

(1966) 09 AHC CK 0031
In the Allahabad High Court
Case No : Second Appeal No. 32 of 1960

Mashkurul Hasan	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 05-09-1966

Acts Referred:

Citizenship Act, 1955 — Section 5, 9
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 6 Rule 4
Constitution of India, 1950 — Article 6, 7
Passports Act, 1967 — Section 2

Citation : AIR 1967 All 565

Hon'ble Judges : M.H. Beg, J

Bench : Single Bench

Advocate : V.K. Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.H. Beg, J.—This is a plaintiffs second appeal arising out of a suit for an injunction against the Union of India and the State of Uttar Pradesh to restrain the defendants from deporting the plaintiff-appellant to Pakistan. The suit was filed on 20th of April 1956, on the ground that the plaintiff and his parents having been born in India and having an Indian domicile, the plaintiff was a citizen of India. The plaintiff, in an extremely brief plaint, devoid of necessary particulars, stated that he had gone to Pakistan in 1948 "on a temporary visit in connection with his business activities." No details were given as to the particular nature of his business activities and the circumstances under which the plaintiff had to go to Pakistan due to the needs of his business. The plaintiff then stated that travel restrictions were suddenly imposed so that it became impossible for the plaintiff to return to India.

He alleged that he had asked the defendants to permit the plaintiff to return to India, but the defendants paid no heed to his requests. The plaintiff also stated that he had applied to the Indian High Commissioner in Pakistan for registration

as an Indian Citizen, after the commencement of the Constitution of India in 1950, but had received no reply Then the plaintiff stated that he continued his efforts to secure his return to this country. but the defendants maintained "a callous indifference to the plaintiff's entreaties and the plaintiff continued to languish in a foreign country". The plaintiff then admitted that he came to India on 18-9-1954 upon a Pakistani passport No. 089986 "in order to seek the protection of the Indian laws and Constitution" after having given up all hopes of persuading the defendants to meet the plaintiff's demands and having become incapable of bearing the "hardships of a foreign country."

In paragraph 8 of the plaint, the plaintiff alleged that he was compelled to apply for a Pakistani passport "on account of the coercion unlawfully exercised by the defendants in the manner detailed above." I may observe here that no details whatsoever of any "coercion" were given in the plaint. The plaintiff seemed to mean nothing more than the defendants' silence, or, to use his own words, a "callous indifference to the plaintiff's entreaties" as equivalent to "coercion". The plaintiff then mentioned that his visa had expired on 30-9-1955 and he was being "threatened by the defendants with deportation." No particulars of what was meant by these threats were given in the plaint. After that, follow the bald assertions that the plaintiff is a citizen of India who has a right to reside and settle in any part of India and that the defendants' threat to deport the plaintiff infringed the plaintiff's fundamental right under Article 19 of the Constitution of India. The plaintiff then mentions that he had given the required notice u/s 80 of the CPC to the defendants and that it had met with no response from the defendants. Hence, he sought the relief by way of the injunction he proved for.

2. The learned Munsif, who tried the suit framed an issue on the question whether the plaintiff was a citizen of India, another on the question whether the notice u/s 80 of the Code was valid, and a third on the question whether Section 56 of the Specific Relief Act barred the suit. As the only issue considered material was the first one and the other two issues were not pressed, the learned Munsif gave his findings only on the first issue. His view was that the plaintiff's case being that he had migrated to Pakistan due to force of circumstances so that he did not voluntarily acquire the citizenship of Pakistan, raised a question triable exclusively by the Central Government u/s 9(2) of the Indian Citizenship Act. 1955.

The learned Munsif also took note of the admission of the plaintiff in his application for a visa that the plaintiff was a Pakistani citizen and of the argument that the admission was not binding upon the plaintiff inasmuch as it was on a question of law. The learned Munsif, however, came to the conclusion that the plaintiff "having entered the territory of India as a national of Pakistan, the defendants would be justified in deporting him to Pakistan." The learned Munsif held that the burden was upon the plaintiff to get rid of the effect of his own admissions. The question as to what constituted migration to Pakistan was not discussed by the learned Munsif who proceeded on the assumption that the

plaintiffs case was that he had migrated to Pakistan. The plaintiffs suit was accordingly, dismissed by the Munsif.

3. The lower Appellate Court started its judgment by the observation "the appellant admittedly migrated to Pakistan in 1948." It also observed that the solitary statement of the plaintiff had not, quite rightly, convinced the learned Munsif that the appellant had gone to Pakistan in 1948 only on a visit of temporary nature and not with the intention of making Pakistan his permanent home. The appellant's appeal was also dismissed.

4. The ground taken in second appeal in this Court, that the judgment of the lower Appellate Court, consisting of a few lines, does not comply with Order 41 Rule 31 of the Code is not without some force. Nevertheless, after examining the plaint and the solitary statement of the plaintiff, and, having regard to the clarification of the law on the subject by the Supreme Court of India in *Kulathil Mammu Vs. The State of Kerala*, I do not think that any useful purpose will be served by remanding the case for rehearing.

The plaintiff was bound to supply particulars on such difficult and complicated issues as "domicile" as that term is understood in international law or under our constitutional provisions. He has given the scantiest possible statement relating to the alleged temporary nature of his visit to Pakistan. He has also not given the required particulars of the alleged "coercion" on the part of the defendants. It was held in *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*,

"Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be and the same applies to undue influence and coercion, See Order 6 Rule 4 Civil P. C."

5. Even if the appellant's case was really not that of "coercion" but was that of having gone to Pakistan for a temporary visit and having got stuck there owing to circumstances beyond his control, he should have given and could have given the circumstances of his departure and the way in which he was compelled to remain in Pakistan against his wishes. He could certainly have led a good deal more and better evidence than his own meagre and solitary statement if the allegations made by him, to the effect that he had gone to Pakistan on a temporary visit, were correct.

6. As regards the meaning of the term "migration", as used in Articles 6 and 7 of the Constitution of India, it has now been held in *Kulathil Mammu's case*, Criminal Appeal No. 24 of 1965. D/- 2-3-1966=(reported in *Kulathil Mammu Vs. The State of Kerala*, that this term has a wide connotation than change of domicile has in private international law. Their Lordships of the Supreme Court have modified the view taken in *Smt. Shanno Devi Vs. Mangal Sain*, and have

held that, although the acquisition of a new permanent residence was not required by these Articles 6 and 7 of the Constitution, yet, it could be shown by a person seeking to retain his domicile and claiming Indian citizenship, after having gone to Pakistan after 1-3-1947, that his visit to Pakistan was not voluntary or was for a specific purpose and for a short and limited period only. In holding that the view taken by the Supreme Court in Smt. Shanno Devi Vs. Mangal Sain, was not correct, their Lordships took into account the abnormal situation described by Mahajan, C. J. in Central Bank of India Vs. Ram Narain, The Supreme Court, in Kulathil Mammu's case, Criminal Appeal No. 24 of 1965 D/- 2-3-1966= (reported in Kulathil Mammu Vs. The State of Kerala, then concluded.

"If this was the situation (and we have no doubt that it was so even from March 1947) at the time when the abnormal movement of population from one side to the other took place, there can be no doubt that when the Constitution makers used the word "migrated" in Articles 6 and 7 they could have intended to give what we have called the narrower meaning to the word "migrated", for there could be no deliberate intention to change one's residence permanently when this large movement of population from one side to the other and vice versa took place. That is also the reason why both these Articles begin with a non obstinate clause and thus in our opinion exclude the concept of domicile for the purpose of these Articles. If that was so and if the concept of domicile is excluded from these two Articles and we have no doubt that it is so excluded by the use of the non obstinate clause in both these Articles, the word "migrated" used therein must be given the wider meaning. If we give the narrower meaning to it we shall be introducing the concept of domicile in these two Articles which was obviously not intended by the Constitution makers, and, in any case, was definitely negated by the use of the non obstinate clause at the beginning of both these Articles." /BLOCKQUOTE> 7. The minority view of Hidayatullah, J. was that the decision of the Supreme Court in Smt. Shanno Devi Vs. Mangal Sain, was correct, but his Lordship held that Aboobacker, who was a minor of 12 years of age when he left India in 1948 for Pakistan where he remained until 1954. and who then came to India twice on a Pakistani passport must be deemed, on these facts, to have migrated to Pakistan His Lordship held that the fact that Aboobacker was a minor in 1948 made no difference to the applicability of the law to him in view of his subsequent actions. He could not claim Indian citizenship as he did not satisfy the requirements of the proviso to Article 7 of the Constitution.

8. The case of the appellant before me seems to be worse than the case of the above-mentioned. Aboobacker before the Supreme Court Inasmuch as the appellant was not a minor when he went to Pakistan. His date of birth is given as 10th February, 1919, in the application for a visa (Ex. A1) made by the appellant on 20th August, 1951. There, he also admitted that he had "migrated" to Pakistan round about 15th February, 1948. This application shows that the appellant was employed as a clerk in the P. W. D. in Pakistan and that his services had been terminated on 10th of June, 1963. The appellant also gave his

"permanent" address in that application as 13, Fateh Chand Building. Samal Ahooja Road, Karachi. The purpose of his visit to India was stated to be to meet his parents and relations, or, in other words, only a temporary purpose.

There can be no doubt that a plaintiff, after such admissions of fact, cannot be believed on his sole testimony when he comes forward with the case that he was domiciled in India at the commencement of the Constitution of India. This had to be proved by the plaintiff after the admissions made by him. The meagreness of the plaint and of the plaintiff's testimony are explicable in the light of the admissions made by the plaintiff in his visa application which he did not seriously even try to explain. A passport is also a very strong piece of evidence.

It contains a recognition by the officially authorised agencies of a State given to the nationality of a citizen of the State issuing the passport after the necessary declarations made by the holder of the passport. Its effect can only be got rid of by proving facts which nullify the passport altogether and make it no passport in the eye of law at all. In view of all this evidence, there is no force whatsoever in the contention that the courts below had come to legally wrong conclusions about the citizenship of the appellant.

9. It was also contended that the question of citizenship of the appellant should not have been determined by the Civil Court but left for adjudication by the Central Government upon the view taken by the trial court itself which was not reversed by the lower appellate court. Reliance was placed upon a decision of my brother S.S. Dhavan, J. in *Samiullah Vs. State of Uttar Pradesh*, where it was held that the only question which a civil court is prevented by Section 9(2) of the Indian Citizenship Act, 1955, from deciding is a question whether a person has acquired the citizenship of another country, and therefore, the dismissal of the entire suit was not open to the civil court His Lordship observed:

"The Citizenship Act does not take away the jurisdiction of the Civil Court to try another suit of a Civil nature or grant any relief which it has the power to grant under the law The suit for a declaration of citizenship and for an injunction restraining the Government to deport the plaintiff is a civil suit, and any citizen has a right to ask for this relief which has not been taken away by Section 9 of the Citizenship Act The court is under a duty to determine his suit and grant him the relief on a proper case being made out."

In that case, the plaintiff's appeal was allowed and the case was sent back to the trial court with a direction that "It shall frame issues which are necessary for the determination of the suit and if any issue includes the question whether the plaintiff voluntarily acquired the citizenship of another country, the Court shall refer this question to the Central Government for decision". The appellant's contention is that I should allow the appeal and pass a similar order in this case.

10. In that case. His Lordship had relied upon *Akbar Khan Alam Khan and Another Vs. The Union of India (UOI) and Others*, where it was held:

""The jurisdiction of a civil court to decide that question is not in any way affected by Section 9(2) of the Citizenship Act. Therefore, it seems to us that the entire suit should not have been dismissed. The Courts below should have decided the question whether the appellants had never been Indian citizens. If that question was answered in the affirmative, then no further question would arise and the suit would have to be dismissed. If it was found that the appellants had been on January 26, 1950, Indian Citizens, then only the question whether they had renounced that citizenship and acquired a foreign citizenship would arise. That question the Courts cannot decide. The proper thing for the court would then have been to stay the suit till the Central Government decided the question whether the appellants had renounced their Indian citizenship and acquired a foreign citizenship and then dispose of the rest of the suit in such manner as the decision of the Central Government may justify."

Now, it is obvious that the abovementioned Supreme Court decision could only apply. If the plaintiff was a citizen of India on 26th January, 1950, and an issue had arisen whether he had acquired the citizenship of another country after 26th January, 1950. This follows from the above mentioned interpretation of the provisions of Section 9 of the Citizenship Act which reads:

""1. Any citizen of India who by naturalization, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1960 and the commencement of this Act voluntarily acquired, the citizenship of another country, shall, upon such acquisition or as the case may be such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

2. If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

In the case before me there can be no doubt, upon the facts mentioned above and the law applicable to these facts that the plaintiff could not claim to be a citizen of India on 26th of January, 1950. In the circumstances of his case, his only remedy could have been to obtain a permit for resettlement in India as contemplated by the proviso to Article 7 of the Constitution of India, or in the alternative to apply for registration u/s 5 of the Indian Citizenship Act. If he has already made these attempts and failed as alleged, he cannot get relief by means of a suit for an injunction against the defendants on the higher footing that he was a citizen of India and domiciled in India on 26th January, 1950.

11. I, therefore, dismiss this appeal, but, as the position in law was somewhat uncertain when the appeal was filed. I make no order as to costs.