

(1974) 01 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Second Appeal No. 58 of 1987

Nenoo Khan

APPELLANT

Vs

Mst. Sugani and Others

RESPONDENT

Date of Decision : 03-01-1974

Acts Referred:

Citation : (1974) WLN 5

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—This is a plaintiff's second appeal arising out of a suit for declaration to the effect that the plaintiff is the lawfully adopted son of defendant No. 1 jabardikhan who has died during the pendency of this litigation, and is now represented by his widow Mst. Sugani.

2. The plaintiff's case is that Jabardikhan adopted him and made a writing in this respect in his Bahi, but subsequently on 17-8-1964 he wrote another deed of adoption in favour of defendant No. 2 Ibrahim Khan on 17-8-1964 and got it registered, which he had no authority to do in the life time of of the plaintiff. The plaintiff's adoption to Jabardikhan was denied by the defendant No. 2.

3. After recording the evidence produced by the parties the trial court dismissed the plaintiff's suit, and its judgment and decree were upheld by the District Judge, Merta.

4. The parties are Mohammedans and admittedly there is no institution like adoption among Mohammedans. It is true that by virtue of custom Mohammedans may also have the system of adoption. But in the present case no such custom of adoption has been set up in the plaint and all tbat the plaintiff has relied upon in support of his adoption was a writing made by Jabardikhan in the Bahi (Ex. 1) In absence of any plea or evidence regarding custom of adoption prevalent in the families of the parties or the community to which the parties

belong the plaintiff's adoption to Jabardikhan cannot be recognised, and his suit for declaration that he is the lawfully adopted son of Jabardikhan has been rightly dismissed. It is true that the defendant has also not made effort to show that his adoption to Jabardikhan is valid but for that reason the plaintiff cannot succeed and his suit for declaration that he is the adopted son of Jabardikhan cannot be decreed. He has, therefore, nothing to do with the status of the defendant No. 2 qua the defendant No. 1.

5. The result is that I do not see any force in this appeal, and hereby dismiss it, but in the circumstances of the case I make no order as to costs.