Kedar Pandey vs Narain Bikram Sah on 15 April, 1965

Equivalent citations: 1966 AIR 160, 1965 SCR (3) 793, AIR 1966 SUPREME COURT 160, 1965 BLJR 755, 1965 3 SCR 793, 1966 2 SCJ 579, ILR 45 PAT 878

Author: V. Ramaswami

Bench: V. Ramaswami, P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah

PETITIONER:
KEDAR PANDEY

Vs.

RESPONDENT:
NARAIN BIKRAM SAH

DATE OF JUDGMENT:
15/04/1965

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.

CITATION:
1966 AIR 160 1965 SCR (3) 793
CITATOR INFO :
D 1991 SC1886 (7,12)

ACT:
Constitution of India, 1950, Art. 5(c)--Acquisition of Indian domicile--Proof.

HEADNOTE:
The appellant and respondent were contesting candidates for election to the State Legislative Assembly. The respondent was declared elected, and the appellant filed an election petition challenging the election on the ground that the respondent was not duly qualified under Art. 173 of the Constitution as he was a citizen of Nepal and not a citizen of India. The Tribunal held that the respondent was not a citizen of India, but the High Court in appeal set aside that order and upheld the election of the respondent.

On the question whether the respondent was a citizen of India under Art. 5 of the Constitution, 0n the material date,

HELD: Assuming that the respondent was not born in the territory of India, on a consideration of all the events and circumstances of his life, he had acquired a domicile of choice in India long before the end of 1949 which is the material time under Art. 5 of the Constitution. He had formed the deliberate intention of making India his home with the intention of permanently establishing himself and his family in India and therefore had the requisite animus manendi. He was ordinarily resident in India for 5 years immediately preceding the time when Art. 5 came into force. Since the requirements of Art. 5(c) were satisfied, the High Court rightly reached the conclusion, that he was a citizen of India at the relevant time. [805 C-D]

The only intention required for a proof of a change of domicile is an intention of permanent residence. What is required to be established is that the person who is alleged to have changed his domicile of origin has voluntarily fixed the habitation of himself and his family in, the, new country, not for a mere special. or temporary purpose, but with a present intention of making it his permanent home, On the question of domicile at a particular time the course of his conduct and the facts and. circumstances before and after that time are relevant. [801 F-G; 803 F]

Udny v. Udny,L.R. 1 H.L..Sc. 441 and, Doucet v. Geoghegan, 9Ch. Div. 441, applied.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 976 and 977 of 1964.

Appeals from the judgment and decree dated March 26, 1964 of the Patna High Court in Election Appeals Nos. 8 and 10 of 1963.

C.B. Agarwala, Jagdish Panday, Chinta Subbarao, M. Rajagopalan and B.P. Jha, for the appellant, (In both the appeals).

K.P. Varma and D. Goburdhun, for the respondent (In both the appeals).

The Judgment of the Court was delivered by Ramaswami, J. Both these appeals are brought by certificate against the judgment and decree of the High Court of Judicature at Patna dated March 26, 1964, pronounced in Election Appeals Nos. 8 and 10 of 1963. The appellant Kedar Pandey and the respondent--Narain Bikram Sah'(hereinafter called Narain Raja) were the contesting candidates in the year 1962 on behalf of the Congress and Swatantra Party respectively for the election to Bihar Legislative Assembly from Ramnagar Constituency in the district of Champaran. The nomination

papers of the appellant and the respondent and two others--Parmeshwar Prasad Roy and Suleman Khan-were accepted by the Returning Officer without any objection on January 22, 1962. Later on the two candidates--Parmeshwar Prasad Roy and Suleman Khan--withdrew their candidatures. After the poll the respondent, Narain Raja was declared elected as member of the Bihar Legislative Assembly by majority of valid votes. On April 11, 1962 Kedar Pandey filed an election petition challenging the election of the respondent. It was alleged by Kedar Pandey that the respondent was not duly qualified under Art. 173 of the Constitution of India to be a candidate for election as he was not a citizen of India. According to Kedar Pandey the respondent, his parents and grand-parents were all born in Nepal and, therefore, on the date of the election, the respondent-Narain Raja--was not qualified to be chosen to fill the Assembly seat for which he had been declared to have been elected. According to Kedar Pandey the respondent was related to the royal family of Nepal and the father of the respondent---Rama Raja---owned about 43 bighas of land and a house at Barewa in Nepal in which the respondent had a share along with his three other brothers. The election petition was contested by the respondent who said that he was an Indian citizen and there was no disqualification incurred under Art. 173 of the Constitution. The further case of the respondent was that he had lived in India since his birth and that he was a resident of Ramnagar in the district of Champaran and not of Barewa in Nepal. The respondent claimed that he was born in Banaras and not at Barewa.

Upon these rival contentions it was held by the Tribunal that the respondent Narain Raja--was not a citizen of India and, therefore, was not qualified under Art. 173 of the Constitution for being chosen to fill a seat in the Bihar Legislative Assembly. The Tribunal, therefore, declared that the election of the respondent was void. But the Tribunal refused to make a declaration that Kedar Pandey was entitled to be elected to Bihar Legislative Assembly for that Constituency. Both the appellant and the respondent preferred separate appeals against the judgment of the Election Tribunal to the High Court of Judicature at Patna. The High Court in appeal set aside the judgment of the Tribunal and upheld the election of the respondent Narain Raja. The High Court found, on examination of the evidence, that Narain Raja, the respondent before us, was born in Banaras on October 10, 1918 and that the respondent was living in India from 1939 right upto 1949 and even thereafter. The High Court further found that long before the year 1949 Narain Raja had acquired a domicile of choice, in Indian territory and, therefore, acquired the status of a citizen of India both-under Art. 5(a) and (c) of the Constitution. On these findings the High Court took the view that Narain Raja was duly qualified for being elected to the Bihar Legislative Assembly and the election petition filed by the appellant--Kedar Pandey--should be dismissed. The main question arising for decision in this case is whether the High Court was right in its conclusion that the respondent-Narain Raja--was a citizen of India under Art. 5 of the Constitution of India on the material date. The history of the family of Narain Raja is closely connected with the history of Ramnagar estate. It appears that Ramnagar estate in the district of Champaran in Bihar originally belonged to. Shri Prahlad Sen after whose death the estate came into the possession of Shri Mohan Vikram Sah, popularly known as Mohan Raja. After the death of Mohan Raja the estate came into the possession of Rani Chhatra Kumari Devi, the vidow of Mohan Raja, and after the death of Rani Chhatra Kumari Devi, the estate came into the possession of Rama Raja alias Mohan Bikram Sah, the father of the respondent Narain Raja. It is in evidence that the daughter of Prahlad Sen was married to Shri Birendra Vikram Sah, the father of Mobart Raja. Mohan Raja died without any male issue but during his lifetime he had

adopted Rama Raja, the father of the respondent and by virtue of a will executed by Mohan Raja in the year 1904 in favour of his wife Rani Chhatra Kumari Devi the Rani became entitled to the Ramnagar estate on the death of Mohan Raja (which took place in 1912), in preference to the adopted son Rama Raja since the properties belonged to Mohan Raja in his absolute right and not as ancestral properties. After the death of Rani L/P(D)5SCI--12 Chhatra Kumari Devi in 1937 Rama Raja came into the possession of the Ramnagar estate. In the year 1923, Rani Chhatra Kumari Devi had filed R.S. No. 4 of 1923 against Rama Raja the Court of Sub-Judge, Motihari with regard to a village which Rama Raja held in Ramnagar estate on the basis of a Sadhwa Patwa lease. Rama Raja in turn filed T.S. No. 34 of 1924 in the Court of Subordinate Judge of Motihari against Rani Chhatra Kumari Devi and others claiming title to Ramnagar estate and for possession of the same on the basis of his adoption by Mohan Raja. The Title Suit and the Rent Suit were heard together by the Additional Sub-Judge, Motihari who, by his judgment dated August 18, 1927 decreed the Title Suit filed by Rama Raja and dismissed the Rent Suit filed by Rani Chhatra Kumari Devi. There was an appeal to the High Court of Patna which dismissed the appeal. Against the judgment of the High Court appeals were taken to the Judicial Committee of the Privy Council. The appeal was decided in favour of Rani Chhatra Kumari Devi and the result was that the Title Suit filed by Rama Raja was dismissed and Rent Suit filed by Rani Chhatra Kumari Devi was decreed. In the course of judgment the Judicial Committee did not disturb the finding of the trial Court that Rama Raja was an adopted son of Shri Mohan Vikiram Sah alias Mohan Raja and accepted that finding as correct; but the Judicial Committee held that Ramnagar estate was not the ancestral property of Mohan Raja, but he got that property by inheritance, he being the daughter's son of Prahlad Sen, the original proprietor of that estate. In view of this circumstance, the Judicial Committee held that though Rama Raja was the adopted son of Mohan Raja, Rama Raja was not entitled to the estate in view of the will executed by Mohan Raja in favour of Rani Chhatra Kumari Devi in the year 1904. It appears that in the year 1927 Rama Raja had taken possession of Ramnagar estate and got his name registered in Register D and remained in possession till the year 1931 when he lost the suit in Privy Council. After the decision of Privy Council, Rani Chhatra Kumari Devi again came into possession of Ramnagar estate and continued to remain in possession till she died in 1937. It is in evidence that after the death of Rani Chhatra Kumari Devi, Rama Raja obtained possession of Ramnagar estate and continued to remain in possession thereof from 1937 till 1947, the year of his death. There is evidence that Rama Raja died in Bombay and his dead-body was cremated in Banaras.

It is also in evidence that during the lifetime of Rama Raja there was a partition suit in the year 1942--No. 40 of 1942--for the partition of the properties of the Ramnagar estate among Rama Raja and his sons including the respondent. This suit was filed on September 29, 1942 in the Court of the Subordinate Judge at Motihari. A preliminary decree--Ex. 1(2)--was passed on April 16, 1943 on compromise and the final decree--Ex 1(1) in the suit was passed on May 22, 1944. From the two decrees it appears that Ramnagar. estate was comprised of extensive properties including zamindariinterest in a large number of villages and the. estate 'had an extensive area of Bakasht lands. By the said partition the estate was divided among the co- sharers but certain properties including forests in the estate were left joint.

On behalf of the appellant Mr. Aggarwala put forward the argument that the High Court was not justified in holding that Narain Raja was born in Banaras in the year 1918. According the case of the

appellant Narain Raja was born at a place called Barewa in Nepal. In order to prove his case the appellant examined two witnesses---Sheonath Tewari (P.W. 18) and N.D. Pathak (P.W. 15). The High Court held that their evidence was acceptable. There was also a plaint (Ex. 8) produced on behalf the appellant to show that Narain Raja was born at Barewa. This plaint was apparently filed in a suit brought by the respondent for the realisation of money advanced by the respondent's mother to one Babulal Sah. The place of birth of the respondent is mentioned in this plaint as Barewa Durbar. The High Court did not attach importance to Ex. 8 because it took the view that the des- cription of the place of birth given in the document was only for the purpose of litigation. It further appears from Ex. 8 that it was not signed by the respondent but by one Subhan Mian Joiaha described as 'Agent'. On behalf of the respondent R.W. 9--G. S. Prasad was examined to prove that Narain Raja was born at Banaras. The High Court accepted the evidence of this witness and also of the respondent himself on this point. It was submitted by Mr. Aggarwala that there were two circumstances which indicate that the respondent could not have been born at Banaras: In the first place, it was pointed out, the municipal registers of Banaras for the year 1918---Ex. 2 series--did not mention the birth of the respondent. It was explained on behalf of the respondent that house at Mamurganj in which the respondent was born was not included within the limits of the municipality in the year 1918, and that the omission of the birth of the respondent in the municipal registers was therefore, of no significance. It was contended behalf of the appellant that there was litigation with regard to properties of Ramnagar estate between the respondent's father Rani Chhatra Kumari Devi and therefore the evidence of P.W. G.S. Prasad that Rama Raja was living with Rani Chhatra Kurnari Devi at Ramnagar even during her lifetime cannot be accepted as true. It was, therefore, suggested that it was highly improbable that Narain Raja should have been born at Banaras in the year 1918, as alleged, in the house belonging to Ramnagar estate. We do not, however, think it necessary to express any concluded opinion on this question of fact but proceed to decide the case the assumption that Narain Raja was not born in the territory ,of India, in the year 1918. The reason is that the place of birth of Narain Raja has lost its importance in this case in view of the concurrent findings of both the High Court and the Tribunal that for a period of 5 years preceding the commencement of the Constitution Narain Raja was ordinarily resident in the territory of India. Therefore the requirement of Art. 5(c) of the Constitution is fulfilled. Mr. Aggarwala on behalf of the appellant did not challenge this finding of the High Court. It is. therefore, manifest that the requirement of Art. 5(c) of the Constitution has been established and the only question remaining for consideration is the question whether Narain Raja had his domicil in the territory of India at the material time. Upon this question it was argued before the High Court on behalf of the respondent that the domicil of origin of Mohan Raja may have been in Nepal but he had acquired a domicile of choice in India after inheriting Ramnagar Raj from his maternal grandfather Prahlad Sen. It was said that Mohan Raja had settled down in India and had married all his 4 Ranis in Ramnagar. It was argued, therefore, that at the time when Mohan Raja had adopted Rama Raja in 1903 Mohan Raja's domicil of choice was India. It was said that by adoption in 1903 Rama Raja became Mohan Raja's son and by fiction it must be taken that Rama Raja's domicil was india as if he was Mohan Raja's son. It was contended in the alternative that whatever may have been Rama Raja's domicil before 1937 when Rani Chhatra Kumari Devi died, Rama Raja acquired a domicil of choice in India when he came to India on the death of Rani Chhatra Kumari Devi. It was also stated on behalf of the respondent that Rama Raja remained in possession of the Ramnagar estate until his death in 1947. The High Court, however. held, upon examination of the evidence, that there was no material on the

record to decide the question of Mohan Raja's domicil. It was also held by the High Court that it was not possible to ascertain from the evidence whether there was any intention of Rama Raja to settle down in India and make it his permanent home. In any event. Narain Raja was born in the year 1918 and unIess the domicil of Rama Raja in 1918 was ascertained the domicil of origin of Narain Raja will remain unknown. The High Court therefore, proceeded upon the assumption that Narain Raja had his domicil of origin in Nepal: and examined the evidence to find out whether Narain Raja had deliberately chosen the domicil of choice in India in substitution for the domicil of origin.

The crucial question for determination in this case, therefore. is whether Narain Raja had acquired the domicil of choice in India.

The law on the topic is well-established but the difficulty is found in its application to varying combination of circumstances in each case. The law attributes to every person at birth a domicil which is called a domicil of origin. This domicil may be changed and a new domicil, which is called a domicil of choice, acquired; but the two kinds of domicil differ in one respect. The domicil of origin is received by operation of law at birth; the domicile of choice is acquired later by the actual removal of an individual to another country accompanied by his animus manendi. The domicil of origin is determined by the domicil, at the time of the child's birth, of that person upon whom he is legally dependent. A legitimate child born in a wedlock to a living father receives the domicil of the father at the time of the birth; a posthumous legitimate child receives that of the mother at that time. As regards change of domicil, any person not under disability may at any time change his existing domicil and acquire for himself a domicil of choice by the fact of residing in a country other than that of his domicil of origin with the intention of continuing tO reside there indefinitely. For this purpose residence is a mere physical fact, and means no more than personal presence in a locality, regarded apart from any of the circumstances attending it. If this physical fact is accompanied by the required state of mind, neither its character nor its duration is in any way material. The state of mind, or animus manendi, which is required demands that the person whose domicil is the object of the inquiry should have formed a fixed and settled purpose of making his principal or sole permanent home in the country-of residence, or, in effect, he should have formed a deliberate intention to settle there. It is also well-established that the onus of proving that a domicil has been chosen in substitution for the domicil of origin lies upon those who assert that the domicil of origin has been lost. The domicil of origin continues unless a fixed and settled intention of abandoning the first domicil and aquiring another as the sole domicil is clearly shown (see Winarts v. Attorney-General. (1) In Munro v. Munro(2) Lord Cottonham states the rule as follows:

> "The domicil of origin must prevail until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicil, and acquiring another as his sole domicil. To effect this abandonment of the domicil of origin, and substitute another in its place, it required animo et facto, that is, the choice of a place, actual residence in the place then chosen and that it Should be the principal and permanent residence, the spot where he had placed larem rerumque ac fortunarum suarum summam. In fact, there must be both residence and intention. Residence alone has no effect, per so, though it may be most important as a ground from which to infer intention."

(1) [1904] A.C. 287. (2) 7 C.I. & Fin . 876.

In Aikman v. Aikman(1), Lord Campbell has discussed the question of the effect on domicil of an intention to return to the native country, where such intention is attributable to an undefined and remote contingency. He said:

> "If a man is settled in a foreign country, engaged in some permanent pursuit requiring his residence there, a mere intention to return to his native country on a doubtful contingency, will not prevent such a residence in a foreign country from putting an end to his domicil of origin. But a residence in a foreign country for pleasure, lawful or illicit, which residence may be changed at any moment, without the violation of any contract or any duty, and is accompanied by an intention of going back to reside in the place of birth, or the happening of an event which in the course of nature must speedily happen, cannot be considered as indicating the purpose to live and die abroad."

On behalf of the appellant Mr. Aggarwala relied on the decision. of the House of Lords in Moorhouse v. Lord(2) in which it was held that in order to lose a domicil of origin, and to acquire a new domicil, a man must intend quatenus in illo exuere patriam and there must be a change of nationality, that is natural allegiance R is not enough for him to take a house in the new country, even with the probability and the belief that he may remain there all the days of his life. But the principle laid down in this case was discussed in Udny v. Udny(3) which decision is the leading authority on what constitute a domicil of choice taking the place of a domicil of origin. It is there pointed out by Lord Westbury that the expressions used in Moorhouse v. Lord(2), as to the intent exuere patriam, are calculated to mislead, and go beyond the question of domicil. At page 458 Lord Westbury states:

> "Domicil of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with the intention of continuing to reside there for an unlimited time. This is description of the circumstances which create or constitute a domicil and not a definition of the term. There must be residence freely chosen and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness, and it must be a residence fixed, not for a limited period or particular purpose, but general and indefinite in its future contemplation. It is true that residence, originally temporary or intended for a limited (1) 3 Mac Q., H.L.C. 854. (2) 10 H.L. Cas. 272.
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> (3) L.R. 1 H.L. Sc. 441.

period, may, afterwards become general and unlimited; and in such a case, so soon as the change of purpose, or animus manendi, can be inferred, the fact of domicil is established ."

In the next case--Doucet v. Geoghegan (1) the Court of Appeal decided that the testator had acquired an English domicil; and one of the main facts relied on was that he had twice married in England in a manner not conforming to the formalities which are required by the French Law for the legalisation of marriages of Frenchmen in a foreign country. James L. J. stated as follows:

> "Both his marriages were acts of unmitigated scoundrelism, if he was not a domiciled Englishman. He brought up his children in this country; he made his will in this country, professing to exercise testamentary rights which he would not have if he had not been an Englishman. Then with respect to his declarations, what do they amount to? He is reported to have said that when he had made his fortune he would go back to France. A man who says that, is like a man who expects to reach the horizon and finds it at last no nearer than it was at the beginning of his journey. Nothing can be imagined more indefinite than such declarations. They cannot outweigh the facts of the testator's life."

In our opinion, the decisions of the English Courts in Udny v. Undy(3) and Doucet v. Geoghegan(1) represent the correct law with regard to change of domicil of origin. We are of the view that the, only intention required for a proof of a change of domicil is an intention of permanent residence. In other words, what is required to be established is that the person who is alleged to have changed his domicil of origin has voluntarily fixed the habitation of himself and his family in the new country, not for a mere special of temporary purpose, but with a present intention of making it his permanent home.

Against this background of law we have to consider the facts in the present case for deciding whether Narain Raja had adopted India as his permanent residence with the intention of making a domicil of choice there. In other words, the test is whether Narain Raja had formed the fixed and settled purpose of making his home in India with the intention of establishing himself and his family in India. (1) 9 Ch. Div. 441.

(2) L.R. 1 H.L. So. 441.

The following facts have been either admitted by the parties found to be established in this case. Narain Raja was educated in Calcutta from 1934 to 1938. From the year 1938 onwards Narain Raja lived in Ramnagar. After Rama Raja's death in 1947 Narain Raja continued to live in Ramnagar, being in possession of properties obtained by him under compromise in 1944. In the course of his statement Narain Raja deposed that his father had built a palace in Ramnagar between 1934 and 1941 and thereafter Narain Raja himself built a house at Ramnagar. Before he had built his house, Narain Raja lived in his father's palace. There is the partition suit between Narain Raja and his brothers in the year 1942. Exhibits 1(2) and 1(1) are the preliminary and final decrees granted in that suit. After the partition Narain Raja was looking after the properties which were left joint and was the manager thereof. The extensive forests of Ramnagar estate were not partitioned and they had been left joint. Narain Raja used to make settlement of the forests on behalf of the Raj and pattas used to be executed by him. After partition, he and his wife acquired properties in the district of Champaran, in Patna and in other places. Narain Raja and his wife and children possessed 500 or

600 acres of land in the district of Champaran. Narain Raja managed these properties from Ramnagar. He had also his houses in Bettiah, Chapra, Patna and Benaras. The forest settlements are supported by Exhibits X series, commencing from 1943, and by Ex. W of the year 1947. Then, there are registered pattas excluded by Narain Raja of the year 1945, which are Exs. W/3, W/4, and W/5. There are documents which prove acquisition of properties in the name of Narain Raja's wife--F(D, F(2). F(3) and F(5). Exhibit F(4) shows the purchase of 11 bighas and odd land at Patna by Narain Raja. It is also important to notice that Narain Raja had obtained Indian Passport dated March 23, 1949 from Lucknow issued by the Governor-General of India and he is described in that Passport as Indian by birth and nationality and his address is given as Ramnagar of Champaran district. In the course of his evidence Narain Raja said that he had been to Barewa for the first time with his father when he was 10 or 12 years old. He also said that he had not gone to Barewa for ten years before 1963.

The High Court considered that for the determination of the question of domicil of a person at a particular time, the course of his conduct and the facts and circumstances before and after that time are relevant. We consider that the view taken by the High Court on this point is correct and for considering the domicil of Narain Raja on the date of coming into force of the Constitution of India his conduct and facts and circumstances subsequent to the time should also be taken into account. 'This view is borne out by the decision of the Chancery Court in In re Grove Vaucher v. The Solicitor to the Treasury(1) in which the domicil of one Marc Thomegay in 1744 was at issue and various facts and circumstances after 1744 were considered to be relevant. At page 242 of the report Lopes, L.J. has stated:

> "The domicil of an independent person is constituted by the factum of residence in a country, and the animus manendi, that is, the intention to reside in that country for an indefinite period. During the argument it was con,ended that the conduct and acts of Marc Thomegay subsequently to February, 1744, at the time of the birth of Sarah were inadmissible as evidence of Marc Thomegay's intention to permanently reside in this country at that time. It was said that we must not regard such conduct and acts in determining what the state of Marc Thomegay's mind was in February, 1744. For myself I do not hesitate to say I was surprised at such a contention; it is opposed to all the rules of evidence, and all the authorities with which I am acquainted. I have always understood the law to be, that in order to determine a person's intention at a given time, you may regard not only conduct and acts before and at the time, but also conduct and acts after the time, assigning to such conduct and acts their relative and proper weight of cogency. The law, I thought, was so well-established on that subject that I should not have thought it necessary to allude to this contention, unless I had understood that the propriety of admitting this evidence was somewhat questioned by Lord Justice Fry, a view which I rather now gather from his judgment he has relinquished."

We are, therefore, of opinion that. the conduct and activities of Narain Raja subsequent to the year 1949 are relevant but we shall decide the question of his domicil in this case mainly in the light of his conduct and activities prior to the year 1949.

Reverting to the history of Narain Raja's life from 1950 onwards, it appears that he had married his wife in 1950. His wife belonged to Darkoti in Himachal Pradesh near Patiala. The marriage had taken place at Banaras. Narain Raja had a son and a daughter by that marriage and according to his evidence the daughter was born in Banaras and the son was born in Bettiah. The daughter prosecutes her studies in Dehradun. In 1950 or 1951 Narain Raja had established a Sanskrit Vidalya in Ramnagar in the name of his mother, called Prem Jananl Sanskrit Vidyalaya. The story of Narain Raja's political activities is as follows: There was a Union Board in Ramnagar before Gram Panchayats had come into existence, of which Narain Raja was the Chairman or President.

(1) (1889) 40 Oh. D. 216.

After Gram Panchayats were established, the Union Board was abolished. Narain Raja was a voter in the Gram Panchayat and he was elected as the Vice-President of the Union called C.D.C.M. Union of Ramnagar. For the General Elections held in 1952 Narain Raja was a voter from Ramnagar Constituency. In the General Election of 1957 he stood as a candidate opposing Kedar-Pandey. Thereafter, he became the President of the Bettiah Sub-divisional Swatantra Party and then Vice-President of Champaran District Swatantra Party. Taking all the events and circumstances of Narain Raja's life into account we are satisfied that long before the end of 1949 which is the material time under Art. 5 of the Constitution, Narain Raja had acquired a domicil of choice in India. In other words, Narain Raja had formed the deliberate intention of making his home with the intention of permanently establishing himself his family in India. In our opinion, the requisite animus manendi has been proved and the finding of the High Court is correct. On behalf of the appellant Mr. Aggarwala suggested that there were two reasons to show that Narain Raja had no intention of making his domicil of choice in India. Reference was made, in this context, to Ex. 10(c) which is a khatian prepared in 1960. showing certain properties standing in the name of Narain Raja and his brothers in Nepal. It was argued that Narain Raja had property in Nepal and so he could not have any intention of living in India permanently. It is said by the respondent that the total area of land mentioned in the khatian was about 43 bighas. The case of Narain Raja is that the property had belonged to his natural grandmother named Kanchhi Maiya who had gifted the land to Rama Raja. The land was the exclusive property of Rama Raja, and after his death, the property devolved upon his sons. The case of Narain Raja on this point is proved by a Sanad (Ex. AA). In any event, we are not satisfied that the circumstance of Narain Raja owning the property covered by Ex. 10(c) can outweigh the fact that Narain Raja alone had extensive properties in India after the partition decree of the year 1944.

It was also pointed out on behalf of the appellant that Narain Raja, and before him Rama Raja, had insisted upon designating themselves "Sri 5,' indicating that they belonged to the royal family of Nepal It was argued on behalf of the appellant that Narain Raja had clung tenaciously to the title of "Sri 5", thereby indicating the intention of not relinquishing the claim to the throne of Nepal if at any future date succession to the throne falls to a junior member of the family of the King of Nepal. We do not think there is any substance in this argument. It is likely that Narain Raja and his father Rama Raja had prefixed the title of "Sri 5" to their names owing to the pride of their ancestry and sentimental attachment to the traditional title and this circumstance has no bearing on the question of domicil. Succession to throne of Nepal is governed by the rule of primogeniture and it cannot be

believed that as the second son of his father, Narain Raja could ever hope to ascend to the throne of Nepal, and we think it is unreasonable to suggest that he described himself as "Sri 5" with the intention of keeping alive his ties with Nepal. There was evidence in this ease that Narain Raja's eider brother Shiv Bikram Sah has left male issues.

For the reasons expressed, we hold that Narain Raja had acquired domicil of choice in India when Art. 5 of the Constitution came into force. We have already referred to the finding of the High Court that Narain Raja was ordinarily resident in India for 5 years immediately preceding the time when Art. 5 of the Constitution came into force. It is manifest that the requirements of Art. 5(c) of the Constitution are satisfied in this case and the High Court rightly reached the conclusion that Narain Raja was a citizen of India at the relevant time.

We accordingly dismiss both these appeals with costs. One set Appeals dismissed.