

SY HA ALIAS SZE SOOK HA ETC. ET AL, PETITIONERS AND APPELLEES VS. EMILIO L. GALANG, ETC., RESPONDENT, AND APPELLANT.

G. R. No. L-18513. April 27, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Go Hip was born in China on March 15, 1922. He came to the Philippines from Amoy, China in 1941 as a Chinese citizen. On February 3, 1960, he applied for the cancellation of his alien registration and upon investigation he was declared a Filipino citizen by birth as the son of Manuel Go who was the illegitimate son of a Filipino mother.

On June 16, 1960, Sy Ha alias Sze Sook Ha, a Chinese citizen, applied for a passport visa at the Philippine Consulate in Hongkong together with her two minor children. Go Kang and Go Siong to enter the Philippines as tourists and were admitted as temporary visitors on June 26, 1960 for one month. On July 20, 1960, however, Sy Ha alias Sze Sook Ha contracted marriage with Go Hip in the Church of God in Christ Jesus at Juan Luna Street, Tondo, and immediately thereafter the former and her two minor children requested the cancellation of their alien registry on the ground that they were already the wife and children of a Filipino citizen, which petition was granted by Associate Commissioner Felix Talabis in an order issued on July 26, 1960 (Exhibit D). This order was however revoked after a re-examination of the evidence by Commissioner Emilio L. Galang in an order he issued on December 1, 1960. In view thereof, Sy Ha alias Sze Sook Ha and her minor children Go Kang and Go Siong filed before the Court of First Instance of Manila a petition for mandamus with preliminary injunction praying (1) that petitioners be declared citizens of the Philippines; and (2) that respondent commissioner of immigration be ordered to recognize the validity of the order dated July 26, 1960 issued by Associate Commissioner Felix Talabis which declared petitioners citizens of the Philippines and to restore their identification certificates as Filipino citizens.

On March 25, 1961, the court a quo dismissed the petition and dissolved the preliminary injunction previously granted. Petitioners moved for a new trial which, over the objection of respondent, was granted. After hearing, the court a quo rendered an amended decision the dispositive portion of, which reads':

"Wherefore, the petition is granted, the writ of preliminary injunction issued on December 19, 1960, is made permanent, petitioners are declared citizens of the Philippines, and respondent is hereby ordered to recognize the validity of the order dated July 26, 1960, Exhibit D, recognizing and declaring petitioners herein as citizens of the Philippines and to restore their identification certificates as Filipino citizens."

Respondent has appealed directly to this Court.

It will be recalled that after Sy Ha alias Sze Sook Ha had contracted marriage with Go Hip on July 20, 1960, or one month after she was admitted as temporary visitor, she requested the cancellation of her alien registry as well as of her minor children alleging that they are already the wife and children respectively of a Filipino citizen and

after proper investigation this petition was granted by Associate Commissioner Felix Talabis in an order issued on July 26, 1960. In said order Commissioner Talabis found, among other things, that Sy Ha alias Sze Sook Ha lived with Go Hip in Amoy, China without benefit of wedlock; that their relationship was blessed with two sons, Go Kang who was born in Amoy in March, 1947 and Go Siong who was born also in Amoy on February 23, 1949, and that on July 20, 1960 Sy Ha alias Sze Sook Ha and Go Hip were legally married in the Church in the Church of God in Christ Jesus, Tondo, Manila. Consequently, they were issued their corresponding identification certificates as Filipino citizens. However, upon a re-examination of the record, respondent Commissioner Galang reached a different conclusion and revoked the order of Associate Commissioner Talabis on December 1, 1960. Pertinent portion of respondent commissioner's order reads:

"A careful perusal of the records pertaining to your documentation for travel to and stay in the Philippines, however, all tend to negate the claim that the GO HIP, who now sought and secured the cancellation of your and your sons' alien registry, had been your common-law husband in Amoy, China, and neither could you lawfully be married to this GO HIP. as by said records you are already married to another man having the same name and who is now residing in Hongkong, no convincing allegation and evidence having been presented to establish that your previous marriage has' been legally dissolved Consider, for example: (1) In the application dated June 16, 1960 for passport visa which was filed with the Philippine Consulate General in Hongkong, you stated that you are domiciled at 38 Java Road, 8th Floor, Hongkong; that you are married and the name of your husband is GO HIP, who is residing at 38 Java Road) 8th Floor, Hongkong; that you desire" to enter the Philippines for a vacation; that your reference in the Philippines is CHU HUA, residing at 649 Carriedo Street, Manila; that you desire to remain in the Philippines for a ' period of 30 days; and that upon termination of your stay in the Philippines, you will proceed to Hongkong; (2) At the investigation on June 22, 1960 of said visa application, you testified that your husband ia GO HIP; that he has been residing in Hongkong for about 7 years and has been engaged in the import/export business; that you are applying for a visa to enter the Philippines for vacation and pleasure trip; and that your reference in the Philippines is CHU HUA, a cousin engaged in the import/export, business; and (3) In the sworn application dated June 28, 1960 for admission as a temporary visitor, you declared that your permanent address abroad is 38 Java Road, 8th floor, Hongkong; that your husband's name is GO HIP, residing at. 38 Java Road, 8th floor, Hongkong, who is also your nearest relative in your country of domicile; that you desire to-enter the Philippines to visit a cousin, CHU HUA, residing at 649 Carriedo St., Manila; and that you intend to stay in the Philippines for one month, with address at 649 Carriedo St., Manila.

"It is readily noted from your aforecited declarations under oath, that your husband, GO HIP, has all the time been residing with you in Hongkong," particularly, at 38 Java Road, 8th floor. The GO HIP who now claimed to be your husband and father of your two sons is a permanent resident of the Philippines since his first arrival in 1941 withv address since May 20, 1953 at 1298 Don Quixote, Sampaloc, Manila. For that reason, and considering your declared purpose in coming to the Philippines, personal reference and nearest relative in this pountry, desired period of stay, and intention to return to Hongkong, this Office is constrained to conclude that they are two persons bearing similar names. It naturally follows that your marriage in Tondo, Manila, on July 20, 1960 is void ab initio, since your first marriage is still valid and subsisting, and that your two sons could not thereby be legitimated."

It should be noted that the findings of respondent commissioner are fully borne out by the evidence submitted at the original hearing. In fact, they were upheld by the court a quo in its original decision. Thus, the court, among other things, stated: "under the facts and circumstances the marriage of Sy Ha and Go Hip of Manila on July '20, 1960 (Exh. A was void ab initio as shown above. At any rate, the intent of petitioners to defeat the immigration laws being palpable and manifest, the element of fraud and misrepresentation prevents such marriage from conferring Filipino citizenship on petitioners." But; after the new hearing was held on alleged, newly discovered evidence, the court a quo reversed its original decision and granted the petition. It went further by declaring

petitioners citizens of the Philippines and by re-affirming the validity of the order issued on July 26, 1960 by Associate Commissioner Talabis which recognized petitioners as Filipino citizens.

Now, the questions before us are: Has the court a quo' acted properly in granting the motion for new trial filed by petitioners based on the alleged newly discovered evidence? Was the court a quo justified in granting the instant petition for mandamus based on said evidence?

Before answering the foregoing questions, let us first see the evidence which, according to petitioners, they failed to present at the original trial because they could not have discovered it and presented it with the use of reasonable diligence. Such evidence is as follows:

"(1) Documentary evidence, more particularly, reentry permits issued to GO HIP, petitioner's husband, to attest to his departures from the Philippines to China in 1946 and 1948, which are in respondent's possession, to prove not only the fact of his marriage to petitioner but also to prove the fact that it was during these two trips that their two children, the petitioners herein, were conceived at that time;

"(2) Expert testimony, either from the NBI Chemistry Laboratory and/or Philippine General Hospital, concerning blood test of the minors GO KANG and GO SIONG as to whether or not they are the possible offsprings of the spouses Sy Ha and Go Hip. An affirmative result would attest to the probability of blood relationship and a negative result would attest conclusively of the fact that they are not blood relations;

"(3) Expert testimony, on the science of portrait parlee, to prove the identities of those appearing in the picture submitted in evidence as Exhibit 'L';

"(4) Testimony, perhaps of hostile witnesses more particularly petitioners' immigration brokers who prepared their travel papers and documents to prove the circumstances which lead to petitioners present difficulties. Petitioners expect to show that their immigration brokers and counsel, who in trying to avoid the imposition of P10,000.00 cash bonds each (under Cabinet Policy of March 16, 1954, applicants temporary visitor's visa for 3 months stay who are related within the 3rd degree of consanguinity to Chinese permanent residents) instead of the usual P1,000.00 or \$500.00 imposed on Chinese tourist for 30 to 59 days stay in this country, have wittingly or unwittingly, doomed petitioners' simple case to a maze of legal controversies with the bleak and frightening prospect petitioners' family being torn asunder, by sanction of laws, through no fault of petitioners' own making. Petitioners' fault if any, was that they followed the instructions of their immigration brokers blindly in their fervent desire to be together, as a family; and

"(5) Testimonial evidence of reputable persons "who have known the petitioners for a long period of time, more particularly the sponsors of their marriage and the nearest relatives of petitioners residents of' this country."

It will thus be seen that the evidence, both documentary and testimonial, which petitioners were allowed to present at the new trial, does not partake of the nature of a newly discovered evidence, because it was already in existence and known to them at the time of the investigation conducted by respondent immigration commissioner, as well as at the original hearing conducted before the trial court. Indeed, it is not such an evidence which petitioners could not, with reasonable diligence, have discovered and produced at the trial more so when it was intended to justify a new trial after the case was lost after the original hearing. For it is a well-known rule that forgotten evidence or one which intentionally or thru oversight was not offered at the trial of a case cannot be presented as newly discovered evidence to support a motion for new trial.[1] And yet the trial court, over the vigorous objection of respondent, found the motion well-taken and allowed the presentation of the alleged newly discovered evidence. Evidently, the court a quo acted improvidently in entertaining such motion.

It should be borne in mind that this is a petition for mandamus to compel respondent to recognize the validity of an order of Associate Commissioner Felix Talabis which declared petitioners citizens of the Philippines and to

restore their identification certificates as such citizens after respondent commissioner had exercised his authority to re-examine and re-evaluate the evidence then extant in his office as submitted in the administrative investigation and yet the court a quo has acted on the matter without giving said respondent an opportunity to examine and evaluate the evidence on which it predicated its amended decision. We consider this action unfair and improvident for it is tantamount to overruling the decision of respondent on evidence which he himself did not have occasion to consider. It is like overruling him on a matter which was never submitted to him for consideration.

Another point we should consider here is the nature of the proceeding before us. It should be recalled that this is a petition for mandamus which will only lie to compel an officer to perform a ministerial duty, not a discretionary duty, for, as it was aptly held, mandamus will not issue to control, the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.[2] Likewise, it was held that the determination of whether or not an applicant for a visa has a non-immigrant status, or whether his entry into this country would be contrary to public safety, is not a simple ministerial function, but one involving the exercise of discretion, which cannot be controlled by mandamus.[3] There is, therefore, no way by which we can now order respondent to re-affirm the order of Associate Commissioner Talabis which declares petitioners as Filipino citizens, as was done by the court a quo.

Wherefore, the decision appealed from is reversed. Petition for mandamus is dismissed. Costs against petitioners.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Bersabal vs. Bernal, 13 Phil., 463; Manila Railroad Company vs. Mitchel, 49 Phil., 801.

[2] Blanco vs. Board of Medical Examiners, 46 Phil., 190; Diokno vs. RFC, 91 Phil., 608; See also Inchausti and Co. vs. Wright, 47 Phil., 866; Marcelo Steel Corp. vs. The Import Control Board, 87 Phil., 374;

[3] Ng Gioc Lim vs. The Secretary of Foreign Affairs, 85 Phil., 842.

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