

(1923) 01 AHC CK 0052
In the Allahabad High Court

Fatteh Din

APPELLANT

Vs

Umrao and Others

RESPONDENT

Date of Decision : 16-01-1923

Acts Referred:

Citation : (1923) 01 AHC CK 0052

Final Decision : Dismissed

Judgement

Daniels, J.—This appeal arises out of a suit by the plaintiff, for a declaration that he was the son of one Shera and for possession of his legal share in the property of the latter on the assumption that he was Shera's son. Both the Courts below have dismissed his suit. The finding of the lower Appellate Court is that the plaintiff was born 331 days or eleven full months after his alleged father's death and that his mother has been living for the last few years in illicit connection with one Imam-ud-Din. The appellant relies on the rule of Muhammadan Law that a child born within two years of the conclusion of a valid marriage is presumed to be the legitimate son of his mother's husband. The commentators have all expressed doubts as to how far this is a substantive rule of law binding on the Courts in this country and how far it is to be considered as replaced by the provisions of Section 112 of the Evidence Act. If this were the sole question in the appeal I should have been disposed to refer it to a Bench but none of the text-books go further than saying that rebuttable presumption arises under these circumstances, and if the presumption is rebuttable there was certainly ample evidence in the present case to rebut it and to justify the Courts below in finding that the plaintiff-appellant was not the son of Shera. I, therefore, dismiss the appeal with costs including fees on the higher scale.