

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 7299 OF 2003

DIYYALA GOPALA KRISHNA MURTHY

.... PETITIONER

VERSUS

PULLAGURA DHANALAKSHAMMA AND OTHERS

.... RESPONDENTS

O R D E R

Heard learned counsel for the parties.

This appeal has been filed against the judgment and order of the High Court of Andhra Pradesh dated 11th October, 2002 passed in Second Appeal No. 71 of 1991.

The facts have been stated in the impugned judgment and hence we are not repeating the same.

The appellant's alleged adopted mother filed a suit for declaration that she is hereditary trustee of the deity Sri Kanyaka Parameswari and is entitled to manage the property and perform Pooja there. The plaintiff's case was that according to the Will executed by her father on 19th August, 1929 the right to perform Pooja and manage the properties devolved upon his second wife Venkatamma and after her death Savitramma, plaintiff, should take possession and

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manage the properties and in the event of her death without issue, the maternal grand sons of the testator, who are defendants in the suit, should take possession of the properties and perform Pooja.

During the pendency of the appeal filed by the defendants before the first appellate court, Savitramma died and the appellant herein had filed a substitution application claiming to be her

adopted son. The claim of the petition in the substitution application to be the adopted son of Savitramma was denied by the defendants. The first appellate court by an order dated 16th November, 1987 allowed the substitution application of the appellant but finally came to the conclusion that he was not entitled to manage the property or perform Pooja because he was not the natural son of Savitramma. The first appellate court held that the word 'issue' in the Will would not include an adopted son. That view of the first appellate court has been upheld by the High Court. Hence the present appeal.

In Hindu Law, an adopted son is exactly on the same legal footing as a natural son but with one distinction, namely that for him the prohibited degrees of relationship for the purposes of marriage are on both sides, namely his natural family as well as his adopted family. In all other respect an adopted son is exactly on the same footing as a natural son. Hence, we cannot agree with the view of the first appellate court and the High Court that an adopted son cannot be treated to be the natural son or issue.

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However, the question whether in fact the appellant was adopted by Savitramma in 1948 as alleged by him, has to be decided on the basis of evidence. Merely because the substitution application has been allowed, it would not automatically mean that the appellant is the adopted son of Savitramma. This question, as stated above, has to be proved and decided by leading evidence that there was a valid adoption in accordance with the Hindu Law as prevailing in 1948.

For the aforesaid reasons the judgments of the courts below are set aside and the matter is remitted back to the trial court to take evidence on the question whether there was a valid adoption of the appellant by Savitramma.

The appeal is allowed. The matter is remitted back to the trial court which shall decide the matter afresh expeditiously. No costs.

.....J.  
(Markandey Katju)

.....J.  
(T.S. Thakur)

New Delhi  
October 19, 2010

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ITEM NO.108

COURT NO.6

SECTION XIIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S  
C I V I L A P P E A L N O ( s ) . 7 2 9 9 O F 2 0 0 3

DIYYALA GOPALA KRISHNA MURTHY Appellant (s)

VERSUS

PULLAGURA DHANALAKSHMAMMA & ORS. Respondent(s)

(With office report )

Date: 19/10/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU  
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mr. A. Subba Rao, Adv.  
Mr. H.K. Naik, Adv.

For Respondent(s) Mrs.B.Sunita Rao, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

(Inder Pal Singh)  
AR-CUM-PS

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(Indu Satija)  
Court Master

The signed order is placed on the file.