

THE LOCAL CIVIL REGISTRAR OF CEBU CITY, PETITIONER, VS. HON. RAFAEL T. MENDOZA, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH VI, AND ANTOINETTE FAYE YU GAW, A ...

G.R. No. 59611. July 20, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

On December 9, 1980, respondent minor Antoinette Faye Yu Gaw, represented by her father and guardian Philip L. Gaw, filed Civil Case No. R-19962 in the Court of First Instance of Cebu against the Republic of the Philippines, the Commission on Immigration and Deportation, the Local Civil Registrar of Cebu City, and the Perpetual Succour Hospital, for "judicial declaration of minor Antoinette Faye Yu Gaw as Filipino citizen and to change the citizenship of her father, Philip L. Gaw and mother Marilou A. Yu as stated in her Certificate of Live Birth from Chinese to Filipino."

The petition alleged that Antoinette Faye Yu Gaw was born on June 6, 1980 at the Perpetual Succour Hospital, Cebu City; that her parents, Philip L. Gaw and Marilou Y. Gaw, are Filipino citizens by birth; that after the birth of Antoinette, her mother Marilou Y. Gaw supplied the Perpetual Succour Hospital all the pertinent data to be entered in the Certificate of Live Birth, including her nationality or citizenship as Filipino, and the nationality or citizenship of the minor's father, Philip L. Gaw as Filipino; that the one in-charge of the hospital erroneously entered therein the nationalities/citizenships of the minor's parents as Chinese instead of their true nationalities/citizenships as Filipinos; that as a consequence, they have been registered in the Office of the Local Civil Registrar of Cebu as Chinese citizens; and, that the registration as Chinese citizen is prejudicial to the minor's rights and prerogatives as a citizen of the Philippines. It is prayed that the minor Antoinette be judicially declared as a Filipino citizen, and that the citizenship of her parents in her Certificate of Live Birth appearing at the Office of the Local Civil Registrar of Cebu City be changed from Chinese to Filipino.

Herein petitioner filed his answer and by way of affirmative defenses alleged that the minor's complaint is not authorized by law and is contrary to jurisprudence; and that "there can be no action or proceeding for the judicial declaration of citizenship of an individual" (Tan vs. Republic 3 SCRA 407).

In October 1981, petitioner filed a motion to treat the affirmative defenses contained in his answer as a motion to dismiss. This was opposed by Antoinette.

On November 24, 1981, respondent Judge issued an order denying the motion to dismiss; and, on December 4, 1981, he issued another order as follows:

"Pending before this Court is a Motion to Dismiss filed by the Civil Registrar of Cebu City. This instant petition is not summary but adversary to determine whether an error was committed or not. It is not for the Court to judicially declare citizenship but to determine if an error was committed, and if evidence warrant, to correct the entry in the birth certificate in question. There is no judicial declaration of citizenship if after

hearing, an alleged error in the entry of the birth certificate was found to have been committed, as when a child is entered as Chinese when in fact as borne out in evidence after trial is a Filipino.

"In view of all the foregoing, the Motion to Dismiss is hereby denied. Set this case for trial on January 18, 1982, at 8:00 in the morning."

Petitioner filed a motion for reconsideration which was also denied by respondent Judge in an order dated December 18, 1981. Hence, this petition for certiorari, with a request that a preliminary injunction and/or restraining order be issued to enjoin respondent Judge from proceeding with the trial of Civil Case No. R-19962 pending resolution of this petition; and, after a thorough study of the issue involved, the complaint filed by Antoinette Faye Yu Gaw be dismissed.

The only issue in this case is whether or not a judicial declaration of citizenship is an appropriate remedy to correct erroneous entry in the Certificate of Live Birth of an individual.

In *Republic of the Philippines vs. Hon. Manolo L. Maddela & Miguela Tan Suat*, 27 SCRA 702, it was held that "under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual. . . . Thus, for instance, no action or proceeding may be instituted for a declaration to the effect that plaintiff or petitioner is married, or single, or a legitimate child, although a finding thereon may be made as a necessary premise to justify a given relief available only to one enjoying said status. At times, the law permits the acquisition of a given status, such as naturalization by judicial decree. But there is no similar legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry."

It is clear that in Civil Case No. R-19962, which is a petition for correction of entry under Article 412 of the Civil Code in relation to Rule 108 of the Rules of Court, not all the interested parties have been notified. There was no publication of the petition in order to give notice to any person who might be interested, including direct service upon the Solicitor General. To justify the correction of an entry in the Civil Registry especially one with respect to citizenship, there must be an adversary proceeding, not one summary in nature. The procedure to be followed in the correction of mistakes in the entries in the civil registry refers to mistakes which are innocuous in character. This point was emphasized by Justice Makasiar as ponente in *Chua Wee vs. Republic*, 38 SCRA 409, thus:

"From the time the New Civil Code took effect on August 30, 1950 until the promulgation of the Revised Rules of Court on January 1, 1964, there was no law nor rule of court prescribing the procedure to secure judicial authorization to effect the desired innocuous rectifications or alterations in the civil register pursuant to Article 412 of the New Civil Code. Rule 108 of the Revised Rules of Court now provides for such a procedure which should be limited solely to the implementation of Article 412, the substantive law on the matter of correcting entries in the civil register. Rule 108, like all the other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule - making authority under Sec. 13 of Art. VIII of the Constitution, which directs that such rules of court 'shall not diminish or increase or modify substantive rights.' If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations, concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, said Rule 108 would thereby become unconstitutional for it would be increasing or modifying substantive rights, which changes are not authorized under Article 412 of the New Civil Code."

Likewise, in G.R. No. L-36478, entitled "*Cesar Yu, et al. vs. The Civil Registrar of Manila*," promulgated on April 23, 1983, We held that: "Article 412 allows correction only of clerical mistakes, not those substantial changes which may affect the civil status or nationality of the persons involved. (*Ty Kong Tin vs. Republic*, L-5609, February 5, 1954; *Beduya vs. Republic*, 11 SCRA 109). A clerical error is one which is visible to the eyes or obvious to the understanding; an error made by a clerk or a transcriber; a mistake in copying or writing

(Black v. Republic of the Philippines, L-10869, November 28, 1958); or some harmless and innocuous changes such as correction of a name that is clearly misspelled or of a misstatement of the occupation of the parties (Ansaldo v. Republic of the Philippines, L-10226, February 14, 1958)."

The correction sought by herein private respondent is clearly substantial, not only clerical, affecting as it does, not only her citizenship but also those of her parents. Thus, the correction can only be made in a proper proceedings where the Local Civil Registrar and all persons who have or claim any interest which may be affected thereby shall be made parties to the proceeding.

WHEREFORE, the writ of certiorari is GRANTED and the orders of respondent Judge dated November 24, 1981, December 4, 1981 and December 18, 1981 are NULLIFIED, SET ASIDE and DECLARED to be without force and effect for having been issued with grave abuse of discretion. Further, the complaint of private respondent in Civil Case No. R-19962 is hereby DISMISSED.

SO ORDERED.

Plana, Escolin and Gutierrez, Jr., JJ., concur.

Teehankee (Chairman), J., concurs in the result.

Melencio-Herrera and Vasquez, JJ., on leave.

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