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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.12.2025

Delivered on : 05.01.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.622 of 2025

Junaidha Begam : Appellant/Appellant/Plaintiff

/Vs./

1.J.Mohammed Ibrahim

2.J.Mujibur Rahman

3.A.Abubackar siddiq

4.Thamijuden Batcha : Respondents/Respondents/Defendants

PRAYER**:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 18.03.2022 in A.S.No.121 of 2018 on the file of the II Additional District cum Sessions Court, Thanjavur, confirming the judgment and decree, dated 25.06.2018 made in O.S.No.28 of 2008 on the file of the learned Principal Subordinate Judge, Thanjavur.

For Appellant : Mr.R.Saravana Prabhu

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JUDGMENT

The Second appeal is directed against the judgment and decree passed in A.S.No.121 of 2018, dated 18.03.2022 on the file of the II Additional District cum Sessions Court, Thanjavur confirming the judgment and decree made in O.S.No.28 of 2008, dated 25.06.2018 on the file of the learned Principal Subordinate Judge, Thanjavur.

2. The appellant is the plaintiff. The plaintiff filed a suit in O.S.No.28 of 2008 on the file of the Principal Subordinate Court, Thanjavur, claiming partition and allotment of 1/5 share in the suit properties. The defendants 1 to 3 have filed written statement and contested the suit. The fourth defendant remained ex-parte. The learned Principal Subordinate Judge, after framing necessary issues and after full trial, passed the judgment and decree, dated 25.06.2018, dismissing the suit. Aggrieved by the dismissal of the said suit, the plaintiff filed an appeal in A.S.No. 121 of 2018 and the learned II Additional District Judge, Thanjavur, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree, dated 18.03.2022, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the fourth plaintiff has preferred the present second appeal.

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3. At the out set, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of ***Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.***, reported in ***AIR 2019 SC 1441***, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

> "18. *Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the*

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concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law."

4. The Hon'ble Supreme Court in the case of ***Chandrabhan Vs. Saraswati and others*** reported in ***2022 SCC OnLine SC 1273*** has specifically held that right of appeal is not automatic and right of appeal is conferred by statute and when statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to the High Court to sit in appeal over the factual findings arrived at by the First Appellate Court and the Hon'ble Supreme Court summarized the principles relating to Section 100 C.P.C., which are as follows;

> *"(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.*
>
> *(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of*

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law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

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5 Bearing the settled legal position in mind, let us proceed with the present case.

6.It is not in dispute that the plaintiff and the defendants 1 and 2 are sisters and brothers and are the children of Thiru.Jainulabudeen and his wife Hamarunnisha.

7. The case of the plaintiff is that her father Jainulabudeen was working in abroad and earned sufficient income and out of the said income, he purchased the suit properties and other properties in the name of his wife Hamarunnisha for the welfare of the family. The mother of the plaintiff has no right over the suit properties, though it was purchased in her name and the transaction is only a benami transaction. The plaintiff's mother is a house wife and she had no source of income to purchase the property. The plaintiff's father on 24.06.1992 one day before the marriage of the plaintiff, made a Hiba of a vacant site situated on the south of their house property in favour of the plaintiff, as he could not be in a position to meet her marriage expenses and for presenting marriage gift to the plaintiff. The plaintiff's mother, without knowledge of the plaintiff settled Hiba property in favour of the defendants 1 and 2 during life time of father. Hence, the plaintiff was forced to file a suit in O.S.No.7 of 2006 for declaration in respect of

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Hiba property before the District Munsif Court, Thiruvaiyaru. The plaintiff's mother secretly executed the registered settlement deed, dated 09.10.1998 in respect of 1st item of the suit property, without the knowledge of the plaintiff in favour of the defendants 1 and 2.

8.The plaintiff's mother has no right to execute the settlement deed in respect of the first item of the suit property as the same was purchased in the name of Mrs.Hamarunnisa, out of the funds provided by the father of the plaintiff. Since the plaintiff's mother has no title to the said property, the plaintiff ignore the alleged settlement deed as it is void *ab-initio*. The plaintiff's father died on 17.02.2006 leaving behind the plaintiff and the defendants 1 and 2 intestate. After the death of the father, the plaintiff demanded her share due in the suit property, but the plaintiff's mother sold the second item of the suit property on 10.03.2006 to the third defendant. Since the plaintiff's mother had no right over the said property, the sale effected by the plaintiff's mother is not binding on the plaintiff's share in the second item of the suit property. The plaintiff's mother also died on 04.02.2008. The plaintiff is deemed to be in joint possession with the defendants. Since the third item of the suit property was sold to the fourth defendant, he was also added as defendant in the above suit. Hence, the suit for partition and for allotment of 1/5 share in the suit properties.

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9. The defence of the defendants 1 and 2 is that the suit first item and the adjoining southern side vacant property (suit property in O.S.No.7 of 2006 on the file of the District Munsif Court, Thiruvaiyaru) were purchased by the defendants' mother on 19.12.1976 out of the income of father Abdul Hameed. After the said purchase, the defendant's mother constructed a madras terrace house on the northern side leaving the southern side as vacant. The defendant's mother was in possession and enjoyment of the entire extent in R.S.No.333/5 by paying necessary tax due to the authorities concerned. The defendants' mother executed a registered settlement, deed on 09.10.1998 in favour of her sons/defendants 1 and 2. Subsequently, patta has been changed in their name and they have been in possession and enjoyment of the said property. The plaintiff's allegation that their father made Hiba in respect of the southern portion of the property on 24.06.1992, that their father purchased the suit property in the name of his wife, but for the benefit of the family and that their mother has got no right or title over the suit property are all false and untenable. Hence, the plaintiff is not entitled to claim any share in the suit properties and the suit is liable to be dismissed.

10. The third defendant filed a written statement taking a stand that the second item of the suit property was purchased by the plaintiff's mother

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Hamarunnisa ; that the third defendant purchased the said property from the said Hamarunnisa on 10.03.2006 and since then he has been in possession and enjoyment of the said property; that the third defendant is a *bona fide* purchaser for value and since the plaintiff has no right to claim any share in the suit property, the suit is liable to be dismissed.

11. The plaintiff filed the above suit claiming partition in respect of the three items of the properties. It is the specific case of the plaintiff that all the suit properties were purchased by her father Jainulabudeen from the funds earned by him in abroad, in the name of his wife Hamarunnisa for the benefit of the family and the purchase of the suit properties in favour of the plaintiff mother is only a benami transaction; that the plaintiff's mother had no source of income to purchase the suit property as she was only a house wife and that therefore, the suit properties came to be owned by her father Jainulabudeen.

12. It is the specific defence of the defendants 1 and 2 is that the items 1 and 2 of the suit properties were purchased by their mother Hamarunnisa with the help of funds given by her father Abdul Hameed and after purchase, their mother constructed a madras terrace house on the northern side of the suit property leaving the southern portion as vacant and that their mother by paying

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necessary tax to the concerned authorities had been in possession and enjoyment of the said properties as its absolute owner. Though the plaintiff has alleged that the suit properties were purchased by her father with his funds, as rightly observed by the Courts below, she has not produced any iota of evidence to substantiate the same.

13. Admittedly, the sale deed in respect of items 1 and 2 of the suit properties stand in the name of Mrs.Hamarunnissa, mother of the plaintiff and the defendants 1 and 2. Since the plaintiff has taken a stand that the property was purchased by her father in the name of his wife as benami, it is for the plaintiff to prove that her father had purchased the property only for the benefit of their family not for the benefit of his wife Hamarunnisa. Admittedly, there is no evidence adduced by the plaintiff in this regard. The Courts below appreciating the evidence available on record, have come to decision that the items 1 and 2 of the properties are the self-acquired properties of the mother of the plaintiff and the defendants 1 and 2. Since the first item of the property was not owned by the plaintiff's father, even assuming that the Hiba alleged by the plaintiff is true, the plaintiff's father has no right to gift that property to the plaintiff. Moreover, the plaintiff has not adduced any evidence to prove the alleged Hiba.

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14. It is the specific case of the defendants 1 and 2 that their mother executed the registered settlement deed, dated 09.10.1998 under Ex.B.2 in their favour. No doubt, the plaintiff has challenged the Ex.B.2 settlement deed on the ground that the Mohamedan Law recognized only Hiba and not the settlement deed and that therefore, the alleged settlement deed under Ex.B.2 is not legally valid.

15.As per the Mohamedan's Law, Hiba means gift and it is a transfer of property made immediately without any exchange by one person to another and accepted by or on behalf of latter. As per Mohamedan Law, a Hiba or gift is complete only when three essentials are met: (i) declaration of gift by the donor, (ii) acceptance of gift (express or implied) by or on behalf of the donee, and (iii) delivery of possession of the gift subject to the donee by the donor. If these conditions are fulfilled, the Hiba/gift is valid.

16. In the case on hand, as rightly observed by the Courts below, their mother in the settlement deed has stated ,

“நீங்கள் எங்கள் மகன்களானபடியினாலும் உங்கள் பெயரில் உள்ள அன்பினாலும், அபிமானத்தாலும் உங்களது பிற்கால வாழ்க்கைக்கு உங்களுக்கு

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நான் ஏதேனும் ஒரு ஏற்பாடு செய்து வைக்கவேண்டும் என்ற என்னுடைய நீண்ட நாளைய எண்ணத்தை நிறைவேற்றும்பொருட்டு நான் உங்களுக்கு இந்த செட்டில்மெண்ட் பத்திரத்தை எழுதி வைக்கிறேன் என்னால் சுயார்ஜிதமாய் என் பெயருக்கு கடந்த 19.12.1976 தேதியில் ஹாஜாமைதீன் அவர்களிடமிருந்து கிரயம் பெற்று அதன்படி எனக்கு கிடைக்கப்பெற்று அதில் என்னால் வீடு கட்டப்பட்டு நான் ஆண்டு அனுபவித்து வருகின்ற இதனடியில் கண்ட விபரப்படிக்குள்ள சொத்தை நாளது தேதியில் உங்கள் இருவருக்கு செட்டில்மெண்ட் பத்திரம் மூலம் எழுதிக்கொடுத்து சொத்தையும் நாளது தேதியிலேயே உங்களுடைய சுவாதீனத்திலும், அனுபோகத்திலும் விட்டுவிட்டேன். தாங்களும் இந்த சொத்தின் சுவாதீனத்தையும் அனுபோகத்தையும் நாளது தேதியிலேயே தங்கள் வசம் எடுத்துக்கொண்டுவிட்டீர்கள். இதனடியில் கண்ட வீடு வகையறாவில் நானும் என் கணவரும் எங்கள் ஆயுள் பரியந்தம் இதனடியில் கண்ட வீடு வகையறாவில் வாசம் செய்துகொண்டு வருவதற்கு மட்டும் முழு உரிமையும் அதிகாரமும் உண்டு. இதனடியில் கண்ட சொத்தை செட்டில்மெண்ட் பத்திர வாசக ஷரத்துப்படி நிராட்சேபணையாய் சர்வ சுதந்திர பாத்தியமாய் பட்டா மிராசுடன் தானாதி வினிமய விற்கிரயங்களை அருகதையுடன் ஆண்டு அனுபவித்துக்கொண்டு சுகத்திலிருப்பீர்களாகவும், இதனடியில் கண்ட சொத்திற்குண்டான பட்டாவையும், பஞ்சாயத்து வீட்டு வரி விதிப்பையும் காப்பித்தொகை உள்பட மின் இணைப்பையும் தங்கள் பெயருக்கு மாற்றுவதற்கு உண்டான அனைத்துவித நமூனாக்களிலும், கையெழுத்து செய்து கொடுத்திருக்கிறேன். இனி நான் எக்காரணத்தைக் கொண்டும் இந்த செட்டில்மெண்ட் பத்திரத்தை மாற்றுகிறதும்

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ரத்து செய்கிறதும் இல்லை என உறுதிமொழி நம்பிக்கை கூறி நாளது தேதியில் இந்த செட்டில்மெண்ட் பத்திரம் எழுதிக் கொடுத்திருகிறேன்.

17. More importantly, it is pertinent to note that the plaintiff's father has subscribed his signature as identifying witness in the Registrar Office and as rightly observed by the Courts below, the plaintiff's father was fully aware of the settlement deed, executed by his wife in favour of their sons.

18.As already pointed out, it has been recited in the settlement deed itself that the donees have taken possession of the property. According to the defendants 1 and 2, mutations were effected in their names and that they have been in exclusive possession and enjoyment of the first item of the property.

19. As already pointed out, the second item of the suit property was also owned by the plaintiff's mother and she sold the said property to the third defendant under Ex.P.10. Since the second item of the property was owned by the mother of the plaintiffs 1 and 2, her sale in favour of third defendant cannot be challenged.

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20. Regarding the third item of the property, it is the specific case of the defendants that the said property was settled in favour of the plaintiff's father Jainulabudeen by his mother Mydeen Beevi on 18.05.1971 under Ex.P.13 settlement deed and the said Jainulabudeen, who was the owner of the third item of the property, sold the same to the fourth defendant on 19.08.1996 under Ex.P. 14. Since the third item of the property, which was owned by the plaintiff's father, was sold by him, the claim of the plaintiff cannot be sustained.

21.Considering the above, the Courts below have rightly come to a decision that the plaintiff is not entitled to claim any share in the suit property. The appellant has not shown that material evidence available in the case had been ignored by the first appellate Court or that there was no evidence at all. The appellant has also not shown any wrong inference had been drawn by the first appellate Court from the proved facts by applying law erroneously. The appellant has also not canvassed any stand that the Courts below have wrongly placed the burden of proof.

22. It is pertinent to note that the first appellate Court on appreciating and re-appreciating the evidence and the legal aspects in proper perspective has come to a definite decision that the plaintiff is entitled to get the reliefs claimed.

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23. Considering the judgments of the Courts below, as rightly contended by the learned counsel for the respondents no question of law much less Substantial Question of Law is made out. It is not open to this Court to sit in appeal over the factual findings arrived at by the first appellate Court confirming the findings of the trial Court. Hence, this Court concludes that since no substantial question of law is made out in the second appeal, the same is liable to be dismissed.

24. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.28 of 2008 on the file of the Principal Subordinate Court, Thanjauvr, and in A.S.No.121 of 2018 on the file of the II Additional District cum Sessions Court, Thanjavur. No costs.

05.01.2026

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

1.The Principal Subordinate Court, Thanjauvr,

2.The II Additional District cum Sessions Court,
Thanjavur.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.622 of 2025

Dated: 05.01.2026

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