

(1961) 09 AP CK 0022

In the Andhra Pradesh High Court

Case No : C.C.C. Appeal No. 30 of 1960

Mohammed Kamal Khan and Others

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 20-09-1961

Acts Referred:

Citizenship Act, 1955 — Section 9(2)
Citizenship Rules, 2009 — Rule 30
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1962 AP 247

Hon'ble Judges : Jaganmohan Reddy, J

Bench : Single Bench

Advocate : V.K. Vaidya, for the Appellant; Govt. Pleader, for the Respondent

Judgement

(1) This is an appeal against the judgement of the First Additional City Civil Judge, Hyderabad, rejecting the plaintiff's suit on the ground that it is not entertainable by a Civil Court having regard to Section 9(2) read with Rule 30 of the Citizenship Act, 57 of 1955 (here-inafter referred to as the Act).

(2) The plaintiff-appellant averred that he was an Indian citizen by birth and that he had gone to Pakistan to establish a branch office, but after he went there due to difficulties and restrictions imposed by India and Pakistan respectively on the migration of people from one side to the other, he was not in a position to come back and though he made attempts to get a no objection certificate from the Indian High Commissioner, he was ultimately forced to obtain a Pakistani passport and visa from the Government of India and return to India in or about 1955. His wife and children plaintiffs 2, 3, 4 and 7 returned earlier in 1954. After the expiry of the visa he was served with an order to leave India. Thereupon the appellants filed a writ petition in High Court which was ultimately withdrawn. They also filed a declaration to say that if by force of any statute or provision of law, they are deemed to be Pakistani citizens, they renounce that citizenship.

(3) The trial court held that having regard to Articles 5 and 7 and section 9(2)

read with Rule 30 it is only the Central Government that can determine the question the question of whether he is a citizen or not. in that view it dismissed the suit.

(4) In this appeal the learned Advocate for the appellants, Sri vaidya contends that the trial court was in error in holding that it had no jurisdiction for the reason that Section 9(2) does not provide a remedy and at any rate it postulates that a person with respect to whom the Central Government may determine, must first be an Indian citizen. Where, however, it is denied that he is ever an Indian citizen and the claim is for a declaration that he is one whether under the Constitution or under the provisions of the Citizenship Act, civil courts cannot refuse to entertain the petition to determine that question. The learned second Government Advocate Sri Shankar Rao, on the other hand contends that where there is a statute governing the subject of the citizenship and that statute provides for specific mode of ascertaining whether a person is a citizen or not there is an ouster of the Civil Court's jurisdiction. In support of this he had cited several decisions to which it is unnecessary to refer, as that proposition cannot be disputed.

(5) The only question in this case is whether the appellants are citizens of India, then the other question would arise as to whether they have lost that nationality. If the Central Government have reason to believe that a citizen of India has lost his nationality by acquiring voluntarily the nationality of another country, it alone has power to enquire into the matter after giving due notice to such person and to require him to establish that he has not acquired the nationality of another country. This is the effect of section 9(2) read with Rule 30. I am relieved of the necessity to refer to a number of authorities on this point having regard to the latest unreported pronouncement of their Lordships of the Supreme Court in *State of Andhra Pradesh v. Abdul Khader*, Criminal Appeal No. 192 of 1959, D/4-4-1961 :

(Since reported in *State of Andhra Pradesh Vs. Abdul Khader*,).

In that case a certain person was convicted by the Judicial Magistrate of Adoni u/s 14 of the Foreigners Act, 1946 which conviction was sustained by the Sessions Judge, Kurnool. In a revision to this Court the petition was allowed and the conviction was set aside. It may be stated that on the evidence the person convicted had left India at the end of 1954 or early 1955 and returned to India on January, 20, 1955 on a passport granted by the Government of Pakistan dated January 10, 1955 with a visa issued by the Government of India authorising his stay till April 14, 1955. The question was whether he was a foreigner. It was held that the passport obtained by a citizen of India from Pakistan would no doubt be evidence that he is a Pakistani national which evidence would be of use in view of section 9(2) of the Act in as much as the Central Government alone can determine whether the respondent before their Lordships, who was admittedly an Indian citizen after the Constitution, had lost his nationality. That question it was held, cannot be decided by a Court. The two propositions which emerge from the

aforesaid decision may be stated in the language of their Lordships as under:-

"1. Now section 9(2) of the Citizenship Act, 1955, provides that if any question arises as to whether an Indian citizen has acquired the citizenship of another country, it shall be determined by such authority and in such manner as may be prescribed. Under rule 30 of the rules framed under that Act, the Authority to decide that question the rules framed under that Act, the authority to decide that question is the Central Government. So the question whether the respondent, an Indian citizen, had acquired Pakistani citizenship cannot be decided by Courts. The learned Magistrate had no jurisdiction therefore to come to the finding on the strength of the passport that the respondent, an Indian citizen had acquired Pakistani citizenship. Nor was there anything before the learned Magistrate to show that the Central Government had decided that the respondent had renounced Indian citizenship and acquired that of Pakistan.....Furthermore, in order that there may be a decision by the Central Government that an Indian citizen has acquired foreign nationality an enquiry as laid down in R. 30 of the rules framed under the Citizenship Act has to be made and no such enquiry had at all been made.....

2. The question whether a person is an Indian citizen or a foreigner, as distinct from the question whether a person having once been an Indian citizen has renounced that citizenship and acquired a foreign nationality, is not one which is within the exclusive jurisdiction of the Central Government to decide. The Courts can decide it and therefore, the learned Magistrate could have done so. He, however, did not decide that question that is find that the respondent had been a Pakistani national all along".

After setting out the aforesaid two propositions it was observed by Sarkar, J., delivering the judgement of the Court that while upholding the decision of the High Court they should not be understood to have accepted or endorsed the correctness of interpretation put on Article 7 to the effect namely that the said Article contemplates migration from India to Pakistan even after January 26, 1950. It was observed that the reference in the opening words of Article 7, to Arts. 5 and 6 taken in conjunction with the fact that both Articles 5 and 6 are concerned with citizenship (at the commencement of the Constitution apart from various other considerations, would appear to point to the conclusion that the migration referred to in Article 7 is one before January 26, 1950, and that the contrary construction which the learned judge of the High Court has put upon Art. 7 is not justified. In the view their Lordships had taken, however, they did not consider it necessary to go into that question more fully or finally pronounce upon it.

From this authoritative pronouncement it is abundantly clear that the appellants are trying to establish that they are Indian citizens under the law of this country and are seeking for a declaration. Such a suit can be entertained by Courts of this country as adumbrated by the second proposition set out above. Various points have been urged by the learned Government Advocate, viz., that the

plaint allegations themselves would show that the appellants are not Indian citizens, secondly, that their declaration would establish that they are renouncing their Pakistani citizenship and consequently they cannot be Indian citizens; and thirdly, that the application filed u/s 5 of the Act to the Collector also supports the contention that they are not Indian citizens. But in my view all these submissions indicate evidence to disprove the Indian citizenship on matter to be taken into consideration at the trial only if the Court has jurisdiction to determine the question whether the appellants are Indian citizens or not.

The learned Advocate for the appellants, on the other hand, states that the question whether a person is an Indian citizen or not, is governed by the Constitution, and under the Constitution the question whether a person was a domicile in India on the date of the Constitution, or whether he migrated between March, 1947, and 26th January 1960, are questions of fact which must be determined before he can be declared an Indian citizen or not. I am only indicating these several contentions raised before me to demonstrate that these are all matters which will have to be taken into consideration only if the Court has got jurisdiction. As I have held that the Court has jurisdiction these matters can be considered by the trial Court in accordance with the pleadings and the issues that may be raised before it.

(6) In the result this appeal is allowed and the case is remanded to the trial Court for disposal according to law with due expedition. The costs will abide the result. A certificate for the refund of the court-fee on the Memo of Appeal may be issued.

(7) Appeal allowed; Case remanded.