
(1991) 04 GAU CK 0026
In the Gauhati High Court
Case No : Second Appeal No. 26 of 1983

Abdur Rahim

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30(2), 80

Citation : (1992) 1 GLR 29

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

Bench : Single Bench

Advocate : B.C. Das, Amicus Curiae, for the Appellant; S.N. Chetia, Addl. Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Homchaudhuri, J.—This second appeal is directed against the Judgment and decree passed by the learned Assistant District Judge No. 1, Nagaon in Title Appeal No. 33/1981 affirming the Judgment and decree passed by the learned Munsiff No. 2, Nagaon in Title Suit No. 74/1980.

2. I have heard Mr. B.C. Das, who has assisted the Court as Amicus Curiae on behalf of the Appellant. I have also heard Mr. S.N. Chetia, learned Central Govt. Standing Counsel. I have perused the plaint and written statement filed by the opposite party.

3. The original Plaintiff No. 1, the present Appellant filed Title Suit No. 74/1980 in the court of Munsiff for declaration that they were citizens of India and for permanent injunction restraining the Defendants from deporting them on the plea that they were Bangladeshi national. In the plaint the Plaintiffs have specifically stated that the Plaintiff No. 1 was born at Chilangani village of Nagaon District and Plaintiff No. 2 was born at Naramari village of the same district and has been residing in India since their birth. They have no connection with other foreign country and as such they are citizens of India by birth and that

inspite of that fact the officers under Defendant No. 3, threatened the Plaintiffs that they would be deported as they were foreigners. During the pendency of the suit Plaintiff No. 1 died. Defendant filed written statement. In the written statement the Defendants did not specifically controvert the averment, that Plaintiffs were born in India and were permanent residents of the village at Nagaon. The Defendant contested the suit contending, that the Plaintiff had no cause of action for the suit, the suit was not maintainable in the present form, the Plaintiffs had no right to sue that the suit was not properly valued and adequate court fee; was not paid, the suit was bad for want of notice u/s 80 CPC the court had no jurisdiction to try the suit and that the Plaintiff were not Indian Citizens and hence the suit was liable to be dismissed.

4. On the pleading of the parties, the following issues were framed by the trial court.

- (1) Whether there is cause of action for the suit ?
- (2) Whether the Plaintiffs are citizens of India ?
- (3) Any other relief to which the Plaintiffs are entitled ?
- (4) Whether the Plaintiff is protected u/s 30(2) CPC for filing the suit without notice ?

5. The Plaintiff-Appellant in support of his case adduced evidence both oral and documentary. Ext-3 is a registered Gift deed executed in 1949 in favour of the Plaintiff-Appellant by his father donating some land situated in Nagaon District to him when he was a child Ext-4 is the Jamabandi mutating the Plaintiff as pattadar in respect of the said land. The reasons and grounds on which the learned courts below discarded the Plaintiff's evidence is erroneous and can not be sustained in law. The registration of birth was not enforced at the material time of birth of the Appellant and very few of the Indian citizens born at that time even in urban areas, have got birth registration. As such the learned court below ought not to have insisted on production of birth registration which was apparently impossible. That apart where millions of persons of identical race community are citizens of India persons of that race/community having residential house living thereon with thereon with their family have to be taken as citizen of India unless contrary is proved. In the instant case, the Defendant did not adduce any evidence controverting/rebutting the positive evidences of Plaintiff-Appellant that he was born in India and he has landed property and that he has been permanently residing in India since his birth. In the written statement also there is no specific denial. Under the circumstances, the learned courts below ought to have accepted the un rebutted pleading and evidence adduced in support of pleading of the Plaintiff and should have decreed the suit. The impugned Judgment and decree, therefore cannot be sustained and is, hereby set aside.

The appeal is allowed and the Plaintiff-Appellant's suit is decreed. I make no

order to cost.