



S.A.(MD)No.600 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.12.2025

Pronounced on : 19.12.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.600 of 2025

Anjalam

... Appellant/
Appellant/
Plaintiff

Vs.

1.Kamalayee

2.Veerammal

3.Sangapillai

4.Pothumponnu

Vellaiammal (Died)

5.Chinnaponnu

6.Dhandapani

7.Ganesan

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8.Tamil

9.Karuppaiah

10.Mariammal

... Respondents/
Respondents/
Defendants

PRAYER : Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 12.11.2024 made in A.S.No.16 of 2019 on the file of the Principal District Court, Dindigul confirming the judgment and decree dated 31.10.2017 made in O.S.No.30 of 2015 on the file of the Sub Court, Veda sandur.

For Appellant : Mr.G.Gomathi Sankar
for Mr.P.Balamurugan

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.16 of 2019 dated 12.11.2024 on the file of the Principal District Court, Dindigul, confirming the judgment and decree passed in O.S.No.30 of 2015 dated 31.10.2017 on the file of the Subordinate Court, Veda sandur.

2. The appellant is the plaintiff. The plaintiff filed a suit in O.S.No. 313 of 2011 before the Principal Subordinate Court, Dindigul claiming



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partition and allotment of 1/10th share in the suit properties. The third defendant and the defendants 5 and 6 filed separate written statements and contested the suit. The defendants 1, 2, 4 and 7 to 9 remained exparte. Subsequently, the suit was transferred to the file of the Subordinate Court, Veda sandur and the same was taken on file in O.S.No.30 of 2015. The learned Subordinate Judge, Veda sandur, after framing necessary issues and after full trial, passed a judgment and decree dated 31.10.2017 dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff filed an appeal in A.S.No.16 of 2019 and the learned Principal District Judge, Dindigul, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 12.11.2024 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiff has preferred the present Second Appeal.

3. At the outset, 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**



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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 concurrent findings of facts and/or even the findings



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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.



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(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of 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



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"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."

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

6. The case of the plaintiff is that the suit properties were owned by the plaintiff's father Ponna Gounder ancestrally. Ponna Gounder had two wives and through first wife Periyakkal, he had five children (plaintiff and defendants 1 to 4) and through second wife Koppaiyee, had five children (defendants 5 to 9). Ponna Gounder died intestate leaving his children (plaintiff and the defendants 1 to 9) as his legal heirs. Hence, the plaintiff is having 1/10th share in the suit properties. The plaintiff and the defendants 1 to 9 are in joint possession and enjoyment of the suit properties under the supervision of the third defendant. Since the plaintiff's demand for partition was not acceded, she was constrained to send a legal notice dated 09.03.2011. The third defendant having received the notice sent a reply notice dated 23.03.2011 with false and



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untenable allegations. Since the plaintiff's demand for partition was not complied with, she was forced to file the above suit for partition. The defendants 1 to 4 and the defendants 5 and 6 have admitted the relationship between the parties and also the fact that the properties were owned by the deceased Ponna Gounder ancestrally and that he had died 20 years back intestate.

7. The defence of the defendants 1 to 4 is that since Ponna Gounder married the second wife Koppaiyee during subsistence of the first marriage with Periyakkal, the second wife and her children (defendants 5 to 9) were not having any right, title or share in the properties. During cyclone times in the year 1977, the plaintiff was given marriage with necessary jewels, articles and cash of Rs.50,000/-. Ponna Gounder while alive had given some other properties to the defendants 5 to 9. The plaintiff never claimed any right or share in the suit properties since her marriage. The plaintiff has not claimed any partition for more than 20 years since the death of their father. The plaintiff has lost her rights by ouster and adverse possession. The suit is bad for partial partition. Hence, the suit is liable to be dismissed.



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8. The defendants 5 and 6 filed a written statement practically admitting the case of the plaintiff and claimed 1/10th share each in the suit properties.

9. During trial, the plaintiff examined herself as P.W.1 and exhibited 14 documents as Ex.P.1 to Ex.P.14. The third defendant examined himself as D.W.1 and exhibited 3 documents as Ex.D.1 to Ex.D.3.

10. As already pointed out, the plaintiff, by alleging that the suit properties are ancestral properties of her father Ponna Gounder, has claimed partition and for allotment of 1/10th share in the suit properties.

11. It is not in dispute that Ponna Gounder had two wives and through first wife he had a son (third defendant) and four daughters (plaintiff and defendants 1, 2 and 4) and through second wife he had two sons (defendants 7 and 8) and three daughters (defendants 5, 6 and 9). It is also not in dispute that Ponna Gounder died on 14.02.1990.



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12. The case of the defendants 1 to 4 that the plaintiff had got married in the year 1977 was not specifically disputed by the plaintiff.

13. The main defence of the defendants 1 to 4 is that while Ponna Gounder was alive, he gave the suit properties to the defendants 1 to 4, that they have been in possession and enjoyment of the suit properties as absolute owners and the plaintiff was given necessary jewels and seer at the time of her marriage itself and that since the plaintiff has not claimed any right or share in the suit properties for more than 20 years since the death of their father, she had lost her rights by ouster.

14. The learned appellate Judge has rightly observed that just because jewels and seer were provided to the plaintiff at the time of marriage, it cannot be stated that she is not entitled to claim share in the ancestral properties and that as per the amended Hindu Succession Act, daughters are entitled to get equal share as that of the sons in the ancestral properties.

15. The learned counsel appearing for the plaintiff would mainly



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contend that there was no partition between the plaintiff and the defendants so far and the defendants have not produced any documents to prove the partition if any, that possession of one of the coparcener is deemed to be the possession of all coparceners and that therefore, the question of applying ouster doctrine does not arise at all.

16. The plaintiff has produced pattas under Ex.P.1 to Ex.P.4, wherein, it is evident that Ex.P.2 is a joint patta standing in favour of the defendants 3, 7 and 8, Ex.P.3 and Ex.P.4 stand in the name of the third defendant and Ex.P.4 is with respect to sub division. The third defendant has produced joint patta under Ex.D.2 and kist receipt under Ex.D.3. The learned appellate Judge, considering the oral evidence and documentary evidence, has come to a finding that the defendants 1 to 4 after sub division were enjoying their respective properties. Admittedly, the plaintiff has not produced any iota of evidence to show that she was in joint possession of the suit properties or that she was also enjoying the fruits of the suit properties jointly with the defendants.

17. According to the defendants 1 to 4, the plaintiff did not claim



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partition for 20 years post-father's death. It is pertinent to note that limitation period of 12 years does not automatically start from father's death and the plaintiff can claim her share in her father's properties if properties remain undivided and she was unaware of being excluded.

18. As already pointed out, it is the specific case of the defendants 1 to 4 that even during the life time of their father they had been in possession and enjoyment of the suit properties and after the death of their father, and sub division, they are enjoying the properties as its absolute owners. It is not the case of the plaintiff that she has raised any objections for partition or for exclusive enjoyment of the properties by the defendants 1 to 4. Admittedly, the plaintiff sent the legal notice claiming partition on 09.03.2011, 21 years after the death of her father. There is no evidence that the plaintiff claimed partition earlier and the same was not considered. Considering the entire evidence available on record, the appellate Court has come to a specific finding that the plaintiff has lost her rights by ouster.

19. The plaintiff has not shown that material evidence available on



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record in the case had been ignored by the first appellate Court or that there was no evidence at all. The plaintiff has also not shown that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. The plaintiff has not canvassed any stand that the Courts below have wrongly placed the burden of proof.

20. It is pertinent to note that the first appellate Court, on appreciating and re-appreciating the entire evidence and the legal aspects in proper perspective, has come to a definite decision that the plaintiff is not entitled to claim any share as she has lost her rights by ouster and as such, the suit is liable to be dismissed.

21. Considering the judgments of the Courts below, no question of law much less Substantial Question of Law is made out. As per the dictum laid down by the Hon'ble Supreme Court in **Chandrabhan's** case referred supra, 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. Consequently, this Court concludes that since no



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substantial question of law is made out in the second appeal, the same is liable to be dismissed.

22. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.30 of 2015 on the file of the Subordinate Court, Veda sandur and in A.S.No.16 of 2019 on the file of the Principal District Court, Dindigul. No costs.

19.12.2025

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

1. The Principal District Judge, Dindigul.
2. The Subordinate Judge, Veda sandur.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J

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Pre-Delivery Judgment made in
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Dated : 19.12.2025