

**TAN PONG, MINOR, REPRESENTED BY HIS GUARDIAN AD-LITEM
ARNULFO M. NONO, PLAINTIFF-APPELLEE, VS. THE REPUBLIC OF
THE PHILIPPINES, ET AL., DEFENDANTS-APPELLANTS, TAN YIAT AI
AND CO...**

G.R. No. L-21010. November 28, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

The plaintiff Tan Pong filed a complaint (civil case 6269) with the Court of First Instance of Negros Occidental, praying (1) that he be adjudged the illegitimate child of one Mercedes Robles, said to be a Filipino citizen, by an unknown common-law husband; (2) that the defendant civil registrar of Bacolod City be ordered to change certain entries in the plaintiff's record of birth respecting (a) his name which he claims is Morito Robles; (b) the date of his birth which he avers is January 4, 1948, not February 6, 1947; (c) his nationality which he asserts to be Filipino, not Chinese; and (d) his civil status which is that of an illegitimate child of Mercedes Robles, Filipino citizen, single, instead of the legitimate child of Tan Yiat Ai and Co Bee; and (3) that the defendant deputy of the Commissioner of Immigration be directed to cancel not only the alien certificate of registration issued by the Bureau of Immigration which registers him as a citizen of China but as well all records connected therewith.

Named parties defendants are the Chinese spouses Tan Yiat Ai and Co Bee, the Republic of the Philippines, the civil registrar of Bacolod City and the administrative deputy of the Commissioner of Immigration.

The lower court's order setting the complaint for hearing on October 7, 1961 and inviting all interested persons to appear and show cause why the reliefs sought should not be granted, was published once a week for three consecutive weeks in the *Civismo*, a newspaper of general circulation in the province of Negros Occidental.

On September 7, 1961 the spouses Tan filed an answer, admitting all the material allegations of the complaint. As special defenses, they alleged that (a) the defendant Tan Yiat Ai filed with the office of the local civil registrar on February 14, 1950 a certificate of birth for the plaintiff in which he represented that the latter's place of birth is Bacolod City, his full name Tan Pong, his date of birth February 6, 1947, his nationality Chinese, and that he is a legitimate child of the defendants spouses, because the latter sincerely believed that, by virtue of the document^[1] executed in defendant Tan Yiat Ai's favor by the plaintiff's real mother, Mercedes Robles, the plaintiff became their own son to all legal intents and purposes; and (b) the defendants spouses obtained for the plaintiff an alien certificate of registration and since then up to the present have reported the plaintiff as a citizen of China and, the defendant Tan Yiat Ai as his father, because they were of the honest impression that the plaintiff, by virtue of the said document, annex A, truly became, to all legal intents and purposes, their own Chinese son.

The defendants Alfredo Tambasen (local civil registrar) and Jesus R. Garcia (administrative deputy of immigration) filed their answer, traversing all the material allegations of the complaint, and raising special defenses most important of which is that the plaintiff's suit is not the proper action because it seeks not merely the

correction of a clerical error, but as well the declaration of the citizenship of the plaintiff, which matter may be threshed out only in an appropriate proceeding.

The Republic of the Philippines, through the Solicitor General, filed its answer which, besides controverting all the material allegations of the complaint, raised the affirmative defense that the complaint was in reality a triple action for correction the plaintiff's birth record under article 412 of the Civil Code, for declaratory relief under Rule 66 of the Rules of Court, and for a writ of mandamus under section 3 of Rule 67, all of which cannot be joined in a single complaint.

Thereafter the Republic of the Philippines, Alfredo Tambasen and Jesus R. Garcia filed a motion to dismiss, predicated on the following grounds: (1) the corrections sought are not merely clerical in nature as contemplated in article 412 of the Civil Code, but on the contrary involve substantial changes in the plaintiff's birth certificate affecting his identity, name, filiation, paternity and citizenship, as well as the identity and paternity of the spouses Tan Yiat Ai and Co Bee, as parents of the plaintiff; (2) declaration of the plaintiff's citizenship (as Filipino) through correction of alleged errors in the birth certificate arising from alleged erroneous and/or invalid entries in the said birth certificate, is not countenanced in this jurisdiction; (3) to direct the Bureau of Immigration by mandamus to cancel the plaintiff's alien certificate of registration and all other pertinent records, is without justification; and (4) there is in law no proceeding for declaration of Philippine citizenship.

In their memorandum of October 25, 1961, the spouses Tan denied the charge made by the assistant city attorney that they were in connivance with the plaintiff.

On October 30, 1962 the plaintiff filed a pleading which is in the nature both of a memorandum and an opposition to the motion to dismiss.

Because it discovered upon examination of the evidence that the plaintiff or his guardian ad litem had not been presented as a witness, the lower court issued on November 7, 1962 an order to reopen the case, upon previous notice to all parties, to enable it to probe into the motivation behind the action.

On January 5, 1963, after trial on the merits, the lower court rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered for the plaintiff and against the defendants, and it is hereby ordered:

"(1) That the Local Civil Registrar of Bacolod City cancel the entry in his office whereby the plaintiff, Tan Pong, is registered as a legitimate son of the spouses Tan Yiat Ai and Co Bee, and

"(2) The Deputy Commissioner of Immigration, Iloilo Branch, is hereby ordered to cause the cancellation in the Alien Registry of the name of the Plaintiff, Tan Pong, as one of the children of the defendant spouses, and in particular, it is hereby ordered that the plaintiff's name be stricken out from the Master Cards of registered aliens, No. 123902 and No. 123904."

Dissatisfied with the said judgment, the defendants (except the defendants spouses) appealed to this Court, contending that the lower court erred (1) in ordering the correction of the plaintiff's status and citizenship in the birth records of the civil registrar of Bacolod City and in the records of the office of the deputy commissioner of immigration in a summary proceeding under art. 412 of the new Civil Code; and (2) in ordering the correction of the plaintiff's citizenship in the birth and immigration records, which correction, in effect, declares him a Filipino, when there is no proceeding available for the purpose of obtaining such a declaration of citizenship.

The court made extensive findings of fact.

In 1947 Mercedes Robles, a Filipino woman, about three months pregnant and abandoned by her common-law husband, went to work as a laundress for one Loreto C. Tan. On or about January 6, 1947, while thus employed, she gave birth to a baby boy whom she called Morito. Mercedes offered the child to Loreto C. Tan but the latter declined as he had children of his own. Remembering, however, that Tan Yiat Ai and his wife had once expressed, a desire to adopt one of his children, Loreto C. Tan asked Mercedes if she was willing to give up her child in adoption to the Chinese couple. Mercedes agreed. They then went to see Tan Yiat Ai; thereafter Mercedes Robles, Tan Yiat Ai, Loreto C. Tan and the child Morito convened in Atty. Rafael Guerrero's office. This lawyer then prepared a document in English which purportedly embodied their agreement. This was translated into the Visayan dialect for the benefit of Mercedes. After the document in the Visayan dialect was typed in final form by his clerk, Atty. Guerrero explained: its contents to Mercedes and Tan Yiat Ai. Mercedes and Tan Yiat Ai forthwith signed the document, Loreto C. Tan and Manuel Gentapanan affixed their signatures as witnesses thereto, and Atty. Guerrero notarized the same. The original document in the Visayan dialect is marked exhibits B and 1.

The English version of the document, marked exhibits B-1 and 1-A, reads as follows:

"SO THAT ALL MAY KNOW:

"We, Mercedes Robles, of legal age, Fill-pina and residing in Bacolod City, Negros Occidental and Tan Yiat Ai, of legal age, merchant, Chinese and likewise residing in Bacolod City, Negros Occidental, hereunder agree:

"That I, Mercedes Robles, have a son whose age is six months and who has not yet been baptized but I call him 'Morito'.

"Because I can not support my son mentioned above inasmuch as I have many children and I do not have a husband to help me (my common-law husband is far away and I do not know now his whereabouts) support them and because what I could earn (laundress) is not even enough for me and for my bigger children, on my own free will, I am giving to said Mr. Tan Yiat Ai whom I know to be a man who is loving, can support and can afford to educate my said son and because of this, said Mr. Tan Yiat Ai will be the one to support said child and when he gets older, he (Tan) will spend for his education and will love him as if he were his own child and because of this, I will not interfere and all my parental authority over said child, I have given to Mr. Tan Yiat Ai.

"I, Tan Yiat Ai, because of the voluntary will of Mrs. Mercedes Robles and because of my love for the said child that is being given to me by Mercedes Robles, promise to comply with my obligations as a parent of said child by supporting him well, loving him as my own child and educating him as well as I can until he reaches the age of majority (21) years.

"IN WITNESS WHEREOF, we have set our hands on this document on this 6th day of July, 1948, at Bacolod City.

MERCEDES ROBLES TAN YIAT AI

"IN THE PRESENCE OF TWO WITNESSES:

LORETO TAN MANUEL GENTAPANAN

"REPUBLIC OF THE PHILIPPINES

"CITY OF BACOLOD

"In the City of Bacolod, this 6th day of July, 1948, A.D., personally appeared before me Messrs. Tan Yiat Ai and Mercedes Robles, personally known to me to be the same persons who signed the foregoing document and

who ratified and acknowledged the same to be their free and voluntary act and deed. Mercedes Robles exhibited her res. cert. No. A-3657451 issued at Bacolod City on July 6, 1948; Tan Yiat Ai with res. cert. No. A-1600638 issued at Bacolod City on Jan. 13, 1948.

"BEFORE ME.

Doc. No. 160

Page No. 68 RAFAEL GUERRERO

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The boy (Morito) went to live with Tan Yiat Ai and the latter's family. Three days later, Mercedes went to Tan Yiat Ai and informed him that she was leaving for Manila; out of pity Tan Yiat Ai gave her P100. Mercedes was never heard of or from again since then.

The court likewise found that Co Bee, the wife of Tan Yiat Ai, gave birth on August 13, 1948 to a boy, their last child, who was named Manuel Tan. This boy died on February 1, 1954.

Meanwhile, Morito was named Tan Pong. "Pong" means stout in Chinese.

Tan Yiat Ai, thinking that the boy was now his child because of the document which he had signed and because this was so under Chinese law, accomplished a birth certificate (exh. 4) for Tan Pong, listing him as his and Co Bee's legitimate child born on February 6, 1947. Tan Yiat Ai secured an alien certificate of registration for Tan Pong (exh. 5), recording the latter as having been born on February 6, 1947 and naming Tan Yiat Ai as his father. He likewise included the name of Tan Pong in his and his wife's list of children in their master cards of registered aliens.

When Tan Pong became of school age, Tan Yiat Ai enrolled him in the Tay Tung, later in the Iloilo Chinese Commercial School, and, at the time of the filing of the action below, in the Hua Ming Catholic School.

According to the court, sometime in 1961, when Tan Pong was about 14 years old, he discovered the document dated July 6, 1948 (exhs. B and 1) among the papers of Tan Yiat Ai and read the same. Confronted with the document, Tan Yiat Ai admitted to Tan Pong that the latter is the same Morito referred to in the document. Thus, having discovered that Tan Yiat Ai and Co Bee were not his real parents and that his mother was a Filipina by the name of Mercedes Robles, Tan Pong, on August 28, 1961, with the assistance of deputy clerk of court Arnulfo M. Mono, filed the present action.

The complaint must be dismissed.

The plaintiff-appellee brought this action for the purpose, among others, of establishing his filiation and of securing judicial approval of his recognition. But he has not impleaded Mercedes Robles or the latter's heirs or kin, who are indispensable parties.[2] This omission is fatal.

In *In Re Jiro Mori*,[3] a minor, through her mother and guardian ad litem, filed a petition with the court of first instance, accompanied by a certified copy of a notarial document which purported to be a recognition by a Japanese citizen - whose whereabouts were unknown - of the filiation of the child though still in the womb of its mother, praying the said court to approve the acknowledgment made therein. The lower court dismissed the petition, holding that the relief prayed for can be obtained only by the institution of an ordinary civil action. This Court, affirming, held that it is not sufficient for the person so recognized to file a mere petition asking the court to approve the acknowledgment. He must file an ordinary civil action against the person who allegedly executed

the instrument of recognition or any of his legal successors.

The foregoing pronouncement - although made before the effectivity of the new Civil Code - is still good law. And not without reason. The supposed recognizing parent must be afforded opportunity to admit or deny the authenticity or genuineness of the alleged instrument of acknowledgment. After all, recognition charges him with certain obligations even as it confers upon the recognized or acknowledged child the corresponding rights – e.g., to bear the surname of the recognizing parent, and to receive support and inherit from such parent.[4] Upon the other hand, the legal heirs or successors of the supposed acknowledging parent should likewise be given opportunity to impugn - if they have good grounds to do so - the alleged document of acknowledgment, because they stand to suffer diminution of their share in the hereditary portion of the alleged recognizing parent.

But assuming *arguendo* that the present action is legally sufficient for the purpose of establishing the plaintiff-appellee's filiation and of securing judicial approval of his recognition, still it cannot, even if successfully concluded, be used as a spring-board to secure a direct declaration of the plaintiff-appellee's citizenship. Indeed, his complaint also seeks a ruling that he is a Filipino citizen, because it likewise prays the lower court "to order the defendant Local Civil Registrar of Bacolod City to correct the entry of his birth in the civil register so as to state . . his nationality as Filipino, ..." In fact, because the plaintiff appellee believes that his supposed mother was not a woman of visible means and that she is moreover already dead, having been unheard of or from for more than 13 years, it would appear that he is interested more in establishing Philippine citizenship (by proving illegitimate filiation to a Filipino mother) than in establishing a right under the civil law. Needless to stress, there is no authorized procedure for direct declaration of citizenship, and the plaintiff-appellee should not be allowed to secure by indirection what the law does not allow directly.[5]

We are not of course to be understood as saying that the political status of citizenship may not at all be established. It can as an incident to the adjudication of a real and justiciable controversy[6] - for example, in a case where the plaintiff or petitioner asserts a right exercisable only by a Filipino citizen. There the court can correctly declare that he is entitled to exercise such right (or privilege) because he is a Filipino citizen. But surely a court cannot, in an action where the plaintiff seeks to establish his filiation and status as an acknowledged illegitimate child of a Filipino woman, who is not made a party to the action, and to impugn his status as a legitimate child of Chinese parents, make a pronouncement that said plaintiff is the recognized natural child of a Filipino woman, and, on this basis alone, declare and adjudge him a Filipino citizen and order the corresponding correction of his birth and immigration records.

ACCORDINGLY, the decision appealed from is reversed, and the complaint is hereby dismissed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur.

[1] Annex A of the Answer, exhs. B and 1, respectively.

[2] See *Mohamed Farrueco v. Consul General of Spain*, 74 Phil. 151 (1943); *Briz v. Briz*, 43 Phil. 763 (1922).

[3] 83 Phil. 450 (1949).

[4] Civil Code, art. 282.

[5] See *Republic v. Maddela*, L-21664-65, March 28, 1969, 27 SCRA 702; *Santiago v. Commissioner*, L-14563, Jan. 31, 1963; *Palaran vs. Republic*, L-15047, Jan. 30, 1962; *Tan v. Republic*, L-16108, Oct. 31, 1961; *Tan Yu*

Chin v. Republic, L-15775, April 29, 1961; Channie Tan v. Republic, 107 Phil. 632 (1960); Delumen v. Republic, L-5552, Jan. 28, 1954.

[6] Channie Tan v. Republic, *supra*, note 5.

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