

Abdul Rahman Haldar and Others

Vs

Union of India and Others

Civil Appeal No. 2434 of 1968

(R. S. Sarkaria, P. N. Kailasam JJ)

02.03.1978

JUDGMENT

KAILASAM, J. -

1. This appeal is preferred by the plaintiffs by special leave against the judgment of the High Court of Assam and Nagaland dismissing their second appeal.
2. The appellants instituted the suit for a declaration that they are Indian nationals and that a permanent injunction restraining the respondents from deporting the appellants from out of India be issued.
3. Plaintiffs 1 and 3 are brothers and plaintiff 2 is their mother. The fourth plaintiff is the wife of the first plaintiff. The trial Court held that the plaintiffs are not Indian nationals but Pakistanis and are not entitled to any relief. Accordingly it dismissed the suit. On appeal by the plaintiffs the Assistant District Judge agreed with the trial Court and confirmed the judgment and decree of the trial Court. The plaintiffs preferred a second appeal to the High Court which was dismissed in limine. They have therefore preferred this appeal in this Court.
4. The case of the appellants is that the second appellant came to Assam from Bengal which is not included in East Pakistan about 28 years back with her husband Mahmad Haldar and settled in the village Tengripur, Mauza Hojai in the district of Nowgang. Thereafter it is claimed that the appellants 1 and 3 were born to them in the said village of Tengripur. It was further alleged that appellants 1 and 3 acquired some land from one Mobaswar Ali Chaudhury on a mortgage in 1947 by an unregistered deed and cultivated the said lands for 2 or 3 years. After the death of Mahmad Haldar, the father of the appellants 1 and 3, the appellants left the village of Tengripur and rented a house at Lakhtakia where the first appellant worked as Khalasi in a ferry ghat and thereafter he married the fourth appellant. The trial Court as well as the appellate Court have considered the evidence on behalf of the appellants and found that they have not succeeded in establishing that they are Indian citizens.
5. There oral evidence adduced on behalf of the appellants is to the effect that father of appellants 1 and 3 took lands from one Mobaswar Ali Chaudhury on mortgage. Before the trial Court no documents were marked and put in evidence to prove the mortgage. The oral testimony was rejected as unconvincing. The court also found that the appellants have not produced any document to prove that the appellants 1 and 3 were born in India or any certificate from any school which would prove that they studied in India. No documents were produced to show that the appellants were doing any work in the ferry ghat or living in India. PW 3 who was a school master did not produce any

documentary evidence to prove that the appellants 1 and 3 studied in the school. No voters' list or any ration records were produced to substantiate their plea that they were Indian citizens. On the evidence the courts below were fully justified in holding that the appellants have not established their case that they were Indian citizens.

6. Mr. Sarjoo Prasad, the learned Counsel appearing for the appellants, submitted that the lower appellate Court was in error in holding that the appellants had not filed any documents in the court below and withheld documentary evidence. The learned Counsel drew our attention to the fact that the document, the alleged mortgage deed was filed in court but submitted that through the mistake of the advocate, it was not marked as an exhibit. It is admitted that the document was not mentioned by any of the witnesses and was not put in evidence. As the learned counsel submitted that this document would establish the appellants' case we looked into it. The document is printed as Item No.19. It is styled as a mortgage deed and is dated 29th September, 1947. The executant is Md. Mobeswar Ali Chaudhury who was examined on behalf of the appellants in the trial court. The document states that it is a lease-deed and is executed by Md. Mobeswar Ali Chaudhury as he was in urgent need of money for Rs. 50. For this amount he leased 4 Bighas of land and the condition was that the land should be released after two years without any payment or adjustment of the amount taken. Though this lease-deed is stated to be for two years it is not registered. There is no evidence to prove that Mobeswar Ali is the owner of the land. Mobeswar Ali was examined as PW 1. He failed to produce any document to show that he owned any land in the village and his evidence was rightly rejected by the courts below. Even after taking into account the document on which the learned Counsel placed considerable reliance, though not marked in the courts below, we see no material for coming to the conclusion that the appellants are citizens of India.

7. There is thus no merit in this appeal and is dismissed. There will be order as to costs.

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