remedy is a petition for change of surname under Rule 103 of the Rules of Court (*Chomi vs. Local Civil Registrar*, 99 Phil. 1004).

It is not necessary to pass upon the Solicitor General's contention that the lower court did not acquire jurisdiction over the case because the petitioner did not include in the caption or heading of his petition his registered name, Leoncio Ti. Whether the ruling in *Jesus Ng Yao Sio Chiong vs. Republic*, L-20306, March 31, 1966, 16 SCRA 483, that in a petition for change of name the heading should include all the names or aliases of the petitioner, should be applied to a proceeding under Rule 108 is a point that is not decided in this case.

WHEREFORE, the lower court's decision is reversed and set aside. The petition is dismissed. Costs against the

petitioner.

SO ORDERED.

Fernando, (Chairman), Antonio, Concepcion, Jr., and Martin, JJ., concur.

Barredo, J., did not take part part.

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