
(1990) 09 GAU CK 0004
In the Gauhati High Court
Case No : Second Appeal No. 120 of 1981

Abdul Mannan and Others	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 17-09-1990

Acts Referred:

Citizenship Act, 1955 — Section 3
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1991) 2 GLR 94

Hon'ble Judges : S.K. Hom Choudhury, J

Bench : Single Bench

Advocate : S.A. Laskar and H.A. Sarma, for the Appellant; Sk. Chand Mohammad, Sr. Central Govt. Standing Counsel and D.C. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

S.K. Homchaudhuri, J.—This second appeal by the Plaintiffs is directed against the judgment and decree dated 13.5.81 passed by the learned Asstt. District Judge No. 2, Nowgong in Title Appeal No. 2 of 1980 affirming the judgment and decree dated 13.6.78 passed by the learned Munsiff, Nowgong to Title Suit No. 132 of 1977. The learned Munsiff, by the judgment dated 13.6.78 dismissed the Plaintiff's suit.

2. The Plaintiffs instituted Title Suit No. 132/77 in the court of learned Munsiff, Nowgong for a decree of declaration that they were citizens of India and for permanent injunction restraining the Defendants from deporting them from India on the allegation that they were Bangladesh Nationals. Plaintiff's case was that the father of Plaintiff No. 1 and 2 originally came from Maymenshing district of united Bengal in the year 1943 and settled in Assam (India) in the Nowgong District and acquired landed property and built permanent residence there, The Plaintiff Nos. 1 and 2 are brothers and were born in India and that Plaintiff No. 1 married Plaintiff No. 3 in the year 1966. The Plaintiff No. 1 was educated in the

Borbeel Chacharigaor L.P. School in the year 1954 and Plaintiff No. 4 to 9 are the children of Plaintiff No. 1 and 3 born in India. Plaintiff's further case was that on 29.1.76 local police raided their house suspecting them as Bangladesh Nationals and being apprehensive of deportation by the police Plaintiff's issued a statutory notice u/s 80 CPC on the Defendant and thereafter instituted the suit for decree or declaration that they were citizens of India and for permanent injunction restraining the Defendant from departing them from India, The Defendants contested the suit denying the averments made in the plaint by filing written statement which was verified by the then Additional Deputy Commissioner, Nowgong. The Defendants also raised various legal pleas, namely-the suit was not maintainable for want of cause of action, the suit was barred by limitation etc. In para-graph 7 of the written statements it has specifically been stated on behalf of the Defendants that the Plaintiffs are foreign national who infiltrated into India (Assam) long after independence, and that they got no landed property of permanent residence in India. They are neither voters nor have they registered their names in the NRC of 1951. On the pleadings, the learned Munsiff framed the following issues--

- 1) Is there any cause of action ?
- 2) Is the suit bad for non compliance of the provisions of notice u/s 80 Code of Civil Procedure?
- 3) Are the Plaintiffs citizens of India ?
- 4) To what relief, if any are the Plaintiffs entitled?

3. In the hearing, the Plaintiffs examined 3 witnesses including Plaintiff No. 1 as P.W. 1. The Defendant did not adduce any evidence. The learned Munsiff on appreciation of the evidences on record decided the Issue Nos. 1 & 2 in favour of the Plaintiff, but decided Issue Nos. 3 & 4 against the Plaintiffs holding that Plaintiffs could not prove by adducing cogent evidence that they were born in India or they came to India and settled in India before partition. The learned Munsiff, however, concluded that Plaintiffs came to India after the Constitution of India came into force. On the basis of the finding, the learned Munsiff dismissed the Plaintiff's suit by the judgment dated 13.6.78. The Plaintiffs impugned the judgment and decree passed by the learned Munsiff in Title Appeal No. 2/80 in the court of learned Asstt. District Judge, Nowgong. The learned Asstt. District Judge by the impugned judgment and decree passed or. 13.5.81 dismissed the appeal of the Plaintiffs and affirmed the judgment and decree passed by the learned Munsiff, Nowgong. The learned Asstt. District Judge also held that the Plaintiffs have failed to prove by documentary evidence that they were born in India or they have landed property in India.

4. I have heard Mr. S.A. Laskar, learned Counsel for the Appellant and Mr. Sk. Chand Mohammed, learned Counsel for the Defendant-Respondent No. 1, I have perused the judgment and other materials on records. The initial burden was no doubt, on the Plaintiffs to establish their case for decree of declaration that they

were citizens of India. As the Plaintiffs could not adduce any documentary evidence, namely birth certificate etc, learned appellate court below held that Plaintiffs failed to establish that they were citizens of India. The learned appellate court below ought to have taken judicial notice to the fact that in our country, majority of the population are illiterate and where till recently there existed no system for registration of birth of a child even in urban areas, it was too much to expect from a villager to produce documentary evidence in support of their birth in India. Besides, persons having permanent dwelling houses and residing with their families should prima facie be taken as citizens of the country, particularly; when millions of people of identical race are citizens of India. In the instant case, the Plaintiff No. 1 on oath have stated that Plaintiff were born in India and he was educated in school in India (Assam) and they were permanent residents and Plaintiff Nos. 4 to 9 were their children born in India but no evidence was adduced by the Defendants to rebut or disprove the statement made by the Plaintiffs on oath. Under the circumstances, the courts below were not justified in requiring the Plaintiffs to adduce documentary evidence in support of their contentions that they were born in India. Ordinarily, in the absence of any evidence or material to the contrary, learned courts below could have accepted Plaintiff's statement made on oath. The impugned judgment and decree therefore, can not be sustained and is set aside.

5. The appeal in the instant case, would have been remitted back to the appellate court below for disposal thereof in accordance with law. But during the pendency of this second appeal, Illegal Migrants (Determination by Tribunals,) Act, 1983 (Act 39 of 1983) has been enacted and has come into force. The Act 39 of 1983 has been enacted for determination in a fair manner, of the question whether a person is an illegal migrant to enable the Central Government to expel the illegal migrants from India, and the matter concerned therewith incidental thereto, Illegal Migrant has been defined in Section 3 of the said Act, The Citizenship Act has also been amended in the year 1986. As such the Plaintiffs case is to be looked Into and judged as per the provisions of the Citizenship Act as amended in 1986 and the provisions of the Illegal Migrants (Determination by Tribunals) Act. 1983.

6. Under the aforesaid changed circumstances, continuation of the Plaintiff's suit is not warranted and the suit instituted by the Plaintiff is therefore, be treated as closed, The Defendants may consider the case of the Plaintiffs in the light of the provisions of the Citizenship Act as amended in 1986 and the provisions of the Act 39 of 1983, and if there are materials for referring the Plaintiff's case to the Tribunal, constituted under Act 39 of 1983, the Defendants may refer for determination by the Tribunal as to whether Plaintiffs are illegal migrants or not. The Defendants are directed not to deport the Plaintiffs, unless they are determined to be illegal migrants by the Tribunal constituted under the Act 39 of 1983, in accordance with law.

7. In the result the appeal is allowed as aforesaid. I make no order as to costs.