

State of U. P.

Vs

Mohammad Din and Others

Civil Appeal No. 1339 (N) of 1971

State of U. P.

Vs

Abdul Rashid and Others

Civil Appeal No. 2044 (N) of 1971

(D. A. Desai, R. B. Misra, V. B. Eradi JJ)

24.07.1984

JUDGMENT

DESAI, J :-

1. As a common question of law touching upon the jurisdiction of the Civil Court to determine the question as to "whether, when or how any person has acquired citizenship of another country" arises in both the appeals and therefore, they were set down for hearing together and are being disposed of by this common judgment.

2. Re. C.A. No. 1339 (N) of 1971 : Respondents filed Civil Suit No. 231 of 1955 on May 3, 1955 against the State of Uttar Pradesh and the Union of India praying for a declaration that the respondents are the citizens of Indian Union and are entitled to permanently live at Aligarh or any other part thereof and for a permanent injunction restraining the defendants in the suit from deporting them to Pakistan or from prosecuting them under various statutes on account of their alleged failure to return to Pakistan. The suit was contested on diverse grounds, one such being that the respondents had migrated to Pakistan and returned to India on a passport issued by the Government of Pakistan. This contention squarely raised the issue whether the respondents-plaintiffs had when or how acquired the citizenship of Pakistan. The trial court decreed the suit and after an unsuccessful appeal by the present appellant, the matter reached the Allahabad High Court. The learned Judge set aside that judgment and decree and remanded the case to the trial court to decide the case afresh in the light of the law laid down in *Abida Khatoun v. State of U.P.* (AIR 1963 All 260 : (1963) 1 Cri LJ 724). After remand the suit of the respondents was decreed and the decree was affirmed in first appeal. When the matter came up before the High Court in the second appeal before a learned Single Judge, a contention was raised that in view of the decision in *State of Uttar Pradesh v. Shah Mohammad* ((1969) 3 SCR 1006 : (1969) 1 SCC 771) the civil court had no jurisdiction to entertain the suit once the contention as envisaged by sub-section (2) of Section 9 of the Citizenship Act, 1955 ('Act' for short) was raised. This contention on behalf of the appellant was negatived by the learned judge observing that on the earlier occasion the High Court had held that the civil court had jurisdiction to entertain the suit and the remand was limited to the question of

determination of issue on merits only. It was further held that as the earlier decision is binding between the parties, the appellant cannot be allowed to reargue the same. Accordingly the second appeal was dismissed. Hence this appeal by special leave.

3. Re. C.A. No. 2044 (N) of 1971 : Respondents filed Civil Suit No. 233 of 1955 on May 3, 1955 for the same reliefs as in the cognate case. The learned trial Judge dismissed the suit holding that the respondents have migrated to Pakistan and as they have returned to India on a passport issued by the Government of Pakistan, they have become citizens of Pakistan which indicate that they have renounced their Indian citizenship. Plaintiffs preferred an appeal in the Court of the District Judge. The learned Judge agreed with the view taken by the learned trial Judge and dismissed the appeal. The plaintiffs thereupon preferred second appeal to the Allahabad High Court. The learned Single Judge set aside the judgment and decree of the trial court and the first appellate court and remitted the matter to the trial court for a fresh adjudication in accordance with the principles of law enunciated in the case hereinbefore quoted. After the remand the trial court decreed the suit of the respondents and the second appeal by the original defendants failed on the same ground on which the appeal in the cognate case failed. Hence this appeal by special leave.

4. Respondents in each appeal sought a declaration that they were citizens of India. The appellants contended that the respondents had acquired the citizenship of Pakistan and accordingly had ceased to be the citizens of India and therefore are not entitled to the declaration sought by them. On these rival contentions the specific issue that arose was whether, when or how the respondents had acquired the citizenship of another country ?

5. Section 9 of The Citizenship Act, 1955 which came into force on December 30, 1955 reads as under :

9. Termination of citizenship - (1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between January 26, 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 maybe 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.

Section 9(1) provides for situations wherein citizenship of an Indian citizen stands terminated, one such situation being upon acquisition of the citizenship of another country. If an Indian citizen acquired citizenship of another country that by itself without anything more would result in the termination of his citizenship of India. Sub-section (2) provides for the forum having jurisdiction to determine the contention as to whether, when and how a person had acquired citizenship of another country and thereby the consequence of termination of Indian citizenship ensued. If such a contention were to arise in any proceeding, it shall be dealt with by the prescribed authority. Rule 30 of the Citizenship Rules framed under the Act prescribes the Central Government to be the

exclusive authority competent to determine whether citizenship of another country is acquired and thereby the person claiming to be Indian citizen has ceased to be one.

6. The question is whether once exclusive jurisdiction is conferred on the Central Government to determine the issue that may arise under sub-section (2) of Section 9, the civil court will have jurisdiction to decide the same. In *Abida Khatoon case* (AIR 1963 All 260 : (1963) 1 Cri LJ 724), which the learned Single Judge followed while deciding the appeal against which the present appeal is filed, the Allahabad High Court had taken the view that if the suit is instituted prior to the enactment and enforcement of the Citizenship Act, 1955 the civil court had jurisdiction to decide the contention whether citizenship of an Indian citizen stood terminated on account of his acquisition of citizenship of another country, and the jurisdiction of the civil court in view of the provision contained in Section 9(2) would not be ousted and the civil court will continue to have jurisdiction to determine the issue. The learned Single Judge negatived the contention that the civil court had no jurisdiction to decide the issue following the decision in *Abida Khatoon case* (AIR 1963 All 260 : (1963) 1 Cri LJ 724).

7. In *Shah Mohammad case* ((1969) 3 SCR 1006 : (1969) 1 SCC 771), this Court specifically overruled the decision in *Abida Khatoon case* (AIR 1963 All 260 : (1963) 1 Cri LJ 724). This Court specifically held that from the amplitude of the language employed in Section 9, the legislative intention has been made clear that all cases which come up for determination where an Indian citizen has voluntarily acquired the citizenship of a foreign country after the commencement of the Constitution, that is after January 26, 1950 and before the commencement of the Act i.e. December 30, 1955 have to be dealt with and decided in accordance with the provisions contained in Section 9(2) of the Act. This Court specifically held that civil court will have no jurisdiction to decide the issue arising in a suit instituted before the commencement of the Act as the Central Government alone has been constituted the exclusive forum for the same. This legal position is unquestioned and unquestionable. Therefore the decision of the High Court is wholly unsustainable, and both the appeals will have to be allowed.

8. Mr Mahajan appearing in one of the two appeals urged that the Court should retain the suits and direct the Central Government to decide the question : whether the respondents had acquired that citizenship of another country i.e. Pakistan and thereby their Indian citizenship stood terminated and till then they should not be deported. We would have been happy to accede to this contention but let it be made very clear that the law in this behalf has been laid down way back in 1969. The decision in *Shah Mohammad case* ((1969) 3 SCR 1006 : (1969) 1 SCC 771) which specifically overruled the decision of the Allahabad High Court in *Abida Khatoon case* (AIR 1963 All 260 : (1963) 1 Cri LJ 724) was specifically brought to the notice of the learned Single Judge hearing the second appeal and yet for reasons wholly un-understandable and entirely unsustainable, the learned Judge declined to apply the law which was binding on him. At any rate, the appellants had knowledge of the legal position from 1969 and it was for them to have taken recourse to appropriate proceeding by moving the Central Government to get the relief. The suit is pending for 30 years and it is not possible therefore, to accede to the request of Mr Mahajan.

9. Accordingly, both the appeals succeed and are allowed and both the suits are dismissed but in the circumstance of the case, with no order as to costs throughout.

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