

(1969) 01 GAU CK 0001

In the Gauhati High Court

Case No : Second Appeal No. 58 of 1966

Union of India and others

APPELLANT

Vs

Karam Ali and others

RESPONDENT

Date of Decision : 20-01-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 5, 6

Citation : AIR 1970 Guw 14

Hon'ble Judges : P.K. Goswami, J

Bench : Single Bench

Advocate : P.C. Kataki, for the Appellant; S.R. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Goswami, J.—This appeal is by the defendants against the judgment and decree of the learned Additional District Judge, Lower Assam Districts, Nowgong, setting aside the judgment and decree of the learned Munsiff, dismissing the plaintiffs suit for declaration of rights of citizenship and for injunction.

2. The plaintiff's case may briefly be stated. Plaintiff No. 1 Karam Ali is the husband of plaintiff No. 2 Maleka Banoo and plaintiff No. 3 is their dependent son. They were originally residents of Habiganj in the district of Sylhet now included in East Pakistan. They came to Thiatangoni village in Juria Mouza in the district of Nowgong, Assam, in the year 1922 and have been living there as permanent residents since then. They have been also carrying on business in dry fish there since about 40 years. Plaintiff No. 3 was born at Juria. On 22nd May, 1963, the plaintiffs were served with a quit-India notice to leave India within 20th June, 1963. The plaintiffs claimed that they are bona fide citizens of India, and, as such, are not liable to be deported. They accordingly served notice on the defendants under S. 80 of the CPC and in due course instituted this suit wherein they claimed for declaration of their rights as Indian citizens and for injunction against the defendants.

3. The defendants denied the plaintiff's claim. The learned Munsiff dismissed the plaintiffs suit on the ground that they have failed to make out a case under Article 5 of the Constitution of India, inasmuch as they could not establish domicile in India. He, therefore, held that the plaintiffs are not citizens of India under Article 5 of the Constitution and rejected their claim. The learned Additional District Judge, on the other hand, held that Article 6 was applicable on the facts and circumstances of the case, and, according to him, acquisition of domicile is not necessary. The learned Judge held as follows:

Under Article 6 those who migrated before 19-7-48 would be deemed to be citizens of India automatically if they had been ordinarily residents in the territory of India since the date of their migration." He further held:

The very fact that plaintiff no. 1 has been living in Nowgong for so many years with his family shows that the plaintiffs are ordinarily residents of this place.

* * * *

If one moves to a new place with Intention to make it his home for an indefinite period one can be said to be ordinarily a resident of that place. In the present case the plaintiffs have been living in Nowgong for more than twenty years. They have subsequently purchased landed property which shows that they have intention of making it their home. The plaintiffs have been also carrying on business in Nowgong since 1946. From all these I am inclined to hold that the plaintiffs have been ordinarily residents in Nowgong which is in the territory of India. Under provisions of Article 6 of the Constitution the plaintiffs must be called citizens of India.

4. The learned Counsel for the appellants submits that the learned Additional District Judge has committed an error of law in holding that Article 6 of the Constitution is applicable in the Instant case. He also draws my attention to an unreported decision of mine in Second Appeal No. 63 of 1966 (Assam) where this Court held that Article 6 is only applicable to a case of migration to India (Bharat) after the creation of the two Dominions on 15th August 1947 by virtue of the Indian Independence Act, 1947. Since the plaintiffs came to India some time in 1922, their case is not covered by Article 6 of the Constitution.

The learned Counsel for the appellants has further drawn my attention to the decision of the Supreme Court in the case of Smt. Shanno Devi Vs. Mangal Sain, , wherefrom he reads the following passage from Paragraph 7:

The extreme contention raised by Mr. Sastri on behalf of the appellant that migration under Art. 6 must take place after the territory of India came into existence under the Constitution cannot be accepted. It has to be noticed that Art. 6 deals with the question as to who shall be deemed to be a citizen of India at the commencement of the Constitution. That itself suggests, in the absence of anything to indicate a contrary intention, that the migration which is made an essential requirement for this purpose must have taken place before such

commencement. It is also worth noticing that Clause (b) of Article 6 which mentions two conditions, one of which must be satisfied in addition to birth as mentioned in Cl. (a) and "migration" as mentioned in the main portion of the Article being proved, speaks in its first sub-clause of migration "before the 19th day of July 1948" and in sub-clause (ii) migration "after the 19th day of July 1948". The second sub-clause requires that the person must be registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of the Constitution. The proviso to that Article says that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application. It is clear from this that the act of migration in Art. 6 must take place before the commencement of the Constitution. It is clear, therefore, that "migrated to the territory of India" means "migrated" at any time before the commencement of the Constitution to place now in the territory of India." On a careful examination of the decision, it will be clear that the last few sentences in the paragraph unequivocally refer to "any time before the commencement of the Constitution". The Constitution having commenced on 26th January, 1950, the migration must be before this date. The decision does not show that the migration is referable even to a time prior to the creation of the two Dominions under the provisions of the Indian Independence Act. Before the 15th August 1947, the question of migration from different parts of undivided India would not arise. The migration in the context of the Constitution, as is clearly understood, must be from a territory which is outside India to India (Bharat) and not from one place to another within the same territory.

When the plaintiffs moved from Habiganj to Nowgong in 1922 in an undivided India, there was no migration within the meaning of Article 6 of the Constitution of India. It is only after 15th August, 1947 that the question of migration from India to Pakistan or vice versa may arise under the Constitution. The Supreme Court has repelled the contention that migration under Article 6 is referable to a movement only after the commencement of the Constitution, namely, after 26th January, 1950. Their Lordships were not called upon to decide in that case from what anterior time prior to the commencement of the Constitution, migration can be said to take place. This very decision of the Supreme Court has noticed the word "migration" and their Lordships observed as follows:

The only explanation of their not expressly mentioning "domicile" or the "intention to reside permanently" in Art. 6 seems to be that they were confident that in the scheme of this Constitution the word "migration" could only be interpreted to mean "come to the country with the intention of residing there permanently.

I am, therefore, clearly of the opinion that Article 6 is not applicable to the facts of this case and the learned Additional District Judge was not justified in invoking the said Article. Even in applying Article 6 and finding in favour of the plaintiffs,

the learned Judge has gone wrong in holding that the question of "domicile" would not arise in dealing with the case under Article 6 of the Constitution. This case has to be decided in the light of Article 5 and from the finding of the learned Judge that the plaintiffs have been residing in India since 1922 and carrying on business here and have since also purchased landed property showing that they have the intention of making India their home, it is difficult to resist the claim of the plaintiffs to their rights of citizenship. All that Art. 5 requires is that at the commencement of the Constitution the plaintiffs must prove their domicile in the territory of India and they must be ordinarily residents in the territory of India for not less than five years immediately preceding such commencement. On the finding of the court below, the plaintiffs have been residents in the territory of India since 1922, which is more than five years immediately preceding the commencement of the Constitution. They have also proved their domicile at the commencement of the Constitution, on the finding of the court below that they have the intention of making India their home. As their Lordships of the Supreme Court observed in the case of Kedar Pandey Vs. Narain Bikram Sah, :

If this physical fact "(namely residence)" is accompanied by the required state of mind, neither its character nor its duration is in any way material. The state of mind, or *animus manendi*, which is required demands that the person whose domicile is the object of the inquiry should have formed a fixed and settled purpose of making his principal or sole permanent home in the country of residence, or, in effect, he should have formed a deliberate intention to settle there.

As the respondents have been residing at Nowgong (India) since 1922, for so many years, and after the creation of the two Dominions have not elected to leave this country, but, on the other hand, have acquired landed property thereafter, the learned Additional District Judge is fully justified in holding that they have established their intention to reside in India by making it their permanent home. They have, therefore, established their domicile in India within the meaning of Article 5 of the Constitution. I am, therefore, clearly of the opinion that the learned Additional District Judge was correct in decreeing the plaintiffs suit although the reasons I have given are different from those given by the learned Judge.

5. In the result, the appeal fails and is accordingly dismissed; but, in the circumstances of the case, there will be no order as to costs.