



**A.S.(MD)No.87 of 2016**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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DATED : 12.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN  
and  
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S.(MD)No.87 of 2016  
and  
C.M.P.(MD)No.5527 of 2016**

R.Sundaresan

... Appellant / Plaintiff

Vs.

1.B.Vairam

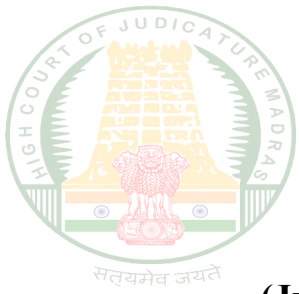
2.Narmadha

... Respondents / Defendants

**Prayer :** Appeal Suit filed under Section 96 of Civil Procedure Code read with Order 41 and Rule 1 of Civil Procedure Code, to set aside the judgment and decree in O.S.No.21 of 2011 dated 18.02.2016 on the file of the Additional District Court, Pudukkottai.

For Appellant : Mr.N.Mohan

For Respondents : No appearance



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## **JUDGMENT**

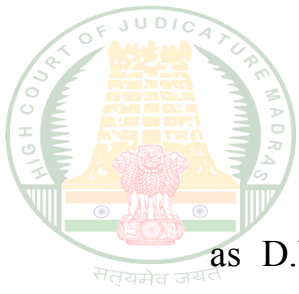
**(Judgment of the court was delivered by G.R.Swaminathan, J.)**

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The plaintiff in O.S.No.21 of 2011 on the file of the Additional District Court, Pudukkottai is the appellant herein. The suit was for partition. The plaintiff claimed half share in the suit schedule properties. The plaintiff claimed that he was adoptive son of one Balasubramanian and Vairam. According to the plaintiff, Balasubramanian passed away in the year 1998 leaving behind himself and the defendants as the surviving legal heirs. Since the defendants declined to concede his share in the suit schedule properties, he filed the said suit.

2.The first defendant filed written statement contending that though an adoption deed was formally executed adopting the plaintiff as their son, the document was never acted upon. The plaintiff continued to reside with his biological parents.

3.The plaintiff examined his biological mother / Lakshmi as P.W.1 and marked Exs.A1 to A4. The first defendant / Vairam examined herself



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as D.W.1 and Narmatha, the adoptive daughter examined herself as D.W.2 and the adoption deed dated 13.11.1995 was marked as Ex.B1.

After considering the evidence on record and arguments on either side, the learned trial Judge vide judgment and decree dated 18.02.2016 dismissed the suit. Aggrieved by the same, this appeal suit came to be filed.

4.Notice was issued to the respondents / defendants. Though Vairam / first respondent received notice, she has not chosen to enter appearance either through counsel or in person. The notice was taken to the last known address of the second respondent / Narmatha also. She is said to have left India. Her name is also printed in the cause list.

5.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and called upon this Court to set aside the impugned judgment and decree and grant relief. He conceded that relief is confined only to the first item of the suit schedule property. He also submitted that the appellant will be satisfied if he is granted 1/3<sup>rd</sup> share in the said item.



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6.We carefully considered the contentions advanced by the learned counsel for the appellant and the evidence on record and also pleadings.

Two issues arise for determination. They are as follows:-

*“(a) Whether the plaintiff was taken in adoption by Balasubramanian and Vairam?”*

*“(b) Whether the plaintiff is entitled to claim any share in the first item of the suit schedule property?”*

7.It is true that the appellant / Sundaresan was born to one Ravichandran and Lakshmi on 02.07.1994. It is not in dispute that Ravichandran's father namely, Chelladurai was none other than the sibling of Vairam. Since Balasubramanian and Vairam did not have any issue through their marriage, they decided to adopt the plaintiff. The adoption took place on 02.11.1995. Evidencing the said adoption, Ex.A1 / adoption deed dated 02.11.1995 was also executed. We went through the contents of the said document. A reading of the said document shows that Ravichandran and his wife / Lakshmi gave the plaintiff / Sundaresan



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in adoption to Balasubramanian and Vairam. It further reads that all the customary and religious formalities were observed. It states that with effect from 02.11.1995, Sundaresan would be the legal heir of Balasubramanian and Vairam. This document was also duly registered as Document No.491/1995 on the file of Joint II Sub Registrar, Pudukkottai. Section 16 of the Hindu Adoption and Maintenance Act, 1956 reads that whenever a registered adoption deed is produced before the court and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved. By marking Ex.A1 which is a registered adoption deed, the plaintiff is entitled to invoke the presumption set out in the aforesaid provision. Therefore, the burden lay entirely on the first defendant to rebut the same.

8.Instead of rebutting the presumption raised against her, by marking Ex.B1, the defendants have strengthened the case of the plaintiff. Ex.B1 is the deed of adoption pertaining to the second defendant / Narmatha. Narmatha / second defendant is none other than



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the niece of Vairam. Vairam had another brother by name, Ramalingam.

Narmatha was his biological daughter. Shortly, after adopting the plaintiff in adoption, Narmatha was also adopted by the said couple / Balasubramaian and Vairam on 13.11.1995.

9.In the recitals of Ex.B1, there is clear and categorical reference to the adoption of the plaintiff and registration of Document No.491/1995. Therefore, the plaintiff's case stood proved by marking of Ex.B1 which is the defendants' document.

10.The Court below was swayed by the fact that the plaintiff was all along brought up by his biological parents. It appears that the plaintiff's biological mother / Lakshmi was none other than the niece of Balasubramanian. Vairam probably did not relish the adoption of the plaintiff. That is why, Narmatha / Vairam's niece was taken in adoption as a daughter. Since Narmatha came to be adopted, it appears that the plaintiff / Sundaresan continued to remain with his biological parents. The only question that calls for consideration is whether on this account, the valid adoption of the plaintiff as the son of Balasubramanian and



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Vairam stood cancelled and whether adoption could be dismissed as sham and nominal.

11. Section 15 of the Adoption and Maintenance Act, 1956 furnishes a clear and complete answer to this question. Section 15 states that no adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth. The first defendant had in her written statement admitted the execution of the adoption deed. She had not disputed its contents also. When once the original adoption of the plaintiff is conceded, it is not open to the first defendant to contest his status as adoptive son, merely on the ground that he continued to reside with his biological parents. Therefore, the first question is answered in favour of the appellant / plaintiff.

12. The plaintiff / appellant himself concedes that the second item of the suit schedule property belonged to the first defendant / Vairam. But the suit first schedule item was that of Balasubramanian. On this,



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there is no dispute. Since the plaintiff is one of the three legal heirs of the deceased Balasubramanian, he will be entitled to 1/3<sup>rd</sup> share and not half share in the property.

13.The impugned judgment and decree is set aside and the appeal suit is partly allowed. It is decreed that the plaintiff / appellant as the adoptive son of Balasubramanian and Vairam is entitled to 1/3<sup>rd</sup> share in the first item of the suit schedule property. No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.) & (M.J.R. J.)**  
**12.02.2025**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
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To:

The Additional District Court,  
Pudukkottai.



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