

IN THE MATTER OF THE PETITION FOR ADMISSION AS CITIZEN OF THE PHILIPPINES. PEDRO TAN CONA, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.*G.R. No. 13224. April 27, 1960*

Ponente: LABRADOR, J.

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The above proceedings were instituted for the naturalization of petitioner Pedro Tan Cona, who alleges in his petition that he was born in Bacuag, Surigao on June 29, 1899; that he returned to the Philippines from Amoy, China on or about 1908, to which place his father has taken him when he was only four years of age, etc. Note that the petitioner does not state who is his mother. The petition was published twice in a newspaper of general circulation and twice also in the Official Gazette. It does not appear that any objection was registered by the Solicitor General. On April 8, 1954, the Court of First Instance of Surigao, Hon. Francisco Area, presiding, held that he has the qualifications necessary; that applicant was born in Bacuag, Surigao on June 29, 1899 of Buenaventura Tan, a Chinaman, and Maria Mati, a Filipino, who have lived together without benefit of marriage. The decision states that the Provincial Fiscal appeared, although he did not present evidence to rebut applicant's place of birth, the citizenship of his father and mother and the marriage of his parents. After stating the above facts the court declared that as the mother of the applicant is a Filipino and that no marriage had been celebrated between her and his father, the petition for naturalization is superfluous because petitioner or applicant is already a Filipino citizen by birth.

The decision bears date of April 8, 1954, and copy thereof was received by the Solicitor General on June 2, 1954. On January 29, 1957, the Solicitor General filed a petition which he entitled "petition for relief from judgment", alleging that contrary to the allegations of the petition the petitioner was actually born in Amoy, China on October 15, 1897, and that he was issued a landing certificate in Manila on June 19, 1908.

Applicant opposed the petition for relief from judgment. Replying to the opposition the Solicitor General cited Section 18 of Commonwealth Act No. 403, to the effect that a certificate of naturalization may be cancelled upon proof that it was secured through fraud or illegally. After hearing both parties, the court denied the petition. From this order of denial, the Provincial Fiscal appealed to this Court.

One of the grounds upon which the appeal is based is the fact that according to the decision of the trial court the petition was published in the Official Gazette only two times, and that, therefore, the court did not have jurisdiction to try and decide the case, in accordance with the decision of this Court in the case of *Ong Son Cui vs. Republic*, 101 Phil., 649. We have already ruled that failure of an applicant for naturalization to publish his petition three times in the Official Gazette affects the jurisdiction of the trial court.

"In short, non-compliance with the requirements thereof, relative to the publication of the petition, affects the jurisdiction of the court. It constitutes a fatal defect, for it impairs the very root or foundation of the authority to decide the case, regardless of whether the one to blame therefore is the clerk of court or the petitioner or his

counsel. Failure to raise this question in the lower court would not cure such defect. * * *." (*Celestino Co y Quing Reyes vs. Republic*, G. R. No. L-10761, prom Nov. 29, 1968; see *Ong Son Cui vs. Republic*, G. R. No. L-9858, May 23, 1957). (*Italics supplied.*)

There being no sufficient publication of the petition in the Official Gazette, and following the above mentioned decisions, this Court hereby holds that the court below had no jurisdiction to hear the petition and render judgment therein.

The proceedings below are hereby declared null, and void and the declaration that petitioner is a Filipino citizen is hereby set aside, without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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