

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF KANCHEEPURAM  
KANCHEEPURAM DISTRICT**

**PRESENT: TMT.R. Rajeswari,B.Com.,L.L.M.,  
Principal District Munsif, Kanchipuram**

On Tuesday, this the 21<sup>st</sup> day of November 2023

**IA.No. 5 of 2023  
in  
O.S.No. 100 of 2011**

1. T. Theeran

2. T. Vasan

...Petitioners/Plaintiffs

/Versus/

1. C. Rathina Kumar

2. R. Balamurugan

3. C. Murugan

4. A. Chellamani

5. T. Anbalagan

6. Usharani

7. Raja

8. M.A.Jayakrishnan(Died)

...1,5,6&7Respondents/1,5,6&7Defendants

This petition has come up on 08.11.2023 for final hearing before me in the presence of M. Madanagopal, advocate for the petitioner and Revathy Vasudevan, advocate for the 1,5,6&7 respondent and upon hearing the arguments of both sides and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

## ORDER

1. This petition is filed under Order 13 and Rule 3 and Section 151 of CPC to reject the Ex.B1 to Ex.B4 which were marked in the case on 04.01.2023 as irrelevant or otherwise inadmissible in the case and render justice.

2. **The case of the Petitioner as stated in his affidavit is as follows:-**

The petitioner submit that the 1<sup>st</sup> Respondent/the 1<sup>st</sup> Defendant had filed a petition I.A. No. 4 of 2022 under Order 8 Rule-1A(3)C.P.C., to receive documents in the case on 17.08.2022 and the petitioner filed the counter on 19.09.2022 duly by objecting to receive and mark the documents mentioned in the petition I.A No. 4 of 2022. The petitioner stoutly opposed to mark the said documents filed therein by stating fit reasons, But, this Hon'ble Court was pleased to mark the above said documents as Ex.B1 to B4 in the above case inspite of the petitioner severe objections in the petitioner counter to mark such documents and at the time of marking the said documents.

3. The petitioner submit that the Ex.B1 dated 21.02.2003 is alleged adoption deed. The petitioner submit that the registration copy of the adoption deed dated 21.02.2003 which was said to have been executed by S. Kanageswari W/o D. Shanmugam of 23/12, Irusappan Street, Cuddalore OT in favour of C.Rathinakumar and Kumari of 152/1, Rangarajapuram Road, Kodambakkam, Chennai-24 in respect of adoption of S. Balamurugan aged about 9 years which was registered as Document No.44 of 2003 in Joint Sub-Registrar No.II, Cuddalore is invalid document and same cannot be received and looked into for any purpose in the above case. The petitioner submit that to prove the said document of adoption deed dated 21.02.2003 is a forged document, the following facts which were No.1,

the age of the S. Balamurugan was mentioned as 9 years as on 21.02.2003 and his date of birth was given as 05.08.1981. The plain reading of the said document would go to show that the said S. Balamurugan, 23 years old on the date of the execution of the said adoption deed dated 21.02.2003. The petitioner submit that the provisions in Section 10 of The Hindu Adoption and Maintenance Act, 1956 would say as follows:

4. "Persons who may be adopted-No Person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely
  - (i) he or she is Hindu;
  - (ii) he or she not already been adopted;
  - (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
  - (iv) **he or she has not completed the age of fifteen years** , unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption."
5. The petitioner submit that the age of the above said S.Balamurugan was 23 years old as on 21.02.2003, the said adoption deed is invalid in law and the same cannot be received and marked. The petitioner came to know about existence of the document dated 21.02.2003 only on the date of the production of the xerox copy of the same into this Hon'ble Court by filing a petition to receive the document in I.A No. 4 of 2022 in the case on 17.08.2022. S.Balamurugan, the 2<sup>nd</sup> Defendant herein had never resided at No.23/12, Irusappan Street, Cuddalore O.T.-607 003 at any time. The petitioner submit that the other documents No. 2 to 4 are all related documents to that of the Documents No. 1 dated 21.02.2003, the registration copy

of the adoption deed. Hence, the documents which were filed by the 1<sup>st</sup> Respondent/1st Defendant cannot be received.

6. The petitioner submit that the document dated 21.02.2003 had been termed as "DEED OF ADOPTION". But, in the recital of the first page of the said deed, it is mentioned as

"This deed of adoption executed on 21<sup>st</sup> day of February, 2003, to confirm the adoption of S. Balamurugan, aged about 9 years, natural son of D. Shanmugam, Hindu aged 65 years and S. Kanageswari, Hindu aged 50 years, residing at 23/12, Irusappan Street, Cuddalore O.T, Pin:607 003 on the 31<sup>st</sup> day of January 1990, between Dr.C. Rathinakumar, Hindu aged 55 years and R. Kumari, Hindu, aged 50 years, residing at 152/1, Rangarajapuram Road, Kodambakkam, Chennai-600 024.

S. Balamurugan was born on 5.8.1981 to D. Shanmugam and S. Kanageswari, his natural parents and whereas Dr.C. Rathinakumar, the adoptive father had no male issues and being desirous of adopting the said S. Blamurugan as a son to himself and whereas R. Kumari the wife of the adoptive father, having consented to his adopting the said S. Balamurugan as their son;

AND WHEREAS as per rites and customs, on 31.1.1990, the 18<sup>th</sup> day of the Tamil month 'Thai' the day being Wednesday and the star being Uthiratadhi at the auspicious time between 9 and 10.30a.m. the said S. Balamurugan aged about 9years had been given in adoption by D. Shanmugam and S. Kanageswari and had been taken in adoption by Dr.C. Rathinakumar and R. Kumari;

The adoptive parents now desire to record the fact of the said adoption by a deed and get the same registered"

The said document would go to show that the alleged adoption was taken place on

31.1.1990 and the adoption deed had been drafted and registered only on 21.02.2003, after 13 years. Hence, the deed dated 21.02.2003 cannot be termed as ADOPTION DEED. Hence, a fraud had been played and marked the said deed as an ADOPTION DEED and same could not have been marked. The petitioner submit that fitting counter had been filed in I.A No. 4 of 2002 to receive and mark the said documents mentioned in the said petition on 19.09.2022. But, later the said documents had been marked in the case on 4.1.2023 as Ex.B1 to Ec.B4. The petitioner submit that he already stated, Ex.B1 dated 21.02.2003 is a forged document and other Ex.B2 to Ex.B4 are connected documents and hence, the said Ex.B1 to Ex.B4 are to be rejected. Hence, the petitioner filing this petition for the relief of rejecting the Ex.B1 to Ex.B4 as irrelevant and inadmissible documents.

7. The petitioner submit that in the counter filed on 19.9.2022 in I.A No. 4 of 2022, The petitioner objected to receive the documents and even on 04.01.2023, at the time of marking the Ex.B1 to Ex.B4, He objected to mark the said documents and have been marked with my objection. Hence, the petitioner made an attempt to stop the reception of the documents at the initial stage itself. Hence this petition.

**8. The respondent filed his counter and the gist of the same is as follows:-**

9. This Respondent submits that the averments in the affidavit of the petitioner are false in fact, frivolous in nature and vexatious in object. The petitioner has come forward with this petition just to drag on the proceedings and nothing more than that. The respondent strongly denies the allegations except those admitted herein

10. The respondent specifically denies that the adoption deed dated 21.02.2003 is a forged one. The respondent had adopted Balamurugan on 31.01.1990 when he was 9 years old and the said adoption was done as per provision of Hindu Adoption and

maintenance Act and the adoption was confirmed by a registered deed date 21.02.2003. The registered deed was executed by both the adoptive parents and biological parents of Balamurugan.

11. The respondent states that as the respondent had adopted his sisters son, they did not find it necessary to register the adoption deed. It is further submitted that as the biological father of Balamurugan was in Military service he used to visit his family only once a year for a very short period and during the period he used to be engaged in other personal works and moreover did not find it necessary to register the adoption. There was no other motive or intention for not registering the deed.
12. The biological father of Balamurugan got retired in the year 1986 and due to age factor and illness due to age it was decided to registered the deed for the benefit of Balamurugan and the deed was registered on 21.02.2003.
13. It is submitted that for a valid adoption the ceremony of give and take is very important and must be proven to have occurred in presence of witnesses. Even if there is no registered document to show that adoption has taken place but there are witnesses to tell that adoption ceremony took place then its a valid adoption.
14. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents. Hence, this petition may be dismissed.

**The Point:**

15. The Petitioners Counsel argued that the 1<sup>st</sup> Respondent/the 1<sup>st</sup> Defendant had filed a petition I.A. No. 4 of 2022 under Order 8 Rule-1A(3)C.P.C., to receive documents in the case on 17.08.2022 and the petitioner filed the counter on 19.09.2022 duly by

objecting to receive and mark the documents mentioned in the petition I.A No. 4 of 2022. The petitioner stoutly opposed to mark the said documents filed therein by stating fit reasons, But, this Hon'ble Court was pleased to mark the above said documents as Ex.B1 to B4 in the above case inspite of the petitioner severe objections in the counter to mark such documents and at the time of marking the said documents.

16. To prove the said document of adoption deed dated 21.02.2003 is a forged document, it is to be considered, the age of the S. Balamurugan was mentioned as 9 years as on 21.02.2003 and his date of birth was given as 05.08.1981.
17. As per the provisions in Section 10 of The Hindu Adoption and Maintenance Act, 1956 one of the condition is persons who may be adopted:- he or she has not completed the age of fifteen years ,unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption." The age of the above said S.Balamurugan was 23 years old as on 21.02.2003, the said adoption deed is invalid in law and the same cannot be received and marked. The petitioner came to know about existence of the document dated 21.02.2003 only at the time of a petition to receive the document in I.A No. 4 of 2022 in the case on 17.08.2022. S.Balamurugan, the 2<sup>nd</sup> Defendant herein had never resided at No.23/12, Irusappan Street, Cuddalore O.T.-607 003 at any time. The other documents No. 2 to 4 (Ex.B2 to Ex.B4) are all related to the Ex.B1. Hence the petitioner counsel prayed to allow this petition.
18. The Respondents Counsel argued that the respondent had adopted Balamurugan on 31.01.1990 when he was 9 years old and the said adoption was done as per provision of Hindu Adoption and maintenance Act and the adoption was confirmed

by a registered deed date 21.02.2003. The registered deed was executed by both the adoptive parents and biological parents of Balamurugan. The respondent had adopted his sisters son, they did not find it necessary to register the adoption deed. It is further submitted that as the biological father of Balamurugan was in Military service he used to visit his family only once a year for a very short period and during the period he used to be engaged in other personal works and moreover did not find it necessary to register the adoption.

19. For a valid adoption the ceremony of give and take is very important and must be proven to have occurred in presence of witnesses. Even if there is no registered document to show that adoption has taken place but there are witnesses to tell that adoption ceremony took place then its a valid adoption.

20. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents. Hence, the respondent counsel prayed to dismiss the petition.

21. Heard both sides and perused the records. The main contention of the petitioner is that Ex.B1 is a forged document and Ex.B2 to Ex.B4 are related to Ex.B1 and hence Ex.B1 to Ex.B4 are to be rejected. Any documents can be received in evidence. Its admissibility is to be decided at the time of judgment. In the following apex court judgment "**Bipin Shatilal Panchal Vs State of Gujarat and another**" 2001(3)sec. It was held that at the time of final stage of passing the judgment, the admissibility or otherwise of the documents should have been decided.

22. Following the apex court judgment, this court is not inclined to reject the Ex.B1 to Ex.B4. Hence, in view of that the petition is dismissed

23. In the result, this petition is dismissed. No cost

Dictated to the steno-typist, who directly typed the same in her Computer,  
corrected and pronounced by me in open court, this the 21<sup>st</sup> day of November 2023.

sd/(R.Rajeswari)  
PRINCIPAL DISTRICT MUNSIF  
KANCHEEPURAM