

BARTOLOME DY POCO, PLAINTIFF AND APPELLANT, VS. THE COMMISSIONER OF IMMIGRATION, AND THE IMMIGRATION OFFICER OF CEBU, DEFENDANTS AND APPELLEES.

G.R. No. 22313, March 31, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

Appealing from the decision of the Court of First Instance of Cebu (in Civil Case No. R-4021), denying his petition to be declared exempted "from compliance with the duties of aliens under the Alien Registration Act and/or from securing an Immigrant Certificate of Residence", Bartolome Dy Poco claims that said court erred (1) in holding that the issue of his (petitioner's) citizenship cannot properly be passed upon in a declaratory relief proceeding, and (2) in not declaring him exempted from the requirements of the Alien Registration law.

The petition for declaratory judgment was based on the allegations that petitioner-appellant is a Filipino, having been born in 1910 in Cebu City, out of wedlock, of a Filipino mother, Susana Apura, who died in 1928, and a Chinese father, Dy Poco, who died in 1915; that believing himself at first to be a Chinese, petitioner secured alien certificates of registration in 1947 and 1951; that in 1952, petitioner-appellant, realizing his mistake, petitioned the Commissioner of Immigration for cancellation of his name from the list of aliens, which petition was denied. On petitioner's request for reconsideration of said ruling, the Secretary of Justice, to whom the matter was referred, rendered an opinion (Op. No. 72, s-1955) sustaining the stand of the Commissioner, for the reason that the nationality of the mother and the illegitimate status of petitioner had not been satisfactorily established. Upon being required, subsequently, by the immigration authorities to secure an immigrant certificate of residence, petitioner instituted the present declaratory relief proceeding in the Court of First Instance of Cebu. As heretofore stated, in its decision of April 10, 1957, the court dismissed the petition, on the ground that the declaration of citizenship is not a proper subject of a proceeding for declaratory judgment. Petitioner has appealed.

To show that his petition comes within the purview of the Rules,[1] appellant contends that it was filed to determine whether he is "duty bound to make an annual report under Section 10 of Rep. Act No. 502 and/or secure an Immigrant Certificate under Sec. 41(a) of Com. Act 613, as amended by Rep. Act 503". It may be pointed out, however, that notwithstanding the manner in which the petition was worded, it is clear from all the allegations thereof that the relief being sought therein is a declaration of petitioner's alleged Philippine citizenship. As consistently ruled by this Court, the proceeding for declaratory relief is not the proper and available remedy to secure such declaration of citizenship.[2]

But, even assuming for the sake of argument, that the issue raised in this case can properly be the subject of a declaratory judgment, the dismissal of the petition must still be sustained.

Appellant's claim to Philippine citizenship, or "exemption from compliance with the requirements of the Alien Registration law", as he wants to put it, is based on his alleged illegitimacy or that, even if his parents were legally married, he followed the citizenship of his Filipino mother when the latter became a Filipino again upon the death

of her Chinese husband in 1915. However, both the Secretary of Justice and the lower court found these allegations not substantiated by evidence. In other words, these material facts upon which the cause of action was based, were and still are subject to dispute or controversy. Consequently, no declaration based on such questioned facts can be made.

Even in the United States, where the law on declaratory judgment permits, in certain specific instances, inquiry on questions of fact during the proceeding,[3] the prevailing rule is that "where a declaratory judgment as to a disputed fact would be determinative of issues rather than a construction of definite stated rights, status, and other relations, commonly expressed in written instruments, the case is not one for declaratory judgment." [4] And, here, the material issues are the citizenship of the mother and the illegitimacy of the petitioner, and the rights and status of the latter which are sought to be declared are dependent upon those disputed issues.

It may be observed further that our Rules contain no similar provision. Taking into consideration the nature of a proceeding for declaratory judgment, wherein relief may be sought only to declare rights, and not to determine or try issues,[5] there is more valid reason for us to adhere to the rule that a declaratory relief proceeding is unavailable where the judgment would have to be made only after a judicial investigation of disputed facts.[6]

For the foregoing considerations, the decision appealed from is hereby affirmed, with costs against appellant. So ordered.

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

[1] "SECTION 1. Who may file petition.—Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, or ordinance, may, before breach or violation thereof, bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.

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(Rule 64, Rules of Court).

[2] Santiago vs. Commissioner, G. R. No. L-14653, Jan. 31, 1963, and cases cited therein.

[3] Sec. 9, Uniform Declaratory Judgment Act.

[4] 16 Am. Jur., sec. 20, pp. 294-295.

[5] See Sec. 1, Rule 64, new Rules of Court.

[6] Transport Oil Co. vs. Bush, 114 Cal. App. 152, 1 P.(2d) 1060, citing R.C.L.; Washington-Detroit Theatre Co. vs. Moore, 249 Mich. 673, 229 N.W. 618, 68 A.L.R. 105.

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