

Jhunka Prasad Vs Nathu

Court: Allahabad High Court

Date of Decision: Feb. 26, 1913

Citation: (1913) ILR (All) 263

Hon'ble Judges: Harry Griffin, J; Chamier, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Harry Griffin and Chamier, JJ.

The plaintiff claiming to be the adopted son of defendant sued for partition. His suit was dismissed by both

the courts below on the finding that the alleged adoption was invalid. The plaintiff comes here in second appeal. The parties are ahirs. The plaintiff

at the time of the alleged adoption was a married man. It is admitted that among the twice-born classes a married man cannot be adopted. The

court below says that ahirs belong to the twice-born classes. This assertion is challenged in appeal. However that may be, there is authority for

holding that the adoption of a married man is not valid even amongst Sudras. In the case of Pichuvayyan v. Subbayyan ILR (1889) Mad. 128 it

was said that an adoption in order to be valid even among Sudras must take place before the marriage of the adopted son. Reference is made to

the Dattaka Chandrika. The same rule is to be found in the text-books on the subject. We see no reason to differ from the finding of the court

below on this point. As to the question of estoppel we hold that there is no estoppel in a case of this nature. The plea of limitation in our opinion

has no force. We dismiss the appeal with costs.