

1955

Present : Pulle, J.

RAJ RETTY, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

*S. C. 797—Appeal under the Indian and Pakistani Residents (Citizenship) Act**Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Application for citizenship—Evidence of applicant's residence in Ceylon—Assessment.*

In an application for citizenship by registration under the Indian and Pakistani Residents (Citizenship) Act the evidence of a witness who testifies to the residence in Ceylon of the applicant and against whose integrity nothing can be urged should not be discounted on the ground that he is also an applicant for registration as a citizen.

APPPEAL under the Indian and Pakistani Residents (Citizenship) Act.

G. Barr Kumarakulasinghe, for the appellant.

R. S. Wanasundera, Crown Counsel, for the respondent.

Cur. adv. vult.

August 22, 1955. PULLE, J.—

The appellant by his application dated the 10th December, 1949, applied to have himself, his wife and minor children registered as citizens of Ceylon. During the final stages of the inquiry which was conducted on the 12th November, 1953, he was required to prove that his wife was resident in Ceylon during the periods July, 1940, to August, 1942, and August, 1943, to August, 1945. The Deputy Commissioner held that he had failed to prove his wife's residence during these periods and refused his application. The appeal is from this order.

The appellant married in India on the 10th July, 1939, and his first three children were born there on the 29th June, 1941, 20th January, 1943, and 4th September, 1944, respectively. According to the appellant he returned to Ceylon with his wife shortly after marriage and afterwards he accompanied her to India for the first confinement. She left Ceylon for her second confinement with his uncle early in 1943 and for her third in July, 1944.

It would be convenient to deal first with the second period of alleged residence, namely, August, 1943 to August, 1945. Learned Crown Counsel did not seek to support the Deputy Commissioner's finding as regards this period. In my opinion he was right in making this concession. Presumably the Deputy Commissioner was satisfied with the evidence of the wife's residence during the year ending in August, 1943. A quarantine permit dated the 27th June, 1943, shows that in or about

August of that year she had returned with the appellant from India. The account books produced by him showed that he had bought a sewing machine apparently for his wife on the 12th January, 1943. There are two items falling within the second period. One is dated the 21st May, 1944, in respect of the purchase of a feeding bottle and the other dated the 19th June, 1944, refers to the purchase of jewellery. This part of the case was disposed of by the Deputy Commissioner with the observation,

“The other entries refer to jewels, sewing machine, feeding bottle, etc., and these may not refer to purchases made for the applicant’s wife.”

In my opinion these items afford sufficient corroboration of the appellant’s case that his wife was in Ceylon during the second period. It is inconceivable that he would have bought a feeding bottle for a child other than his own or jewellery for some one other than his wife, the evidence being that the appellant was the only child of his parents.

Crown Counsel, however, pressed on me that there was no reason to disturb the finding that the wife’s residence during the first period had not been proved. This part of the case has given me considerable trouble. The appellant called two witnesses of whom one was the Rev. Father A. M. Arokiam the parish priest of Kadugannawa where the appellant had a property planted in tea named Mercantile Estate and where the main office of the appellant’s family business was situated. The other witness was a trader named Bogaharalage Punchi Banda. Had these witnesses been believed the appellant’s case would have been fully proved. The complaint on the appellant’s behalf is that the evidence of these witnesses has been rejected on grounds which are demonstrably unsustainable. Father Arokiam was apparently asked by the Deputy Commissioner whether he was of Indian origin and whether he himself was an applicant for registration as a citizen to which questions he gave answers in the affirmative. The Deputy Commissioner in dealing with the evidence of Father Arokiam refers in his order to these admissions and I cannot agree with the submission for the respondent that he did not regard them as grounds for not acting on his evidence. I have already pointed out in the case of *M. Palaniyandi v. Commissioner for Registration of Indian and Pakistani Residents*¹ that a witness against whose integrity nothing can be urged should not lay himself open to have his evidence discounted on the ground that he is also an applicant for registration.

Another point made against the acceptance of the parish priest’s evidence is set out in the order as follows :

“He stated that the applicant took his wife to India for her first confinement in 1940 whereas the applicant gave the date as April, 1941.”

This criticism is, in my opinion, hardly justifiable because what the priest said in his evidence was,

¹ (1955) 56 N. L. R. 374.

“ The wife went to India for the first confinement in about 1940. ”
A greater degree of precision could hardly be expected of a witness giving evidence about thirteen years after the event.

A scrutiny of the evidence of Punchi Banda reveals that the Deputy Commissioner has either misunderstood relevant portions thereof or has misdirected himself. Punchi Banda used to visit Mercantile Estate to settle accounts for tea leaf supplied by him. He said,

“ The applicant always returned to Mercantile Estate and, after staying a few days here, the family moved to one or other of their estates. I cannot say to which estates they went. ”

In his order, however, the Deputy Commissioner states,

“ This witness visited Mercantile Estate frequently, but the applicant stated that both he and his wife resided at other estates during a greater part of the periods in issue. The witness *admitted* he was not aware of their movements to the other estates. ”

I see no ground for rejecting or doubting the evidence of the two witnesses called by the appellant. There are undoubtedly certain inconsistencies in the evidence of the appellant which are stressed in the order under appeal and stressed again at the argument in appeal. Yet making every allowance I am satisfied that the appellant has made out a *prima facie* case for registration. I may say that, as relevant to the issue of residence during the first period, I agree with the submission that the entry dated 21st July, 1940, in the appellant's books of account that medicine had been purchased for his wife is a strong piece of circumstantial evidence pointing to her return to Ceylon after the marriage and her stay in this country before the birth of the first child.

I hold that the appellant has made out a *prima facie* case for his application to be allowed and remit the record for further action on the basis of that finding.

The respondent will pay the appellant Rs. 105 as costs of appeal.

Appeal allowed.
