

WONG WOO YIU ALIAS NO YAO, PETITIONER AND APPELLEE VS. HON. MARTINIANO P. VIVO, ETC., ET AL., RESPONDENTS AND APPELLANTS.

G. R. No. 21076. March 31, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On June 28, 1961, the Board of Special Inquiry No. 3 rendered a decision finding petitioner to be legally Carried to Perfecto Bias and admitting her into the country as a non-quota immigrant. This decision was affirmed by the Board of Commissioners on July 12, 1961 of which petitioner was duly informed in a letter sent on the same date by the Secretary of the Board. However, on June 28, 1962, the same Board of Commissioners, but composed entirely of a new set of members, Rendered a new decision reversing that of the Board of Special Inquiry No. 3 and ordering petitioner to be excluded from the country. On August 9, 1962, petitioner filed a motion for new trial requesting an opportunity clarify certain points taken in the decision, but the same was denied for lack of merit. Whereupon, on September 14, 1962, petitioner initiated the instant petition for mandamus with preliminary injunction before the Court of First Instance of Manila which incidentally was considered by it as a petition for certiorari.

In due time, respondents filed their answer, and, after the parties had submitted a written stipulation of facts, attaching thereto some documentary evidence, the court a quo rendered decision granting in toto the relief prayed for. Thus, the court declared valid the decision rendered by the Board of Special Inquiry No. 3 while it restrained respondents from excluding petitioner from the country. Respondents interposed the present appeal.

It appears that in the proceedings held before the Board of Special Inquiry sometime in June, 1961, petitioner declared that she came to the Philippines in 1961 for the first time to join her Intsband Perfecto Bias to whom she was married in Ching kang, China on January 15, 1929; that they had several children all of whom are now in the Philippines; that their marriage was celebrated by one Chua Tio, a village leader; that on June 28, 1961 the Board of Special Inquiry No. 3 rendered a decision finding, among others, that petitioner is legally married to Perfecto Bias, a Filipino citizen, and admitted her into the country as a non-quota immigrant; that this decision was affirmed by the Board of Commissioners of which petitioner was duly notified by the Secretary of said Board in a letter dated July 12, 1961 ; that in a motu proprio decision rendered by the Board of Commissioners composed of a new set of members dated June 28, 1962 the latter found that petitioner's claim that she is the lawful wife of Perfecto Bias was without basis in evidence as it was "bereft of substantial proof of husband-wife relationship"; that said Board further held that, it appearing that in the entry proceedings of Perfecto Bias had on January 23, 1947 he declared that he first visited China in 1935 and married petitioner in 1936, jt could not possibly sustain her claim that she married Perfecto Bias in 1929; that in an affidavit dated August 9, 1962 Perfecto Bias claimed that lie went to China in 1929, 1935 and 1911, although in his re-entry declaration he admitted that he first went to China in 1935, then in 1937, then in 1939, and lastly in 1911; and that Perfecto Blas in the same affidavit likewise claimed that he first went to China when he was merely four years old so that computed from his date of

birth in 1908 it must have been in 1912.

In view of the discrepancies found in the statements made by petitioner and her alleged husband Perfecto Bias in the several investigations conducted by the immigration authorities concerning their alleged marriage before a village leader in China in 1929, coupled with the fact that the only basis in support of petitioner's claim that she is the lawful wife of Perfecto Bias is "a mass of oral and documentary evidence bereft of substantial proof of husband-wife relationship", the Board of Commissioners *motu proprio* reviewed the record concerning the admission of petitioner into the country resulting in its finding that she was improperly admitted. Thus, said Board made the following comment:

"The only basis in support of the claim that she is the wife of Perfecto Blas is a mass of oral and documentary evidence bereft of substantial proof of husband-wife relationship. She relies on the records of Perfecto Blas in connection with his cancellation case and the testimony of the supposed children in the previous admission proceeding. But the claim is belied by the admission of Perfecto Blas himself, in the hearing conducted of special inquiry in connection with his entry on January 23, 1947, that he was married to one Ng Yo in Ki Say, Ching kang, China in 1936 his first visit there being in 1935; he could not therefore have been married to herein applicant in 1929."

The above comment cannot be disputed, it finding support in the record. Indeed, not only is there no documentary evidence to support the alleged marriage of petitioner to Perfecto Bias but the record is punctured with so many inconsistencies which cannot but lead one to doubt their veracity concerning the pretended marriage in China in 1929. This claim can not also be entertained under our law on family relations. Thus, Article 15 of our new Civil Code provides that laws relating to family rights or to the status of persons are binding upon citizens of the Philippines, even though living abroad, and it is well-known that in 1929 in order that a marriage celebrated in the Philippines may be valid it must be solemnized either by a judge of any court inferior to the Supreme Court, a justice of the peace, or a priest or minister of the gospel of any denomination duly registered in the Philippine Library and Museum (Public Act No. 3412, Section 2). Even if we assume, therefore, that the marriage of petitioner to Perfecto Bias before a village leader is valid in China, the same is not one of those authorized in our country.

But it may be contended that under Section 4 of General Order No. 68, as reproduced in Section 19 of Act No. 3613, which is now Article 71 of our new Civil Code, a marriage contracted outside of the Philippines which is valid under the law of the country in which it was celebrated is also valid in the Philippines. But no validity can be given to this contention because no proof was presented relative to the law of marriage in China. Such being the case, we should apply the general rule that in the absence of proof of the law of a foreign country it should be presumed that it is the same as our own.

"The statutes of other countries or states must be pleaded and proved the same as any other fact. Courts can not take judicial notice of what such laws are. In the absence of pleading and proof the laws of a foreign country or state will be presumed, to be the same as our own." (Yam Ka Lim vs. Collector of Customs, 30 Phil., 46)

"In the absence of anything to the contrary as to the character of a foreign law, it will be presumed to be the same as the domestic law on the same subject." (Lim and Lim vs. Collector of Customs, 36 Phil., 472)

"In the absence of evidence to the contrary foreign laws on a particular subject are presumed to be the same as those of the Philippines." (Miciano vs. Brimo, 50 Phil., 867)

Since our law only recognizes a marriage celebrated before any of the officers mentioned therein, and a village leader is not one of them, it is clear that petitioner's marriage, even if true, cannot be recognized in this jurisdiction.

Wherefore, the decision appealed from is reversed. As a corollary, the petition for mandamus filed before the court a quo is hereby dismissed. No costs.

Bengzon, C. J., Conception, Reyes, J. B. L., Barrera, Paredes, Dizonv Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

Judgment reversed.

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