

1958

Present : H. N. G. Fernando, J.

A. V. MARIMUTHU, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. Application (Citizenship) 380/57

In the matter of an Appeal under Section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Applicant for registration as citizen—Evidence of visits made to India—How far it negatives intention of permanent settlement in Ceylon—Effect of inheriting property in India.

In an application for citizenship under the Indian and Pakistani Residents (Citizenship) Act—

Held, (i) that while visits made to India for the purposes of any business maintained there or in connection with the management of property there may indicate that an applicant is not permanently settled in Ceylon, visits merely for the purpose of occasional meetings with parents do not bear the same complexion, particularly in the case of an applicant who was born in Ceylon.

(ii) that the fact that, after the date of his application for citizenship, the applicant inherited a share of his deceased father's property was not prejudicial to his claim for citizenship.

APPEAL under section 15 of the Indian and Pakistani Residents (Citizenship) Act.

S. P. Amarasingham, with *F. X. J. Rasanayagam*, for the Applicant-Appellant.

R. S. Wanasundere, Crown Counsel, for the Respondent.

Cur. adv. vult.

December 5, 1958. H. N. G. FERNANDO, J.—

The only reasons given in the order for the finding that the applicant was not permanently settled in Ceylon are firstly, that the applicant made frequent visits to India, and secondly, that he had made no attempt to dispose of his property in India.

The applicant has made four visits to India since 1939—in 1941 to get married, in 1942 to attend his mother's funeral, in 1946 to stay for three months with his father "who was anxious to see us", and again in 1950 to see his father. The father was apparently ailing, for he died in March 1951. One finds again and again that visits of this kind are used against applicants for citizenship. While visits made to India for the purposes of any business maintained there or in connection with the management of property there may indicate that an applicant is not permanently settled in Ceylon, visits merely for the purpose of occasional meetings with parents surely do not bear the same complexion, particularly in the case of an applicant who was born in Ceylon.

In regard to the second matter, the property which the applicant owns is his share of his father's property in India. This share only accrued to him after his father's death and after the date of his application for Citizenship. It was quite unreasonable to expect him to have disposed of a share to which he had no right at the time of his application.

There is ample evidence in this case to show that Ceylon had become the applicant's home before he made his application. The appeal is allowed with costs fixed at Rs. 105 and the Commissioner is directed to take steps on the basis that a *prima facie* case has been made out for the registration of the applicant, his wife and children.

Appeal allowed.