

(1962) 03 AHC CK 0022
In the Allahabad High Court
Case No : Second Appeal No. 496 of 1957

Union of India (UOI) and Others

APPELLANT

Vs

Yaqub Ali Khan

RESPONDENT

Date of Decision : 29-03-1962

Acts Referred:

Citizenship Act, 1955 — Section 9
Civil Procedure Code, 1908 (CPC) — Section 100, 101
Constitution of India, 1950 — Article 7

Citation : AIR 1963 All 205 : (1963) CriLJ 562

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : H.N. Seth, for the Appellant; Hari Swarup, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a second appeal by the union of India and the State of Uttar Pradesh, against the decree of the Temporary Civil Judge, Shahjahanpur, granting the plaintiff respondent Yaqub Ali Khan a declaration that he continues to be a citizen of Union of India. The facts are these; Yaqub Ali Khan was born in the village of Korokoian in the district of Shahjahanpur and was living there when the Constitution of India came into effect. He became a citizen under Article 5. In March 1950 as a result of communal disturbances he left India for Pakistan and remained there till 1952. It is common ground that he did not return on a Pakistani Passport because no entered India via East-Pakistan for which no pass-port was necessary at the time. He was prosecuted under the Influx of Pakistan Control Act. Later he was informed by the District Magistrate Shahjahanpur that he would be deported to Pakistan. He moved this court for relief under Article 226 but his petition was rejected on the ground that he should file a Civil Suit for a declaration to establish his status as a citizen of India. In April, 1954, he was directed by the authorities to leave India within two months or obtain a declaration of his status as a citizen from a competent court.

Thereupon he filed this suit. He alleged in his plaint that he is an Indian citizen as defined in Article 5 of the Constitution as he was born in village Korokuiyan in India and had lived there all his life. He claimed that his domicile was also Indian. He admitted that in March 1950 he went to Pakistan as a result of serious communal disturbances which broke out in that year, but alleged that his visit was temporary and he never settled in Pakistan "nor did he transfer his allegiance". He tried to avail of the opportunities afforded by the Liaquat Nehru Pact to return to India but had to remain in Pakistan for reasons beyond his control. He did not explain these reasons in the plaint. At last however he returned and was prosecuted under the Influx of the Pakistan Control Act. It had become necessary for him to obtain a declaration from the Civil Court to establish his status as an Indian citizen as he was threatened with deportation to Pakistan. He asserted that he never migrated to Pakistan and, therefore, did not lose his citizenship rights as provided by Article 7 of the Constitution. He asked the court to declare that he is a citizen of India.

2. Both the Union of India and the State of Uttar Pradesh resisted the suit and filed a common written statement. It was asserted that the plaintiff had in fact migrated to Pakistan some time after March 1950 without obtaining, a "no objection" certificate from the District Magistrate, Shahjahanpur and had thus lost all the rights of citizenship and was not entitled to the declaration prayed for. The trial court framed five issues as follows :

1. Is the plaintiff still a Citizen of Union of India?
2. Whether the plaintiff migrated to Pakistan with the intention to permanently settle there? If so, did he lose all his citizenship rights?
3. Is the suit bad for mis-joinder of parties?
4. Do the provisions of Influx of Pakistan Act directing deportation of the plaintiff lead to the infringement of his fundamental rights under the Constitution of India? If so, are they void and ultra vires.
5. To what relief, if any, is the plaintiff entitled?

3. The trial court rejected the plaintiff's version that he never intended to migrate to Pakistan and disbelieved his witnesses. It held that he did migrate to Pakistan and by reason of this conduct lost his citizenship rights as provided under Article 7 of the Constitution. In appeal learned District Judge took a different view of the plaintiff's evidence and believed his witnesses who had deposed that he had gone to Pakistan, only for a temporary period and not with the intention of settling there permanently. Some of those witnesses said that they had met the plaintiff in Pakistan and learnt from him that he was anxious to return to India. The learned Judge also considered other facts such as that the plaintiff did not take his wife and children with him to Pakistan and had taken a long and tedious journey through the East Pakistan to accomplish his desire to return to India. He allowed the appeal with costs and awarded the plaintiff a declaration that he

continued to be a citizen of India. The defendants have now come to this court in second appeal.

4. Mr. H. N. Seth, who represents both the Union of India and the State of Uttar Pradesh had to concede that the finding of the Learned District Judge that the plaintiff did not migrate to Pakistan and had no intention of settling there permanently is one of fact. It is a finding which cannot be reviewed in second appeal. Mr. Seth, however, contended that the District Judge had no jurisdiction to decide the question of citizenship and should have referred it to the Central Government for a finding. He relied on Section 9 of the Citizenship Act 1955 read with rule 30 of the Citizenship Rules made under that Act.

5. Section 9 which consists of two sub-sections runs thus :

"Termination of Citizenship: -- (1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 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".

6. Thus Section (1) provides in effect that any citizen of India may cease to be one if he voluntarily acquires between 26th January 1950 and the commencement of the Act of the citizenship of another country by naturalisation, registration or otherwise. Sub-Section (2) prescribes a procedure for determining whether any person has acquired the citizenship of another country. It enjoins that if any such question arises it shall be determined by the prescribed authority. Rule 30 lays down that this authority shall be the Central Government.

It is, therefore, not open to doubt and in fact conceded by Mr. Hari Swarup, who argued the case for the plaintiff-respondent with considerable tenacity, that the combined effect of the section and the rule is that the question whether a person acquired the citizenship of another country by any of the means specified in Section 9 of the Act must be determined by the Central Government and if this question arises in any suit in the Civil Court, the court must refer to that Government and abide by its decision. *Akbar Khan v. Union of India* AIR 1962 SC 70.

7. But both the section and the Rule provide that the Central Government acquire the exclusive jurisdiction to determine this question only if and when it arises, not otherwise. It follows that if the question never arose in any particular

suit or was not raised, and the suit was decided on other grounds, the jurisdiction of the Court is not ousted. In this case the plaintiff contended in his plaint that he had not lost his citizenship by reason of Article 7 of the Constitution as he had never migrated to Pakistan. The defendants in their written statement challenged the veracity of his assertion and alleged that he had in fact migrated and was therefore hit by Article 7. Thus the only question raised before the Court and decided by it was whether the plaintiff had migrated to Pakistan and lost his citizenship for that reason.

To lose Indian citizenship is not the same thing as acquiring the citizenship of another country. It was not contended by the State that he had lost his Indian citizenship because he had acquired that of another country. It may be that migration to Pakistan may result in the acquisition of Pakistani citizenship, but not necessarily in all cases. This question did not arise in the present case and the courts were free to decide the plaintiff's suit on the issues raised before them. They had jurisdiction to do so and the finding of the appellate court, being one of fact, cannot be reviewed in second appeal.

8. This appeal must, therefore, be dismissed with costs.