

(1970) 01 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Second Appeal No. 404 of 1962

Kanaiyalal and Jamnadas

APPELLANT

Vs

Gaurishankar and Others

RESPONDENT

Date of Decision : 20-01-1970

Acts Referred:

Citation : (1970) WLN 41

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—The only point arising for decision in this second appeal by the plaintiff, who has failed in both the lower courts is whether the adoption of the defendant Gaurishanker to Bakshi Ram by the latter's widow Smt. Janki is proved? It is the admitted position of the plaintiffs that if Gaurishanker's adoption to Bakshiram is established, they have no case. But their contention is that Gaurishanker's adoption to Bakshiram by Mst. Janki has not been proved according to law.

2. It is not disputed before me that Mst. Janki had executed an adoption deed (Kholanama) in favour of Gaurishanker as the adopted son to her deceased husband Bakshiram and this adoption deed (Ex. A. 1) contains an unequivocal declaration by Mst. Janki that she had adopted Gaurishanker to her deceased husband Bakshiram.

3. It is urged by the learned counsel for the plaintiff-appellants that there is absolutely no evidence on the record to prove that there was ceremony of giving and taking Gaurishanker in adoption. It is contended that in absence of giving and taking which is the most essential requirement of a valid adoption under the Hindu Law, no valid and legal adoption of Gaurishanker to Bakshiram can be said to have come into existence. It is conceded by the learned counsel for the respondents also that there is no proof of giving and taking, but his contention is

that no giving and taking was necessary in as much as the adoption of Gaurishanker to Bakshiram by Mst. Janki was a customary adoption prevalent in the erstwhile State of Bikaner which is known as "Khola". It has been urged that such a customary adoption in the erstwhile State of Bikaner has been recognised in two decisions of this Court reported as Sarjeet Singh v. Kripal Singh ILR 4 Raj. 558 and Hira Lal and another v. Mahadeo and others ILR Raj. 608. In these two decisions reliance has been placed on a Full Bench decision of the former High Court of Bikaner: Ramanlal v. Mst. Nandan 5 Bik.LR 30 (Part I). In this case it was observed that giving and taking of the boy do not take place under the "Khola" system and none of the conditions of the Hindu Law for a valid adoption are essential under this system. That there was a customary adoption in the erstwhile State of Bikaner known as "Khola" is not disputed by Mr. Agarwal, learned counsel for the appellants, and in my opinion rightly. But his objection is that the defendant Gaurishanker had not pleaded the customary adoption, and, therefore, the lower courts were not justified in accepting the defendant's claim as an adopted son of Bakshiram under the "Khola" system in absence of a specific pleading on the point to that effect.

4. It may be observed that the defendant had specifically stated in para No. 11 of his written statement that he is a "Kholayat" son of Bakshiram and that a "Kholanama" dated 27-5-1955 was executed and got registered on 28-5-1955. The trial court struck an issue with respect to this contention which is issue No. 2 and which reads as follows;

(2) Whether the defendant is a valid "Kholayat" of the deceased Bakshiram?

This system of "Khola" appears to be well known in Bikaner and has received judicial recognition. In these circumstances it cannot be said that the plaintiffs have been prejudiced in any way in absence of specific mention of the customary "Kholayat" system in the written statement by the defendant. Moreover no such objection was taken either before the trial court or before the first appellate court that the defendant was not entitled to rely on the customary adoption known as "Khola" on account of the absence of pleading to that effect in the written statement. In these circumstances no case is made out for rejecting the defendant's claim as the adopted son of Bakshiram solely on the ground that the pleading on the point is not exact and specific.

5. In the result I do not see any force in this appeal and hereby dismiss it, but in the circumstances of the case I leave the parties to bear their own costs.