



A.S. NO.672 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22 / 08 / 2025

WEB COPY

JUDGMENT PRONOUNCED ON : 07 / 04 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.672 OF 2019

AND

CIVIL MISCELLANEOUS PETITION NO.20201 OF 2019

1.Malliga

2.Akash

S/o.P.Balasubramani

3.Sivaranjaini

D/o.P.Balasubramani

All are residing at

1/51, Pudhu Nagar, 3rd Street,

Water Tank Road,

Ayanavaram,

Chennai - 600 023.

... Appellants/Defendants

Vs.

1.B.Geetha

W/o.P.Balasubramani

2.B.Manimekalai

D/o.P.Balasubramani

All are residing at

1/51, Pudhu Nagar, 3rd Street,

Water Tank Road,

Ayanavaram,

Chennai - 600 023.

... Respondents/Plaintiffs



A.S. NO.672 OF 2019

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated November 22, 2018 passed in O.S. No.5378 of 2013 by the III Additional City Civil Court, Chennai.

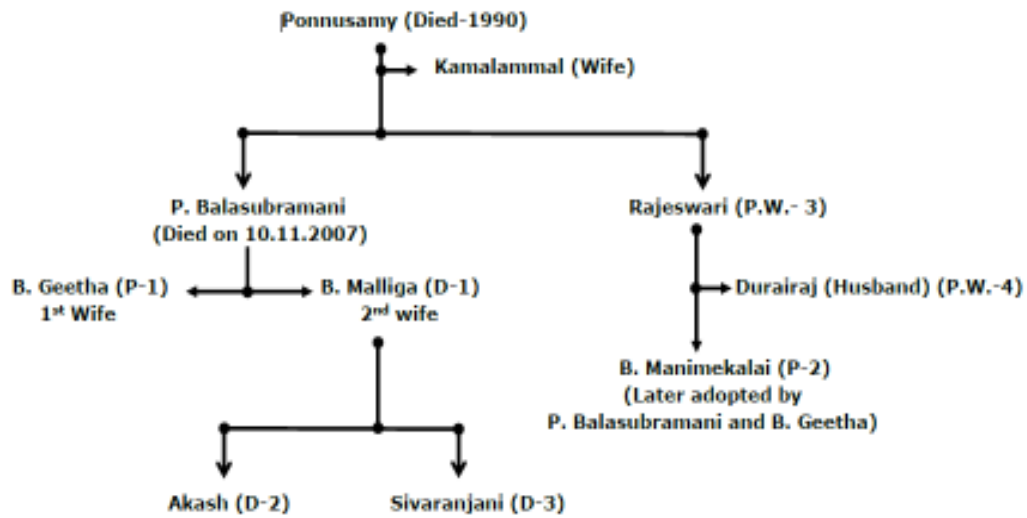
For Appellants : Mr.N.S.Sivakumar
For Respondents : Served - No appearance
* * *

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated November 22, 2018 passed in O.S. No.5378 of 2013 by 'the III Additional City Civil Court, Chennai' ['Trial Court' for brevity], the Defendants therein have filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. The appellants in the Appeal Suit are the defendants in the Original Suit. The respondents herein are the plaintiffs therein. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. The following genealogy chart shows the relationship between the parties as stated in the plaint:



3.1. The defendants admit the above relationships, except the alleged marriage between P.Balasubramani and first plaintiff, and their alleged adoption of second plaintiff. The said marriage and the said adoption are in serious dispute in this case.

PLAINTIFFS' CASE

4. The suit property along with other properties originally belonged to Perumal, who is the paternal grandfather of P.Balasubramani (husband of the first plaintiff and father of the second plaintiff). After Perumal's demise, the said properties devolved upon his son - Ponnuswamy, father of P.Balasubramani. Ponnuswamy passed away on



November 18, 1990, leaving behind his son - P.Balasubramani and his daughter - Rajeshwari as his legal heirs.

4.1. In an oral partition in the year 1975, the suit property fell into the share of P.Balasubramani, while the adjacent property went to Rajeshwari. Thereafter, P.Balasubramani remained in continuous possession and enjoyment of the suit property until his demise on November 10, 2007.

4.2. The marriage between the first plaintiff and P.Balasubramani took place on January 30, 1977 in the presence of family elders and relatives, in a simple and traditional manner without engaging a photographer. As the couple remained issueless even after seven years of marriage, P.Balasubramani's sister - Rajeshwari conceived a child to give it in adoption to the couple. Accordingly, the second plaintiff was born to Rajeshwari and her husband - Durai Raj on June 16, 1984 and was given in adoption on September 30, 1984, to the first plaintiff and P.Balasubramani in the presence of relatives and friends.

4.3. Since the date of adoption, the second plaintiff has been in the exclusive care and custody of the first plaintiff and P.Balasubramani. A naming ceremony was held thereafter, which was attended by relatives and



friends. Further, in August 1989, a house-warming ceremony was conducted for the building constructed on the suit property using funds of P.Balasubramani and the first plaintiff.

4.4. Later, P.Balasubramani's mother pressurized him to re-marry for a son, and he eventually agreed to a second marriage despite the first plaintiff's strong objections. During the lifetime of his legally wedded wife - first plaintiff, P.Balasubramani married the first defendant on October 25, 1993 and the second and third defendants were born to them. The second marriage is an invalid one. All original title documents relating to the suit property came into the possession of the first defendant. Even after the second marriage, it was the first plaintiff who took care of P.Balasubramani and bore his medical expenses when he fell ill in 2006. The first defendant neither contributed financially nor provided care. P.Balasubramani died on November 10, 2007 at the first plaintiff's residence, where his funeral rites were performed.

4.5. The suit property is an ancestral property of P.Balasubramani. The plaintiffs along with the second and third defendants, are his legal heirs. The first defendant not being his legally wedded wife, is not entitled to any share in the suit property. By virtue of



A.S. NO.672 OF 2019

Section 16 of the Hindu Marriage Act, 1955, the second and third defendants are entitled only to a proportionate share in their father's interest in the suit property. As the defendants did not come forward for amicable partition, the plaintiffs have filed the present Suit seeking partition of the suit property into four equal shares, allotment of three such shares to them with separate possession, and *mesne* profits in respect of their 3/4th share. Further, the first plaintiff executed registered Will dated July 22, 2013 bequeathing her 5/12th share in suit property in favour of second plaintiff apprehending that the defendants may deprive the second plaintiff of her rightful share.

DEFENDANTS' CASE

5. The defendants filed a written statement denying the allegations made by the plaintiffs in the plaint. The defendants denied the alleged marriage between the first plaintiff - Geetha and P.Balasubramani as well as the alleged adoption. According to the defendants, the plaintiffs fraudulently filed the Suit for partition, in collusion with P.Balasubramani's sister - Rajeswari, with an ulterior motive to usurp the suit property based on forged documents.



5.1. It is averred that the first plaintiff was a tenant under the first defendant's husband - P.Balasubramani in the ground floor of the Suit premises and after his demise, the first plaintiff continued to be a tenant but under the first defendant. From the month of March 2011 to October 2013, the first plaintiff refused to pay monthly rent and hence, the first defendant has filed R.C.O.P. No.814 of 2013 before the X Small Causes Court, Chennai. The first plaintiff is in no way connected with the defendants' family.

5.2. According to the defendants, the suit property originally belonged to the great-grandfather of the first defendant's husband and it was succeeded by her father-in-law namely Ponnuswamy and subsequent to her father-in-law's demise in 1990, her mother-in-law namely Kamalammal Ponnuswamy succeeded the suit property. In 1995, first defendant's mother-in-law arranged a family settlement and divided the suit property between P.Balasubramani and his sister - Rajeswari equally and thereby they were enjoying their respective shares of 700 sq. ft. each. The first defendant *qua* legally wedded wife of P.Balasubramani, after his demise in 2007, succeeded the suit property under Section 14 of Hindu Succession Act, 1956. Since then, the defendants have been in peaceful possession and enjoyment of the suit property.



5.3. The plaintiffs herein have no *locus standi* as they are in no way related to first defendant's husband. Further, as regards the Will dated July 22, 2013, the defendants contend that the same is executed without any legal footing and validity, and the said Will is a voidable document. Stating so, the defendants sought to dismiss the Suit.

TRIAL COURT

6. Based on the above pleadings, the Trial Court framed the following issues:

- '1) *Whether the plaintiffs 1 and 2 are entitled to 3/4th share in the plaint schedule property?*
- 2) *Whether the plaintiffs are entitled to preliminary decree for partition of their 3/4th share in the plaint schedule property?*
- 3) *Whether the plaintiffs are entitled to future mesne profits as prayed for?*
- 4) *To what reliefs?'*

7. At trial, on the side of the plaintiffs, the plaintiffs 1 and 2 were examined as P.W.1 and P.W.2 respectively; Mrs.D.Rajeswari, sister of P.Balasubramani and her husband – Mr.K.Durai Raj were examined as P.W.3 and P.W.4 respectively; and a local resident namely Mrs.Rosemary Peter was examined as P.W.5; and Ex-A.1 to Ex-A.14 were marked. On the



side of the defendants, first defendant was examined as D.W.1 and Ex-B.1 to Ex-B.8 were marked.

8. After full-fledged trial, the Trial Court found that no valid adoption of second plaintiff by the first plaintiff and P.Balasubramani took place as alleged. Further found that the first plaintiff is the first wife of P.Balasubramani. Further, the suit property is an absolute property of P.Balasubramani. Upon arriving at these findings, the Trial Court held that the first plaintiff, defendants 2 and 3 being the legal heirs of the deceased -Balasubramani are equally entitled to the suit property. The Trial Court held that the second plaintiff is not entitled to any share in the suit property. The plaintiff's claim for future *mesne* profit was also denied. Accordingly, the Trial Court decreed the Suit in part by granting a preliminary decree by dividing the suit property into three equal shares and allotting one such share to the first plaintiff and one such share each to the defendants 2 and 3, subject to payment of proper Court Fee.

9. Feeling aggrieved by the Judgment and Decree of the Trial Court, the defendants therein have preferred this Appeal Suit under Section 96 read with Order XLI Rule 1 of the CPC.



ARGUMENTS

10. Mr.N.S.Sivakumar, learned Counsel appearing for the appellants / defendants would submit that there is no acceptable evidence adduced by the plaintiffs to prove the alleged marriage between the first plaintiff and P.Balasubramani. He would further submit that P.W.3 & P.W.4, who are the parents of the second plaintiff, colluded with the first plaintiff and filed the Suit. Since the marriage held between P.Balasubramani and B.Geetha itself was not proved, the alleged adoption of second plaintiff - Manimekalai is not valid. Further, the first defendant in her evidence has categorically denied the signature and writing contained in the complaint/statement found in Ex-A.13, which is anyhow an inadmissible document. On the other hand, the marriage between the first defendant and P.Balasubramani was proved by adducing the proper documentary and oral evidence. The Trial Court without considering the above aspects as well as the facts and circumstances of the case, erroneously concluded that the first plaintiff is the legally wedded wife of P.Balasubramani. Therefore, he would pray to allow the Appeal Suit and set aside the Judgment and Decree of the Trial Court.

11. Despite service of notice, the respondents / plaintiffs did not appear to contest the Appeal Suit.



POINTS FOR CONSIDERATION

12. Heard the learned Counsel for the appellant / defendants.

Perused the evidence available on record. The points that arise for consideration in this Appeal Suit are as follows:

- (i). Whether the first plaintiff is the legally wedded wife of P.Balasubramani ?
- (ii). Whether the second plaintiff is the adopted daughter of P.Balasubramani and the first plaintiff ?
- (iii). Whether the first defendant is the legally wedded wife of P.Balasubramani ?
- (iv). Whether the Decree and Judgment of the Trial Court is to be interfered with ?

Point Nos.(i) and (iii)

13. As Point No.(i) and Point No.(iii) are intertwined, they are taken up for discussion jointly and answered as follows:

13.1. The plaintiffs in the plaint as well as in their evidence have taken a consistent stand that the marriage held between P.Balasubramani and the first plaintiff took place on January 30, 1977. To prove the marriage, the plaintiffs examined themselves as P.W.1 and P.W.2 respectively. P.W.1 in her evidence has deposed that her marriage with



A.S. NO.672 OF 2019

P.Balasubramani was held on January 30, 1977 in the presence of elders and relatives. The plaintiffs further examined P.W.3 to P.W.5. P.W.3 and P.W.4 are none other than the sister of P.Balasubramani and her husband respectively. P.W.5 – Rosemary Peter is an independent witness residing in the same locality as the plaintiffs and the defendants. P.W.3 to P.W.5 have deposed in line with the plaintiffs' case. They have deposed that the first plaintiff is the first wife of P.Balasubramani and they had no issues, and that the P.Balasubramani married the first defendant as his second wife. Further, P.W.3 and P.W.4 have deposed that as P.Balasubramani and the first plaintiff did not have any issues, the daughter of P.W.3 and P.W.4 - Manimekalai who is the second plaintiff herein, was given in adoption to them on September 30, 1984. And P.W.5 has further deposed that she knows the first plaintiff for the past 40 years; that she attended the marriage of P.Balasubramani and first plaintiff and the same was held in their residence; and that the second plaintiff was given in adoption when second plaintiff was 3 months old to P.Balasubramani and first plaintiff by P.W.3 and P.W.4. The evidence of P.W.1 to P.W.5 support the case of the plaintiffs and nothing vital could be obtained in their cross-examination by defendants in their favour.



13.2. Apart from the oral evidence, the plaintiffs produced Ex-A.5 to Ex-A.7, Ex-A.13 and Ex-A.14. Ex-A.5 and Ex-A.7 are Ration Cards issued by the Civil Supplies Consumer Protection Department for the years 1998 - 2003 and 2005 - 2009 respectively. Ex-A.5 and Ex-A.7 shows P.Balasubramani as head of the family, and the plaintiffs 1 and 2 as well as the defendants 1 to 3 as family members. To be noted, Ex-A.5 and Ex-A.7 were marked with the objection that they are photocopies. As regards the objection, when a new ration card is issued, the older ones would be taken back. Hence, naturally, the older ones will not be available with the family. In such a scenario, the plaintiffs ought to have summoned the concerned authorities and marked Ex-A.5 and Ex-A.7 through them or at least shall have examined them with regard to Ex-A.5 and Ex-A.7. But the plaintiffs have failed to do so. Hence, Ex-A.5 and Ex-A.7 being photocopies are inadmissible as evidence.

13.3. Coming to the other documents, Ex-A.6 is the Voter ID Card of first plaintiff issued on December 22, 1998 by the Election Commission of India wherein her husband's name has been shown as 'Balasubramaniam'. Further, in the reply to the second plaintiff's application under the Right to Information Act, 2005 seeking the details of voters residing in the house in the suit property for the year 1980, found in



Ex-A.14, the first plaintiff's relative has been shown as 'Balasubramaniam' and the relationship between him and the first plaintiff has been shown as husband. Ex-A.14 has an annexure of the voter list for the year 1980 as well. Voted ID Card and Voter List being prepared by public officer by conducting public enquiry, are relevant and admissible as evidence under Section 35 of the Indian Evidence Act, 1872.

13.4. The oral evidence of P.W.1 to P.W.5 coupled with the documentary evidence in Ex-A.6 - Voter ID Card and Ex-A.14 - RTI Reply along with Voter List probablizes the plaintiffs' case that P.Balasubramani and the first plaintiff have been living under one roof as husband and wife for a long period of time. The plaintiffs discharged their initial burden through the oral evidence of P.W.1 to P.W.5 and by marking these admissible documents. Anything contra, has to be proved by the defendants by letting in evidence. The case of the defendants in this regard is that the first plaintiff is a tenant in a portion of the suit property but no independent witness has been examined to prove the same. To prove their defence, the defendants would rely on Ex-B.8 which is an order passed in R.C.O.P No.814 of 2013 by the X Court of Small Causes, Chennai. The said R.C.O.P was filed by the first defendant herein seeking eviction of the first plaintiff herein. The first plaintiff herein has categorically pleaded



there that she is not a tenant under the first defendant but the legally wedded wife of P.Balasubramani, and that the first defendant is his second wife and has no right in the suit property. The first plaintiff has further pleaded about the pendency of the instant Suit. However, the R.C.O.P was allowed and eviction was ordered. This order will not help the case of the first defendant and disprove the evidence of P.W.1, when the order does not delve into the question of whether the first plaintiff is the legally wedded wife of P.Balasubramani. The said order cannot deny the legal status of the first plaintiff and her right to property. In these circumstances, this Court is of the view that the defendants have failed to rebut the case of the plaintiffs with sufficient evidence. Hence, first plaintiff is the legally wedded wife of P.Balasubramani.

13.5. From Ex-B.5 - Death Certificate of P.Balasubramani, it could be seen that he passed away on November 10, 2007 and at that time, he was aged 58 years. The same facts are admitted by both sides. This means he would have probably been born in 1949. But in Ex-B.1 - Transfer Certificate of P.Balasubramani, his birth year has been mentioned as 1965. Since there is no dispute with respect to the facts stated in Ex-B.5 from either side and since as per Ex-A.8 - Voter ID of P.Balasubramani, his age as on January 1, 2006 is 55 years which means he would have born in



1951 and since in Ex-A.14 his age as in 1980 is mentioned as 28 years which means he was born in 1952, the entry in Ex-B.1 is probably an erroneous one. It could be inferred that P.Balasubramani was born between 1949 to 1952 or around that time. Further, the age of first plaintiff in 1995 as per her Voter ID in Ex-A.6, is 34 years, which means she was born in 1961. In the voter list for 1980 in Ex-A.14, her age is said to be 23 years which means she was born in 1957. The present plaint filed in 2013 shows her age as 57 which means she was born in or around 1956. These show that she was born between or around 1956 to 1961. The marriage between P.Balasubramani and first plaintiff was held on January 30, 1977. At the time of marriage, they do not come under the definition of 'child' under Section 2 (a) of the Child Marriage Restraint Act, 1929 as it stood then. Hence, their marriage is not hit by the Child Marriage Restraint Act, 1929. Anyways, the child marriage is a voidable one as per the then law and hence, the competent person to seek to declare it as void is P.Balasubramani or the first plaintiff. The competent persons have not disputed the marriage. Hence, this Court concludes that the first plaintiff is the legally wedded wife of P.Balasubramani.

13.6. The first plaintiff has pleaded that the first defendant is the second wife of P.Balasubramani and that defendants 2 and 3 are



children born to P.Balasubramani and first defendant. The defendants also have filed Ex-B.2 - Marriage Invitation Card, Ex-B.3 and Ex-B.4 - Birth Certificates of defendants 2 and 3 respectively. These prove the second marriage. Hence, this Court concludes that the first defendant is the second wife of P.Balasubramani.

13.7. The marriage between P.Balasubramani and first plaintiff was held on January 30, 1977; that the first plaintiff is the legally wedded wife of P.Balasubramani; and that the defendants 2 and 3 are the children born to P.Balasubramani and his second wife / the first defendant. Hence, the first defendant is not the legally wedded wife of P.Balasubramani. The Trial Court rightly arrived at the above conclusions. There is no need to interfere with them. ***Point No.(i) and Point No.(iii) are answered accordingly.***

Point No.(ii)

14. The case of the plaintiffs is that the second plaintiff is the adopted daughter of P.Balasubramani and the first plaintiff. To that effect, the plaintiffs had made a foundational plea in the plaint. Apart from the pleadings, the biological parents of the second plaintiff were examined as P.W.3 and P.W.4. Competent person to depose about the adoption are P.Balasubramani, P.W.1, P.W.3 and P.W.4. As stated *supra*, P.W.1, P.W.3



and P.W.4 deposed that the on September 30, 1984, the second plaintiff was given in adoption to P.Balasubramani and first plaintiff as they remained issueless. The second plaintiff examined as P.W.2 has deposed that she is the adopted child of P.Balasubramani and the first plaintiff. The same has been corroborated by the evidence of the independent witness namely P.W.5 as stated *supra*.

14.1. Apart from these oral evidence, the plaintiffs have let in Ex-A.3-Income Certificate issued in 2004 by Executive Deputy Tahsildhar, Purasaiwalkam, Perambur Taluk, Chennai, Ex-A.9 - Voter ID of second plaintiff issued in 2006, Ex-A.11 - Passport of second plaintiff issued in 2011, and Ex-A.12 - PAN Card of second plaintiff issued in 2007. In the aforesaid documents, which are public documents under Section 35 of the Indian Evidence Act, 1872, the second plaintiff's father's name has been mentioned as P.Balasubramani. Further, the aforesaid documents coupled with the oral evidence proves the adoption. This Court concludes that the plaintiffs proved the adoption. The adoption satisfied the conditions under Sections 6 to 11 of the Hindu Adoption and Maintenance Act, 1956. Since the first defendant was not wedded to P.Balasubramani as on the date of adoption, her consent is not necessary as contemplated under the



explanation to Section 7 of the Hindu Adoption and Maintenance Act, 1956.

14.2. The Trial Court erred in finding that *Dattahomam* was not performed and hence, the adoption is invalid, when as per Section 11 of the Hindu Adoption and Maintenance Act, 1956 there is no need for any rituals or ceremonies. Giving in adoption by the biological parents and taking in adoption by the adoptive parents are sufficient. The performance of *Dattahomam* or any other religious ceremony is not required for a valid adoption if other conditions stated in the Act under Sections 6 to 11 are satisfied. Hence, the Trial Court's finding that the adoption is invalid is incorrect. The same is liable to be set aside and accordingly, set aside. **The Point No.(ii) is answered accordingly.**

Point No.(iv)

15. Case of the plaintiffs' is that the suit properties are ancestral properties. The defendants pleaded that the suit property along with some other properties belonged to Perumal, the great grandfather of P.Balasubramani. Ponnusamy, the father of P.Balasubramani succeeded the same from Perumal. After the demise of Ponnuswamy, P.Balasubramani and his sister Rajeshwari (P.W.3) orally divided the property left by



A.S. NO.672 OF 2019

Ponnuswamy and the suit property was allotted to P.Balasubramani in the oral partition. Admittedly, Ponnuswamy passed away in 1990 [Ex-A.1 - Death Certificate]. P.W.4 - Rajeshwari's husband has deposed the suit property was a *poromboke* land later acquired by Ponnusamy. Except for the evidence of P.W.4, there is no evidence available on record to decide on the character of the suit property. But one fact is admitted, the suit property was allotted to P.Balasubramani in the oral partition. Considering the cumulative facts and circumstances, this Court is of the view that the suit property is a separate property of P.Balasubramani. The Trial Court rightly arrived at the said conclusion.

15.1. P.Balasubramani died on November 10, 2007, leaving behind his wife - B.Geetha (first plaintiff) and adopted daughter - B.Manimekalai (second plaintiff) and defendants 2 and 3 being the children born through the second marriage. Though the marriage held between the P.Balasubramani and Malliga (first defendant) the marriage is not valid in the eyes of law, as per Section 16 of the Hindu Marriage Act, 1955, the defendants 2 and 3 are Class-I legal heirs along with plaintiffs. It is apposite to state that the defendants' side filed Ex-B.7–Letters of Administration dated May 5, 2015 issued by this Court vide Order dated February 25, 2015 passed in O.P.No.45 of 2014. In the said Order, it has



been specifically stated that Late P.Balasubramaniam passed away intestate i.e., without leaving any Will / Testament. Further, the plaintiffs herein were not parties in the said proceedings. Hence, Ex-B.7 will not be an impediment for the plaintiffs to get the relief of partition. Further, the plaintiffs have pleaded in paragraph No.10 of the plaint that the plaintiffs and the defendants are in continuous and joint possession of the Suit Schedule Property and have valued the plaint. Further, the plaint has been valued under Section 37(2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 which shows that the plaintiffs and the defendants are in joint possession over the Suit Schedule Property. It is settled law that the further relief in a partition Suit, the parties can claim further relief under Order XX Rule 18 of CPC alone and not under Order XX Rule 12 of CPC. Since the plaintiffs themselves pleaded that they are in joint possession and enjoyment over the Suit Schedule Property along with the defendants, the question of accounting the profits for *mesne* profits does not arise in this case. Hence, the Trial Court rightly negated the said reliefs. The Trial Court has erred in negating the second plaintiff's claim even though sufficient oral and documentary evidence were adduced by the plaintiffs. In view of the answer found in Point No.(ii), this Court holds that the second plaintiff is entitled to claim a share in the suit property as an



A.S. NO.672 OF 2019

adopted daughter along with other legal heirs of P.Balasubramani. To this extent, the Decree and Judgment of the Trial Court is liable to be interfered. **Point No.(iv) is answered accordingly.**

16. It is apposite to mention that though the plaintiffs received notice, they did not choose to appear and contest the Appeal Suit. This Court by exercising the power under Order XLI Rule 33 of CPC, modifies the decree even though the plaintiffs did not come forward to contest the Appeal Suit. Accordingly, the plaintiffs each are entitled to $\frac{1}{4}$ shares and the 2nd and 3rd defendants are entitled to $\frac{1}{4}$ shares. To that extent, the preliminary decree is modified. In all other aspects, the Decree of the Trial Court shall hold good.

CONCLUSION

17. Resultantly, the Appeal Suit is partly allowed and the Judgment and Decree of the Trial Court is modified as indicated above. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

07 / 04 / 2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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A.S. NO.672 OF 2019

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To

The III Additional Judge
III Additional City Civil Court
Chennai.



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A.S. NO.672 OF 2019

R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.672 OF 2019

07 / 04 / 2026

Page No.24 of 24