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S.A(MD)No.598 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2025

Delivered on : 19.12.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.598 of 2025

and

C.M.P.(MD)No.19226 of 2025

T.Robert Willson

: Appellant

/Vs./

T.Sheela

: Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 27.09.2024 in A.S.No.5 of 2019 on the file of the Additional District and Sessions Court, Padmanabapuram, confirming the judgment and decree, dated 05.07.2018 made in O.S.No.228 of 2011 on the file of the Sub Court, Padmanabapuram.

For Appellant : Mr.G.Gomathi Shankar,

For Respondent : Mr.T.Nelson

JUDGMENT

The Second appeal is directed against the judgment and decree made in A.S.No.5 of 2019, dated 27.09.2024 on the file of the Additional District and



S.A(MD)No.598 of 2025

Sessions Court, Padmanabapuram, confirming the judgment and decree passed in O.S.No.228 of 2011, dated 05.07.2018, on the file of the Sub Court, Padmanabapuram.

2. The appellant is the defendant. The respondent/plaintiff filed a suit to declare that the suit property belongs to her and to recover the possession of the suit property from the defendant.

3.The appellant/defendant filed a written statement and contested the suit. The learned Subordinate Judge, after framing necessary issues and after full trial, passed a judgment and decree, dated 05.07.2018, decreeing the suit as prayed for, granting two months time for handing over the vacant possession of the suit property. Aggrieved by the said judgment and decree, the defendant preferred an appeal in A.S.No.5 of 2019 and the learned Additional District and Sessions Judge, Padmanabapuram, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment, dated 27.09.2024, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the defendant has preferred the present second appeal.



S.A(MD)No.598 of 2025

WEB COPY

4. 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 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*



S.A(MD)No.598 of 2025

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.”

5. 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



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."



S.A(MD)No.598 of 2025

WEB COPY

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

7. The case of the plaintiff is as follows :

a) The suit property belongs to one Dhasayyan, Vadakkanadu, who purchased the same in the year 1979 and constructed a terraced house therein, Door No.6/42 of Kumarankudi Panchayat in the year 1980 and he was residing in the said property with his family since then.

b) The said Dhasayyan has got six children namely, Thanga Vijayakumari, Lalithakumari, Robert Wilson (defendant), Johnsy rani, Selvi and Sheela (Plaintiff) and all the children of Dhasayyan, except the plaintiff, got married and are living with their spouse and children at different places.

c) The said Dhasayyan became seriously ill due to cancer in the year 2003, the plaintiff, who was living with her father, had taken care of him. Dhasayyan's other children including the only son (defendant) neglected their father and the defendant left the home and started residing at Chennakallavilai, Vadakkanadu only to evade to maintain and take care of ailing father.

d) Since the plaintiff alone was taking care of the said Dhasayyan, considering the then prevailing situation and also the fact that the plaintiff alone remained unmarried, executed a registered settlement deed, dated 19.04.2004,



S.A(MD)No.598 of 2025

settling the suit property in favour of the plaintiff and as such, the plaintiff has become the owner of the property of the suit. The plaintiff effected mutation in the revenue records and changed the house property tax assessment in her favour and started paying house tax and kist.

e) The plaintiff's father Dhassaiyan died on 20.04.2004 and the defendant being the only son did not perform his father's last funeral rights. The plaintiff and her sisters performed the funeral rights. Since the defendant was attempting to dispossess the plaintiff from the suit property, the plaintiff was constrained to file a suit in O.S.No.45 of 2005 on 08.02.2005 on the file of the Principal District Munsif Court, Padmanabhapuram and got an order of interim injunction restraining the defendant from interfering with the suit property.

f) The plaintiff married one Rajkumar of Parvathipuram on 20.03.2005 at Vellimalai Murugan Temple in the presence of her sisters and their relatives. Since it was an inter-caste marriage, the defendant was against the marriage and was intimidating the plaintiff. Since the plaintiff apprehends that her life is in danger, she shifted her place of residence to Parvathipuram, after locking the suit property. The defendant forcibly broke open the door and took possession of the suit property on 30.11.2005.

g) The plaintiff's suit in O.S.No.45 of 2005 was dismissed for default on 11.06.2007. The plaintiff approached her well wishers for restoration of



S.A(MD)No.598 of 2025

possession of the property, but the defendant was not amenable. Hence, the plaintiff was forced to file the above suit for declaration and for recovery of possession.

8. The Defendant has admitted the relationship between the parties and also the factum that his father was suffering from cancer. The defence of the defendant is that their father did not execute any settlement deed in favour of the plaintiff; that since their father died on 20.04.2004 due to cancer, it was not possible for him to execute a settlement deed on the previous date on 19.04.2004; that the defendant had also taken care of his father's treatment; that the plaintiff received an advance amount of Rs.1 lakh and good will of Rs.1,50,000/- for two shops run by them and utilized the said amount of Rs.2,50,000/- for the treatment of their father; that though the defendant is also entitled to get $\frac{1}{2}$ of the amount, the plaintiff has not chosen to pay the same to the defendant; that the plaintiff was never in possession and enjoyment of the suit property; that the plaintiff's earlier suit in O.S.No.45 of 2005 was allowed to be dismissed for default; that the defendant filed a suit in O.S.No.198 of 2010 against the plaintiff for declaration of title and permanent injunction with respect to the suit property, but the same was dismissed for default as the defendant was unwell; that there is no cause of action to file the above suit and that therefore, the suit is liable to be dismissed.



S.A(MD)No.598 of 2025

WEB COPY

9. The plaintiff claimed title to the suit property on the basis of the settlement deed, dated 19.04.2004 under Ex.A.1 executed by her father Dhassayan. As already pointed out, the defendant has specifically disputed the settlement deed and according to him no such settlement deed was executed by their father. The plaintiff examined her own sister Thanga Vijayarani, who attested the settlement deed along with one Vallinayagam of Nagercoil.

10. As rightly observed by the Courts below, P.W.2 Thanga Vijayarani deposed about the execution of settlement deed by their father Dhassayan in favour of the plaintiff and her attestation of the said document along with another witness Vallinayagam. Admittedly, during the life time of father Dhassayan, all his children, except the plaintiff, got married and settled. It is also not in dispute that the said Dhassayan was suffering from cancer and was taking treatment.

11. The learned trial Judge has rightly referred the contents of Ex.A.1 settlement deed, wherein the said Dhassayan referred about the plaintiff taking care of him and his treatment and since she remained unmarried, he decided to settle the property in her favour. Though P.W.1 and P.W.2 were subjected to cross examination, nothing was elicited by the defendant in their favour. The Courts



S.A(MD)No.598 of 2025

below have rightly come to a decision that the plaintiff has proved the execution of Ex.A.1 settlement deed and derived title to the suit property through the settlement deed.

12. The plaintiff produced the house tax receipts under Ex.A.2 to Ex.A.6 and kist receipts under Ex.A.7 to Ex.A.9. According to the plaintiff, after the execution of settlement deed, she effected mutation in the revenue records and also changed the house tax assessment in her favour and started paying kist and property tax.

13. It is not in dispute that the plaintiff earlier filed a suit in O.S.No.45 of 2005 for permanent injunction and obtained interim injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and that subsequently, the suit was dismissed for default. It is also not in dispute that the defendant filed a suit in O.S.No.198 of 2010 claiming the reliefs of declaration and permanent injunction and the same was also dismissed for default.

14.It is the specific case of the plaintiff that after her marriage and considering the intimidation caused by the defendant, she was forced to shift her



S.A(MD)No.598 of 2025

residence to Parvathipuram, after locking the suit property, but the defendant on 30.11.2005 forcibly broke open the door and took possession of the suit property.

Though the defendant has alleged that the plaintiff was never in possession and enjoyment of the suit property, he did not dispute his possession in the suit property as claimed by the plaintiff. Since the plaintiff has proved her title to the suit property, the Courts below have rightly held that she is entitled to get the relief of recovery of possession consequently.

15. No doubt, the defendant has taken a stand that since the plaintiff's earlier suit in O.S. No. 45 of 2005 was dismissed for default, the present suit is barred by the doctrine of *res judicata* and is also barred under Order IX Rule 9 of the Code of Civil Procedure, but the above pleas were not taken in the written statement.

16. As rightly observed by the learned appellate Judge, since the earlier suit was dismissed for default and not on merits, the doctrine of *res judicata* cannot be made applicable. As already pointed out, in the earlier suit, since the defendant attempted to interfere with the plaintiff's possession and enjoyment of the suit property, she was forced to file the earlier suit for bare injunction. But after dismissal of the said suit, since the defendant forcibly took possession of the suit



S.A(MD)No.598 of 2025

property, the plaintiff was constrained to file the present suit claiming declaration and for recovery of possession.

17.As rightly contended by the learned counsel for the plaintiff, since the present suit is on different cause of action, the bar under Order IX Rule 9 of the Code of Civil Procedure will not apply. The Courts below appreciating the evidence available on record and taking note of the legal position, have granted the relief sought for. The appellant has not shown that the 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 the law erroneously. The appellant has also not canvassed any stand that the Courts below have wrongly placed the burden of proof.

18. 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.

19.Considering the judgments of the Courts below, as rightly contended by the learned counsel for the respondent, no question of law much less Substantial



S.A(MD)No.598 of 2025

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.

20. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.228 of 2011 on the file of the Sub Court, Padmanabapuram and in A.S.No.5 of 2019 on the file of the Additional District and Sessions Court, Padmanabapuram. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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S.A(MD)No.598 of 2025

K.MURALI SHANKAR,J.

DAS

To:

- 1.The Additional District and Sessions Court,
Padmanabapuram.
- 2.The Sub Court, Padmanabapuram.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
S.A.(MD).No.598 of 2025
and
C.M.P.(MD)No.19226 of 2025

Dated: 19.12.2025