In the Privy Council.

No. 35 of 1951.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

BETWEEN

V. L. WIRASINHA, Commissioner for the Registration of Indian and Pakistani Residents, Colombo ... ... APPELLANT

AND

MOHAMED MOHIDEEN ABDUL CADER ... ... RESPONDENT.

CASE FOR THE APPELLANT

RECORD

1.—This is an Appeal from a Decree dated the 24th May, 1951, of the Supreme Court of Ceylon (Basnayake, J.) allowing an Appeal from an Order dated the 7th July, 1950, of the Appellant whereby the Appellant refused the Respondent's application for registration as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949. p. 18 pp. 12–13

2.—The Act requires an application for registration to be in a prescribed form containing all relevant information for which the form provides, supported by affidavits of the Applicant which may be supplemented before disposal of the application by affidavits from other persons. In the case of a married man with a living wife not divorced from him and with minor children, his application is only to be granted by the Appellant if satisfied that the applicant :—

(1) is an Indian or Pakistani resident in Ceylon ;

(2) was for seven years prior to the 1st January, 1946, and thereafter until his application uninterruptedly so resident, apart from occasional absences ;

(3) is able to support himself and his dependants ;

(4) understands certain effects of his being registered as a citizen of Ceylon ;

RECORD

and further that :—

(5) the applicant's wife has been ordinarily resident in Ceylon ;

(6) each minor child dependent on the applicant was ordinarily resident in Ceylon while being so dependent ;

(7) no disability or incapacity renders it difficult or impossible for the applicant to live in Ceylon according to the laws of Ceylon.

3.—Of the above conditions the Respondent admittedly satisfied the first four and the last. The question in the Appeal is whether the Supreme Court was right in holding that he had also satisfied the other two.

p. 27, ll. 3–19
pp. 1–7

4.—The Act came into force on the 5th August, 1949. On the 4th January, 1950, the Respondent wrote to the Appellant enclosing an application in proper form for the registration under the Act as citizens of Ceylon of himself, his wife and his three minor children. The Respondent is an Indian resident in Colombo, and there has never been any dispute that he possesses the special residential qualification prescribed by Section 3 of

p. 7

the Act. In the schedule to his application he stated that his wife, whom he had married in 1932, and his three children born respectively in 1940, 1942 and 1947, had resided at his own address for the one year and ten months immediately preceding the application and at another address in Ceylon for one month.

p. 28, ll. 8–10

5.—With his application the Respondent submitted a joint affidavit of himself and his wife, in which they deposed that they were married on the

p. 27, ll. 22–34

1st January, 1932, at Sathankulam in South India. He also submitted a certificate showing that all his three children had been born in South India.

6. The Appellant, in accordance with Section 8 of the Act, referred the application to an investigating officer for verification and report. The

p. 39, ll. 32–33

investigating officer made his report on the 31st January, 1950, stating *inter alia* that the Respondent's wife and children had been residing permanently in Ceylon from December, 1947.

p. 8

7.—On the 6th February, 1950, the Appellant wrote to the Respondent informing him that he had decided to refuse his application on the ground

p. 9

that his wife and minor children had not been ordinarily resident in Ceylon. In his answer of the 20th March, 1950, the Respondent stated that his wife had resided with him in Ceylon from 1939 to 1941 when she went to India because of the threat of air raids ; between 1943 and 1947 his wife and family visited him in Ceylon several times, but could not remain there because it was practically impossible to get a house ; in 1947 he did get a house and they took up residence with him. He said he had omitted to

RECORD

mention in his application his wife's residence from 1939 to 1941 by an oversight, and asked that his application be reconsidered in the light of these facts.

8.—On the 31st March, 1950, the Appellant wrote informing the Respondent that he proposed to hold an inquiry into the application. On the 1st May, 1950, one Reyal, Vice-President of the Maradana Mosque, wrote to the Appellant stating that he knew the Respondent's family, and the Respondent's wife had resided in Ceylon since January, 1938. She had visited India for confinements and to see her relatives, but since December, 1947, she and the children had resided permanently in Ceylon. p. 40, ll. 2–20 p. 41, l. 29—p. 42, l. 6

9.—The Appellant held the inquiry on the 15th May, 1950. The Respondent said in evidence that he had tried to get a house before 1947 and had brought his family over as soon as he succeeded. The inquiry was then adjourned until the 26th June, 1950, when Reyal gave evidence. He said the Respondent had been married in Colombo, he thought in 1927. The Respondent had four children, and he thought most of them were born in Colombo. The Respondent's wife used to visit her relations in India every year. She had been very useful to Reyal in canvassing the votes of Muslim ladies in a municipal election in 1939. He could not give definite periods in which she had been in Ceylon. At the end of the evidence the Respondent's proctor submitted that even if residence of the wife and children from 1939 was not proved, their residence from December, 1947, was sufficient under Section 6 (2) (ii) of the Act. p. 10, ll. 21–25 p. 10, l. 31—p. 11, l. 11 p. 11, ll. 12–17

10.—The Appellant made his order on the 7th July, 1950. He found that the Respondent's wife and children had been resident in Ceylon from December, 1947. He found they had not been so resident before then and rejected Reyal's evidence, drawing attention to the inconsistency between his letter and his statement on oath. The Appellant granted that the Respondent's wife and children had been ordinarily resident in Ceylon at the date of the application, but held that this did not satisfy Section 6 (2) (ii) of the Act. The provision in Section 4 that a male married applicant could secure the registration of his wife whether or not she possessed the special residential qualification, gave no clue to the requirement of Section 6 that an applicant must for his own registration prove that his wife " has been ordinarily resident." On the other hand, Section 6 (2) (ii) required that a child should have been ordinarily resident in Ceylon throughout the period of its dependence on the applicant, so it would be absurd if a wife had only to be ordinarily resident at the time of the application. The right interpretation was that a wife should have been ordinarily resident from the date of her marriage or from the 1st January, 1939, whichever was later. p. 12, ll. 6–24 p. 12, ll. 33–35 p. 12, l. 42—p. 13, l. 12 p. 13, ll. 13–21 p. 13, ll. 21–26

11.—The Respondent appealed to the Supreme Court of Ceylon. In his Petition of Appeal, dated the 6th October, 1950, he set out the facts, pp. 14–15

p. 15, ll. 7–11 and alleged that there was his " uncontradicted evidence " that his wife lived in Colombo from 1939 to 1941, then went to India, and returned to Ceylon several times between 1943 and 1947. In fact, although the Respondent had mentioned these matters in a letter, he had said nothing
p. 15, ll. 22–24 about them in his evidence. He also alleged in his Petition of Appeal that his children had been supported by his father-in-law while they were in India. The Appellant submits that there was no evidence to support this allegation and that the Supreme Court should have ignored it in the determination of the Respondent's appeal. The Appellant submits that the Act entrusts the decision on an application to the Appellant and that the appeal to the Supreme Court (which by Regulation 9 made under Section 21 of the Act, is by transmitting the appeal to the registrar of the Court through the Commissioner) should be determined only on the material
p. 15, ll. 17–21 before the Appellant. The Respondent submitted in his Petition of Appeal that he had only to prove that his wife had been ordinarily resident in Ceylon at the date of the application, but had in fact proved that she had been so resident from 1939 ; that he had only to prove that his minor
p. 15, ll. 27–33 children dependent on him were ordinarily resident in Ceylon at the date of the application, but in fact they had been so resident while dependent on him.

12.—The Appeal was heard by Basnayake, J., who delivered a reserved
pp. 16–17 Judgment on the 18th May, 1951. The learned judge said he had already held (in a case now under appeal to the Privy Council, No. 34 of 1951) that the Appellant's construction of the Act was wrong. The Appellant granted that the Respondent's wife and children were ordinarily resident in Ceylon on the date of the application, so the Respondent was entitled to succeed. The Appeal was allowed.

13.—The Appellant submits that the interpretation placed by the learned Judge on section 6 (2) (ii) of the Act is wrong. The requirement regarding an applicant's wife is not that she " is ordinarily resident in Ceylon," but that she " has been ordinarily resident in Ceylon." The Appellant submits that the natural meaning of these words is that she has ordinarily resided in Ceylon before the application, not merely that she is so resident at the time thereof. In this case the Respondent and his wife had been married seventeen years, and the Respondent had been resident in Ceylon throughout that period ; yet, in the Appellant's submission, the evidence showed only that the Respondent's wife had been resident in Ceylon for two years. When as here the marriage has subsisted throughout the husband's necessary qualifying period, the Appellant submits that nothing in the Act justifies limiting the period during which the wife " has been ordinarily resident in Ceylon " to any less period. It is clear that the wife must have some period of residence herself as well as her husband's residence ; and since the husband's residence must (under Section 3) have extended over at least ten years, it would be strange if two years were sufficient for the wife. As regards the children, furthermore, the Appellant

submits that the natural meaning of Section 6 (2) (ii) is that they must have been ordinarily resident in Ceylon throughout the period of their dependence on the applicant. At the time of this application the Respondent's children were aged nine, seven and nearly three, and in the absence of evidence must be presumed to have been dependent on the Respondent throughout their lives ; yet they had resided in Ceylon for only two years. p. 5

14.—The Appellant therefore submits that the decree of the Supreme Court of Ceylon is wrong and ought to be reversed for the following amongst other

10 **REASONS**

1. BECAUSE on the material before him the Appellant properly determined that the Respondent had not satisfied all the statutory conditions for registration as a citizen of Ceylon.

2. BECAUSE the Supreme Court misinterpreted Section 6 (2) (ii) of the Act.

3. BECAUSE the Supreme Court was not justified in overruling the Appellant's decision.

HARTLEY SHAWCROSS.
FRANK GAHAN.

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