



S.A(MD)No.575 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.12.2025

Delivered on : 19.12.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.575 of 2025

and

C.M.P.(MD)No.18962 of 2025

R.Palanivel

: Appellant

Vs./

M.Ramasamy (died)

1.The Indian Overseas Bank,
Nanjikottai Branch,
Rep.by its Branch Manager,
Having office at RR.Nagar, Pudukkottai Road,
Thanjavur Town and Munsif,
Thanjavur District.

2.Lakshmi

3.Vennila

4.Parimala

: Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 19.07.2025 made in A.S.No.27 of 2017 on the file of the learned I Additional District Judge (PCR), Thanjavur,



S.A(MD)No.575 of 2025

confirming the judgment and decree, dated 21.04.2017 made in O.S.No.240 of 2012 on the file of the learned Principal Subordinate Judge, Thanjavur.

For Appellant : Mr.R.Sakthivel

JUDGMENT

The Second appeal is directed against the judgment and decree passed in A.S.No.27 of 2017, dated 19.07.2025 on the file of the learned Additional District Judge (PCR) Thanjavur, confirming the judgment and decree passed in O.S.No.240 of 2012, dated 21.04.2017 on the file of the Principal Subordinate Court, Thanjavur.

2. The appellant is the plaintiff. He filed the suit in O.S.No.240 of 2012 on the file of the Subordinate Court, Thanjavur, against his father Thiru.Ramasamy and the first respondent herein claiming partition and allotment of 1/2 share in 'B' schedule property and for allotment of 1/2 share in the 'C' schedule amount lying in the account of his father Ramasamy in the first respondent's bank.

3. Originally, the first and second defendants filed the written statements and contested the suit. The learned Principal Subordinate Judge, Thanjavur, after



S.A(MD)No.575 of 2025

framing necessary issues and after full trial, passed the judgment and decree, dated 21.04.2017, dismissing the suit. Aggrieved by the dismissal of the said suit, the plaintiff preferred an appeal in A.S.No.27 of 2017 and the I 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 19.07.2025, 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.

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



S.A(MD)No.575 of 2025

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 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;



WEB COPY

“(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



WEB COPY

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."

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

7. The case of the plaintiff is that he is the only son of the first defendant; that the properties shown in the schedules 'A' and 'B' are the ancestral properties of the plaintiff and the first defendant, who acquired the same from the first defendant's father Ramasamy, as he died in the year 1990. The suit 'A' schedule properties were acquired by the Government under the Land Acquisition Act for expansion of Air Force in Thanjavur and the compensation awarded in L.A.O.P.No.352 of 1997 was deposited in the second defendant's bank. Since the 'A' schedule property, which is ancestral property, was acquired, the plaintiff is entitled to get $\frac{1}{2}$ share in the compensation deposited with the second defendant's bank. The first defendant attempted to alienate 'B' schedule properties on



S.A(MD)No.575 of 2025

15.11.2012 depriving the plaintiff of his shares in the suit properties. Hence, the plaintiff was constrained to file the above suit for partition and allotment of 1/2 share in 'B' schedule property as well as in 'C' schedule amount.

8. The first defendant has admitted that the plaintiff is his only son. The defence of the first defendant is that after the death of his first wife/plaintiff's mother, he married one Lakshmi and had two daughters namely Vennila and Parimala through the second wife. The suit 'A' and 'B' schedule properties are the separate properties of the first defendant and the contention of the plaintiff that they are ancestral properties, is false and incorrect. At the instigation of the plaintiff, the first defendant executed a settlement deed, dated 07.04.2005 in respect of three items of the properties and sold some other portion to one Anuradha while sale deed, dated 07.04.2005 to meet out marriage expenses of his daughter Vennila. Since the first defendant's properties in 'A' schedule was acquired, the first defendant alone is entitled to get compensation. Since the properties are the first defendant's self acquired and separate properties, the plaintiff is not entitled to claim partition. Hence, this suit is liable to be dismissed.



S.A(MD)No.575 of 2025

WEB COPY

9. The second defendant's bank filed written statement admitting the availability of compensation amount in the account of the first defendant and stated that they are ready to give the amount as per the directions of the Court.

10. At the outset, it is pertinent to note that the plaintiff alleging that 'A' schedule and 'B' schedule properties are the ancestral properties left out by his grand father Ramasamy, himself and the first defendant are entitled to get $\frac{1}{2}$ share each. But the defence of the first defendant is that the suit properties are his self-acquired and separate properties and as such, the plaintiff is not entitled to claim $\frac{1}{2}$ share in the properties.

11. No doubt, the plaintiff produced a sale deed, dated 09.07.1964 /Ex.A.7 executed in favour of Mariappan Pagattuvar/grandfather of the plaintiff. It is not in dispute that Ex.A7 sale deed relates to properties in R.S.No.270/10 and 239/2, and the property in R.S.No.239/2 is shown as third item of 'A' schedule property, but the other property in R.S.No.270/10 is not included in the present suit.

12. It is not in dispute that Ex.A.1 and Ex.A.2 Patta pass Books relating to the suit 'A' and 'B' schedule properties stand in the name of the first defendant. It



S.A(MD)No.575 of 2025

is not the case of the plaintiff that his grandfather Mariappan, purchased the properties under Ex.A.7 with the help of ancestral nucleus available at that time or from the sale proceeds of some other ancestral properties.

13. Except the third item in 'A' schedule i.e., R.S.No.239/2, the plaintiff has not shown that the other properties were owned by his grandfather Mariappan. As rightly observed by the Courts below, the plaintiff has not produced any iota of evidence to show that the suit properties are the ancestral and joint family properties. According to the first defendant, at the instigation of the plaintiff, he executed a settlement deed in respect of three items of properties, which stand in the name of the first defendant under Ex.A.2 patta pass book. Though the plaintiff has taken a stand that he paid amount for settlement executed by the first defendant, failed to produce any evidence to substantiate the same.

14. The Courts below by observing that even assuming that the plaintiff had some shares in the suit properties, the first defendant settled three items of properties and as such, he cannot claim anything more. But the learned counsel for the appellant would mainly contend that since the properties are ancestral properties, he was entitled to get $\frac{1}{2}$ share and the settlement of three items of properties in his favour does not prevent him from claiming the shares, which he is entitled under law.



S.A(MD)No.575 of 2025

WEB COPY

15. As already pointed out, the plaintiff has miserably failed to prove that the properties are ancestral character. It is not in dispute that after the death of the plaintiff's mother, the first defendant married one Lakshmi and through her had two daughters. Assuming that the properties are ancestral in character, as per Hindu Succession (Amendment) Act, the daughters of the first defendant being co-parceners are also entitled to get equal shares like that of the plaintiff.

16. Admittedly, the plaintiff has not impleaded the first defendant's daughters. During pendency of the appeal, since the first defendant died, he impleaded the second wife and the daughters of the deceased first defendant/respondents 2 to 4 herein. The learned trial Judge, observing that the plaintiff has not impleaded the daughters of the first defendant, who are necessary parties, has held that the suit is bad for non-joinder for necessary parties.

17. As already pointed out, the Courts below by observing that even if the plaintiff was entitled to get any share, he was allotted with 79 cents of land, which is more than what he is entitled in the entire extent of the properties. The Courts below by specifically holding that the plaintiff is not entitled to get any further share, rejected his claim for partition.



S.A(MD)No.575 of 2025

18. 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.

19. It is pertinent to note that the first appellate Court on appreciating and re-appreciating evidence available on record, has come to a definite decision that the plaintiff failed to prove his claim for partition and as such, dismissal of suit by the trial Court cannot be faulted.

20. Considering the judgments of the Courts below, this Court is the clear view that 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.



S.A(MD)No.575 of 2025

21. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.240 of 2012 on the file of the Principal Subordinate Judge, Thanjavur and in A.S.No.27 of 2017 on the file of the Ist Additional District Judge (PCR), Thanjavur. Consequently, connected Miscellaneous Petition is closed. No costs.

19.12.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To:

- 1.The Ist Additional District Court (PCR), Thanjavur.
- 2.The Principal Subordinate Court, Thanjavur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.575 of 2025

K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.575 of 2025
and
C.M.P.(MD)No.18962 of 2025

Dated: 19.12.2025