



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

**MONDAY, THE THIRTIETH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX**

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

SECOND APPEAL NO: 42/2024

Between:

The South Central Railway And 2 Others and Others **...APPELLANT(S)**

AND

Rayudu China Venkata Rao And Another and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. MALLAMPALLI SRINIVAS (CENTRAL GOVT COUNSEL)

Counsel for the Respondent(S):

1.0

2. NAGESWARA RAO V

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.42 of 2024

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed aggrieved against the judgment and decree, dated 12.09.2011, in A.S.No.22 of 2008, on the file of the Principal Senior Civil Judge, Kovvur, reversing the judgment and decree, dated 31.01.2008, in O.S.No.940 of 2005, on the file of the Principal Junior Civil Judge, Kovvur.

2. The plaintiff initiated action in O.S.No.940 of 2005, on the file of the Principal Junior Civil Judge, Kovvur, with a prayer for declaration that the plaintiff is the adopted son of Rayudu Veerraju and his wife Somamma and for costs of the suit.

3. The learned Principal Junior Civil Judge, Kovvur, dismissed the suit without costs. Felt aggrieved of the same, the unsuccessful plaintiff in the above said suit filed the first appeal before the First Appellate Court. The learned Principal Senior Civil Judge, Kovvur, allowed the appeal without costs by setting aside the judgment and decree passed by the learned trial Judge. Aggrieved thereby, the appellants/defendant Nos.1 to 3 approached this Court by way of second appeal.

4. The appellants herein are the defendant Nos.1 to 3, the respondent No.1 herein is the plaintiff and the respondent No.2 herein is the defendant No.4 in O.S.No.940 of 2005.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the suit O.S.No.940 of 2005.

6. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.940 of 2005, is as follows:

One Rayudu Veerraju and his wife Somamma adopted the plaintiff as they had no children and they requested Rayudu Surya Rao, who is the younger brother of Rayudu Veerraju to give the plaintiff, who is his son, in adoption to them. The plaintiff pleaded that the natural parents of the plaintiff agreed to the same and accordingly, on 10.03.1985, a function was arranged and all the relatives of late Rayudu Veerraju and his wife Somamma attended the function and since then, the plaintiff joined the family of late Rayudu Veerraju as an adopted son by acquiring all rights as a son of Rayudu Veerraju and continued his studies and began living in their house. The plaintiff further pleaded that Rayudu Veerraju was working as a gangman in the defendant Nos.1 to 3 department i.e. the South Central Railways and he died on 06.09.1995 while he was on duty. The plaintiff pleaded that one Venkamma, who is the original wife of Rayudu Veerraju, filed a suit in O.S.No.18 of 1998 seeking declaration to that effect and also for the death benefits of late Rayudu Veerraju and subsequently, the said Venkamma, the

plaintiff and his mother Somamma compromised the matter before Lok Adalat, Kovvur, on 05.05.2001, to avoid delay in receiving the death benefits and the job for the plaintiff on compassionate grounds from the defendant Nos.1 to 3 department.

The plaintiff pleaded that accordingly, the pension was granted to the plaintiff's mother Somamma as per the Lok Adalat award and the defendant Nos.1 to 3 paid the death benefits and half share in the arrears of pension to the said Venkamma and also to the plaintiff's mother Somamma respectively. The plaintiff further pleaded that he applied to the defendant Nos.1 to 3 for a job on compassionate grounds and the defendant Nos.1 to 3 sent an application form to the plaintiff, which was filled by him and submitted to the defendant Nos.1 to 3, but the defendant Nos.1 to 3 failed to take any action on the application of the plaintiff and as such, the plaintiff got issued a legal notice to the defendant Nos.2 and 3 requesting them to consider and implement the Lok Adalat decree dated 05.05.2001, by providing the job to the plaintiff on compassionate grounds, but, though the defendant Nos.2 and 3 received the same, they kept quiet without giving any reply. Aggrieved by the said action, the plaintiff filed O.A.No.1656 of 2003, before the Central Administrative Tribunal, Hyderabad, seeking a direction to the defendant Nos.1 to 3 to consider the case of the plaintiff for appointment on compassionate grounds. The plaintiff pleaded that the defendant Nos.1 to 3 after knowing about the filing of O.A.No.1656 of 2003, issued a notice to the

mother of the plaintiff stating that the name of the plaintiff was not included in the declaration for availing the privilege pass and also there is no satisfactory proof of adoption of the plaintiff. As such, the plaintiff is constrained to file the present suit.

7. The defendant No.4 remained ex-parte before the trial Court and the defendant No.3 filed the written statement, which was adopted by the defendant Nos.1 and 2. The brief averments in the written statement filed by the defendant No.3 is as follows:

The defendant No.3 pleaded that the alleged adoption of late Veerraju is not true and correct and the family composition of the deceased employee at the time of his death is a) R.Venkamma, wife, 42 years; b) sons/daughters – Nil, which was executed by the said late Rayudu Veerraju while he was in service. The defendant No.3 further pleaded that there was a rival claim seeking death benefits of late Rayudu Veerraju by Smt. R.Venkamma and Smt. K.Somamma, as such, the defendants enquired into the matter by deputing the Welfare Inspector, wherein the Welfare Inspector submitted his report stating that China Venkata Rao, the plaintiff, is the son of R.Surya Rao, who is the younger brother of the deceased employee and R.Somamma, while seeking a job on compassionate grounds, submitted a representation dated 08.01.2002 i.e. after more than seven (07) years from the death of late Veerraju.

The defendant No.3 further pleaded that as per the Award passed by the Lok Adalat, Kovvur, the death benefits of the deceased employee were sanctioned and paid to R.Somamma and R.Venkayamma as per the compromise between them and the provision of appointment on compassionate grounds is purely discretionary on the part of the employer-railway. The defendant No.3 pleaded that the plaintiff is not entitled to the mere declaration prayed for in the suit that he is the adopted son of the deceased employee and there is no valid proof for the adoption of the plaintiff and the absence of the plaintiff's name in the declaration executed by the deceased Veerraju for the purpose of availing privilege pass, privilege travel order, is the clear proof that the adoption of the plaintiff is not true and correct and that the plaintiff's suit is false, frivolous and vexatious and as such, the defendant Nos.1 to 3 prayed for dismissal of the suit.

8. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

- 1) Whether the plaintiff is entitled for the relief of declaration that he is the adopted son of late Rayudu Veerraju and his wife Somamma as prayed for? and
- 2) To what relief?

9. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 to 6 were examined and Exs.A-1 to A-18 were marked. On behalf of the defendants, D.W.1 was examined and Exs.B-1 to B-9 were marked.

10. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit without costs. Felt aggrieved thereby, the unsuccessful plaintiff filed the appeal suit in A.S.No.22 of 2008, on the file of the Principal Senior Civil Judge, Kovvur.

11. The learned first appellate Judge after hearing the arguments, discussed elaborately on the issues framed by the trial Court and allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful defendant No.1 to 3 in O.S.No.940 of 2008 filed the present second appeal before this Court.

12. On hearing learned counsel for the appellants at the time of admission of the second appeal on 23.02.2024, a learned Judge of this Court, admitted the second appeal and framed the following substantial question of law:

- 1) Whether the judgment and decree of the lower appellate Court is perverse in reversing the findings of the judgment of the trial Court, while appreciating the pleadings and evidence on record?

13. Heard Sri Mallampalli Srinivas, learned Standing Counsel for Central Government, appearing for the appellants and Sri Nageswara Rao.V, learned counsel for the respondents.

14. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous

being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***¹, the Apex Court held as follows:

“The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature.”

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***², the Apex Court held as follows:

“The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

15. The undisputed facts are that Rayudu Veerraju and Surya Rao are brothers and Rayudu Veerraju and Somamma are not having any children. The case of the plaintiff is that Rayudu Veerraju and Somamma have no children and they requested Surya Rao, who is the younger brother of Veerraju to give the plaintiff, who is his son, in adoption to them. It is the specific case of the plaintiff that Surya Rao had three (03) sons and one (01) daughter, and the said Surya Rao and his wife agreed to give the plaintiff in adoption to Veerraju and Somamma. It is not in dispute that Veerraju used to work as gangman in Railways and died on 06.09.1995, while he was in

¹ AIR 1993 SC 398

² AIR 1999 SC 471

service. The case of the plaintiff is that subsequent to the death of his adopted father, he applied to the defendant Nos.1 to 3 for a job on compassionate grounds, and the defendant Nos.1 to 3 failed to provide employment and that he got issued a legal notice to the defendant Nos.1 to 3, and the defendant Nos.1 to 3 are disputing the alleged adoption of the plaintiff by the deceased Veerraju, and that the plaintiff approached the trial Court seeking the relief of declaration that he is the adopted son of Rayudu Veerraju and his wife Somamma.

16. The learned counsel for the appellant would contend that the First Appellate Court failed to observe that the Lok Adalat and the voters' list are subsequent to the death of the adoptive father of the plaintiff and that no evidentiary value will be given to both of them. The plaintiff, in order to prove the alleged adoption, placed as many as eighteen (18) documents apart from the Lok Adalat award and the voters' list, and all the eighteen documents were exhibited as Ex.A-1 to Ex.A-18. By the time of the alleged adoption, the plaintiff was aged about twelve (12) years and he was also prosecuting his studies in High School, by showing his natural parents as father and mother. The parents of the plaintiff and the adopted parents of the plaintiff, due to illiteracy, might not have taken any legal steps to change the status of paternity of the boy in the school records. The cause of action arose only after the death of Veerraju, on which date the adopted father died i.e. on 06.09.1995, in an accident while he was in service. The alleged adoption is dated 10.03.1985, which is much prior to the death of the adoptive father.

17. Section 6 of the Hindu Adoption and Maintenance Act, 1956, reads as under:

“6. Requisites of a valid adoption:- No adoption shall be valid unless-

- I. the person adopting has the capacity, and also the right, to take in adoption;*
- II. the person giving in adoption has the capacity to do so;*
- III. the person adopted is capable of being taken in adoption; and*
- IV. the adoption is made in compliance with the other conditions mentioned in this Chapter.”*

18. The plaintiff is examined as P.W.1 and according to the plaintiff, at the time of adoption he was aged about twelve (12) years. Therefore, it is highly impossible to remember each and every event after a lapse of twenty five (25) years, it is also highly impossible to explain the manner of adoption on each and every aspect. Therefore, the best persons to speak about the adoption of the plaintiff are the adopted parents and the natural parents of the plaintiff. The adopted father of the plaintiff was no more on the date of filing of the suit. The plaintiff examined his adoptive mother as P.W.2 and his natural father as P.W.3. The two important conditions as mentioned under Sections 7 and 11 of the Hindu Adoption and Maintenance Act, 1956, are the consent of the wife before a male Hindu adopts a child and proof of ceremony of the actual giving and taking in adoption. It is well settled that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned with intent to transfer the child from the family of its birth to the family of its adoption. The giving and taking in adoption is the requirement which stands as sine qua non for a valid adoption.

19. The plaintiff examined his adopted mother as P.W.2 and also examined his natural father as P.W.3. P.W.2 testified that herself and her husband were not blessed with any children, and they requested her husband's brother Surya Rao to give their son Venkata Rao i.e. the plaintiff herein to them in adoption, and Rayudu Surya Rao and his wife Kanthamma agreed to the same and that accordingly, a function was arranged on 10.03.1985, at Kumaradevam, in their house. She further reiterated in her evidence that at that time all her relatives attended the said function and according to their caste customs the adoption ceremony was conducted, and the natural parents of the plaintiff gave the plaintiff to them and they took the plaintiff as an adopted son, and the natural parents of the plaintiff handed over the plaintiff to her and her husband Veerraju on the even date. She also testified that at that time herself and her husband decided that a deed should be executed for adoption of the plaintiff and by that time the plaintiff was aged about twelve (12) years and the alleged adoption is evidenced by Ex.A-1 adoption deed.

20. P.W.3, who is the natural father of the plaintiff testified that Rayudu Veerraju is his elder brother and Smt. Somamma is his wife and they were not blessed with any children and himself and his wife have three (03) sons and one (01) daughter and the plaintiff is one of his three (03) sons. He further deposed in his evidence that his elder brother Rayudu Veerraju and his wife Somamma were not fortunate enough to beget any children and they requested him to give the plaintiff in adoption. He further deposed that himself and his wife agreed to the same and accordingly, on 10.03.1985, a function

was arranged at Kumaradevam, at the residence of his brother and the adoption ceremony was conducted according to their caste customs and giving and taking of the plaintiff as an adopted son to the said Veerraju and his wife Somamma was completed in the presence of their relatives, neighbours and some of the villagers. P.W.3 further reiterated that at the time of the said adoption ceremony, the deed of adoption was also executed between them and Ex.A-1 is the said adoption deed.

21. P.W.5 is one of the attestors in Ex.A-1 adoption deed; he also testified that Veerraju and Somamma adopted the plaintiff as they are not having any children. He further deposed that Veerraju and Somamma adopted the plaintiff as their son and they have conducted the adoption ceremony at their residence and Rayudu Surya Rao and his wife Kanthamma gave the plaintiff in adoption to Rayudu Veerraju and Somamma in the said function held on 10.03.1985. He further testified that several relatives, neighbours and villagers attended the said adoption ceremony, which was conducted as per their caste customs. He further deposed that the natural parents of the plaintiff handed over the plaintiff to the adoptive parents on the even date and the plaintiff was aged about twelve (12) years on that date and an adoption deed was also executed among the natural and adoptive parents and he attested the said adoption deed. He further testified that ever since the date of adoption, the plaintiff continued to live with his adoptive parents i.e. with Veerraju and Somamma in their house.

22. The evidence of P.W.2, P.W.3 and P.W.5 together with Ex.A-1 clinchingly establishes that the plaintiff was adopted by Veerraju and Somamma, by that time the plaintiff was aged about twelve (12) years. P.W.4, who is also a village elder, he also testified that himself and his wife attended the adoption ceremony of the plaintiff. Moreover, the attester to Ex.A-1/P.W.5 is aged about ninety two (92) years at the time of giving evidence and he is a resident of the same village and he is the best person to speak about the manner of adoption and he totally supported the case of the plaintiff that the plaintiff is the adopted son of Veerraju and Somamma and his evidence also establishes the factum of adoption of the plaintiff. A document of adoption under Ex.A-1 was also produced by the plaintiff.

23. The evidence of P.W.2, P.W.3 and P.W.5 proves all the requirements of a valid adoption. No ill motive was attributed to P.W.5 to depose falsehood against the defendants. In cross-examination, the evidence of P.W.5 is not at all shattered on the material aspects of the case. Since the scribe of Ex.A-1 is no more, the son of the sister of the scribe is examined as P.W.6 to identify the signature of the scribe. Moreover, the document for adoption under Ex.A-1 was produced by the plaintiff, which contains the thumb impressions of the natural parents of the plaintiff and the adoptive parents of the plaintiff. The adopted father of the plaintiff used to work as a gangman in Railways and he died while in service all of a sudden in an accident. The defendants did not take any steps to send Ex.A-1 document to prove that the thumb impression of Veerraju is not that of the thumb impression in Ex.A-1. The service records

of Veerraju which contains thumb marks of Veerraju are very much available with the defendants, but they failed to prove the same.

24. The evidence of P.W.2 and P.W.3 establish that at the age of twelve (12) years of the plaintiff, he was actually given for adoption by his natural parents and taken in adoption by the adoptive parents with an intent to transfer the child from the family of birth to the adoptive family. The plaintiff also relied on Ex.A-1 to Ex.A-18. Ex.A-1 is the adoption deed, Ex.A-4 dated 05.07.2001 is the Andhra Pradesh Gazette Publication, which clearly shows that the father's name of the plaintiff is mentioned as Veerraju. The suit is filed in the year 2005. Ex.A-4, Ex.A-5 house patta, Ex.A-6 Caste Certificate of the plaintiff and Ex.A-8 voters' lists are the prior documents, those documents proves that the plaintiff's father's name is recorded as Veerraju in all the documents much prior to the filing of the suit itself. Moreover, Ex.A-14 Family Members Certificate dated 22.08.2003, clearly goes to show that on the application of the adopted mother of the plaintiff, a family member certificate was issued, which includes the name of the plaintiff in the list of family member of Veerraju.

25. The learned counsel for the appellant would contend that during the lifetime of the adopted father, he was never shown as the father of the plaintiff in any of the documents. As stated supra, Ex.A-4 document is dated 05.04.2001, Ex.A-5 is dated 05.09.2002, Ex.A-6 is the permanent caste certificate dated 22.11.2003 and the voters' list under Ex.A-8 are much prior documents to the institution of the suit. It is evident that at the time of

adoption, the plaintiff was aged about twelve (12) years and after ten (10) years, all of a sudden, the adopted father died in an accident and the adopted father worked as a 'Kalaasi' in the Railways, the child is prosecuting his studies by that time and the adopted mother is illiterate. Ex.A-1 goes to show that the natural parents and the adopted parents of the plaintiff are illiterates and they are not the signatories and they have affixed their thumb marks in Ex.A-1. As noticed supra, the admitted thumb marks of Veerraju are very much available in the office of the defendant Nos.1 to 3, but, they have not taken any steps to send Ex.A-1 adoption deed with the admitted thumb marks of Veerraju to the Government Fingerprint Expert to prove that the thumb marks in Ex.A-1 are not that of Veerraju.

26. D.W.1 is a clerk in Railways and as per his evidence, except Ex.B-1, they did not file the declaration given by Veerraju after joining his service. He further admits that as seen from Ex.A-10, the co-employees of the deceased Veerraju certified that the plaintiff is the son of Rayudu Veerraju and he is entitled to a job under compassionate grounds and one Section Engineer also signed on Ex.A-10. He further admits that the thumb mark of the declarant Rayudu Veerraju is not found in Ex.B-1 and there is no document to show that pursuant to the declaration under Ex.B-1 an enquiry was made by the defendants to find out whether the contents of Ex.B-1 are true and correct. Therefore, no sanctity will be given to Ex.B-1 filed by the defendants.

27. The documentary evidence under Ex.A-4 Andhra Pradesh Gazette Publication dated 05.07.2001, Ex.A-14 family member certificate dated

22.08.2003, Ex.A-8 voters' list, all these three documents relate to a period much prior to the institution of the suit and those documents clinchingly establish that the plaintiff is the adopted son of Veerraju and Somamma. Those documents have evidentiary value and after due enquiry only, the Revenue Department included the name of the plaintiff in the family members' list of deceased Veerraju.

28. Learned counsel for the appellant would contend that the trial Court has rightly observed that the plaintiff did not take any steps to produce the documents i.e. the service register and other records lying with the defendants. The defendant Nos.1 to 3 are the Railways and the service records of the deceased Veerraju, who worked as gangman in the Railways and who died in an accident while he was in service are very much available with the defendants. Therefore, it is the duty of the defendant Nos.1 to 3 to produce the service register and other records to disprove the contention of the plaintiff, but they failed to prove the same. On the other hand, the plaintiff by producing oral and documentary evidence proved that he is the adopted son of Veerraju and Somamma. To disprove the same no rebuttal evidence was produced by the defendants. As stated supra, the thumb impression of late Veerraju is very much available in the service records of Veerraju, which are lying in the office of the defendants/appellants, but to disprove the Ex.A-1, the defendant Nos.1 to 3 did not move their little fingers to prove the thumb marks on Ex.A-1 are not that of Veerraju.

29. On appreciation of the entire evidence on record, the learned First Appellate Judge arrived at the conclusion that the plaintiff proved that he is the adopted son of Veerraju and Somamma. Therefore, I do not find any perversity in the said finding of the learned First Appellate Judge.

30. In the case at hand, on appreciation of the entire evidence on record, the learned First Appellate Judge held in its judgment that the plaintiff proved that he is the adopted son of Veerraju and Somamma. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellants did not arise or remain for consideration. This Court is satisfied that this second appeal did not involve any substantial question of law for determination.

31. In the result, the second appeal is **dismissed**, confirming the judgment and decree passed the First Appellate Court. Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

V. GOPALA KRISHNA RAO, J.

Date: 30.03.2026

SRT