

Samiullah Vs. State of Uttar Pradesh

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Court : Allahabad

Decided On : Apr-12-1962

Reported in : AIR1963All482

Judge : S.S. Dhavan, J.

Acts : [Citizenship Act, 1955](#) - Sections 9(2); Citizenship Rules, 1956 - Rule 30;
[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : Second Appeal No. 3678 of 1958

Appellant : Samiullah

Respondent : State of Uttar Pradesh

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : M.H. Beg, Adv.

Disposition : Appeal allowed

Judgement :

S.S. Dhavan, J.

1. This is a Second Appeal by samiullah against the concurrent decisions of the courts below dismissing his suit for a declaration that he is a citizen of India and for permanent injunction restraining the State of Uttar Pradesh from deporting him

to Pakistan. Both the courts have held that they had no jurisdiction to try the case in view of Section 9(2) of the Citizenship Act read with Rule 30 of the Citizenship Rules, 1956. The plaintiff has now come to this Court in Second Appeal.

2. The facts are these: In his plaint Samiullah alleged that he was born in the year 1911 in village Garhi Pukhta, in the district of Muzaffarnagar. His parents were Indians and he was married in his village and has two wives. His children were also born in his native village. He earned his living as a motor mechanic from time to time. During the years 1936-39 he served with M/s. Premier Motors at Dehradun but his services came to an end when the proprietor, Mr. Talbot, wound up his business and left India to serve in the Second World war. From 1945 to 1952 he was employed as a Branch Post Master under the Government of India in the post office in his village Garhi Pukhta. One of his sisters-in-law, Sughra Begum, migrated to Bahawalpur in West Pakistan in 1950 and took away with her the plaintiff's minor son without the plaintiff's consent. In 1952 he was offered a lucrative job in Bahawalpur by his former employer Mr. Tolbot who himself had taken up service as a motor engineer with a firm M/s. Afzal and Co., at Bahawalpur, the plaintiff accepted this job and went to Pakistan to earn his livelihood but without any intention of migrating from India or giving up his citizenship. He took his second wife and four children with him but left his first wife and daughter behind in his native village in India.

In 1953 he received the news of the death of his first wife and decided to cut short his stay in Pakistan and return to India. He applied to the Deputy High Commissioner for India in Pakistan at Lahore for a permanent return, but the latter informed him that he was required to obtain in the first instance a passport from the Government of Pakistan as a Pakistan national and then apply to the High Commissioner for a visa. As he had no other alternative means of returning to India permanently, he was compelled in accordance with the advice of the Deputy High Commissioner to obtain a Pakistan Passport for himself and his family out 'without renouncing their Indian citizenship' and only with a view to return to India permanently. The plaintiff submitted that in view of these circumstances all the entries in his passport relating to his domicile were incorrect and not binding on him. He with his family came back to India in October, 1953 and made attempts

and moved petitions for permission to live here permanently. But before any permission could be granted, the period of his visa expired on 30th November, 1954 and the Muzaffarnagar Police asked him to return to Pakistan. He was threatened with deportation and moved the High Court for relief under Article 226 of the Constitution on the ground that he had not lost his Indian citizenship. But his petition was dismissed on an undertaking by the Government that if at any time it wanted to deport him it would give him three months time to establish by means of a suit or other proceedings that he had not lost his Indian citizenship. As the State was thinking of arresting the plaintiff and his family and deporting them to Pakistan by force, he was compelled to file this suit to restrain them and establish his status as citizen of India.

3. The suit was resisted by the State and a preliminary objection was taken that the jurisdiction of the civil Court was barred by Section 9(2) of the Citizenship Act of 1955 read with Rule 30 of the Citizenship Rules of 1956. The plaintiff's allegation that he is an Indian citizen was denied on the ground that he had voluntarily migrated to Bhawalpur with his whole family with the intention of permanently settling there. The State pointed out that the plaintiff had applied for the grant of a Pakistan passport which was granted only to Pakistan nationals, and had also applied for a visa thereby admitting himself to be a national of Pakistan. According to the case of the State, as he was not an Indian citizen, he was not entitled to stay in mala as of right and could not ask for an injunction restraining the Government from deporting him.

4. The trial Court framed an issue whether the jurisdiction of the Civil Court to determine the question whether the plaintiff had voluntarily acquired the citizenship or Pakistan was barred under Section 9 of the Citizenship Act. It came to the conclusion that the Court had no jurisdiction and dismissed the suit. The plaintiff appealed but the Additional Civil Judge Muzaffarnagar confirmed the view of the trial Court. He has now come to this Court in Second Appeal.

5. Mr. M.H. Beg, learned counsel for the appellant, conceded at the outset that this case involved the determination of the question whether the plaintiff had voluntarily acquired the citizenship of another country and thereby ceased to be a citizen of

India and that as the suit was filed after the Citizenship Act came into force, this question could not be decided by the Civil Court. But he submitted that the Courts had erred in dismissing the plaintiff's suit instead of staying its hearing and waiting for the determination of the aforesaid questions by the Central Government which is the prescribed authority for determining it. He relied on a recent decision of the Supreme Court in *Akbar Khan Alamkhan v. Union of India*, AIR 1962 SC 70 in which the decision of the lower Courts dismissing the suit for want of jurisdiction was reversed and the case remanded to the Courts below with the following direction:

'We direct that the suit be heard and decided on an questions raised in it excepting the question whether the appellants having been Indian citizens for sometime have renounced that citizenship and acquired a foreign citizenship. If the Court finds that the appellant had never been Indian citizens, then the suit would be dismissed by it. it on the other hand, the Court finds that they were Indian citizens earlier, then the Court would stay the further hearing of the suit till the Central Government decides whether the appellants had acquired subsequently a foreign nationality and thereafter dispose it of by such order as the decision of the Central Government may justify.'

6. That suit involved the determination of two questions--first, whether the plaintiffs were citizens of India at the commencement of the Constitution and secondly, whether they lost this citizenship subsequently by reason of having acquired voluntarily the citizenship of another country. In the present case, as far as I can see, the only question is whether the plaintiffs voluntarily acquired the citizenship of Pakistan, for it is common ground that the plaintiffs were citizens of India at the commencement of the Constitution. Hut there is virtually no difference between a case in which the plaintiff proves that he was a citizen of India at the commencement of the Constitution and one in which the plaintiff's claim is admitted, and in both the question for determination is whether he subsequently lost his Indian citizenship by acquiring that of another country. Therefore the principles and directions laid down by the Supreme Court in that case will govern this one too. I am satisfied that the decision dismissing the entire suit was erroneous.

7. I have now to consider what orders should be passed in this appeal. In Akbar Khan Alam Khan's case, AIR 1962 SC 70 the Supreme Court remanded the case to the Court below with a direction that it should stay further hearing of the suit till the Central Government decided the question. They did not specify how the Central Government was to be moved and whether the Civil Court should refer the question itself to that Government. I have to consider whether the Civil Court had the power to make this reference. In my opinion, it has.

8. The Citizenship Act does not take away the jurisdiction of the Civil Court to try another suit of a Civil nature or grant any relief which it has the power to grant under the law. The suit for a declaration of citizenship and for an injunction restraining the Government to deport the plaintiff is a civil suit, and any citizen has a right to ask for this relief which has not been taken away by Section 9 of the Citizenship Act. The Court is under a duty to determine his suit and grant him the relief on a proper case being made out.

9. But Section 9(2) read with Section 30 of the Citizenship Rules has taken away the power of the civil Court to determine a particular question if it arises in the suit -- namely, whether when or how any person has acquired the citizenship of another country, and vested this power in the Central Government. It is clearly implied that whenever such question arises before the Civil Court it shall remit it to the Central Government for decision,

10. It is true that neither Section 9 nor Rule 30 expressly provides for a reference by the Civil Court to the central Government for the determination of this question, but unless this power is imported by necessary implication, the result would be a virtual denial of the citizen's right to obtain a decision from the Civil Court, Rule 1 of Schedule III provides

'where it appears to the Central Government that a citizen of India has voluntarily acquired the citizenship of any other country, it may require him to prove within such period as may be fixed by it in this behalf, that he has not voluntarily acquired the citizenship of that country; and the burden of proving that he has not so acquired such citizenship shall be on him.'

But the power to initiate an inquiry under this rule is discretionary and the Central Government may inquire into the matter only after it has formed a tentative opinion that a citizen of India has voluntarily acquired the citizenship of another country and then require him to prove that he did not so acquire it. However the question of forming a tentative opinion does not arise when the dispute has already arisen before the Civil Court and has to be decided judicially by the Central Government. I think Rule 1 of Schedule 3 provides for an inquiry by the Central Government on its own initiative and had no reference to an issue remitted by the Civil Court. The power of the Court to remit an issue must be inferred by necessary implication from Section 9 and Rule 30 itself. That rule provides

'If any question arises as to whether, when or how any person has acquired the citizenship of another country, the authority to determine such question shall, for the purposes of Section 9(2), be the Central Government.'

Thus the rule enjoins in effect that if this question arises before a Civil Court it shall be decided by the Central Government. It is clearly implied that it shall be sent by the Court to the Central Government for decision, and that Government is under a duty to decide it and convey its decision to the Court.

11. It could not have been the intention of Parliament to prevent the Civil Court from determining a question and transfer this power exclusively to another authority but make no provision for the question being referred to that authority whenever it arises before the Court. Therefore Section 9, by necessary implication provides for a reference by any Tribunal or Civil Court before which the question arises to the Central Government for its determination.

'Where a statute grants a right or imposes a duty, it also confers by implication every particular power and every reasonable means necessary for the exercise of the one or the performance of the other.'

American Jurisprudence Vol. 50 page 237. A somewhat similar principle is enunciated by Maxwell:

'A duty or right imposed or given to one may also cast by implication a corresponding burden on another, as in the case of the proviso in the Commission of the peace requiring the Quarter Sessions not to give judgment in cases of difficulty unless in the presence of one of the Judges of Assize. That impliedly requires the Judge to give his opinion.'

Interpretation of Statutes, 9th Edition p. 367.

12. If the power of the Civil Court to refer a question to the Central Government for determination is not implied, the purpose of Section 9 itself may be frustrated, furthermore, the jurisdiction of the Courts to give reliefs, which in the opinion of the Supreme Court has not been taken away by Section 9, will be destroyed. In Akbar Khan Alam Khan's case, AIR 1962 SC 70 the Supreme Court observed that the plaintiffs had the right to apply to the Central Government for the determination of the question which had arisen before the Supreme Court. It follows that the Court before which the question arises also has a similar power to ask the Central Government to determine it, for otherwise the position would be anomalous -- the parties to the suit having the right to approach the Central Government for its determination but not the Court.

13. This appeal is allowed and the decision of the lower Court set aside. The case shall be sent back to the trial Court with a direction that it shall frame issues which are necessary for the determination of the suit. If any issue includes the question whether the plaintiffs voluntarily acquired the citizenship of another country, the Court shall refer this question to the Central Government for decision. The language of Section 9(2) read with Rule 30 and Schedule III and the nature of the question to be determined indicate that the Central Government is under a duty to act judicially and in accordance with ordinary laws of evidence and procedure except in so far as these have been validly modified by the Citizenship Rules. After the finding of the central Government has been received by it, the Court shall dispose of the suit itself in accordance with law. Pending the final decision of the trial Court the defendants shall not deport the plaintiff to Pakistan but they are free to impose such restrictions on his movements in the public interest as may be permissible under the law against a non-citizen.

