

DANILO CHANNIE TAN ALIAS TAN SUY CHAN, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.

G.R. No. L-14159. April 18, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The Solicitor General seeks a review of the decision of the Court of First Instance of Cebu, in this naturalization case, declaring that petitioner Daniio Channie Tan, alias Tan Suy Chan, is a citizen of the Philippines and, accordingly, dismissing his petition for naturalization as such citizen.

Considering that petitioner has not appealed from said decision, the only question for determination before us is whether or not the lower court has erred in declaring that petitioner is a citizen of the Philippines. Upon a review, of the record, we are satisfied that the answer should be in the affirmative, for the following reasons:

- 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.

- The petition for naturalization in this case, and the declaration of intention filed by petitioner herein, state that he is a citizen of Nationalist China and that he wants to become a citizen of the Philippines. Moreover, in the former he prays to be "admitted" as such citizen. In other words, the question whether or not petitioner is a citizen of the Philippines has never been put in issue in this case. As a consequence, when the lower court declared him to be such citizen, it went beyond the issues raised by the pleading's, and, accordingly, acted in a manner so irregular as to, in effect, exceed its jurisdiction. We have not overlooked the decision in *Palanca vs. Republic* (80 Phil., 578; 45 Off. Gaz., Supp., p. 204) in which Palanca was declared a citizen of the Philippines in the proceedings for his naturalization. However, through appropriate pleading's, the petitioner in that case had averred that he possessed such status, thus putting the, same in issue.

- The evidence on record does not justify the finding above mentioned. Petitioner tried to prove that he is the legitimate child of Hee Acusar; that he (petitioner) was born in Amoy, China, on June 25, 1927; that he is married to Ong Witty, born in Bangkok, Siam, and a resident of Hongkong; that he has two (2) legitimate children, both residing in Hongkong, namely: Tan Khing Khing, born in Amoy, China, on August 12, 1948, and Tan Phing

Phing, born in Hongkong; that he came to the Philippines in 1935 and resided in the municipality of Bogo, province of Cebu; that his father, Hee Acusar, likewise, had his business and resided in said municipality; that the latter's father, Calixto Acusar, and his second wife, Anastasia Amoco resided, also in the same municipality; and that Hee Acusar and Calixto Acusar are citizens of the Philippines.

Upon the other hand, petitioner testified that he is a Chinese citizen. It appears also that, as far back as 1946, he registered himself as such Chinese citizen in our Immigration Office, which issued to him the corresponding Alien Certificate Registration, stating that he is a citizen of China; that he renewed this certificate in 1951; that he paid the annual fees due from aliens and has an Immigrant Certificate of Residence, in which his nationality is said to be Chinese; and that identical statement is made in the certificate, Exhibit S, and in his income tax return for 1956, Exhibit Y, both introduced by him in evidence. Again, petitioner's certificate of baptism, Exhibit AA, which states that the same took place on, June 25, 1957, names his father as Tan Sim.

Although petitioner testified that Tan Sim is the same Hee Acusar, this evidence is unworthy of credence for his (petitioner's) Exhibit W shows that as early as October 20, 1877, when Calixto Acusar, the alleged father of Hee Acusar, was baptized, said Calixto Acusar and his father Crisanto Acusar, used these Christian names and surnames. Considering the customs and practices prevailing in the Philippines, it is inconceivable that the son of Calixto Acusar and grandson of Crisanto Acusar would have used, fifty (50) years later, the Chinese name Tan Sim. Again, Hee Acusar stated in the special power of attorney, Exhibit FF, that petitioner herein is a "Chinese citizen", which, as adverted to above, tallies with the petition for naturalization, the declaration of intention and the testimony of petitioner herein. Lastly, petitioner has not even attempted to explain why he has never used the surname "Acusar", despite the fact that he allegedly is a descendant of at least three (3) generations of Acusars.

It is clear to us that his evidence to, the effect that he is a citizen of the Philippines, can not be relied upon.

Evidently, his failure to bring his children to the Philippines and enroll them in local schools as required in our Naturalization Law, and our decisions holding that such omission bars the naturalization of the father, even if the omission were sought to be justified by the alleged impossibility to get the children, out of China (*Hao Lian Chu vs. Republic*, 87 Phil., 668; 48 Off. Gaz., 1780; *Lim Lian Hong vs. Republic*, G. R. No. L-3576, Dec. 28, 1950; *Tan Hi vs. Republic*, 88 Phil., 117; *Ang Yee Koe Sengkee vs. Republic*, 30 Phil., 594; *Bangon Du vs. Republic*, 92 Phil., 519; *Yap Chin vs. Republic*, 93 Phil., 215; *Quin Hu Chay vs. Republic*, 94 Phil., 736; *Kin vs. Republic*, G. R. No. L-6894, April 27, 1955), are responsible for his efforts to establish in the lower court that he is already a citizen of our Republic, despite the allegations to the contrary in his petition for naturalization and in his declaration of intention.

Wherefore, the decision appealed from is hereby reversed, insofar only as it declares that petitioner is a citizen of the Philippines, with costs against said petitioner. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L. and Barrera, JJ., concur.
Padilla and Endencia, JJ., on leave.

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