

IN THE MATTER OF THE PETITION OF ADRIAN FONG TO BE ADMITTED A CITIZEN OF THE PHILIPPINES. ADRIAN FONG, PETITIONER AND APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND A...

G.R. No. 15991. May 30, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Petitioner seeks Philippine citizenship in a petition filed before the Court of First Instance of Rizal. The petition is supported by the affidavits of Gumersindo Garcia, a doctor of medicine, and Gerardo Florendo, a lawyer, who testified as character witnesses.

In a decision rendered on December 7, 1958, the court found petitioner to possess all the qualifications and none of the disqualifications prescribed by law to become a Filipino citizen, and hence it ordered that he be issued the requisite certificate of naturalization after he has taken his oath two years from the date of the finality of the decision pursuant to the provisions of Republic Act No. 531.

On January 9, 1959, the Solicitor General filed a motion for reconsideration praying that, in the interest of justice, the case be reopened for the reception of new evidence found by the government which would show that petitioner is undeserving of becoming a citizen of the Philippines because he has circumvented the provision of the Constitution prohibiting aliens from acquiring real properties in the Philippines except by hereditary succession. And considering the motion meritorious, the court, over the objection of petitioner, acceded to it setting aside its own decision and setting the case anew for hearing in order to give the government an opportunity to present the evidence it has discovered. Thereafter, the government filed a formal opposition setting forth the reasons on which the same is predicated. To this opposition petitioner filed his answer.

After the new hearing, the court rendered a new decision finding this time that petitioner is disqualified to become a Filipino citizen in view of the evidence submitted by the government. Accordingly, it dismissed the petition. Hence this appeal.

With regard to the procedural question raised by appellant in the sense that the lower court erred in giving the government an opportunity to present new evidence to the extent of setting aside its own decision in spite of the different motions for postponement filed by its representative which were granted but said representative nevertheless failed to appear when the case was tried on the merits, we can only say that while the lower court was not without reason in denying the government's last motion for postponement which prevented its representative from appearing on the date of trial, however, we find no error when it reopened the case to give another chance to the government in view of the new evidence it had discovered considering that the case on hand is one which involves an important policy of the State. Since the question of whether an applicant should be granted Philippine citizenship is merely one of privilege or a sort of a gift that our government bestows upon an alien, it is of importance that every opportunity be given to its representative to determine if he is really deserving

and qualified to become so beyond peradventure of doubt. And so we are not prepared to hold that the lower court has committed an abuse of discretion in acting the way it did in order that the government may be given the last chance to present the evidence it has uncovered. In this sense we hold that the trial court did not err in disregarding the vehement opposition of petitioner to the motion for reopening.

It cannot be disputed that if we are to attain merely to the evidence in chief presented by petitioner especially the testimony given by his two character witnesses, Dr. Gumersindo Garcia and Professor Gerardo Florendo, it can be said, as originally found by the trial court, that he possesses all the qualifications and none of the disqualifications prescribed by law to acquire Philippine citizenship. However, on the strength of the new evidence submitted by the government, the trial court found the contrary and went to the extent of reversing itself by denying the petition for naturalization. We are now called upon to determine if it acted properly in reversing its own decision.

The ground on which the government has predicated its opposition to the petition and which served as basis of the revocatory decision of the trial court is as follows: that petitioner, from the report submitted by the NBI, made an attempt to circumvent the provision of the Constitution which prohibits aliens from acquiring private agricultural lands, including residential lands, by purchasing a lot thru his mother-in-law, a Filipino citizen, when in fact the purchase was intended for her own daughter who, because of her marriage to petitioner, has herself become a Chinese citizen upon such marriage. This attempt at circumvention of said prohibition is predicated on the following facts:

"(a) Petitioner's mother-in-law, at the time of the purchase of the lot in question and when the house was constructed thereon, was already so old over to think of building a house for her own residence after she had for many years been always living with her daughter and son-in-law the petitioner herein;

(b) The lot in question, together with the house build thereon, was the very property allegedly given to petitioners wife as the latter's share in the properties of her mother, and notwithstanding that the properties given to each of her two brothers and a sister were worth almost twice than her she made no protest;

(c) The checks issued by the RFC representing installment of a loan contracted by petitioner's mother-in-law for the construction of the house on the lot in question were issued mostly in the names of the petitioner and his wife;

(d) The affidavit of one Ignacio Masangkay attached to the NBI report as an integral part thereof, petitioner was allegedly pointed to as the person who was to make payment of the lot in question. Although the affiant was not presented to affirm his affidavit, because the subpoena for his appearance was not served on him, his whereabouts now being unknown, there seems to be no reason to doubt the veracity of his statement, he being, to all appearances, a disinterested person." (Brief of Appellee, pp. 5-6).

To rebut the evidence on which the government predicated its opposition, petitioner called to the witness stand Gabriel A. Ambrosio, a realtor, Pacita David, and her sister Virginia David, wife of petitioner, and from their testimonies he sought to prove the following facts: that sometime in 1952 or 1953 Filomena David, mother-in-law of petitioner, out of her own funds, acquired by purchase the rights of one Ignacio Masangkay over a lot of the Calero Company situated in Sta. Lucia Subdivision (Little Baguio), San Juan, Rizal; that after the purchase, Filomena David, with the help of her daughter Virginia, and son-in-law, Adrian Fong, secured a real estate loan for P17,000.00 from the Rehabilitation Finance Corporation for the purpose of constructing a house on said lot, and for convenience and expediency, Filomena David executed a power of attorney in favor of her daughter Virginia to receive the releases from said bank; that after the death of Filomena David her children agreed to assign that house and lot to Virginia as the others had already received their respective shares in the properties of Filomena David and her husband; that Pacita David received a piece of land in Lubao, Pampanga, valued at P15,000.00, Diomedes, a lot in Dagupan Street, Tondo, Manila, and Ruben, a parcel of land located in Lubao,

Pampanga; and that after the property in Little Baguio was adjudicated to Virginia, she and her husband assumed the obligation with the bank and continued with the payment of the monthly installments.

And to prove that her mother Filomena David had her own money with which to pay the lot in Little Baguio and pay the monthly amortization, Virginia David declared that during the lifetime of her father the latter was engaged in business and owned a tractor which he sold at a high price the proceeds of which were loaned to her husband Adrian Fong; that after the death of her father the loan was paid by her husband to her mother by installments; and that, aside from the savings of her mother, the latter received from her husband allowances ranging from P100.00 to P200.00 a month in return for her keeping the house as she could not do the housekeeping herself because of her teaching job.

The trial court, upon examining the evidence of both parties, made the following comment:

"Contrary to the claim of Virginia David that her mother was the real party in interest in the purchase of the right of Ignacio Masangkay over the lot in question, the Court finds that it was the petitioner and his wife, Virginia who actually were interested in the acquisition of the property. The testimony of Virginia David that her mother had funds of her own with which to pay the lot and the real estate loan of P17,000.00 is difficult to believe. Filomena David in her old age was dependent for support and subsistence on her daughter Virginia and her son-in-law, Adriano Fong, she had no business or enterprise of her own nor did she have properties from which she derived a regular and fixed income. The statements in the application for real estate loan, Exhibit '7-A', to the effect that Filomena David was a general merchant engaged in the food stuffs and had an average yearly income of P9,600.00 were all false for the truth was that her only occupation at the time was keeping house for her daughter, Virginia, who in return gave her an allowance now and then. As a matter of fact, the creditor Bank must have considered the financial condition of the applicant, Filomena David, unsatisfactory so much so that the spouses Adrian Fong and Virginia David had to signed for the loan as co-makers with the applicant.

Another point to be considered is the fact that it was the wife of the petitioner who actually took interest in the construction of the house on that lot in Little Baguio. All the checks of the Bank were made payable to her (see Exhs. '7-C-1' to '7-H-1') and she administered the construction as if the property was her very own. After the house was finished, the Fong family lived in the same and made it their home, and Filomena David continued to live with them as she did in the past until she died in 1956. The alleged donation 'mortis causa' executed by Filomena David in favor of Virginia David, which by the way was not presented in Court, was a device by which the ownership of Virginia David was confirmed." (Record On Appeal, pp. 72-73).

After considering the arguments pro and con advanced by both parties in their briefs, we are persuaded to agree to the above findings of the trial court. Indeed, it is hard to believe that the lot in question was acquired by Filomena David, mother-in-law of petitioner, out of her own money and has later constructed thereon a house with money borrowed from the Rehabilitation Finance Corporation considering that at the time the transaction was made she was already old as she had then the age of 65 years. In fact, she was 69 when she died. At that ripe age it is indeed strange that she would still entertain the idea of acquiring a lot and a house where she could reside considering that she had been living with appellant and his wife for many years in their house after she had become a widow.

One piece of evidence that is worthy of note is the affidavit of one Ignacio Masangkay wherein appellant was indicated by him as the person who made the payments of the price of the lot in question. Although Masangkay was not presented to affirm his affidavit because the subpoena for his appearance was not served on him, his whereabouts being unknown, there seems to be no valid reason to doubt his veracity for appellant's counsel, instead of choosing to disregard said affidavit by insisting on its rejection as hearsay, directed questions to his witness with regard to said affidavit thereby impliedly admitting its competence as evidence. Certainly, if it is true that Filomena David bought the lot in question out of her own savings, why did not appellant present the bank

statement or account to prove the same? If she had enough money of her own why was she given a pension of one to two hundred pesos a month by her daughter and son-in-law for keeping the house where they were residing? The circumstances unfolded in this case leave in our mind serious doubt relative to the acquisition of the lot in question which in keeping with our policy should be resolved adversely to petitioner.

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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