

1956 Present: H. N. G. Fernando, J., and T. S. Fernando, J.

A. ADDAICKALAM, Appellant, *and* COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

Citizenship Case No. 138 of 1956—Application M6532

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—Application for citizenship—Evidence of residence of children.

There is no warrant to take judicial notice that, among Indian estate labourers, children are taken to India by grand-parents or relatives and kept in India for long periods.

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

S. P. Amerasingham, for the applicant-appellant.

J. W. Subasinghe, Crown Counsel, for the respondent.

Cur. adv. vult.

November 19, 1956. H. N. G. FERNANDO, J.—

This application for registration was refused by the Deputy Commissioner on the ground that the applicant failed to prove the residence in Ceylon of four of his children during certain periods as follows:—

- (1) Antony (born June 1936) from 1.1.1939 to 8.2.1948.
- (2) Thavasagayam (born December 1928) from 1.1.1939 to 13.3.1946.
- (3) Mickel (born February 1941) from 3.2.1942 to 4.8.1948.
- (4) Mariamma (born February 1944) from 12.2.1945 to 4.5.1951.

It was proved that these four children, as well as four younger children of the applicant were all born on an Estate in Ceylon in which the applicant was registered as a worker, and the Deputy Commissioner was satisfied that the applicant and his wife were "uninterruptedly" resident in Ceylon from January 1939 until the date of the application. In the case of the second and third children, the Investigating Officer's notes that they had been admitted to the estate school in March 1946, and August 1948 respectively, were accepted as evidence of their residence thereafter. In the case of the eldest child, however, the Investigating Officer had not traced any entry in the school register, and the only documentary evidence was that of the Check Roll which showed that the child had been employed on the estate from February 1948; there was however the oral evidence of the applicant that this child had continuously resided with his parents in Ceylon prior to 1948. There was similarly oral evidence

of the applicant that the other children had also been resident in Ceylon during the specified periods. As I have pointed out in *Kumarasamy v. The Commissioner for Registration of Indian and Pakistani Residents*,¹ the fact that both parents resided in Ceylon all the time, and that other children were also born in Ceylon strongly supported the applicant's evidence. But according to the Deputy Commissioner, "it is often found, among Indian Estate labourers, children are taken to India by grand-parents or relatives and kept in India for long periods." There was no evidence whatever to establish this alleged custom or practice, nor is there any warrant in the Evidence Ordinance for the Deputy Commissioner to take judicial notice of such a matter. To hold that such a practice was followed in the present case is almost absurd, because it is a proved fact that the second and third children at any rate were admitted to school in Ceylon at the ages of eight and seven respectively; it is quite unreasonable to suppose that they would have been removed from the custody of their mother during infancy and then brought back to Ceylon when they no longer needed a mother's care and attention.

The appeal is allowed with costs fixed at Rs. 105. The Commissioner will take the necessary steps on the footing that a prima facie case has been made out for the registration of the applicant and of his wife and children.

T. S. FERNANDO, J.—I agree.

Appeal allowed.
