



S.A(MD)Nos.368, 367, 407 and 656 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.02.2026

DELIVERED ON : 27.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).Nos.368, 367, 407 and 656 of 2025

and

C.M.P.(MD)Nos.12842, 12840, 14079 and 20628 of 2025

S.A.(MD)No.368 of 2025:

Muthaiah(died)

Jothi Prakasam

: Appellants/2nd Appellant/
3rd party LR of 2nd Defendant

Vs.

1.Soundaraiya

2.Rajalakshmi

3.Sridevi

: Respondents 1 to 3/Respondents 1 to 3/
Plaintiffs

4.Uthandaraman

: 4th Respondent/4th Respondent/1st Defendant

5.Chandramohan

6.Sangeetha

7.Jeevitha

: Respondents 5 to 7/Appellants 3 to 5/
3rd parties L.Rs of 2nd defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 07.08.2023 made in A.S.No.38 of 2017, on



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the file of the Additional District Court, Paramakudi, confirming the judgment and decree dated 05.01.2017 made in O.S.No.47 of 2010, on the file of the Subordinate Court, Paramakudi.

S.A.(MD)No.367 of 2025:

1.S.Muthumanikandan
2.K.Muniasamy
3.M.Vairamani

Muthaiah(died)

4.Jothi Prakasam : Appellants 1 to 4/Appellants 1 to 3 & 5/
Defendants 1 to 3

Vs.

1.Soundaraiya
2.Rajalakshmi
3.Sridevi : Respondents 1 to 3/Respondents 1 to 3/
Plaintiffs

4.Uthandaraman : 4th Respondent/4th Respondent/4st Defendant

5.Chandramohan
6.Sangeetha
7.Jeevitha : Respondents 5 to 7/Appellants 6 to 8/
L.Rs of 5th defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 07.08.2023 made in A.S.No.36 of 2017, on the file of the Additional District Court, Paramakudi, confirming the judgment and decree dated 05.01.2017 made in O.S.No.11 of 2011, on the file of the Subordinate Court, Paramakudi.



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S.A.(MD)No.407 of 2025:

K.Muniasamy

: Appellant/Appellant/Plaintiff

Vs.

1.Soundaraiya
2.Rajalakshmi
3.Sridevi

: Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 07.08.2023 made in A.S.No.39 of 2017, on the file of the Additional District Court, Paramakudi, confirming the judgment and decree dated 05.01.2017 made in O.S.No.110 of 2012, on the file of the Subordinate Court, Paramakudi.

S.A.(MD)No.656 of 2025:

Muthaiah(died)

Jothi Prakasam

: Appellant/2nd Appellant/
3rd parties LR of deceased plaintiff

Vs.

1.Poonarasi
2.Nagajothi
3.Soundaraiya
4.Rajalakshmi
5.Sridevi
6.Uthandaraman

: Respondents/Respondents 1 to 6/Defendants

7.Chandramohan
8.Sangeetha
9.Jeevetha

: Respondents 7 to 9/Appellants 3 to 5/
3rd parties L.Rs of deceased plaintiff



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 07.08.2023 made in A.S.No.37 of 2017, on the file of the Additional District Court, Paramakudi, confirming the judgment and decree dated 05.01.2017 made in O.S.No.33 of 2011, on the file of the Subordinate Court, Paramakudi.

For Appellants
in all the appeals : Mr.P.T.S.Narendravan

COMMON JUDGMENT

These Second Appeals are directed against the common judgment and decrees made in A.S.Nos.36, 37, 38 and 39 of 2007, dated 07.08.2023, on the file of the Additional District Court, Paramakudi, confirming the common judgment and decrees passed in O.S.Nos.47 of 2010, 11 of 2011, 33 of 2011 and 110 of 2012, dated 05.01.2017, on the file of the Subordinate Court, Paramakudi.

2. One Jothiprakasam, W/o Muthiah, who is the plaintiff in O.S.No.33 of 2011 and the second defendant in O.S.No.47 of 2010 is the appellant in S.A.(MD)No.656 of 2025 and S.A.(MD)No.368 of 2025. One Muniasamy, plaintiff in O.S.No.110 of 2012 is the appellant in S.A.(MD)No.407 of 2025. One



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Muthumanikandan and two others who are the defendants 1 to 3 in O.S.No.11 of 2011 are the appellants in S.A.(MD)No.367 of 2025.

3. For the sake of convenience and brevity, the parties will hereinafter be referred by the trial Court in its common judgment.

4. The plaintiffs in O.S.No.47 of 2010 filed a suit seeking declaration that the suit property is belonging to them and for consequential permanent injunction restraining the defendants therein from interfering with their peaceful possession and enjoyment of the suit property. The very same plaintiffs in O.S.No.11 of 2011 filed a suit seeking declaration that the sale deeds dated 23.06.2010 executed by the first defendant Muthumanikandan in favour of the second defendant Muniasamy and the third defendant M.Vairamani as null and void. The first defendant in O.S.No.47 of 2010 and the fifth defendant in O.S.No.11 of 2011 Thiru.S.Muthiah filed a suit in O.S.No.33 of 2011 claiming partition and allotment of 1/4th share in the suit property. The second defendant in O.S.No.11 of 2011 filed a suit in O.S.No.110 of 2012 claiming permanent injunction restraining the defendants therein from any manner interfering with his peaceful possession and enjoyment of the suit property. The first defendant in O.S.No.47 of 2010, the fourth defendant in O.S.No.11 of 2011, the sixth defendant in



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O.S.No.33 of 2011 – S.Uthandaraman had remained exparte. The other defendants in all the suits filed their respective written statement and contested the suits.

5. The learned Subordinate Judge, Paramakudi, after framing necessary issues in all the suits and after joint trial, passed a common judgment dated 05.01.2017, allowing the suits in O.S.No.47 of 2010 and O.S.No.11 of 2011 granting the reliefs sought for and dismissed the suits in O.S.No.33 of 2011 and O.S.No.110 of 2012. Aggrieved by the said common judgment and decrees, the contested defendants preferred the appeals in A.S.Nos.36 of 2017, 37 of 2017, 38 of 2017 and 39 of 2017 and the learned Additional District Judge, Paramakudi, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment dated 07.08.2023, dismissing all the appeals and thereby confirming the common judgment of the trial Court. Challenging the impugned common judgment of the first appellate Court, the above Second Appeals came to be filed.

6. 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***



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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 recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”



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7. 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



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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."

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



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9. The relationship not in dispute is that one Chandana Konar had two sons viz., Thiru.Uthandaraman and Muthiah – defendants 1 and 2 and two daughters namely P.W.1-Nagajothi and the defendant – Ponnarasi and that the plaintiffs are the daughters of P.W.1-Nagajothi. An extent of 1.20 Acres in S.No.239/3 of Agathariruppu Village, Abiramam group, Kamuthi Taluk, Ramanathapuram District is the suit property in the suits in O.S.No.47 of 2010, O.S.No.11 of 2011 and O.S.No.33 of 2011. An extent of 50 cents in Acres 1.20 in Survey No.239/3 of the said village is the suit property in O.S.No.110 of 2012.

10. It is admitted by all the parties that the suit property was originally owned by the said Chandana Konar who purchased the same on 10.12.1953, vide Ex.A.1 sale deed. The case of the plaintiffs is that while Chandana Konar was alive, he orally partitioned the properties and allotted to his sons and daughters, that the suit property was allotted to the share of P.W.1 – Nagajothi and since then, she had been in possession and enjoyment of the suit property and that P.W. 1 had settled the suit property in favour of her daughters-plaintiffs on 17.08.2009, vide Ex.A.23 settlement deed and that since then, the plaintiffs have been in possession and enjoyment of the suit property.



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11. The defence of the defendants is that no oral partition had taken place during the life time of Chandana Konar, that as per the practice prevailing in the community, the mother's properties were given to daughters and Chandana Konar's properties were given to the sons – defendants 1 and 2, that the suit property had been in possession and enjoyment of the defendants 1 and 2, that the defendants 1 and 2 executed a power of attorney deed in favour of the defendant – Muthumanikandan on 12.08.2009 under Ex.B.8 power deed, that the said Muthumanikandan sold 50 cents of land to the defendant Muniasamy on 23.06.2010 vide Ex.A.16 sale deed and 6 cents of land to the defendant Vairamani on 23.06.2010, vide Ex.A.17 sale deed and that therefore, neither the plaintiffs' mother nor the plaintiffs had any right, title or possession over the suit properties. As already pointed out, the plaintiffs filed the second suit in O.S.No. 11 of 2011, challenging the sale deeds executed by the defendant – Manikandan in favour of the other defendants – Muniasamy and Vairamani.

12. The second defendant Muthiah by alleging that the suit property is a joint family property and claiming to be in possession, filed a suit in O.S.No.33 of 2011 for partition and allotment of his 1/4th share. The defendant Muniasamy who purchased 50 cents of land in the suit property from the defendant Manikandan – power of attorney of the defendants 1 and 2, filed a suit in O.S.No.



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110 of 2012 seeking permanent injunction restraining the defendants and their men therein from interfering with his peaceful possession and enjoyment of the suit property. The plaintiffs have also filed a petition in I.A.No.74 of 2011, to punish the respondents therein for contempt as at the instance of the defendants 1 and 2, the other defendants had trespassed into the suit property and made constructions therein.

13. As rightly observed by the Courts below, the main issue to be decided is as to whether the oral partition alleged by P.W.1 – Nagajothi is true and as to whether the suit property was allotted to the share of P.W.1- Nagajothi. It is the specific defence of the defendants that no such partition had taken place and the suit property was inherited by the defendants 1 and 2. It is pertinent to mention that the plaintiffs have produced a partition deed dated 13.05.1988 under Ex.A.14, that was entered into between the defendants 1 and 2, wherein they have referred a partition done by their father in the presence of some mediators in the year 1987. According to the plaintiffs, there was an oral partition in the year 1987 while their grandfather Chandana Konar was alive.

14. As rightly observed by the Courts below, the said factum is also confirmed by the partition deed under Ex.A.14 entered into between the



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defendants. Moreover, the plaintiffs produced two sale deeds executed by the second defendant one in favour of Natarajan dated 16.07.1997 under Ex.A.12 and the other in favour of Tmt.Shanmugavalli dated 28.08.1987 under Ex.A.13. In both the sale deeds, the second defendant has referred to the first defendant's dry land as the southern boundary for the properties conveyed under Exs.A.12 and A.13. As rightly observed by the learned trial Judge, if there had been no partition, there would have been no occasion for the second defendant to execute such sale deeds referring to the property of the first defendant.

15. It is admitted by the second defendant that the title deeds with regard to the properties obtained by him under Ex.A.14 partition are in his custody. It is pertinent to note that the title deed with regard to the suit property admittedly was in the custody of P.W.1-Nagajothi and now with plaintiffs who filed the same as Ex.A.1. As rightly observed by the learned trial Judge, the custody of the title deed would also fortify the oral partition alleged by the plaintiffs. More importantly as rightly observed by the Courts below, patta was issued in favour of P.W.1 – Nagajothi as early as on 09.02.1987 under Ex.A.19. The plaintiffs have produced patta issued in favour of P.W.1 – Nagajothi under Exs.A.27 and A.29. The said factum has not been specifically disputed by the defendants. Moreover, it is not the case of the defendants that they have challenged the issuance of patta



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in the name of P.W.1-Nagajothi before the appropriate authorities and that therefore, silence and inaction with regard to Exs.A.27 and A.29 pattas would only strengthen the case of the plaintiffs. Moreover the defendant Ponnarasi, sister of P.W.1 – Nagajothi in her written statement filed in the case in O.S.No.29 of 2019 has specifically admitted that the suit property was allotted to the share of P.W.1-Nagajothi.

16. It is pertinent to note that the second defendant's wife alone has been examined as D.W.1 and the second defendant has not chosen to enter the witness box. As already pointed out, the first defendant S.Uthandaraman remained exparte.. As rightly observed by the Courts below, the second defendant, alleging ill-health, has chosen to examine his wife as D.W.1, instead of examining himself, for reasons best known to him.

17. Considering the evidence available on record, the Courts below have come to a decision that the plaintiffs have proved the oral partition and the allotment of the suit property to the share of P.W.1-Nagajothi, who in turn settled the suit property in favour of the plaintiffs and that the plaintiffs have been in possession and enjoyment of the suit property.



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18. The next contention of the defendants is that P.W.1-Nagajothi has earlier filed a suit in O.S.No.30 of 2019 against the defendants 1 and 2 and subsequently withdrew the suit and that therefore, the present suit in O.S.No.47 of 2010 filed by the daughters of P.W.1 is barred by Order II Rule 2 C.P.C. It is not in dispute that P.W.1 has filed the suit in O.S.No.30 of 2019 to declare that power of attorney deed executed by the defendants 1 and 2 in favour of the defendant Muthumanikandan on 02.08.2009 is invalid and to cancel the same and that they should not alienate the property on the basis of the said power of attorney deed.

19. The learned trial Judge, on observing that the plaintiffs were not parties to the earlier suit, that the cause of action arose for the present suit and for the suit in O.S.No.30 of 2019 are different and that there was neither necessity nor occasion for the plaintiffs to claim the reliefs now sought for in the earlier suit, has held that the bar under Order II Rule 2 C.P.C., is not attracted. Since it has been found that the suit property belonged to P.W.1 – Nagajothi and thereafter devolved upon the plaintiffs, the Courts below have rightly held that the second defendant – Muthumanikandan is not entitled to seek partition and consequently, dismissed the suit in O.S.No.33 of 2011.



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20. Since the property was not owned by the defendants 1 and 2, the Courts below have rightly held that the defendants 1 and 2 have absolutely no right to execute Power of Attorney to the defendant Muthumanikandan and the said Muthumanikandan has no right to sell a separate portion of the suit property to the defendants Muniasamy and Vairamani and as such, the sale deeds under Exs.A.16 and A.17 are invalid. Since the sale deed in favour of the defendant Muniasamy under Ex.A.16 is declared as invalid, he is not entitled to get the relief of permanent injunction as sought for.

21. Considering the above facts and circumstances and the evidence available on record, the Courts below have rightly come to the conclusion that the plaintiffs are entitled to get the reliefs sought for in both the suits and that the other suits filed by the second defendant for partition and the defendant Muniasamy for the permanent injunction are liable to be dismissed and as such, the common judgment of the Courts below cannot be faulted.

22. The appellants havd not shown that material evidence available in the case had been ignored by the first appellate Court or that there was no evidence at



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all. The appellants have also not shown any wrong inference had been drawn by the first appellate Court from the proved facts by applying law erroneously. The appellants have also not canvassed any stand that the Courts below have wrongly placed the burden of proof.

23. 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 plaintiffs have proved the suit claim and decreed the suit as prayed for and the same cannot be faulted.

24. 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. Considering the other facts and circumstances, this Court further decides that the parties are directed to bear their own costs.



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25. In the result, the Second Appeals are dismissed and the common judgment and decrees made in A.S.Nos.36, 37, 38 and 39 of 2007, dated 07.08.2023, on the file of the Additional District Court, Paramakudi, confirming the common judgment and decrees passed in O.S.Nos.47 of 2010, 11 of 2011, 33 of 2011 and 110 of 2012, dated 05.01.2017, on the file of the Subordinate Court, Paramakudi, are hereby confirmed. Consequently, the connected Civil Miscellaneous Petitions are closed. The parties are directed to bear their own costs.

27.02.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
SSL

To:

- 1.The Additional District Court, Paramakudi.
2. The Subordinate Court, Paramakudi.
3. The Section Officer,
VR 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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