

MODESTA DUGCOY JAO (SOMETIMES SPELLED HAO), PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR.

G.R. No. L-29397. March 29, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

The petitioner filed a petition in the Court of First Instance of Davao for repatriation under Commonwealth Act. No. 63, as amended, alleging therein that although her father was Chinese, she was a citizen of the Philippines because her mother was a Filipina who was not legally married to her Chinese husband; that she lost her Philippine citizenship when she married Go Wan, a Chinese, with whom she had three children; and that Go Wan died in September 6, 1962. Petitioner further alleged that her illiterate mother erroneously registered her as an alien with the Bureau of Immigration, by virtue of which she was issued Alien Certificate of Registration No. A-176678. The petition contains no prayer for relief.

The petition was not published, but notice thereof was served on the Provincial Fiscal who appeared at the hearing but presented no evidence. After receiving the evidence of the petitioner, the trial court issued an Order declaring the petitioner as "judicially repatriated," and ordering the cancellation of her alien certificate of registration. The Provincial Fiscal, in behalf of the Republic of the Philippines, took this appeal.

The proceedings taken in the trial court are a complete nullity. There is no law requiring or authorizing that repatriation should be effected by a judicial proceeding. All that is required for a female citizen of the Philippines who lost her citizenship to an alien to reacquire her Philippine citizenship, upon the termination of her marital status, "is for her to take necessary oath of allegiance to the Republic of the Philippines and to register the said oath in the proper civil registry" (*Lim vs. Republic*, 37 SCRA 783). Moreover, the petitioner's claim of Philippine citizenship prior to her marriage for being allegedly an illegitimate child of a Chinese father and a Filipina mother may not be established in an action where the mother or her heirs are not parties (*Tan Pong vs. Republic*, 30 Phil. 380). It is the consistent rule in this jurisdiction that Philippine citizenship may not be declared in a non-adversary suit where the persons whose rights are affected by such a declaration are not parties, such as an action for declaratory relief (*Tiu Navarro vs. Commissioner of Immigration*, 107 Phil. 632) a petition for judicial repatriation (*Lim vs. Republic*, *supra*), or an action to cancel registration as an alien (*Tan vs. Republic*, L-16108, Oct. 31, 1961). As was held in *Lim vs. Republic*, *supra*, "there is no proceeding established by law or the rules by which any person claiming to be a citizen may get a declaration in a court of justice to that effect or in regard to his citizenship."

ACCORDINGLY, the decision appealed from is hereby revoked and set aside.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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