

IN THE MATTER OF THE PETITION OF FELISA LIM (ALIAS LAM BIT SHA) FOR REPATRIATION UNDER COMMONWEALTH ACT NO. 63. FELISA LIM (ALIAS LAM BIT SHA), PETITIONER-APPELLEE, VS. REPUBLI...

G.R. No. L-29535. February 27, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, taken by the Solicitor General, from a decision of the Court of First Instance of Zamboanga City, the dispositive part of which reads as follows:

"WHEREFORE, the Court finding the petition to be meritorious on the ground that the petitioner Felisa Lim has all the qualifications as required by law, hereby GRANTS the same and the herein petitioner Felisa Lim is permitted to take her oath of allegiance as a Filipino citizen and declared repatriated."

On September 30, 1960, petitioner Felisa Lim (alias Lam Bit Sha) filed with said court a petition alleging, inter alia, that she was formerly a citizen of the Philippines; that she lost her Philippine citizenship, on December 10, 1943, by reason of marriage to a Chinese in Canton, China, by whom she had two children; that her husband died in Canton, China, on April 15, 1955; that it is her intention to reacquire Philippine citizenship and to renounce all allegiance and fidelity to any foreign potentate, state or sovereignty and, particularly, to China, of which she is at present a citizen; that she has all the qualifications to be repatriated, as shown by an affidavit of two Filipino citizens, appended to the petition; and that she and her minor children are holders of immigration papers and were admitted into the Philippines, as permanent residents, on March 14, 1960. Premised upon these allegations, Felisa Lim prayed that she "be permitted to take the oath of allegiance as a Filipino citizen and thus repatriated." Despite the opposition thereto of the Government, the lower court rendered the aforementioned decision declaring that Felisa Lim was a citizen of the Philippines before her marriage and that she may be repatriated as such citizen. Hence, this appeal by the Solicitor General who maintains that the lower court erred "in declaring petitioner 'repatriated' as a citizen of the Philippines," upon the ground, inter alia, that she had not duly established either the nationality of her alleged father, Lorenzo, or her alleged relation with him, and that -

"Under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual' (Republic vs. Maddela, supra). 'Only as an incident of the adjudication of the rights of the parties to a controversy may the Court pass upon and make a pronouncement relative to their status. Otherwise, such pronouncement is beyond judicial power' (Republic vs. Maddela, supra)."

The appeal taken by the Government is well taken. The procedure for the repatriation of a female citizen of the Philippines, who has lost her citizenship by reason of marriage to an alien, is as simple as it can possibly be. All that is required of her, upon termination of her marital status, is for her to take the necessary oath of allegiance to the Republic of the Philippines and to register said oath in the proper civil registry.[1] In fact, the allegations and, particularly, the prayer in the petition of appellee herein suggest that she is aware of the pertinent legal provisions.

It is, moreover, apparent that her objective is to settle her political status prior to marriage. In other words, thru her petition herein, she hopes to establish that she was a citizen of the Philippines before she contracted marriage. As a consequence, her petition is, in effect, one for a declaratory relief, which this Court has repeatedly held to be inapplicable to the political status of natural persons.

Thus, the petitioner in *Feliseta Tan v. Republic*^[2] had sought the cancellation of her alien certificate of registration and that of her children, upon the ground that she is a Filipino citizen and that she is not married to the father of her children, who is a Chinese. She subsequently amended her petition so as to convert it into one for a declaration that she is a citizen of the Philippines, she being the illegitimate child of a Filipino woman and a Chinese citizen, and that her children are, likewise, citizens of the Philippines, she having begotten them outside wedlock with another citizen of China, who was her common-law husband. In due course, the lower court rendered judgment, the dispositive part of which was:

"WHEREFORE, premises considered, the court hereby renders judgment declaring said Eleuteria Feliseta Tan a Filipino citizen; that her registration as an alien has been a clear mistake on her part and on the part of the City Treasurer of Ozamis City and therefore, the Commissioner of Immigration is hereby ordered to cancel the Alien Certificate of Registration of the herein petitioner as well as those of her children born out her relationship as husband and wife without benefit of marriage with Tan King Pock, namely: Loreta Tan, Nenita Tan, Lourdes Tan, Leonila Tan, Tan King Pock, Jr., and William Tan."

This judgment was set aside by the Supreme Court upon the ground that:

"Declaratory relief in this jurisdiction is a special civil action which may lie only when 'any person interested under a deed, will, contract or other written instrument, or whose rights are affected by statute or ordinance,' demands construction thereof for a declaration of his rights thereunder. None of the above circumstances exists in the case under consideration. And this Court has already held that 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."

"x x x If the petition seeks to compel the Commissioner of Immigration to cancel her and her children's alien certificate of registration, this petition would not lie because such a remedy of cancellation of alien certificate of registration can only be had by virtue of a judgment of a competent court in an action where the citizenship of parties is a material matter in issue, declaring the Filipino citizenship of the petitioner and her children, and such declaration cannot be obtained directly because there is no proceeding at present provided by law or the rules for such purpose."

For the same reasons, in *Santiago v. Commissioner of Immigration*,¹ the decision of a Court of First Instance declaring Santiago a Filipino citizen and ordering the cancellation of his alien certificate of registration, as prayed for by Santiago, was reversed by the Supreme Court.

To the same effect was *Board of Commissioners v. Domingo*.² Said Board having ordered the exclusion and deportation of one Muya, the latter instituted a certiorari proceeding in the Court of First Instance of Manila to annul the decision of the Commissioners of Immigration. The case having been dismissed for non-exhaustion of administrative remedies, Muya filed with the Court of First Instance of Pangasinan an action for a declaratory judgment with mandamus and injunction, to declare him a Filipino citizen, to restrain his deportation and compel the Commissioners of Immigration to release him. Said court having issued a writ of mandatory injunction to set Muya free, the Board of Commissioners applied from the Supreme Court for a writ of certiorari to annul said writ, which We did, upon the ground, among others, that "it is now well settled x x x that there is no proceeding established by law, or the rules, for the judicial declaration of the citizenship of an individual x x x and that citizenship is not a proper subject for declaratory judgment."

In *Tiu Navarro v. Commissioner of Immigration*,³ which was a proceeding to declare that petitioner therein was a citizen of the Philippines and to, accordingly, cancel his alien certificate of registration, the judgment rendered by the lower court granting the relief prayed for was, on appeal, reversed by the Supreme Court, upon the theory that an action for a declaratory relief is not proper to resolve doubts concerning one's citizenship.

*Channie Tan v. Republic*⁴ went a little farther. It held that, under a petition for naturalization alleging that petitioner is a Chinese and praying that he be naturalized as a citizen of the Philippines, the court had no authority to declare him a Filipino citizen. This view was reiterated in *Tan Yu Chin v. Republic*,⁵ in which We postulated:

"Even assuming, therefore, that herein petitioner has shown that he is already a Filipino citizen, the lower court exceeded its power, authority, and jurisdiction in declaring him to be such in these naturalization proceedings."

Of particular relevance to the case at bar is the following pronouncement made in *Delumen v. Republic of the Philippines*¹:

"x x x there is nothing in the petition which even intimates that the alleged status of the appellees as Filipino citizens had in any instance been questioned or denied by any specific person or authority. Indeed, the petition alleges that the appellees have considered themselves and were considered by their friends and neighbors as Filipino citizens, voted in the general elections of 1946 and 1947, and were registered voters for the elections of 1951, and it is not pretended that on any of said occasions their citizenship was controverted. It is not accurate to say, as appellees do, that an actual controversy arose after the filing by the Solicitor General of an opposition to the petition, for the reason that the cause of action must be made out by the allegations of the complaint or petition, without the aid of the answer. As a matter of fact, the answer herein alleges that the petition states no cause of action. In essence, the appellees merely wanted to remove all doubts in their minds as to their citizenship, but an action for declaratory judgment cannot be invoked solely to determine or try issues or to determine a moot, abstract or theoretical question, or to decide claims which are uncertain or hypothetical. (1 C. J. S., p. 1024.) And the fact that appellees' desires are thwarted by their 'own doubts, or by fears of others * * * does not confer a cause of action.' (Moran, Comments on the Rules of Court, 1952 ed., Vol. II, p. 148, citing *Willing vs. Chicago Auditorium Assn.*, 277 U.S., 274, 289, 48 Sup. Ct., 507, 509.)."

WHEREFORE, the decision appealed from should be, as it is hereby, reversed and another one shall be entered dismissing the petition herein, with costs against petitioner-appellee Felisa Lim.

IT IS SO ORDERED.

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

Makasiar, J., did not take part.

[1] Sections 2 and 4, Commonwealth Act No. 63.

[2] L-16108, October 31, 1961.

1 L-14653, January 31, 1963.

2 L-21274, July 31, 1963.

3 L-15100, December 29, 1960.

4 107 Phil. 632.

5 L-15775, April 29, 1961. To the same effect, also, are *Soria v. Commissioner of Immigration*, L-24102, Jan. 30,

1971; Tan Pong v. Republic, L-21010, Nov. 29, 1969; Chua Tan Chuan v. Republic, L-25439, March 28, 1969; Dy Poco v. Commissioner of Immigration, L-22313, March 31, 1966; Lao v. Republic, L-19107, and 19109, Sept. 30, 1964; Palaran v. Republic, L-15041, Jan. 30, 1962.

1 94 Phil. 287, 289.

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