**ALLAHABAD HIGH COURT**

Abida Khatoon

Vs.

State of U. P

Second Appeal No. 1618 of 1957, against decree of IInd Addl. C.J. Agra
1963 AIR (Allahabad) 260 **:** 1963(1) CriLJ 724

(S.S. Dhawan, J.)

05.04.1957. 16.04.1962

**JUDGMENT**

**Dhawan, J.**

1. This is a second appeal by Smt. Abida Khatoon and her husband Abdul Shakoor against the decision of the IInd Additional Civil Judge, Agra dismissing their suit for a declaration that they are Indian citizens not liable to be deported to Pakistan. In their plaint the appellants made the following allegations : They were born and brought up at Agra and their parents too were born there. They were citizens of India at the commencement of the Constitution and have continued to enjoy this status ever since. In February, 1950, both of them went on a visit to Pakistan but without any intention to migrate or settle there permanently. After staying in Pakistan for some time they were anxious to return to India and applied to the Refugee department of the Pakistan Government for repatriation to India under the Delhi agreement of 1950 (the so called Nehru-Liaqat Pact). Under that agreement the Governments of India and Pakistan had agreed to the return of the nationals who had fled to one country but desired to return home. The Muslims of Uttar Pradesh who went to West Pakistan between February and May, 1950 were eligible for repatriation under this agreement, but the plaintiffs were unable to get a permanent permit enabling them to return. They could not secure accommodation in the special trains which were being run to transport refugees back to India, nor a permit for permanent return. But they did not give up their Indian nationality nor acquire any foreign nationality voluntarily. After this they signed some papers or forms in Pakistan but, being illiterate, did not know the nature of the documents they were signing. The plaint did not give the exact date when the

appellants returned to India, but it was stated that on their return the appellants applied for permission to re-settle in India permanently, but their request was not granted. The State and its officials were threatening to deport the plaintiffs and on 1-3-51 the final orders of the State requiring them to leave India were communicated to them. The appellants moved this Court under Article 226 of the Constitution for relief but they were asked to obtain a declaration from the Civil Court; hence this suit. The appellants contended that their threatened deportation was illegal and infringed their constitutional rights as citizens. Since January, 1954, they had been living in this country and their visa was being continuously extended by the State Government; but in view of the imminent threat of deportation, the plaintiffs asked for a declaration that they are Indian citizens not liable to be deported to Pakistan.

2. The suit was resisted both by the Union of India and the State of U. P. but a common written statement was filed. This is a very unsatisfactory document containing evasive replies, vexatious and frivolous denials, and vague allegations. Apart from a bare assertion that the plaintiffs are nationals of Pakistan, the case of the state was not clearly stated. The question in issue was whether the plaintiffs ever lost their citizenship of India, but apart from an allegation in paragraph 17 of the additional pleas that the plaintiffs came to Agra on 17th January, 1953, as nationals of Pakistan on a temporary Pakistan Passport there are no particulars of how and when the plaintiffs ceased to be citizens of India.

3. The plaintiff Abida Khatoon deposed before the trial Court that she was born in Agra and that she and her husband did not go to Pakistan with any intention of settling there permanently. She explained that she went to Pakistan on receiving information that her brother who lived in Karachi was seriously ill. She was accompanied by her husband and children but left all her belongings in India. On reaching Pakistan she found her brother suffering from a serious illness of which he died ten months later. After his death there was no occasion for the plaintiffs to remain in Pakistan and she made attempts to return. Ultimately a friend whom they had known in Agra asked her to put her thumb impressions on two applications which she did without understanding their contents. After obtaining permission they returned to India and have continued to live there ever since. On one or two occasions a police official asked her why she had not reported her movements to the police but she replied that this was not necessary as she was a permanent resident of India. A police inspector advised her to get her visa extended and she sent her passport to the Government at Lucknow with an application

for extension.

4. No witness appeared for the State which relied entirely on certain applications made by the plaintiffs in Pakistan to obtain a visa and an application made in India for permission to live here permanently. The trial Court believed the plaintiffs' story that they had gone to Pakistan because Abida Khatoon's brother had fallen seriously ill but without any intention of settling there permanently. It held that the plaintiffs had not lost their citizenship and gave them a declaration that they were still citizens of India who were not liable to be deported to Pakistan.

5. Both the Union of India and the State of U. P. appealed. The appellate Judge took a contrary view of the evidence and held that the plaintiffs migrated to Pakistan with the intention of residing there permanently and had consequently lost their Indian nationality. It held that as they were no longer citizens of India they were not entitled to any declaration of citizenship. He allowed the appeal of the State and dismissed the suit of the plaintiffs who have now come to this Court in second appeal.

6. Mr. H. N. Seth, who argued the case for the State with ability and exemplary fairness, raised a preliminary objection that after the passing of the Citizenship Act of 1955 the Civil Court had no jurisdiction to decide the question whether the plaintiffs had acquired the citizenship of Pakistan and thus lost their Indian citizenship. He relied on Section 9 (2) of that Act. It is necessary to quote the entire section which bears the title 'Termination of citizenship' and runs thus : -

> "(1) Any citizen of India who by naturalization, 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"

7. In the present case the plaintiff's suit was filed on the I3th August, 1954; the Citizenship Act came into force while it was pending. Mr. Seth contended that the jurisdiction of the Civil Court to determine this question is barred in all pending suits and even appeals. He relied upon a decision of the Supreme Court in *Akbar Khan v. Union of India,*[1]holding that a Civil Court is prevented by Section 9 (2) of the Citizenship Act from determining the question whether a citizen of India has acquired the citizenship of another country or when or how he had acquired it. I do not find much substance in this objection which was not taken before the Courts below. The Supreme Court did not hold that Section 9 (2) is retrospective in its effect. The relevant words in sub-section (2) are "if any question arises", not "if any question has arisen". A litigant, after filing this suit, acquired a vested right to have all questions determined by the Court in which the suit is filed. The institution of the suit carries with it all the rights of appeal then in force. *Garikapati Veerayya v. Subbiah Choudhry,* [2] In *Cyril Austin Spencer v. M. H. Spencer,* [3] it was held by this Court that the right to appeal from the decision of an inferior to a superior tribunal is not a procedural but a substantive right which vests in a party at the initiation of the proceedings. If the right of appeal before a particular tribunal, which may or may not be exercised, becomes a vested right when the suit is filed, a fortiori the right to have the suit determined by the Court where it is instituted becomes a vested right too.

8. Counsel had to concede that an appeal is a continuation of a suit and that his argument must lead to the result that the jurisdiction of the appellate Court in all the pending appeals must also be taken away, and in all second appeals pending in the High Court at the commencement of the Citizenship Act, the decisions of the Courts below on the question whether the plaintiff acquired the citizenship of another country would stand nullified, and the High Court must refer this question to the Central Government and abide by its decision. I think any intention that a law will have such drastic effect on existing rights must be clearly expressed in the statute itself. The normal principles of legislation are that an Act is ordinarily not retrospective, that vested rights are not disturbed, and that the jurisdiction of the Civil Courts in pending cases is not taken away by the creation of a new tribunal for the determination of a particular question. I find nothing in the language or the scheme of the Citizenship Act to suggest that Parliament wanted to depart from these principles. The preliminary objection fails and the appeal must be decided on merits.

9. The next question is whether the State has proved that the plaintiffs acquired the citizenship of Pakistan under Section 3 (d) of the Pakistan Citizenship Act or in any other manner. Before considering the evidence it is necessary to clarify where the onus of proof lies in this case. The plaintiffs claim that they are citizens of India whereas the State alleges that they are citizens of Pakistan. Ordinarily it is for the plaintiff to prove the facts on which his prayer for relief is based. But if the plaintiffs are able to prove that they were citizens of India when they left for Pakistan, there will be a presumption that they continued to be citizens in 1953 when they returned. Citizenship does not evaporate with the passing of time : it clings to a person wherever he may roam. It cannot be taken away from him unless he voluntarily renounces it or is guilty of some conduct involving loss of citizenship. The onus of proving that a citizen of India has lost his citizenship is on the party seeking to deprive him of his rights as a citizen.

10. In this case it is not seriously disputed by the State that the plaintiffs were citizens of India at the commencement of the Constitution. Abida Khatoon deposed that she was born in Agra and married to Abdul Shakoor and they have been residing in Agra. The law presumed that as husband and wife they lived and co-habited in Agra. One of the plaintiffs' witnesses, Wazir Uddin P. W. 3, deposed that he had seen Abida Khatoon and her husband in Agra since their childhood. These statements were not challenged in cross-examination. Thus it is established that at the commencement of the Constitution both were domiciled in India, the wife being born in India and her husband having been ordinarily resident in the territory of India for not less than five years prior to the commencement of the Constitution. In the written statement it was "admitted" that the plaintiffs had migrated from India to Pakistan and this was an implied admission that they were domiciled in India in February, 1950. Thus the plaintiffs established that they were citizens of India at the commencement by virtue of Article 5, and were citizens in February 1950, when they left for Pakistan. They returned to India in 1953. The State alleges that during this interval they lost their citizenship. The onus of proving this fact is on the State.

11. In view of the lack of particulars in the written statement of the State, the Court asked the Standing Counsel to specify the facts on which the State relied to prove that the plaintiffs had lost their Indian Citizenship between February 1950, and January 1953. Counsel's reply was recorded in my notes. He stated that he would rely on the following facts to prove the loss of citizenship by the plaintiffs :

(1) First, in February 1950, they left India with the intention of settling in Pakistan and migrated to Pakistan. Thus they acquired the citizenship of Pakistan under Section 3 (d) of the Pakistan Citizenship Act, 1951 and thereby ceased to be citizens of India by virtue of Section 9 (1) of the Indian Citizenship Act of 1955. On a further question from the Court counsel admitted that the sole evidence of their intention to migrate to Pakistan apart from the fact of leaving India and residing in Pakistan, was a sentence in an application made by the husband on his return to the Collector at Agra dated 26th September, 1953, which runs thus :-

"I was compelled to cast a lingering look behind my native country and cherished home and to bid adieu to all that was dear to me".

This sentence weighed decisively with the lower appellate Court.

(2) Secondly, the plaintiffs entered India in 1953 on a Pakistan Passport. It followed that the plaintiffs must have applied for such a passport and made a declaration of Pakistani citizenship in the prescribed form and that the Pakistan Government must have made the necessary enquiries and accepted the plaintiffs' declaration as true before issuing the passports. It was for the plaintiffs to explain why they acquired a Pakistani passport.

(3) Thirdly, on return to India the plaintiffs made several applications for the extension of their stay but did not repudiate the Pakistani passport at the earliest opportunity. This showed that they were conscious of their status as Pakistani citizens but decided to live in India at a late stage.

(4) Fourthly, the plaintiffs' explanation for going to Pakistan was untrue and must be rejected. It followed that the only reason for their going to Karachi was that they had decided to settle in Pakistan permanently.

12. Mr. Beg objected that it would not be fair to the plaintiffs to permit the State to argue at this stage that the plaintiffs acquired the citizenship of Pakistan under Section 3 (d) of the Pakistan Act when they had not taken up this plea in their written statement. The objection has considerable substance and ordinarily I would have upheld it. Section 9 lays down a general principle that any person who acquires the citizenship of any other country shall cease to be a citizen of India. If the State contends that a citizen lost his citizenship because he acquired that of another country,

it must give particulars and the Court must give an opportunity to that person to meet the case against him. But in the present case I do not think the plaintiffs will be prejudiced if the State is allowed to raise this plea even at this stage. They themselves alleged that they did not intend to settle permanently in Pakistan nor acquire the nationality of any other country, and the State denied this allegation in the written statement. Thus the question was put in issue, though the Sections were not referred to. The plaintiffs led evidence in support of their case and their witnesses were cross-examined. They were fully aware that the question in issue was whether they had acquired the citizenship of Pakistan. I think it is fair that the State should be permitted to show whether the existing evidence on the record proves that the plaintiffs acquire the citizenship of that country under Section 3 (d) of the Pakistan Citizenship Act or any other law.

13. Mr. M. H. Beg, who argued the case for the appellants with considerable ability and tenacity advanced the following arguments in support of this appeal : First, the learned Judge had ignored the relevant principles of international law while considering the question whether the appellants had lost their citizenship of India by migrating to Pakistan. Mr. Beg contended that a person who leaves India with the intention of settling in Pakistan does not lose his Indian domicile without actually settling down in that country. He argued that a frustrated intention does not result in the loss of the domicile of origin, and even if the plaintiffs had left India with the intention of making Pakistan their permanent home, they did not lose their Indian domicile unless they actually settled down in that country. Secondly, learned counsel argued that the finding of the lower Court that the plaintiffs had left India with the intention of settling down in Pakistan was vitiated because the learned Judge was influenced by facts which were irrelevant and ought not to have been considered.

14. I shall consider the last argument first. The trial Court has held that the plaintiffs had not left India with the intention of settling down in Pakistan. The appellate Judge reversed this finding and held that the plaintiffs had migrated from India with the intention of making Pakistan their permanent home. Ordinarily this would be a finding of fact binding on this Court in second appeal. But in reviewing the evidence the learned Judge was influenced by several items of evidence which he could riot have taken into account. The first was a sentence in an application moved by the plaintiff Abdul Shakoor before the District Magistrate, Agra, that at the time of leaving India he had "to cast a lingering look behind my native country and cherished home and to

bid adieu to all that was dear to me". The learned Judge treated this as an admission by the plaintiffs that on leaving India they said farewell to their country of origin, "otherwise there would have been no reason for his having a heavy heart at the time of his departure from India to Pakistan." I am afraid the learned Judge ignored two principles according to which the statement of a party may be used against him as his admission. The first is that a statement must be considered as a whole and the Court should not pick out isolated sentences torn from their context. Now in this very application the plaintiff Abdul Shakoor had stated that he was compelled to leave India on account of rioting and disturbance and general upheaval throughout the length and breadth of the country, but "during all this time I spared no pains and tried my utmost to come back to the forsaken mother country but all my efforts turned fruitless and my hopes frustrated." It is evident that if the learned Judge had considered the statement as a whole, he would not have drawn the inference which he did. Another principle governing admissions is that if the statement is ambiguous it must be put to the party who must be given an opportunity of explaining it before it can be used against him as his admission. The sentence that the plaintiff was compelled to cast a lingering look behind his native country and bid adieu to all that was dear to him was ambiguous as it could mean either a permanent or a temporary farewell to India or even reflect a feeling of sadness caused by the uncertainties of the future. It was the duty of the Judge, before accepting a meaning adverse to the plaintiffs, to ensure that they were given an opportunity to explain this ambiguity. It is conceded that no such opportunity was given. Consequently the learned Judge should not have permitted himself to be influenced by this statement.

15. The learned Judge also considered another matter which he should not have. He observed that the appellants went to Pakistan in 1950 "when the conditions in our country had fully settled and force of the exodus of the Muslim population had considerably subsided". Now a Court can take judicial notice of what are known as notorious facts but the question whether the conditions in February 1950 were "fully settled" is a matter of opinion and somewhat controversial. It is true that in 1950 the volume of the exodus of Muslim population to Pakistan had been reduced considerably but it is equally true that in that year communal riots flared up in parts of Uttar Pradesh which forced some Muslims to go to Pakistan. In observing that the conditions had "fully settled", the learned Judge was importing into the evidence his own opinion. The Court cannot smuggle into the evidence its own opinion of controversial situations disguised as notorious facts. Moreover, the fact that conditions

had become settled and the exodus of Muslim population to Pakistan had subsided was irrelevant in ascertaining the intention of the plaintiffs in going to Pakistan. If anything it was in their favour, for if conditions had become normal there was no great urge for the plaintiffs to migrate to Pakistan and Abida Khatoon's explanation that she went to see her ailing brother sounds plausible.

16. A finding of fact can be reviewed in second appeal if the appellate Court relied on an ambiguous statement torn from its context as an admission by a party without giving that party an opportunity to explain the ambiguity and without considering the effect of the statement read as a whole (*Jwala Das v. Pir Sant Das,* [4] *Mahadeo v. Baleshwar Prasad,* [5] or if it imported into the evidence its own opinion of controversial situations under the guise of taking judicial notice of "notorious facts". Therefore the finding of the lower appellate Court that the plaintiffs left India for Pakistan with the intention of settling there permanently cannot stand.

17. The next question is whether I should remand the case to the lower Court for a proper assessment of the evidence according to law or review the evidence myself. I do not think that a remand would be fair to the appellants. They came to India in 1953 and their status has been under a cloud for the last nine years. A remand would postpone the decision of this case for another seven years or more. I think they are entitled to an immediate decision. I asked the counsel for the appellants and the State to argue their respective cases on the basis of the evidence on record. After hearing them, I have come to the conclusions which are detailed below.

18. The State relies on Section 3 (d) of the Pakistan Citizenship Act 1951 which provides:

> "At the commencement of this Act every person shall be deemed to be a citizen of Pakistan-
> (d) who before the commencement of this Act migrated to the territories now included in Pakistan from any territory of the Indo-Pakistan sub-continent outside those territories with the intention of residing permanently in those territories."

It is contended that the plaintiffs by migrating, from India to Pakistan became citizens of Pakistan and consequently ceased to be citizens of India by virtue of Section 9 (1)

of the Indian Citizenship Act. To establish that the plaintiffs lost their Indian Citizenship the State must prove that the plaintiffs migrated to Pakistan before the commencement of the Pakistani Citizenship Act with the intention of residing there permanently. That Act came into force on 13th April 1951. The State must, therefore, prove that the plaintiffs' migration to Pakistan was completed between February 1950 and 13th April 1951. Counsel for the State argued that they must be deemed to have migrated to Pakistan as soon as they entered that country with the intention of permanently settling there, and it was not necessary for the State to prove that they had actually settled down in Pakistan and changed their Indian domicile. Counsel submitted that the word migration in Section 3 (d) of the Pakistan Citizenship Act does not contemplate change of domicile and an Indian citizen who had "migrated" to Pakistan could become a Pakistani citizen while retaining his Indian domicile. On the other hand, Mr. Beg contended that migration under Section 3 (d) did not mean merely entering Pakistan with the intention of settling in it but involved change of domicile, and was not complete until the person had actually settled down in that country with the intention of residing there permanently. Mr. Beg argued that a frustrated intention could not result in a change of domicile. He submitted that in this case there was no evidence that the plaintiffs left India with the intention of settling in Pakistan; and alternatively, even if they did, there was no evidence that they actually did settle down in that country. Therefore, they never lost their domicile of origin; and without change of domicile there could be no migration and no acquisition of a Pakistani Citizenship under Section 3 (d) of the Pakistan Citizenship Act. This argument requires an examination of the meaning and content of the word migration. Both counsel addressed the Court at considerable length on this point and a large number of authorities were cited.

19. Under Section 3 (d) of the Pakistan Citizenship Act the effect of migration to Pakistan upon the citizenship of the migrant was automatic. If a person migrated to Pakistan with the intention of residing there permanently he became a citizen of Pakistan. He did not have to apply for naturalization or registration or formally renounce his Indian Citizenship. This is an important point in considering the meaning of the word migration in Section 3 (d). In my opinion an Indian Citizen could not migrate to Pakistan without a conscious desire to abandon, and actually abandoning, his domicile of origin. On the other hand if migration is interpreted as change of residence leading to change of citizenship without change of domicile this may lead to absurd results. Under Article 5 of the Constitution every person was a citizen of India

at the commencement of the Constitution if he had two qualifications. The first was domicile within the territories of India, and the second birth (or residence). Domicile was made compulsory in all cases without exception, and there could be no citizenship of India at the commencement of the Constitution without an Indian domicile. In 1951, Section 3 (d) of the Pakistan Citizenship Act provided that person who before the commencement of that Act had migrated from India to Pakistan with the intention of residing there permanently acquired the Citizenship of Pakistan, and all Indian Citizens who had already migrated to Pakistan automatically became citizens of that country. In 1955, Section 9 (1) of our Citizenship Act struck a blow at the dual Citizenship of such persons by enjoining that a person who acquired the Citizenship of another country shall cease to be a citizen of India. But what is the legal effect of a person ceasing to be a citizen of India? We have seen that Citizenship of India at the commencement of the Constitution was based on two qualifications- domicile and birth (or residence for five years). Therefore loss of Citizenship means the loss of the essential ingredient of Citizenship- domicile (the fact of birth or previous residence could not be wiped out). But if, as argued by Mr. Seth, a person could migrate to Pakistan under Section 3 (d) of the Pakistan Act without changing his domicile, the result would be that he lost his Indian Citizenship under Section 9 of our own Act while all the ingredients of his Citizenship remained in tact. This would be plainly absurd. But there is no absurdity if migration to Pakistan as contemplated by Section 3(d) of the Pakistan Citizenship Act is interpreted as involving change of domicile, because in that case an Indian Citizen migrating to Pakistan lost his Citizenship because he consciously abandoned his Indian domicile by settling down in Pakistan with the intention of making it his permanent home and thereby lost the basic qualification on which his Indian Citizenship was founded. I think that Section 3 (d) of the Pakistan Citizenship Act was intended to confer Citizenship only on those who abandoned their Indian domicile and acquired a Pakistani domicile. Migration without change of domicile is a contradiction in terms. If Citizenship were to be conferred irrespective of the intention of the migrant and without the creation of a legal link between the migrant and the adopted country, this will introduce an unusual concept into the law of Citizenship. The word "migration" has been interpreted by our Courts as including change of domicile. *Shanno Devi v. Mangal Sain,* [6] and *Shabbir Hussain v. State of U. P.,* [7]

20. Mr. Seth relied on a decision of the Supreme Court in *State of Bihar v. Amar Singh,* [8] I do not think the principle laid down in that case can serve as a guide in the

case before me. As I understand in that judgment, their Lordships held that a wife who migrated to Pakistan would lose the anchor provided by her husband's domicile even if the husband did not migrate with her. They apparently took the view that Article 7 of the Constitution made an inroad into the normal rule that the wife takes the domicile of the husband. The Patna High Court had followed the British principle that the wife's domicile remains with her husband wherever she may go, but the Supreme Court held that as a result of Article 7 a wife who had permanently settled down in Pakistan could not be permitted to shelter behind the domicile of her husband who remained in India. Their Lordships pointed out that Article 7 was peremptory in its scope and provided for no exceptions, and it followed that even a wife lost her citizenship if she committed acts which would amount to a change of domicile if committed by any other person. The reason for this modification of the normal law that a wife takes the domicile of her husband is not difficult to understand. The makers of the Constitution were dealing with a flood of migrations during an extraordinary period in our history. The division of India may have led to the straining of loyalties to breaking point in some individual families. In these exceptional circumstances, the framers of the Constitution provided that during these three years even a wife would lose her Citizenship if she migrated to Pakistan leaving her husband behind in India. The laws of many other countries recognize exceptions to the general rule that the domicile of the wife follows that of the husband. See American Jurisprudence Vol. 17 Article 50, page 235. The decision of the Supreme Court in AIR 1955 Supreme Court 282 is consistent with the interpretation that the word migration in Article 7 of the Constitution contemplates change of domicile.

21. Thus the plaintiffs could not have acquired the citizenship of Pakistan under Section 3 (d) of the Pakistan Citizenship Act without acquiring a Pakistani domicile. The State must prove that the plaintiffs, after leaving India and at some time during their residence in Pakistan but before the commencement of the Pakistan Citizenship Act, acquired a Pakistani domicile which made them citizens of Pakistan under Section 3 (d) of the Pakistan Citizenship Act.

22. A large number of cases are being listed before me under the classified list system in which the question in issue is whether a person migrating to Pakistan lost his Indian Citizenship by virtue of Section 9 of the Citizenship Act, because he left India for fear of communal riots or went in search for employment and either got or failed to get a job in Pakistan but ultimately returned to India on Pakistani Passport. It is therefore

desirable to explain the purpose and policy of the Citizenship Act, particularly Section 9 on which the State relies in this and all other cases. The section lays down a general principle that an Indian citizen will lose his citizenship if he voluntarily acquires the Citizenship of another country. Its purpose is to ensure that no citizen shall carry the political burden of a dual Citizenship with its inevitable consequence of divided loyalities. But there is nothing in the Act to suggest that Parliament wanted to discourage Indian citizens from going abroad to Pakistan or any other country, in a search for jobs or livelihood.

Throughout the ages Indians have gone forth to the four corners of the world for trade, commerce, and other adventures. The recently discovered dock-yard at Lothal (Kathiawar), an important centre of the Indus Valley Civilization, is a silent monument to the adventurous spirit of the sea-faring Indians. Thousands of Indian citizens today are residing abroad and earning their livelihood as professors, merchants, and skilled artisans. It would be a very serious matter for an Indian citizen, returning home after a sojourn of a few years in Britain or the U.S. A. or Pakistan or any other country, to be told that by living abroad he had acquired the Citizenship of another country and thereby lost his own. There is nothing in Section 9 which enjoins that an Indian citizen must cease to be a citizen of India because he has lived and earned his livelihood abroad- in Pakistan or elsewhere-for several years. Section 9 was not enacted to curb the spirit of adventure among Indians or make them a nation of Koopa-mandookas.

23. Moreover the Citizenship Act is not a special law providing for acquisition of Pakistani Citizenship by Indians migrating to Pakistan. There is nothing in Section 9 or the entire Citizenship Act to suggest that migration to Pakistan was singled out for special control. In fact the word Pakistan does not occur even once in the Act. Provisions of Section 9 were not intended by Parliament to operate as a statutory iron curtain- If I may borrow Mr. Churchill's phrase- between India and Pakistan or discourage normal intercourse between the peoples of these two countries who are neighbors. It lays down a general principle of universal application and its scope and meaning must be ascertained without any special reference to Pakistan.

24. It follows that under the Citizenship Act there cannot be different tests for ascertaining the intention of persons who are alleged to have migrated to Pakistan and of those who are alleged to have migrated to other countries. The Court cannot adopt the approach that if a person went to Pakistan in search for employment he will be presumed to have gone with the intention of renouncing his Indian domicile, but not if

he went to Britain, Egypt or Iran or Indonesia. I find nothing in the Act to warrant this discrimination. It is true that after the partition of India millions of Indian Muslims left for Pakistan regarding it as their homeland. But the Citizenship Act was enacted in 1955 and contains no special provision for persons leaving India for Pakistan after the commencement of the Act. This deliberate omission means that the provisions of the Act must be interpreted by the Courts free from any complexes generated by the memories of the events surrounding the partition.

25. In determining whether a citizen of India lost his Indian Citizenship and acquired that of Pakistan by the combined effect of Section 9 of the Indian Citizenship Act and Section 3 (d) of the Pakistan Citizenship Act, the Court shall apply the general principles of international law which ordinarily govern the change of domicile or origin and not any peculiar test specially devised for person leaving for Pakistan. It is desirable to state these general principles.

26. To every adult person the law assigns a domicile which is called the domicile of origin and which remains attached to him until a new and different domicile takes its place. The domicile of origin must prevail until the party has not only manifested but carried into execution an intention of abandoning his former domicile and acquiring another as his sole domicile : *Winans v. Attorney General,*[9] . A domicile of origin though intended to be abandoned will continue until a new domicile is acquired, and the new domicile is not acquired until there is not only a fixed intention of establishing a permanent residence in some other country but this intention has been carried out by actual residence there. *Bell v. Kennedy,* [10] The question whether a person intended to make the country to which he shifted his permanent home is one of fact, and the Court will consider all the surrounding circumstances. Residence in a country, particularly for the purpose of taking up a job there, is prima facie evidence of domicile but the presumption is rebuttable. Neither residence, however prolonged, nor employment in a country of itself results in change of domicile unless there is an intention to make the country a permanent home.

27. The important point to emphasize once again is that under the Citizenship Act there cannot be two different tests for ascertaining the intention of persons leaving for Pakistan and those departing for other countries.

28. The entire controversy is thus narrowed to the question of the intention of the

plaintiffs. Did they go to Pakistan with the intention of making that country their permanent home and did they actually settle down in that country? But both questions must be answered against the plaintiffs before it is held that they lost their Indian domicile. If the Court finds that they left India with the intention of living in Pakistan permanently but did not actually settle down there, their domicile of origin will be deemed not to have been abandoned. Of course, after it is proved that a person left India with the intention of making Pakistan his permanent home and went to Pakistan and resided there, the burden of proving that, the intention was carried out will be light, for in the circumstances residence itself raises a presumption that it was carried out and the onus will be on the person to prove that it was given up or frustrated. But the original intention of leaving India and residing in Pakistan permanently must be proved beyond doubt by cogent evidence. The fact that a person left for Pakistan for fear of communal disturbances or in search for employment is not conclusive evidence of any intention to abandon his Indian domicile, though the acquisition of a Pakistani passport during one's residence in Pakistan will ordinarily raise a strong presumption of acquisition of Pakistani Citizenship (if the inquiry is concluded by the Central Government under Rule 30 of the Citizenship Rules it is conclusive evidence); and if the passport was obtained for general purposes of travel and not merely for returning to India it will be almost conclusive, and the person must explain why he made applications for a Pakistani passport and an Indian Visa in both of which he must have declared himself to be a national of Pakistan.

29. On the question of intention to settle in Pakistan the lower appellate Court relied on two facts for its verdict against the plaintiffs. The first is the statement made by the plaintiff Abdul Shakoor in his application before the District Magistrate, Agra, in which he stated that while leaving India he cast a longing look on his country of origin. I have already explained that this statement cannot be used as an admission against the plaintiffs. The second is the admitted fact that both the plaintiffs returned to India on Pakistani passports. A passport does not confer Citizenship of that state and does not necessarily explain how or when he acquired it. The holder may be the citizen of that State by birth or naturalization, or by any other manner permitted by law. A passport is prima facie evidence that the person in possession of it acquired, at some time prior to its issue, the citizenship of the country whose Government issued it. But the presumption is not conclusive but rebuttable. Schedule III of the Citizenship Rules which enjoins that the acquisition by an Indian citizen of a passport of another country shall be conclusive proof of his having acquired the Citizenship of

that country governs an inquiry by the Central Government but not a trial before the Civil Court which must be conducted according to the ordinary laws of evidence. I have to consider whether the plaintiffs have succeeded in displacing the presumption which undoubtedly arises from the fact that they entered India with Pakistani passports. If it had been proved against them that they had obtained a Pakistani passport for general purposes and not necessarily with the object of returning to India, this would have been almost conclusive evidence of the fact that they had acquired Pakistani Citizenship, though it would still leave open the question when they acquired it. But there is no evidence that they applied for a Pakistani passport for any purpose other than returning to India. On the contrary, it is established that they first decided to return to India and then some one hit upon the device of obtaining a passport as the easiest way of achieving their object. The obtaining of a passport in these circumstances does not indicate a desire to acquire Pakistani Citizenship, but only to get out of Pakistan. It would be somewhat paradoxical to hold that a passport obtained with the express purpose of abandoning all connection with Pakistan is evidence of an intention to acquire Pakistani Citizenship.

30. It was argued by Mr. Seth that the plaintiffs must have made declaration of Pakistani Citizenship in their applications for passport. The actual words of the declaration were not produced before the Court. Assuming that the plaintiffs did make some declarations, they have explained the circumstances in which these were made. Abida Khatoon deposed that she was asked by an acquaintance to fix her thumb impressions on certain forms which she did without knowing their contents. She is illiterate. She was not cross-examined on this part of her evidence. In my opinion, it is unlikely that in their anxiety to return to India the plaintiffs signed any number of forms recklessly without realizing that they were declaring themselves to be Pakistani citizens. I am, therefore, of the opinion that the State has not been able to discredit the explanation given by the plaintiffs that they signed blank forms without understanding their contents and acquired Pakistani passports with the sole motive of being able to return to India.

31. There is no other evidence of any intention to settle in Pakistan permanently. Abida Khatoon deposed before the trial Court that she and her husband went to Pakistan to see her ailing brother. There was no evidence in rebuttal. It is not denied by the State that she had a brother in Pakistan who subsequently died after the plaintiffs' arrival in Pakistan. In the circumstances, I must hold that the State has not

been able to prove that the plaintiffs left India with the intention of permanently settling down in Pakistan or that they decided during their stay in Pakistan to settle in that country.

32. There is an additional reason for holding that the State has not established its case. It relies on Section 3 (d) of the Pakistan Citizenship Act to prove that the plaintiffs acquired the citizenship of Pakistan. That Act came into force on 13th April, 1951. Clause (d) provides for the acquisition of Pakistani Citizenship by a person who migrated from India before the commencement of the Act. It is not enough for the State to prove that a person migrated to Pakistan; it must further prove that his migration was effected before the commencement of the Pakistan Citizenship Act. Migration involves change of domicile, and is not complete until the domicile of origin is lost and a new domicile acquired. A person may leave India with the intention of settling in Pakistan but his Indian domicile is not destroyed until he fulfils his intention and acquired a Pakistani domicile- that is to say, he settles down in Pakistan with an irrevocable intention to live there permanently. He may change his mind before making a final decision, or his intention may be frustrated, or the Pakistan Government may not permit him to settle there. The mere fact of arrival in Pakistan with the intention of settling there is not sufficient to destroy the link of domicile of origin.

33. To prove that the plaintiffs acquired the Citizenship of Pakistan under Section 3(d) of the Pakistan Citizenship Act the State must prove that they made their decision to make Pakistan their permanent home before 13th April 1951 when the Act came into force. Clause (d) does not apply to subsequent migration. In this case, even assuming that the plaintiffs went to Pakistan with a tentative intention of migrating, there is no evidence of when they carried out their intention and acquired a Pakistani domicile. It is hardly likely that they decided to make Pakistan their permanent home during the serious illness of their relation, and even less likely that they decided to settle down in Pakistan after he died. All that is proved is that they left for Pakistan in March 1950 to see a sick relation and after his death decided to return to India and come back in 1953 on a Pakistani passport. This slender evidence does not lead to the conclusion that the plaintiffs migrated to Pakistan under Section 3 (d) of the Pakistan Citizenship Act. The facts are more consistent with the plaintiff's explanation that they went to see an ailing relative.

34. For the reasons detailed above, I hold that the State has not been able to prove that the plaintiffs who were citizens of India in February 1950, had lost their Citizenship when they returned in 1953. Therefore, it must be presumed that they continued to be citizens of India. Their right to stay in India is under a cloud and they are in danger of being deported. They are entitled in these circumstances to relief.

35. I allow this appeal, set aside the decree of the lower appellate Court, and grant the plaintiffs a declaration that they are Indian citizens with all the rights to which they are entitled by virtue of their Citizenship. The plaintiffs shall have their costs in all Courts.

36. Before leaving this case, I am compelled to comment on the manner in which the case for the State has been conducted in the Courts below. For the State to contend that two of its citizens have lost their citizenship by acquiring the citizenship of another country is a serious matter. Whenever such a situation arises, the State has to present its case fairly and establish it by cogent reasons. It is a serious matter for a citizen after he has lived in Britain or Argentina or Pakistan or any other country to be told that he has acquired the citizenship of that country and, therefore, lost his own. He must be made aware of the case against him so that he may meet it, if he can. I do not think that in this case the State has been either fair or efficient in the presentation of its case. Its replies in the written statement are vague and evasive. For example, in reply to the plaintiffs' allegations in paragraph 1 of the plaint that they were born and brought up at Agra and went to Pakistan in February 1950 without any intention of migration or permanent settlement, the Government replied, "With reference to paragraph 1 of the plaint it is admitted that the plaintiffs migrated to Pakistan....." The plaintiffs had clearly stated that they went to Pakistan "Without any intention of migrating" and it is beyond one's comprehension how a party can "admit" a statement which was never made by the other. Again, the plaintiffs' allegation that they were born in India was resisted with a blanket denial that "the allegations in the said paragraph are denied," But during the trial the State did not even attempt to challenge the plaintiffs' assertion that they were born in Agra. During the hearing of this appeal the State Counsel was asked whether the State contended that the plaintiffs were not born in Agra, and he had to concede that it did not. It is difficult to understand what the State stood to gain by a pointless denial which they ought to have known was frivolous and vexatious. The common litigant indulges in denials for the purpose of harassing his opponent but the State is expected

not to descend to this level.

37. During the trial no witness appeared for the Government. It would not have been difficult for the State with all the resources at its command to collect evidence, if any, to prove that the plaintiffs broke up their home in Agra before leaving for Pakistan. The cross-examination of the plaintiffs and their witnesses was ineffective. The plaintiffs were not asked in cross-examination who paid their passage money and other travelling expenses of their visit to Pakistan which must have been substantial. I was informed that the plaintiff Abdul Shakur is a rickshaw driver. A man in his position could hardly afford the expenses of a temporary visit to a foreign country to see his wife's ailing brother. Did the plaintiffs raise the necessary funds by selling their belongings and winding up their home, or did the brother in Pakistan remit the money? These were relevant questions for cross-examination but were not put to the plaintiffs. As important cases of this kind are being frequently filed in the civil courts, I hope that Government in future will ensure that its defense is properly presented and effectively conducted.

Appeal allowed.

Cases Referred.

1. AIR 1962 SC 70
2. AIR 1957 SC 540
3. 1955 All LJ 307
4. AIR 1930 PC 245 (247)
5. AIR 1939 All 626)
6. AIR 1961 SC 58
7. AIR 1952 All 257
8. AIR 1955 SC 282
9. 1904 AC 287
10. (1868) LR 1 HL 307