

IN RE: FLORENCIO MALEARE*Adm. Case No. 533. April 29, 1968*

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

The respondent, Florencio Mallare, was admitted to the practice of law on 5 March 1962. In his verified petition to take the bar examinations in 1961, he alleged that he is a citizen of the Philippines and that “his father is Esteban Mallare and his mother is Te Na, both Filipino citizens”. (Personal Record, No. 17450, Bar Division)

On 16 July 1962, the then Acting Commissioner of Immigration Martiniano P. Vivo denounced the respondent to this Court as a Chinaman masquerading as a Filipino citizen and requested that the matter be investigated thoroughly and if the respondent fails to show that he has legally become a Filipino, steps be taken for striking his name from the roll of persons authorized to practice law. Acting upon the request, this Court, on 9 August 1962, referred the matter to its Legal Officer-Investigator for investigation and report. An investigation was thus held wherein the relator or complainant and the respondent appeared and adduced their respective evidence.

The position of the respondent-lawyer is that he is a Filipino citizen based on the supposed citizenship of his father, Esteban Mallare, alleged to be a Filipino citizen by choice, because he was the illegitimate son of a Chinese father and a Filipina mother, Ana Mallare; and that the respondent’s mother, Te Na, a Chinese, followed the citizenship of her husband upon their marriage.

The respondent’s second theory is that, having been declared a Filipino citizen in a final judgment in 1960 by the Court of First Instance of Quezon province, in its Civil Case No. 329-G (entitled, Vitaliano Itable vs. Artemio, Florencio, Paciencia, Esperanza and Raymundo Mallare) and his birth record, wherein he was originally registered as a Chinese, has likewise been ordered corrected to Filipino, by final judgment in Special Proceeding No. 3925 of the same court,[1] his Filipino citizenship is conclusive, *res judicata* and binding to the government and to the world.

Complainant Vivo disputed, on the facts, the respondent’s first theory, and, on the second theory, claimed that the aforesaid Civil Case No. 329-G (Itable vs. Mallare) was a simulated action calculated to obtain a judicial declaration of Philippine citizenship and, after having obtained the said declaration, the respondent, together with his brothers and sisters, utilized the declaration to change their birth and alien registration the better to hide their true nationality, which is Chinese.

The respondent denies the charge of simulating an action; and by way of defense, points out that Civil Case No. 329-G and Special Proceeding No. 3925 are not subject to collateral attack and, since his birth record and alien registration (and that of his brothers and sisters) have been corrected and cancelled, respectively, the question of their citizenship is now moot and academic.

On respondent’s first claim to citizenship by blood, the earliest datum that can be stated about the respondent’s supposed ancestry is that in 1902,[2] ex-municipal president Rafael Catarroja, then eight years old, met for the first time Ana Mallare, the supposed paternal grandmother of the respondent, in Macalelon, Quezon. He had not

seen her deliver or give birth to the baby boy, Esteban Mallare, father of the respondent, but met the supposed Filipina mother and Esteban Mallare years later when the boy was already (8) years old. (Annex “8”, pp. 10-12, t.s.n., Sept. 24, 1959, Civil Case No. 329-G, CFI of Quezon Province). There is no evidence that Ana Mallare was an “inhabitant of the Philippine Islands continuing to reside therein who was a Spanish subject on the eleventh day of April, eighteen hundred and ninety-nine”, as required by the Philippine Bill of July 1, 1902 and she cannot, therefore, be considered a Filipina. That witness Catarroja, the respondent, and the latter's brothers and sisters, stated that Ana Mallare was a Filipina, as well as their testimonies in the civil case that she had not married; her Chinese husband and that she is the true mother of Esteban Mallare, are more of opinion or conjecture than fact, utterly insufficient to overcome the presumption that persons living together as husband and wife are married to each other (Rule 131, par. bb). “Every intendment of law and fact”, says Article 220 of our Civil Code “leans toward the validity of marriage and the legitimacy of children.”

The respondent relies on three documents as indicative of the alleged Philippine citizenship of his father, Esteban Mallare. On 7 July 1926, Te Na, respondent's Chinese mother, was described in a landing certificate of residence issued to her, as “wife of P.I. citizen” and as “wife of Dy Esteban, P.I. citizen”. (Annex “16”, being Exh. “3” in Civil Case No. 329-G). On 20 February 1939, Esteban Dy Mallare executed an affidavit stating therein that when he reached the age of majority he had “definitely elected to be a Filipino citizen following the citizenship of my mother.” (Annex “4”, being Exh. “1” in Civil Case No. 329-G) And, in 1928, Esteban Mallare was a registered voter in Macalelon, Quezon. (Annex “7”, being Exh. “2” in Civil Case No. 329-G).

A landing certificate of residence' issued under Section 7, Act 702 by the Collector of Customs is based upon an administrative ex parte determination of the evidence presented and the facts as stated by the applicant and, therefore, carries little evidentiary weight as to the citizenship of the applicant's husband. In the instant case, the truth of Te Na's declarations when she applied for the landing certificate could have been inquired into had she been presented as a witness in these proceedings, but this was not done.

The affidavit of Esteban Mallare, besides being self-serving, is not a substitute for a duly recorded election of Philippine citizenship, assuming that the affiant was qualified to so elect. When Esteban executed it, he was already thirty-six (36) years old and he executed it for the purpose, stated in the last paragraph, of making a change in a miscellaneous lease application wherein he had previously stated that he is a citizen of China.

Nor can it be regarded as a re-affirmation of an alleged election of citizenship, since no such previous election was proven to have existed.

Esteban Mallare's registration as a voter indicates his desire to exercise a right appertaining exclusively to Filipino citizens but this does not alter his real citizenship, which, in this jurisdiction, is determinable by his blood (*jus sanguinis*).

Against these pretensions of Philippine citizenship, all the five (5) known children of the spouses Esteban Mállare and Te Na, Artemio, Esperanza, Florencio, Paciencia and Raymundo, were registered at birth as children of a Chinese father and a Chinese mother and with the added detail that their parents were born in China.

The birth certificate of Esperanza Mállare (Exh. “F”) who was born on 25 October 1939, is particularly significant in this regard, because it bears the father's own signature. If Esteban Mállare was indeed a Filipino by choice, as stated by him in his aforementioned affidavit (Annex 4), then he should have so stated in this birth certificate of his daughter; instead, he admits, against his own interest, that he is a Chinese. Esteban Mallare's own death certificate (Exh. “C”), over the signature of his son, Artemio Mallare, shows against Artemio's own interest, that Esteban was a Chinese, born in Fookiang, China; that he died on 5 June 1945, at the age of 42 and was buried at the Chinese cemetery, having resided in the Philippines for 28 years (Exh. “C”), i.e., only since

1917.

The affidavit of Artemio denying that the signature in the aforesaid death certificate is his, is inadmissible and, therefore, should be rejected, as it was offered in evidence for the first time after trial was closed, as an annex to the respondent's memorandum with the investigator. The affiant was not; examined thereon, and the affidavit is self-serving besides.

The entire family, consisting of the father, mother and their four (4) children (Raymundo was not yet born) were registered as aliens in 1942 in the then Division of Alien Statistics, pursuant to the proclamation of the Commander-in-Chief of the Imperial Japanese Forces in the Philippines and Executive Order No. 25 of the then Executive Commission (See letter of Jan. 18, 1963 from the Bureau of Immigration to the Legal Officer-Investigator; see also pp. 171 and 180-181, Vol. I, No. 4, Official Gazette, published during Japanese occupation.)

In addition, the respondent himself was again registered as an alien in 1950, his application thereto bearing his thumbprints and stating therein that he is a Chinese; that he belongs to the yellow race and that he had used these other names: "Tan Jua Gae", "Enciong" and "Jua Gao" (Exh. "N"). He had been a teacher in the Candon Chinese School (t.s.n., p. 17, Oct. 3, 1962). His explanation that it was his mother who registered him as an alien is flimsy; and, as stated hereinbefore, he did not present his mother as a witness.

The evidence is thus clearly preponderant, if not overwhelming that the respondent's father, Esteban Mallare or "Mallari", also known as "Esteban Dy", "Esteban Dy Mallare" and "Esteban Tan", was and remained a Chinese until he died; consequently, the respondent's mother, admittedly a Chinese, retained her original citizenship and their offspring, respondent, Florencio Mallare, together with his brothers and sisters, are likewise Chinese nationals, through and through.

We now turn to respondent's second defense of *res judicata*. There are certain marks of simulation that attended Civil Case No. 329-G, and indicating that it was brought to circumvent a previous unfavorable opinion of the Secretary of Justice denying cancellation of Mallare's alien registration (Op. No. (90, Ser. of 1955, dated March 31, 1955). The said civil case was instituted by the vendor (Vitaliano liable) of a certain parcel of land to rescind the sale and recover the land sold from the vendees, who are the herein respondent and his brothers and sisters, on the ground that the said vendees are Chinese. The vendor-plaintiff practically abandoned the case; the vendees-defendants submitted evidence purporting to show their Filipino citizenship, and plaintiff neither cross examined nor presented rebuttal proof. After trial, the court, declaring the vendees as natural-born Filipino citizens, decided for the validity of the sale of the parcel of land.

On the basis of the foregoing declaration by the Court of First Instance of Quezon Province, the respondent and his brothers and sisters filed Special Proceeding No. 3925, in the same court, but in a different branch, for the "correction" of their birth records. The local fiscal, representing the Solicitor General, appeared but did not oppose the petition; wherefore, after hearing, the court granted the petition. Based on the same judicial declaration, the then Commissioner of Immigration De la Rosa (not the complainant) cancelled on June 8, 1960, the alien registration of the herein respondent and that of his brothers and sisters, and issued to them identification certificates recognizing them as Filipino citizens. Then Solicitor General Alafriz took the same position.

Civil Case No. 329-G and Special Proceeding No. 3925 are not modes of acquiring Philippine citizenship; neither is the Chinese citizenship of the respondent converted to Filipino because certain government agencies recognized him as such. He remains, by *jus sanguinis*, a Chinese until he is naturalized.

It is noted that the declaration that the respondent and his brothers and sisters are Filipino citizens is stated in the

dispositive portion of the decision in Civil Case No. 329-G, which was an action in personara. The pronouncement was not within the court's competence, because the declaration of the citizenship of these defendants was not the relief that was sought. At the time, the pronouncement was beyond judicial power, there being no law authorizing the institution of a judicial proceeding to declare the citizenship of an individual (*Danilo Channie Tan v. Republic*, L-14159, April 18, 1960; *Palaran v. Republic*, L-15047, Jan. 30, 1962; *Tan Yu Chin v. Republic*, L-15775, April 29, 1961; *Tan v. Republic*, L-16108, October 31, 1961; *Santiago vs. Commissioner*, L-14653, Jan. 31, 1963; *Commissioner vs. Domingo*, L-2121A, July 31, 1963; *Lao Yap Diok, et al., v. Republic*, L-19107-09, Sept. 30, 1964).

In the basic case *Channie Tan vs. Republic*, ante, this Court ruled as follows:

“Under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual. Courts of justice exist for the settlement of justiciable controversies, which imply a given right, legally demandable and enforceable, an act or omission violative of said right, and a remedy granted or sanctioned by law, for said breach of right. As an incident only of the adjudication of the rights of the parties to a controversy, the court may pass upon, and make a pronouncement relative to, their status. Otherwise, such a pronouncement is beyond judicial power. Thus, for instance, no action or proceeding may be instituted for a declaration to the effect that plaintiff or petitioner is married, or single, or a legitimate child, although a finding thereon may be made as a necessary premise to justify a given relief available only to one enjoying said status. At times, the law permits the acquisition of a given status, such as naturalization, by judicial decree. But, there is no similar legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry.” (*Tan vs. Republic*, G. R. No. L-14159, April 18, 1960, reiterated in G.R. No. L-15775, April 29, 1961).

The said judicial declaration^[3] was merely an incident to the adjudication of the rights of the parties to the controversy over land ownership. Their citizenship was not the thing adjudicated in the judgment and the declaration that they are Filipinos was but a necessary premise for the court to arrive at a conclusion that the sale of the realty was valid as between the parties. Not being the thing directly adjudicated, their declared citizenship is not *res judicata*, and cannot become conclusive.

The appearance of the fiscal, representing the Solicitor General, in Special Proceeding No. 3925 does not bind the state to the order of “correction” of the birth records because the proceeding was not instituted as in *rent and*, under no law had the state given its consent to be party thereto. For this reason, the fiscal's appearance was an unauthorized one.

It is noteworthy that in neither case relied upon by the respondent does it appear that his claim for citizenship was given adequate publication so as to apprise all concerned and give them opportunity to contest it or supply the corresponding public office any derogatory data that might exist against the alleged citizenship. Hence, neither decision constitutes *res judicata* on the issue of respondent's alleged Filipino nationality.

And certainly, the Supreme Court, acting pursuant to its inherent and constitutional authority, may not be precluded from inquiring into the citizenship of persons admitted to the practice of law, independent of any court's findings in the cases or proceedings brought or instituted therein.

IN VIEW OF ALL THE FOREGOING, the respondent Florencio Mallare is hereby declared excluded from the practice of law; his admission to the Philippine bar is revoked and he is hereby ordered to return immediately to this Court the lawyer's diploma previously issued to him.

Let a copy of this decision be furnished, when it becomes final, to the Secretary of Justice, for such action as may be deemed warranted, and let another copy be sent to the Local Civil Registrar of Macalelon, Quezon, for

purposes of record in the corresponding civil registry of births.

SO ORDERED.

Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Respondent excluded from the practice of law.

[1] Petition for Correction of Qvil Registry of Birth: Artemio, Florencio and Esperanza Mallare, petitioners.

[2] Catarroja was 65 when he testified in 1959; therefore, he was born in 1894. Adding his age of 8 to his year of birth equals 1902.

[3] 3In Civil Case No. 329-G (liable vs. Mallare).

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