

## Hurmat Ali and Others Vs Union of India (UOI) and Others

**Court:** Gauhati High Court

**Date of Decision:** March 23, 1978

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 80  
Limitation Act, 1963 â€” Section 22

**Citation:** AIR 1978 Guw 21

**Hon'ble Judges:** Baharul Islam, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Baharul Islam, J.

This appeal is by the plaintiffs who filed a suit for declaration that they were Indian citizens after they had been served with a quit India notice by defendant No. 3 Superintendent of Police, Nowgong.

2. The material facts of the plaintiff's case are:

Plaintiff No. 1 is the husband, plaintiff No. 2 is his wife, and the other plaintiffs are their children. The plaintiff No. 1 was born in the district of

Mymensing. which was in Bengal, a province of undivided India at that time and now a part of Bangladesh. He migrated to Assam with his parents

and brothers about 40 years ago and settled at village Khalihamari under Samaguri Polica Station in the district of Nowgong. His wife and the

children were Indian citizens by birth and that all of them have been living in Assam. The plaintiff No, 1 also has his landed properties in Assam and

he is a voter of the Assam Legislative Assembly. But as the plaintiffs were served with a notice to quit India by the Superintendent of Police,

Nowgong (respondent No. 3), they filed the suit after having issued notice u/s 80, Civil P.C.

3. The defendants filed a written statement and contested the suit. They denied the allegation of the plaintiffs that they were Pak Nationals.

4. The learned trial Court framed a number of issues of which Issue Nos. 4 and 7 are relevant. They are:

4. Whether the plaintiffs are citizens of India?

7. Whether the suit is barred by limitation?

5. Both the Courts below have concurrently found that the plaintiffs are Indian citizens, but they have held that the suit was barred by limitation and

dismissed the suit.

6. The only point canvassed before me by Shri S.N. Bhuyan learned Counsel of the appellant is that the learned courts below erred in holding that

the suit was barred by limitation. Shri M.A. Laskar, counsel for the respondents on the other hand submits that the findings of the learned Courts

below were correct as Article 53 which provides a period of three years for filing a declaratory suit applies to the case in hand. On the other hand.

Mr. S.N. Bhuyan, submits that there is no period of limitation in such a suit and, as such, the suit was not barred by limitation. In support of his

contention Mr. Bhuyan cites before me a Division Bench decision of the Bombay High Court in the case of Sayed Ahmed Kabuli Vs. The State of

Maharashtra, In that case the plaintiff filed a suit for declaration that he was an Indian citizen and also for an order of permanent injunction

restraining the State of Maharashtra from deporting him as a foreigner under the provisions of the Foreigners Act. His case was that he was born in

Afghanistan, but he had made India his domicile since his arrival in Bombay in the year 1941 and that he never left India since then. He, however,

on the pressure of police officers, was constrained to register himself as a foreigner on 12th July, 1956 and also to receive Afgan passport

thereafter through Afghanistan Consulate to enable him to continue his stay in India. After the expiry of the passport period on 11-4-1961 the

Afghanistan Consulate declined to renew his passport. The -defendants, who were police officers, on the other hand, threatened him to serve a

notice to quit India if the passport was not renewed within two months from their notice dated 11-12-1961. and finally such a notice was served

on him on 18-7-1962. The plaintiff then instituted his suit after serving notice u/s 80, Civil P. C, on Oct. 2, 1962. The State of Maharashtra in its

written statement denied that the plaintiff was an Indian citizen. On a consideration of the evidence, the trial Court held that the plaintiff was an

Indian citizen, but it held that Article 120 of the Limitation Act, 1908, applied to the case and as the suit was filed beyond six years it was barred

by limitation and, as such, the suit was dismissed. His first appeal was also dismissed by a Single Judge of the High Court. The plaintiff then took

an appeal under the Letters Patent in which the Division Bench observed:

We are afraid, the dismissal of the appeal and the suit by the Single Judge does not appear to have been warranted, The trial Judge has found that

the plaintiff had proved his being a citizen of India on 26th Jan. 1950. This finding does not appear to have been challenged in appeal and he has

not considered it fit to reverse the same. Even before us the learned Assistant Government Pleader had very little to say while challenging this

finding of fact. It was not disputed that the plaintiff came to India in the year 1941, while he was still a boy of 14 years, he having been born in

Afghanistan in the year 1926. He appears to have become major in the year 1944 and has not left India at any time during the period from 1941 till

the institution of the suit on 23rd Jan., 1962. He declined to accompany his uncle, who left India in the year 1946. He has been married in India

and has been doing business in India. He is registered as a voter and has exercised franchise. These undisputed tell-tale facts are by themselves

sufficient to hold that the plaintiff has adopted India as a domicile of his choice notwithstanding he having been born in Afghanistan in the year

1926.

A person found to be a citizen at the commencement of the Constitution possesses certain fundamental rights including freedom of movement and

protection against unwarranted interference therewith. It is difficult to resist his claim for protection" against unlawful interference if such case is

made out....

Their Lordships further observed:

It is well settled that Limitation" Act only bars remedy and does not destroy the substantive rights, excepting as provided u/s 28 (of 1908 Act) with

regard to the rights in immovable properties. Status of a person as citizen of India cannot be said to have been extinguished merely because his

remedy for getting declaration to that effect is lost due to the bar of limitation.

Their Lordships decreed the suit.

7. The facts of the case in hand are exactly similar to those of the Bombay case (supra).

8. In my opinion the matter may be approached from another point of view.

9. In my opinion Section 22 of the Limitation Act, 1963, applies to the present case. The defendants" quit India notice constitutes a threat of

deportation overhanging the plaintiffs every moment and is a continuing tort within the meaning of Section 22 of Limitation Act. ""A tort is a civil

wrong"". ""A wrong is simply a wrong act - an act contrary to the rule of right and justice. A synonym of it is injury (Salmond"s Jurisprudence). Both

the Courts having concurrently found that the plaintiffs are Indian citizens, which finding of fact has not been as it cannot be, challenged before me,

the plaintiffs have a right guaranteed by the Constitution to stay in India. By the threat of deportation, the defendants have committed a continuing

civil wrong or a continuing tort on and from the date of service of the notice to quit India upon the plaintiffs and the cause of action of the suit arose

de die in diem.

Interpreting the expression ""continuing wrong"" in Section 23 of the Limitation Act, 1908, the Supreme Court in Balkrishna Savalram Pujari and

Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others, has held:

It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible

and liable for the continuance of the said injury. If...a wrongful act is of such a character that the injury caused by it itself continues, then the act

constitutes a continuing wrong.

As a result of the foregoing discussions, it must be held that the suit is not barred by limitation.

10. In the result the appeal succeeds and is allowed. The judgments and decrees of the Courts below are set aside. The respondents shall pay

costs of this appeal.