appellant. No question as to the effect of the amended definition on the appellant's status fell for our decision in this case for we were only concerned with his status in 1953. We would also point out that no order appears to have been made concerning the appellant under s. 3(2)(c) and we are not to be understood as deciding any question as to whether such an order could or could not have been made against the appellant.

Appeal allowed.

AKBAR KHAN ALAM KHAN AND ANOTHER

v.

THE UNION OF INDIA AND OTHERS

1961

April 5.

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Citizenship—Suit for declaration of rights as Indian Citizens—Jurisdiction of Civil Court—Citizenship Act, 1955 (57 of 1955), s. 9(2).

The only question that a civil court is precluded from determining under s. 9(2) of the Citizenship Act, 1955, read with r. 30 of the Rules framed under the Act is the question as to whether, when or how any person has acquired the citizenship of another country. They are not prevented from determining other questions concerning the nationality of a person.

Where, therefore, a suit brought for a declaration that the appellants were Indian Citizens, where they themselves had raised the question of acquisition of foreign citizenship, was resisted on the ground that they had never been Indian Citizens, and the courts below dismissed the suit in its entirety,

Held, that the courts below were in error in holding that the suit was barred in its entirety by s. 9(2) of the Act.

They should have decided the question as to whether the appellants had ever been citizens of India and, if the finding was in their favour, should have stayed the suit till the Central Government had decided whether such citizenship was renounced and if the finding was against the appellants dismissed the suit.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 18 of 1961.

Appeal by special leave from the judgment and order dated January 23, 1960, of the Madhya Pradesh High Court at Indore in Second Appeal No. 473 of 1959.

Z. F. Bootwala, E. Udayarathnam and *S. S. Shukla*, for the appellants.

M. C. Setalvad, Attorney-General of India, B. Sen and *T. M. Sen*, for respondent No. 1.

H. L. Khaskalam and *I. N. Shroff*, for the respondents Nos. 2, 3.

1961. April 5. The Judgment of the Court was delivered by

Sarkar J.

SARKAR, J.—This appeal raises the question whether the suit filed by the appellants was properly dismissed on the ground that a civil court had no jurisdiction to entertain it. The Courts below held that a civil court's jurisdiction to entertain the suit was barred by s. 9 of the Citizenship Act, 1955.

The appellants had filed the suit for a declaration that they were citizens of India and for an injunction restraining the defendants from removing them from India. The defendants were the Union of India, the State of Madhya Pradesh and the District Magistrate, Jhabua, in Madhya Pradesh. The appellants stated in the plaint that they were citizens of India and had not ceased to be such citizens. They said that in the beginning of 1953 they went to Pakistan for a temporary visit without a passport but when they wanted to return they were compelled to obtain Pakistani passports. They stated that they obtained these passports only as a device for securing their return to India and had really been compelled to obtain the passports against their will. They further stated that, therefore, they could not be said to have acquired citizenship of Pakistan. They also stated that they had made all efforts for the cancellation of the passports and to obtain permission to stay in India permanently but were unsuccessful. They said that the

State of Madhya Pradesh served on them an order dated November 11, 1955, under s. 3(2) of the Foreigners Act, 1946, asking them to leave the country. They contend that this order was illegal and without justification as they were not foreigners.

In the written statement filed by the defendants it was stated that the appellants had left India between March and May, 1948, and they returned for the first time on a temporary Pakistani passport sometime in the early part of 1955. It was also stated that the permits granted to them to remain in India were extended from time to time and ultimately up to about October, 1955, and thereafter they were served with orders to quit India. The defendants further stated that the appellants were not citizens of India as they had voluntarily acquired Pakistani citizenship by obtaining passports from that country.

The suit was dismissed as it was held not to be maintainable in view of the provisions of sub-sec. (2) of s. 9 of the Citizenship Act. That sub-section is in these terms:

> *Section 9 (2).* "If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

Rule 30 of the Rules framed under this Act provides that such a question shall be determined by the Central Government, who for that purpose shall have regard to the rules of evidence specified in Schedule III to the Rules.

It seems to us clear that sub-sec. (2) of s. 9 of the Citizenship Act bars the jurisdiction of the civil court to try the question there mentioned because it says that those questions shall be determined by the prescribed authority which necessarily implies that it cannot be decided by anyone else. The only question, however, which a civil court is prevented by s. 9(2) of the Citizenship Act from determining is the question whether a citizen of India has acquired citizenship of another country or when or how he acquired it. The

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civil courts are not prevented by this provision from determining other questions concerning nationality of a person. There is no doubt that the suit by the appellants raised the question whether they had lost their Indian citizenship by acquiring the citizenship of Pakistan. The appellants themselves had raised that question by pleading in their plaint that they had not voluntarily acquired the citizenship of Pakistan. To that extent, it has to be held that the appellants' suit was barred. It seems to us however that the suit raised other questions also. The appellants' claim to the citizenship of India was resisted on the ground that having migrated to Pakistan in 1948, they had never acquired Indian citizenship. That might follow from Art. 7 of the Constitution. The jurisdiction of a civil court to decide that question is not in any way affected by s. 9(2) of the Citizenship Act. Therefore it seems to us that the entire suit should not have been dismissed. The Courts below should have decided the question whether the appellants had never been Indian citizens. If that question was answered in the affirmative, then no further question would arise and the suit would have to be dismissed. If it was found that the appellants had been on January 26, 1950, Indian citizens, then only the question whether they had renounced that citizenship and acquired a foreign citizenship would arise. That question the Courts cannot decide. The proper thing for the court would then have been to stay the suit till the Central Government decided the question whether the appellants had renounced their Indian citizenship and acquired a foreign citizenship and then dispose of the rest of the suit in such manner as the decision of the Central Government may justify. The learned Attorney-General appearing for the respondents, the defendants in the suit, conceded this position. He did not contend that there was any other bar to the suit excepting that created by s. 9 of the Citizenship Act.

What we have said disposes of this case but we think we should express our views on some of the arguments of the learned counsel for the appellants.

He first contended that it is only when a right is created by a statute and a Tribunal is set up for the determination of that right by that statute that the jurisdiction of a civil court as to a question concerning that right is taken away and that, therefore, the jurisdiction of a civil court to entertain the appellants' suit was not taken away. We are unable to accept this contention. A competent legislature may take away a civil court's jurisdiction to try other questions also. No authority has been shown that this cannot be done.

Another argument advanced by him was that the appellants had no right to approach the Central Government to decide the question whether they had lost their Indian citizenship and therefore the appellants' right to resort to a civil court to decide that question cannot be deemed to have been barred. Reliance was placed in support of this contention on *Sharafat Ali Khan* v. *State of U.P.* (1). This question really does not arise because the learned Attorney-General appearing for the respondents has conceded the appellants' right to apply to the Central Government for a decision of the question. Even apart from this concession the view expressed in *Sharafat Ali Khan* v. *State of U. P.* (1) would seem to be open to grave doubt. But in the circumstances of this case we do not feel called upon to say more on that matter.

For the reasons earlier stated, we set aside the orders and the judgments of the Courts below and direct that the suit be heard and decided on all questions raised in it excepting the question whether the appellants having been Indian citizens for sometime have renounced that citizenship and acquired a foreign citizenship. If the Court finds that the appellants had never been Indian citizens, then the suit would be dismissed by it. If on the other hand, the court finds that they were Indian citizens earlier, then the court would stay the further hearing of the suit till the Central Government decides whether the appellants had acquired subsequently a foreign nationality

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and thereafter dispose it of by such order as the decision of the Central Government may justify. There will be no order as to costs.

Appeal allowed.
Case Remitted.

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B. SUBBARAMA NAIDU
v.
B. SIDDAMMA NAIDU & OTHERS

(K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR, JJ.)

Arbitration—Order of reference—If must specify date within which the award is to be made—Award—Validity—When can be set aside—Arbitration Act, 1940 (10 of 1940), ss. 23(1), 30.

The questions for determination in the appeal were whether the award in question was invalid, (1) by reason of the court failing to comply with the mandatory requirement of s. 23(1) of the Arbitration Act, 1940, that the time within which the award is to be made, must be specified in the order, and (2) whether the arbitrator was in error in allotting to the appellant less than half share in the properties.

Held, that under s. 23(1) of the Arbitration Act, 1940, it is imperative that the time for making the award must be fixed; but that does not mean that where the court omits to specify the time in the order of reference and does so elsewhere in the proceedings, the reference is invalid. Consequently, in a case where the order sheet of the court read with the order of reference made it clear that the arbitrator was to file his award by the date to which the suit was adjourned, it could not be said that the section had not been complied with.

Raja Har Narain Singh v. *Chaudhrain Bhagwant Kuar* (1891) L.R. 18 I.A. 55, referred to.

Held, further, that the award could not be said to be bad on the face of it and "otherwise invalid" merely because the appellant had received less than his due share. The court cannot interfere with the findings of an arbitrator based on the best of his judgment unless it is shown that he has acted dishonestly.