

CHUA KENG GIAP, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND CHUA LIAN KING, RESPONDENTS.

G.R. No. 75377. February 17, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

We are faced once again with still another bid by the petitioner for the status of a legitimate heir. He has failed before, and he will fail again.

In this case, the petitioner insists that he is the son of the deceased Sy Kao and that it was error for the respondent court to reject his claim. He also says his motion for reconsideration should not have been denied for tardiness because it was in fact filed on time under the *Habaluyas* ruling.[1]

This case arose when Chua Keng Giap filed on May 19, 1983, a petition for the settlement of the estate of the late Sy Kao in the regional trial court of Quezon City. The private respondent moved to dismiss for lack of a cause of action and of the petitioner's capacity to file the petition. The latter, it was claimed, had been declared as not the son of the spouses Chua Bing Guan and Sy Kao in S.P. No. Q-12592, for the settlement of the estate of the late Chua Bing Guan. The decision in that case had long become final and executory.[2]

The motion was denied by Judge Jose P. Castro, who held that the case invoked decided the paternity and not the maternity of the petitioner.[3] Holding that this was mere quibbling, the respondent court reversed the trial judge in a petition for certiorari filed by the private respondent.[4] The motion for reconsideration was denied for late filing.[5] The petitioner then came to this Court to challenge these rulings.

The petitioner argues at length that the question to be settled in a motion to dismiss based on lack of a cause of action is the sufficiency of the allegation itself and not whether these allegations are true or not, for their truth is hypothetically admitted.[6] That is correct. He also submits that an order denying a motion to dismiss is merely interlocutory and therefore reversible not in a petition for certiorari but on appeal.[7] That is also correct. Even so, the petition must be and is hereby denied.

The petitioner is beating a dead horse. The issue of his claimed filiation has long been settled, and with finality, by no less than this Court. That issue cannot be resurrected now because it has been laid to rest in *Sy Kao v. Court of Appeals*,[8] decided on September 28, 1984. In that case, Sy Kao flatly and unequivocally declared that she was not the petitioner's mother.

The Court observed through Justice Hugo E. Gutierrez, Jr.:

"Petitioner Sy Kao denies that respondent Chua Keng Giap is her son by the deceased Chua Bing Guan. Thus, petitioner's opposition filed on December 19, 1968, is based principally on the ground that the respondent was not the son of Sy Kao and the deceased but of a certain Chua Eng Kun and his wife Tan Kuy.

"After hearing on the merits which lasted for ten years, the court dismissed the respondent's petition on March 2, 1979 on a finding that he is not a son of petitioner Sy Kao and the deceased, and therefore, had no lawful

interest in the estate of the latter and no right to institute the intestacy proceedings.

"The respondent tried to appeal the court's resolution but his appeal was denied by the lower court for having been filed out of time. He then filed a mandamus case with the Court of Appeals but the same was dismissed. Respondent, therefore, sought relief by filing a petition for certiorari, G.R. No. 54992, before this Court but his petition was likewise dismissed on January 30, 1982 for lack of merit. His subsequent motions for reconsideration met a similar fate.

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"To allow the parties to go on with the trial on the merits would not only subject the petitioners to the expense and ordeal of litigation which might take them another ten years, only to prove a point already decided in Special Proceeding No. Q-12592, but more importantly, such would violate the doctrine of res judicata which is expressly provided for in Section 49, Rule 39 of the Rules of Court."

There is no point in prolonging these proceedings with an examination of the procedural objections to the grant of the motion to dismiss. In the end, assuming denial of the motion, the resolution of the merits would have to be the same anyway as in the aforesaid case. The petitioner's claim of filiation would still have to be rejected.

Discussion of the seasonableness of the motion for reconsideration is also unnecessary as the motion would have been validly denied just the same even if filed on time.

Who better than Sy Kao herself would know if Chua Keng Giap was really her son? More than any one else, it was Sy Kao who could say - as indeed she has said these many years - that Chua Keng Giap was not begotten of her womb.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Teehankee, C.J., Narvasa, Gancayco, and Grino-Aquino, JJ., concur.

[1] Petition.

[2] Rollo, pp. 184, 108, 54.

[3] Ibid., p. 50.

[4] Id., pp. 52-60, Decision penned by Kapunan, J., and concurred in by Sison, Lazaro and Cruz, JJ.

[5] Id., p. 62.

[6] Id., pp. 127-130, 156-161.

[7] Id., pp. 36-38.

[8] 132 SCRA 302.

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