



S.A.(MD)No.632 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2026

Pronounced on : 28.01.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.632 of 2025

and

C.M.P.(MD)Nos.20206 and 20207 of 2025

1.N.Radha

2.N.Manoharan

3.N.Bhaskaran

4.N.Murugan

5.N.Venkatesan

6.N.Devanathan

7.N.Vilvanathan

... Appellants/
Appellants/
Defendants

Vs.

1.K.Revathy

2.K.Suresh Bal



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3.K.Kalaivani

... Respondents/
Respondents/
Plaintiffs

PRAYER : Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 10.02.2024 in A.S.No.67 of 2015 on the file of the Principal Subordinate Court, Kumbakonam, confirming the judgment and decree dated 02.12.2014 in O.S.No.468 of 2010 on the file of the I Additional District Munsif, Kumbakonam.

For Appellants : Mr.H.Lakshmi Shankar

For Respondents : Mr.P.Thiagarajan

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.67 of 2015 dated 10.02.2024 on the file of the Principal Subordinate Court, Kumbakonam, confirming the judgment and decree passed in O.S.No.468 of 2010 dated 02.12.2014 on the file of the I Additional District Munsif Court, Kumbakonam.

2. The appellants are the defendants (hereinafter referred as 'defendants'). The respondents / plaintiffs (hereinafter referred as 'plaintiffs') filed the suit in O.S.No.468 of 2010 on the file of the I Additional District Munsif Court, Kumbakonam against the defendants



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claiming permanent injunction restraining the defendants and their men from in any manner interfering with the plaintiffs' rights by forming road or forming a layout in the suit property. The defendants have filed their written statement and contested the suit. The learned Additional District Munsif, after framing necessary issues and after full trial, passed the judgment and decree dated 02.12.2014 granting the permanent injunction as prayed for. Aggrieved by the granting of decree, the defendants preferred an appeal in A.S.No.67 of 2015 and the learned Principal Subordinate Judge, Kumbakonam, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 10.02.2024 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the defendants have 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 Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.,***



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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*



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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 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,



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is not reasonably capable of supporting the finding.”

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

6. It is not in dispute that the suit property and other properties were owned by one Marudhu Padayachi originally and after his demise, the same came to be owned by his son Rajagopal Padayachi and that the said Rajagopal Padayachi along with his sons Krishnamoorthy and Natarajan partitioned the properties on 15.08.1964. It is also not in dispute that D schedule property in the partition deed dated 15.08.1964 was allotted to the shares of Krishnamoorthy and Natarajan jointly.

7. It is not in dispute that the suit property which admeasures 14 cents described as kalam and kanni to support harvest and other agricultural activities in the surrounding lands owned by the said Krishnamoorthy and Natarajan and that the said suit property was set apart as common property. It is also not in dispute that the said Krishnamoorthy had died in the year 1996 leaving behind the plaintiffs



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as his legal heirs and that the said Natarajan had died in the year 2008 leaving behind the defendants as his legal heirs.

8. It is pertinent to mention that the plaintiffs as well as the defendants before the trial Court as well as in the first appellate Court have specifically admitted that the suit property is their common property.

9. The plaintiffs, by alleging that the defendants two months prior to the filing of the suit, have attempted to form a pathway in the suit property by pouring sand but the same was prevented, that the defendants have again attempted on 16.09.2010 to form a road by destroying the suit property and the same was also prevented and that therefore, the plaintiffs were constrained to file the above suit claiming permanent injunction restraining the defendants from forming any road or from converting the suit property into house sites.

10. The defence of the defendants is that the plaintiffs have formed a layout known as Rajiv Gandhi Nagar and they have already converted portion of the D schedule property in the partition deed dated 15.08.1964



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as road, that the plaintiffs have already appropriated around 4 cents and formed the road so as to reach their layout, that the cause of action alleged by the plaintiffs is false, that the defendants have never attempted to convert portion of the suit property into road or as layout, that the plaintiffs have suppressed their own misappropriation of portion of common property and approached the Court with unclean hands and that therefore, the plaintiffs are not entitled to get the relief of permanent injunction and that too against co-owners.

11. As already pointed out, it is the admitted case of both the parties that the suit property was set apart as common property for being used as kalam and kanni to support the agricultural activities in surrounding lands owned by their predecessors.

12. As already pointed out, the principal contention of the defendants is that the plaintiffs themselves had converted a portion of the common property into a road to provide access to their layout, namely Rajiv Gandhi Nagar, and that the Local Panchayat, by a resolution dated 10.05.2007, approved the said layout formed by the plaintiffs. As rightly



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observed by the Courts below, it is not the case of the defendants that they had raised any objection or initiated any action against the plaintiffs for converting a portion of the common property into a road for their layout. As further rightly observed by the Courts below, merely because the plaintiffs had converted a portion of the common property into a pathway, the same, by itself, would not confer any right upon the defendants to convert the remaining portions of the land either into a pathway or into a layout.

13. No doubt, it is a settled principle of law that, ordinarily, an injunction cannot be granted against a co-owner; however, such relief can be granted if a co-owner acts in a manner detrimental to the interests of the other co-owners. In the case on hand, as already pointed out, since the defendants had attempted to convert the suit property into a pathway and to form a layout, the present suit came to be filed.

14. As rightly pointed out by the Courts below, the plaintiffs, by examining the second plaintiff and two other witnesses P.W.2 and P.W.3, have proved the cause of action and as such, the plaintiffs are entitled to get the permanent injunction as sought for.



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15. The learned counsel appearing for the appellants / defendants would submit that the plaintiffs, by suppressing their conversion of portion of the property as pathway, approached this Court with unclean hands and as such, they are not entitled to get the equitable relief of injunction and relied on the decision of this Court in ***Seeni Chettiar Vs. Santhauathan Chettiar and others*** reported in ***1897 20 ILR (Mad) 58*** and ***Bashesar Nath and others Vs. Municipal Committee, Moga*** reported in ***AIR 1940 Lah 69***. In both the decisions, it has been held that the party who seeks equity must do equity and implies that a plaintiff seeking an injunction must comes with clean hands.

16. Even according to the defendants, the resolution of the Local Panchayat was approved as early as in the year 2007, and admittedly, the defendants neither challenged the formation of the road or layout by the plaintiffs nor initiated any legal proceedings in that regard. The plaintiffs, on the other hand, filed the present suit in the year 2010, alleging that the defendants had attempted to convert the suit property into a road and layout two months prior to the filing of the suit.



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17. The learned counsel appearing for the appellants / defendants would further contend that the plaintiffs' remedy is to file a suit for partition and that since they are having equally efficacious remedy, the present suit for bare injunction is barred under Section 41(h) of the Specific Relief Act.

18. Section 41(h) of the Specific Relief Act enumerates the circumstances under which a Court ought not to grant an injunction, one such circumstance being the availability of an equally efficacious alternative remedy. In the case on hand, as already pointed out, the suit property was set apart as a common property to be used as kalam and kanni for the surrounding agricultural lands. Since it was directed to be retained as common property, none, including the defendants, can compel the plaintiffs to seek partition. As the defendants had allegedly attempted to convert the suit property for their own use, the plaintiffs were constrained to file the present suit. The Courts below, on a proper appreciation of the evidence available on record and the settled legal position, have rightly concluded that the plaintiffs are entitled to the relief of permanent injunction as prayed for.



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19. 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 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.468 of 2010 on the file of the I Additional District Munsif Court, Kumbakonam and in A.S.No.67 of 2015 on the file of the Principal Subordinate Court, Kumbakonam. Consequently, connected Miscellaneous Petitions are closed. No costs.

28.01.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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K.MURALI SHANKAR, J

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To

1. The Principal Subordinate Judge, Kumbakonam.
2. The I Additional District Munsif, Kumbakonam.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment made in

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and

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Dated : 28.01.2026