

**SON CUI, TAN CHUI TOO ET AL., PLAINTIFFS AND APPELLANTS, VS. ATANASIA GUEPANGCO Y LIM, LUISA TAN TUNGCO Y GUEPANGCO ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 6163. March 14, 1912*

Ponente: MORELAND, J.

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The question involved in this litigation relates to the hereditary and conjugal rights of the plaintiffs and defendants to the property of one Fernando Roxas Tan Tungco, deceased. It is alleged in the complaint that said Tan Tungco was born in Tangua, China, in 1853; that he married the plaintiff, Son Cui, in Tangua, China, about the year 1868; that neither party to the marriage brought any property thereto; that there were born of said marriage six sons, named Tan Chui Too, Tan Sipco (Luico), Tan Coco, Tan Quico, Tan Muico, and Tan Chujay; that Tan Tungco died in Amoy, China, on the 21st day of April, 1892, leaving a last will and testament purporting to have been executed in July, 1891; that after the death of Tan Tungco three of the sons above named, Tan Muico, Tan Chujay, and Tan Quico, died intestate and that the four plaintiffs herein are their only heirs at law; that under said will Leon Guepangco, Antonio Roxas, and the defendant Atanasia Guepangco were made alternative executors, and that upon the death of Tan Tungco they took possession of all of his property, both real and personal, together with all his papers, documents, and books of accounts, and administered said property until the 25th day of April, 1901, when it was distributed among the defendants, in whose possession it has since remained; that with the income from the property of Tan Tungco, the defendant Atanasia Guepangco acquired other properties of considerable value; that she has never accounted for the property taken over by her from the estate or acquired by her from the proceeds thereof during the administration, but has, on the contrary, concealed and hidden that property, together with the rents and profits therefrom, making it impossible for the plaintiffs to ascertain its amount and value; that the value of the property belonging to said estate, so far as plaintiffs are able to ascertain, is about P700,000; that the plaintiffs are the only legitimate surviving heirs of Tan Tungco and as such are the owners of all his estate.

It is further alleged in the complaint that Tan Tungco was a Chinese subject at the time of his death and that his property ought, therefore, to be distributed according to the laws of China; that under the laws of China the mistress and illegitimate children living outside the family take nothing, and the daughters are entitled to nothing but support until marriage, when they may claim the marriage dowry. The plaintiffs pray for a discovery, an accounting; a receivership; the notation of a *lis pendens* in the registry of property with respect to all of the real estate belonging to the estate; that the plaintiffs be declared the only surviving heirs of Tan Tungco, and as such the legal owners of the original estate of Fernando Roxas Tan Tungco and the property into which it has been converted; that the defendants be declared to have held the original property, and the property into which it has been converted, as well as the rents and profits therefrom, in trust for the plaintiffs; that the will above referred to be set aside as making an unlawful disposition of the estate in that it deprives the plaintiffs of the property to which they are entitled under the law and of which the deceased could not legally deprive them.

The defendants deny generally. As a special defense they allege that Tan Tungco was born in China in 1842; that he came here when he was 11 years of age and lived here continuously, with the exception of short journeys made to China, until he was 43 years of age; that he established his permanent residence and domicile in the Philippine Islands and acquired a large property and had extensive business interests which he maintained here until his death; that he was baptized in the Christian faith and afterwards, on or about the year 1871, being then single, he married the defendant Atanasia Guepangco y Lim; that they lived together as husband and wife from that time forward until the death of said Tan Tungco; that the result of that union was the four defendants Luisa, Romana, Cecilia, and Maria; that Tan Tungco, by the said will of the 15th of July, 1891, named these said children as his only legitimate children and as his only legal heirs; that after the death of Tan Tungco an appraisal and inventory of his estate was made and thereafter it was partitioned and divided in accordance with the will, which partition was approved by the Court of First Instance of the city of Manila. Defendants further allege that the plaintiff Son Cui has no right, interest, or participation whatever in the estate of Tan Tungco, and that the other plaintiffs, the illegitimate Chinese sons of Tan Tungco, have no other right, interest, or participation in the property of Tan Tungco than that given them by the will above named.

It is undisputed that Fernando Roxas Tan Tungco was born in the year 1842 in the town of Cuayan, China; that in the year 1853, when 11 years old, he came to the Philippine Islands; that he went into business as an industrial partner in a shop on Calle Rosario in the city of Manila, and subsequently became the owner of the business; that some time in the year 1866 he and the defendant Atanasia Guepangco, although unmarried, began to live together as man and wife, and a child was born to them on the 13th day of March, 1867, to whom the name Leandro was given; that in 1869 another child was born, and in 1871 after three children had been born to them, one of whom died, the parents were married; that a number of children were born after the marriage; that those children born of that union whose names do not appear here as defendants are dead, their only heirs at law being the defendants in this action.

It is also substantially undisputed that the plaintiffs in this action Tan Chui Too, Tan Coco, and Tan Sioco (Luico) are the sons of Tan Tungco by the plaintiff Son Qui, substantially the only question being as to whether these children are legitimate or illegitimate. It is admitted that if they are illegitimate and are not recognized as natural children they have no interest whatever in the estate of their father under the laws of the Philippine Islands. Having been recognized, however, by Tan Tungco as natural children, it is admitted that as such they are entitled to the same rights in his property as he gave them in his will. (Civil Code, art. 840.) The main question to determine, therefore, is whether or not said three plaintiffs are the legitimate children of Tan Tungco; for if legitimate, their interests would be greater than they otherwise would.

Upon this question the evidence is hopelessly conflicting. The plaintiffs have presented as witnesses persons who allege that they saw with their own eyes the marriage performed between Son Cui and Tan Tungco in Tangua, China, in the year 1868. They have presented what is termed the marriage contract between the family of Tan Tungco and Son Cui, bearing date June or July, 1868; they have presented the plaintiff Son Cui, the alleged wife of Tan Tungco, who testifies to the marriage and to the fact that she lived with her husband during the short periods that he visited China and that she bore him six children as heretofore stated.

On the other hand, the defendants introduced evidence tending to show that Tan Tungco came to the Philippine Islands when he was 11 years old, in other words, in 1853, and that he never left the Islands until the year 1872 at the earliest. The evidence thus presented consists in the testimony of the Filipina wife Afanasia, the defendant, and of other persons who had knowledge of the fact. It also consists of certain data, or the absence of certain data, in the public records of the Philippine Islands relative to Tan Tungco, which data should have been matter of public record if Tan Tungco had left the Philippine Islands for China in the year 1868 as alleged by the

plaintiffs. Defendants assert, in the first place, that from the year 1867 forward no Chinaman was allowed to leave the Philippine Islands without first obtaining special permission to do so and without procuring also a passport, which permission and the issuance of which passport became necessarily public records. Defendants assert, in the second place, that, in the year 1867, Tan Tungco, as did every other Chinese resident of the Philippine Islands, had what was known in the Spanish law as a registered residence number; that that number remained the same so long as the holder thereof remained continuously in the Philippine Islands. If, however, he left the Philippine Islands and thereafter returned, on his return such number was changed and he thereafter was known under a different registered number.

Basing themselves upon these facts the defendants assert and prove by the public records themselves and by the testimony of the keeper of those records of that date, that Tan Tungco was not given permission or a passport to leave the Philippine Islands at any time during the years from 1867 to 1871, inclusive, and that the registered residence number of Tan Tungco was the same in 1871 that it was in 1867. These two facts, and the conclusions drawn from them, are presented by the defendants to substantiate and support the direct testimony given by the witnesses who declare that Tan Tungco was continuously in the Philippine Islands from 1863 to 1872, and from such evidence they assert that he could not have married Son Cui in China in 1868 as the plaintiffs allege.

In this connection it must be remembered that Tan Tungco was one of the prominent Chinamen of the Philippine Islands, particularly of Manila. He was a large business man, was a Catholic, had married a Filipina woman, and was one of the first Chinese citizens of Manila. Only a few years after he married the defendant Atanasia Guepangco he held various concessions from the Philippine Government, among them the opium concession for Iloilo, Cagayan, Negros, and Antique, these facts show that he was prominent and rapidly progressing even before the year 1868. It is not conceivable that a man of such prominence and so widely known would surreptitiously leave the Philippine Islands for China (as he did as late as 1871, if the testimony of the plaintiffs be true) without obtaining the consent and the passport required by law, thus jeopardizing not only his personal position in the community but his property and business interests. So that, it having been demonstrated that no passport was issued to Tan Tungco from 1867 to 1871, inclusive, and that during that time he received no permission whatever to leave the Philippine Islands, and that his registered residence number was the same in 1871 that it was in 1867, there is presented for our consideration a fact of striking importance.

In reply the plaintiffs maintain that the testimony of Atanasia Guepangco herself is a substantial admission upon the part of the defendants that the marriage between Son Cui and Tan Tungco actually occurred, the only difference between the claims of the plaintiffs and those of the defendants being as to the year in which it occurred; the plaintiffs claiming that it occurred in 1868 and the defendants admitting that it occurred in 1883. The oft-repeated assertion of the plaintiffs that defendants admit the marriage is not supported by the record. We do not find any admission whatever of the sort, and we are led to the conclusion that such assertion was based upon the testimony of Atanasia herself in her declaration as a witness in her own behalf to which we have just referred. She stated in effect that her husband, upon her urgent request by telegram, returned to the Philippine Islands about 1882 or 1883 after a few months' absence in China; that she had been left in charge of the business by Tan Tungco during his absence; that while he was away she heard that he had gone there to get married, and being considerably upset over such news she had at once telegraphed him to return to attend to his own business as she would have nothing further to do with it; that upon his return, in the perhaps stormy scene which immediately succeeded his arrival, he made some statements to her indicating, as she seems to say, that he had recently been married in China, but that he had been forced into the marriage by his mother, against his will. Another witness for the defense testified to something somewhat similar. This is the only part of the record so far as we have been able to discover, which could in any way be tortured into an admission on the part of the defendants of the marriage of Son Cui and Tan Tungco.

We do not belittle the importance of this testimony. Of its competency and relevancy we need not speak. Under all the circumstances we hesitate to give it that importance and weight which the plaintiffs claim for it. We are of the opinion that too much significance could easily be attached to it by a misunderstanding of its proper setting in this case. It is admitted, as we have said, and that fact the deceased never attempted to conceal, that he was maintaining a concubine in China and that he was raising children by her. It is undoubted that he was maintaining both her and the children and that he went to China every two or three years for short visits, and, doubtless, lived with that family while there. Such continuous cohabitation and such relationship, resulting in the creation and rearing of a family and extending through a considerable period of years, might very readily lead persons, including Atanasia herself, to speak of the relationship as a marriage and the persons resulting from those relations as his family. It is well known that such relationships, carried on for such a long period of time, and the rearing and maintenance of a family, lead people generally to speak of the parties to that relationship as husband and wife, and the fruits thereof as the legitimate offspring of the parents. We do not believe, therefore, that too much stress should be laid upon the fact that Atanasia spoke of Son Cui as the wife of Tan Tungco, or even the fact that Tan Tungco himself spoke of her as his wife should be given too much prominence under all the facts and circumstances in this case. Atanasia, it must be remembered, was testifying to an event which occurred twenty-eight years before, which was made up of facts and circumstances which she might easily have forgotten and which she might easily have misunderstood, particularly in view of the fact that her husband had returned hurriedly at her impatient request and that the relations between the two were probably considerably strained at the moment. The words which passed between them at that time were doubtless somewhat thoughtless, may not have been well chosen, were spoken by a Chinaman to a Filipina, and may not have been measured with that care and solemnity which characterizes words used after deliberation. These words must be taken in connection with the fact that Tan Tungco, under far different circumstances and surrounded by far different conditions, made statements entirely at variance with that upon which the plaintiffs lay so much stress, (a) At the time of his marriage to Atanasia in 1872 he solemnly deposed under oath that he was single and had never been married previously, nor had he ever been engaged to be married theretofore. (6) The will of June 15, 1891, duly executed by Fernando Roxas Tan Tungco and duly attested and probated, contains the following:

"Fourth. I give and bequeath to my natural children which I have in China, namely, Tan Luico, Tan Coco, Tan Quico, Tan Muico, and Tan Chujay, and Tan Chui Too the one-third part of my property, for the reason that I hereby recognize said children as my natural children in the manner required by law, and for that reason the legacy which I bequeath to them is all the property which I am able to give them under the law, namely, a one-third part."

The fifth clause of the will reads as follows:

"Fifth. I declare, as I have already said, that I am married to Dona Atanasia Quepangco [of Binondo], of which marriage there have been born various children, those now living being Romana, Cecilia, Luisa, and Maria, all of the surname Roxas Tan Tungco y Quepangco."

In this instrument, as is seen, the deceased Tan Tungco states what he evidently believed to be his true relationship with all of the parties to this action. It was a deliberate statement; it was made after due consideration of all the facts in the case and after due deliberation as to the effect which such statements would have upon the rights of the parties in reference to whom it was made, and with the view that it would probably be the last word of his life upon that subject. He knew that if that document contained a lie he would go to his grave with his last act a falsehood and its fruit injustice. Moreover, the admission, so called, of the marriage, as made by Atanasia in her testimony is not corroborative of or corroborated by the testimony of the plaintiffs' witnesses as to the marriage as it is admitted that the two sets of witnesses were speaking of events happening fourteen years apart. As between the two statements we are inclined to say that that made in the will is entitled to the greatest

consideration, and believe that to it should be given the greatest weight. To say the least, we are satisfied upon the whole case that the proofs are such that we can not justly say that the decision of the trial court in that respect is against their fair preponderance.

We are constrained to believe that the judgment of the court below upon the question of the marriage in China is sustained by the evidence. In support of this conclusion we desire to call particular attention to the case of *Sy Joe Lieng vs. Sy Quia* (16 Phil. Rep., 137). Substantially every word of the opinion in that case is applicable to the case at bar. The importance of the question at issue; the kind of proof required to establish the alleged prior marriage when the later marriage is admitted by all; the difficulty on the part of the defendants of rebutting the testimony relating to the marriage presented by the plaintiffs; the relationship of the witnesses testifying as to the marriage with the plaintiffs; the impossibility of effective cross-examination of witnesses; the difference in nationality; the fact that the alleged Chinese wife and her children lived, as they allege, from 1868 to 1908 without having ever presented any claim against Tan Tungco; that it was sixteen years after his death, and after all his property had been divided in accordance with his will before the plaintiffs began this action or made any claim whatever; that the proof of marriage by plaintiffs' witnesses is entirely offset by the proofs of the defendants that there could have been no marriage at the time assigned; and many other facts and circumstances pertinent to this case are there discussed in full with ample citations of authorities.

Upon all the evidence in this case and upon the authority of *Sy Joe Lieng vs. Sy Quia*, supra, the judgment in this case is affirmed, without special finding as to costs.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

Johnson, J., dissents.

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