

IN THE MATTER OF THE PETITION FOR DECLARATORY RELIEF ON CITIZENSHIP STATUS, VICENTE TIU NAVARRO, PETITIONER, VS. THE HONORABLE COMMISSIONER OF IMMIGRATION, RESPONDENT.

G.R. No. L-15100. December 29, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Vicente Tiu Navarro filed the petition which began this proceeding in the Court of First Instance of Surigao, alleging that he is the son, out of wedlock, of one Cecilia Laygo, Filipina, with Tiu Kiang, a Chinese merchant; that both of his parents are dead; that he has continuously resided in the Philippines except for two occasional visits to China and that his physical features are more those of a Filipino than those of a Chinese; that he is registered as a Chinese citizen, according to his landing certificate; and he prays that after the presentation of his evidence his alien papers be cancelled and a certificate of identity as Filipino citizen be issued in his favor. The Solicitor General opposed the petition on the ground among others, that in so far as the petition asks for a declaratory judgment, the petition states no cause of action, and that in so far as it compels the cancellation of his alien certificate, neither does the said action lie for various reasons, among them that mandamus does not lie to control the discretionary powers of the defendant, and that petition does not allege sufficient facts to constitute an action for mandamus. Thereafter the Solicitor General filed a motion to dismiss the petition but this motion was denied. A hearing of the case was had and thereafter, the court below declared that the petitioner is a Filipino citizen entitled to all the rights and privileges thereunto appertaining. Against this decision the Solicitor General has presented this appeal.

In this Court, the Solicitor General claims that the trial court erred, in holding that an action for declaratory relief lies for a judicial pronouncement of citizenship and, in granting the petition holding that the evidence presented is sufficient to establish the fact that the petitioner is a Filipino citizen.

A study of the petition shows that petitioner failed to allege sufficient facts to show that he is entitled to a judgment for declaratory relief. There is no allegation of the existence of the necessity of determining any question of construction or validity arising under an instrument or statute and for a declaration of petitioner's rights or duties thereunder, as required by Section 1 of Rule 66 of the Rules of Court. There is no allegation that anybody has contested his claim of citizenship, whether private or official, and neither is there any allegation that any controversy has arisen with respect to his claim of citizenship. A similar question has been decided adversely by Us in the case of *In Re Hospicio Obiles*, 92 Phil., 864; 49 Off. Gaz. No. 3, p. 923.

Our decision in the case of *Antonio Delumen vs. Republic of the Philippines*, 94 Phil., 287; 50 Off. Gaz., [2] 578, is to the same effect thus:

"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 appellee's 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. 289, 48 Sup. Ct. 507, 509.)"

In accordance with Our ruling in the above cases, We hereby reverse the decision of the court below and dismiss the petition, with costs against petitioner-appellee.

Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur..

Judgment reversed.

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