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C.A.No. 642 OF 1999

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ITEM NO. 103

COURT NO. 6

SECTION IVA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 642 OF 1999@@  
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Savithamma ... Appellant (s)

Vs.

Puttegowda ... Respondent (s))

( With office report )

Date: 01-03-2001 This/These matter(s) was/were called  
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE  
HON'BLE MR. JUSTICE S.N. VARIAVA

For appellant (s) Mr. GV Chandrashekhar, adv.  
for Mr. PP Singh, adv.

For respondent (s) Mr. Naresh Kaushik, adv.  
Ms. Shilpa Chohan, adv.  
for Ms. Lalita Kaushik, adv.

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

The appeal is allowed. There shall be no  
order as to costs.

.SP1

(Alka Dudeja)  
Court Master

(S. Krishnan)  
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 642 OF 1999@@  
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Savithramma ... Appellant (s)

Vs.

Puttegowda ... Respondent (s))

O R D E R@@  
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This appeal is directed against the judgment of the High Court of Karnataka allowing the second appeal filed by the defendant-respondent.

One Nanjegowda had two wives, both with the same name - Savithramma. It is alleged that on 22nd May, 1963 Nanjegowda, by a registered adoption deed, adopted the defendant-respondent as his son. It is further alleged that subsequently by a registered deed dated 21st July, 1967 Nanjegowda revoked the said adoption deed. On 6th March, 1981 Nanjegowda executed a settlement deed in favour of both his wives towards their maintenance. On 7th May, 1981 Nanjegowda died.

After the death of Nanjegowda, his two wives filed a suit for declaration as well as injunction against the defendant-respondent. The defendant-respondent contested a suit by filing a written statement. In the written statement it was, inter alia, pleaded that the defendant-respondent is an adopted son of Nanjegowda and, therefore, he is entitled to half share in the property and that the marriage of second wife of Nanjegowda is void as it was contracted during the life time of the first wife and, therefore, she is not entitled to any share in the property. The trial court framed two issues; first issue was as to whether the defendant-respondent is an adopted son of Nanjegowda and the second issue was as to whether the marriage of plaintiff No. 2 with Nanjegowda is void and thus, she is not entitled to any share in the property. The parties led their evidence on those two issues. The trial court after considering the evidence on record came to the conclusion that defendant-respondent was not an adopted son of Nanjegowda and that the marriage of second wife of Nanjegowda is not void. Consequently, the suit for declaration as well as for injunction was decreed. The defendant-respondent thereafter preferred first appeal. Before the first appellate court the only argument advanced on behalf of the defendant-respondent was that the marriage of plaintiff No. 2 is void as same was contracted during the life time of plaintiff No. 1. The first appellate court rejected the said argument and affirmed the finding of the trial court. Consequently, the appeal was dismissed by the first appellate court. Defendant-respondent thereafter preferred a second appeal before the High Court. The High Court even after recording a finding that the second wife is a legally wedded wife of Nanjegowda, held that the defendant-respondent is an adopted son of Nanjegowda and,

therefore, he is entitled to half share of the property. In view of the matter, the second appeal was partly allowed. Consequently the suit was partly decreed and partly dismissed. It is against the said judgment, the plaintiff is in appeal before us.

Learned counsel appearing for the appellant, urged that in view of the fact that the respondent who was appellant before the first appellate court has not advanced any arguments in respect of the correctness of finding of the trial court regarding his adoption before the first appellate court, it was not permissible for the High Court to entertain the said argument. We have gone through the judgment of the first appellant court and found that the first appellate court has stated in its judgment that only argument raised on behalf of defendant-respondent was in relation to the validity of marriage of plaintiff No. 2 with Nanjegowda. We have also looked into the memo of second appeal filed before the High Court, but we do not find anything to show that the statement of fact recorded in the judgment of the first appellate court that only argument advanced was in respect of validity of marriage of plaintiff No. 2 is incorrect. Under such facts and circumstances, it was not open to the High Court to entertain the argument regarding the validity of adoption of defendant-respondent and record finding in that respect. We, therefore, find merit in the contention of learned counsel for the appellant.

Learned counsel appearing for the respondent, then urged that in any case it is now open to the respondent to urge before this Court that the marriage of plaintiff No. 2 was void having been contracted during the life time of plaintiff No. 1. So far as this argument is concerned, the defendant-respondent has not preferred any cross appeal before this Court and in the absence of such an appeal the said argument is not available to the respondent.

For the aforesaid reasons, this appeal deserves to succeed. We, therefore, set aside the judgment under appeal. The appeal is allowed. There shall be no order as to costs.

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.SP1

.....J.  
(V.N. KHARE)

.....J.  
(S.N. VARIAVA)

NEW DELHI  
MARCH 01, 2001.