

CHANGE OF NAME OF THE MINOR HENRY TOMELDEN; JUAN MALICDEM AND SATURNINA AQUINO, PETITIONERS AND APPELLEES, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.

G.R. No. 19141. October 31, 1964

Ponente: BARRERA, J.

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BARRERA, J.:

The spouses Juan Malicdem and Saturnina Aquino filed in the Court of First Instance of Pangasinan a petition for change of name of the minor Henry Tomelden to Henry Malicdem (Sp. Proc. No. 14080-II). It was alleged in the petition that they were the legitimate parents of said minor, but following the local belief that to break the chain of mortality of their children, which had been plaguing their family, their remaining child had to be sold Henry was registered in the civil registry as the son of Lope Tomelden and Eugenia Aquino, Saturnina's sister; that the minor has been living with them since birth, and although he uses the surname Tomelden, he knows that petitioners are his real parents; and said minor now wishes to use his true name Henry Malicdem.

After due publication and notice to interested parties, the petition was heard, during which the petitioners, the minor, and Eugenia Aquino, who was named as his mother in the record of birth, testified to the facts alleged in the petition. Thereafter, the lower court, finding the minor to be the legitimate child of petitioners, granted the petition and allowed the change of his name from Henry Tomelden to Henry Malicdem.

The Solicitor General interposed the present appeal, contending that it was error for the lower court to allow testimonial evidence, tending to establish that petitioners are Henry's parents, to override the entry in the civil register showing that said minor is the son of Lope and Eugenia Tomelden.

It is not denied that as recorded in the civil register, Henry appears to be the child of the Tomeldens. Petitioners, however, tried to explain the circumstances leading to such registration, which the lower court found to be credible. The action taken by the trial court is not erroneous. While it is true that the civil registry is an official record, it must also be remembered that entries made therein are only *prima facie* evidence of the facts so stated. (Art. 410, Civil Code). Thus, the correction or cancellation thereof, in proper cases and by judicial order, is allowed. (Art. 412, Civil Code). In the instant case, the lower court, after weighing the evidence presented, found that notwithstanding the entry in the civil registry, the minor is really the legitimate child of petitioners, and, therefore, should bear the surname of his father. This is a finding of fact which is binding on this Court on an appeal directly taken to it. The Solicitor General also contends that if it is true that the minor is the legitimate child of the Malicdems, this proceeding is unnecessary and should have been dismissed as the legitimate child is entitled as of right, to bear the surname of his legitimate father. This same argument has already been disposed of contrary to the contention of the Solicitor-General, in the case of *Asensi, etc. vs. Republic* (G. R. No. L-18047, Dec. 26, 1963), wherein it was held that there could be no legal prohibition against such a petition, because it would only be a confirmation of a legal right, which although superfluous, is not against law, customs or morals.

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed, without costs. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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