



S.A.(MD)No.47 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.02.2026

Pronounced on : 27.02.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.47 of 2026

and

C.M.P.(MD)No.1956 of 2026

1.Thavasi @ Thavamani

2.T.Ponnammal

3.T.Pandi

... Appellants/
Appellants 1 to 3/
Defendants 1 to 3

Vs.

1.Maya Jothi

Mohan Doss (Died)

Natarajan (Died)

2.P.Gurusamy

3.P.Chinna Gurusamy



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4.Gnana Gurusamy

5.P.Sekar

6.A.Raman

7.Anbuselvi

8.Priya Darshini

9.M.Victoria

10.M.Kamal Doss

11.M.Anandha Suganthi

12.M.Vimala Doss

...Respondents/
Respondents 1 to 14/
Plaintiffs 1 to 14

PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 09.12.2025 in A.S.No.25 of 2021 on the file of learned Subordinate Judge, Theni confirming the judgment and decree dated 07.04.2021 in O.S.No.20 of 2011 on the file of learned District Munsif, Aundipatti, Theni District (Full Additional Incharge).

For Appellants : Mr.S.Meenakshi Sundaram, Senior Counsel
for Mr.J.Anand Kumar

For Respondents : Mr.S.Vellaichamy
Caveator for R4



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JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.25 of 2021 dated 09.12.2025 on the file of the Subordinate Court, Theni, confirming the judgment and decree passed in O.S.No.20 of 2011 dated 07.04.2021 on the file of the District Munsif Court, Andipatti.

2. The appellants are the defendants. The respondents / plaintiffs filed a suit in O.S.No.20 of 2011 on the file of the District Munsif Court, Andipatti seeking recovery of possession of the suit properties. The appellants / defendants filed their written statement and contested the suit.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The learned District Munsif, Andipatti, after framing necessary issues and after full trial, passed a judgment and decree dated 07.04.2021 granting the relief of recovery of possession in respect of Items 1 and 2



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of the suit properties and dismissed the suit in respect of the 3rd Item of the suit properties. Aggrieved by the said judgment and decree, the defendants preferred an appeal in A.S.No.25 of 2021 and the learned Subordinate Judge, Theni, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 09.12.2025 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the first appeal, the defendants have preferred the present Second Appeal.

5. 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



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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.”

6. The Hon'ble Supreme Court in the case of **Chandrabhan Vs. Saraswati and others** reported in **2022 SCC OnLine SC 1273** has



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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."

7. Bearing the settled legal position in mind, let us proceed with the case on hand.



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8. The case of the plaintiffs, in short, is as follows:

(a) The suit properties originally belonged to two brothers, namely, Andisamban and Annathasamban. In the partition effected between them, Items 1 and 2 of the suit properties were allotted to the share of Andisamban. The said Andisamban had availed loans from third parties and, upon his failure to discharge the same, the creditors instituted a suit, obtained a decree, and brought Items 1 and 2 of the suit properties to sale in Court auction. In the said auction held on 17.07.1944, one Pandian Nadar purchased Items 1 and 2 of the suit properties. Subsequently, Andisamban repurchased Items 1 and 2 from the said Pandian Nadar and also purchased Item 3 of the suit properties from him. Thereafter, Andisamban continued to be in possession and enjoyment of all the suit properties.

(b) Thereafter, Andisamban mortgaged Item 3 of the suit properties. The plaintiffs' predecessors in title instituted a suit in O.S.No. 852 of 1979 for redemption of mortgage, while the defendants' predecessors in title filed a suit in O.S.No.906 of 1979 seeking declaration of title and injunction in respect of Items 1 and 2 of the suit properties. Andisamban had three sons, namely, Mayandi, Parathasy and



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Aandi. Plaintiffs 1 to 3 are the children of Mayandi; plaintiffs 4 to 7 are the children of Parathasy; and the 8th plaintiff is the son of Aandi. Both suits, namely, O.S.Nos.852 of 1979 and 906 of 1979, were jointly tried by the District Munsif Court, Periyakulam. The suit in O.S.No.852 of 1979 was decreed as prayed for, whereas the suit in O.S.No.906 of 1979 was dismissed. Challenging the common judgment, appeals in A.S.Nos. 19 of 1982 and 63 of 1982 were preferred and the same were dismissed. Thereafter, second appeals in S.A.(MD)Nos.287 and 288 of 1984 were filed and were also dismissed on 28.07.2008, thereby confirming the title and interest of the plaintiffs' predecessors in title. Consequently, the defendants have no manner of right, title or interest over the suit properties. Since the defendants are in unlawful possession, the plaintiffs were constrained to institute the present suit for recovery of possession.

9. The defence of the defendants, in short, is as follows:

(a) The defendants would contend that they are not aware of the alleged court auction sale, the subsequent purchase of the suit properties by Andisamban from Pandian Nadar, or the earlier litigation and the dismissal of the appeals. According to them, they had purchased the suit



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properties in the year 1995. It is their specific case that the properties situated in Survey Nos.322/2 and 322/4A, measuring 2 acres and 9 cents, were purchased from one Nagammal, and that since the date of such purchase, they have been in continuous possession and enjoyment of the same. They would further claim that, by virtue of such long and uninterrupted possession, they have perfected their title by adverse possession.

(b) It is their further case that, on account of their possession, patta had been issued in their favour. However, based on objections raised by the plaintiffs, the District Revenue Officer cancelled the said patta without properly considering the pendency of the civil suit. Challenging the said order, the defendants have initiated proceedings before the Madurai Bench of the Madras High Court, which are stated to be pending. The defendants would also contend that they have no right, title or possession in respect of Item 3 of the suit properties. On the above grounds, they seek dismissal of the suit insofar as Items 1 and 2 of the suit properties are concerned.

10. As already pointed out, it is pertinent to mention that the defendants had taken a specific stand that they were not aware of the



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earlier Court proceedings between the plaintiffs' predecessors in title and the defendants' predecessors in title.

11. The plaintiffs have produced the common judgment passed in S.A.(MD)Nos.287 and 288 of 1984 dated 23.07.2008 by this Court and also the order of the Hon'ble Supreme Court passed in Civil Appeal No. 7369 of 2000. They have also produced the copies of the judgment and decree made in O.S.No.852 of 1979 and O.S.No.906 of 1979 dated 14.10.1981 on the file of the District Munsif Court, Periyakulam and in A.S.No.19 of 1982 and A.S.No.63 of 1982 dated 30.03.1983 on the file of the Subordinate Court, Periyakulam.

12. It is pertinent to note that the defendants cannot disclaim knowledge of the earlier court proceedings that had taken place between their predecessors-in-title and the plaintiffs' predecessors-in-title, as ignorance of law cannot be pleaded as an excuse in view of the well-settled legal maxim "ignorantia juris non excusat" (ignorance of law is no excuse).



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13. Moreover, it is the specific case of the plaintiffs that their predecessors in title had instituted a suit in O.S.No.661 of 1983 against the first defendant and his predecessors in title, in which the first defendant had entered appearance and filed his written statement. In such circumstances, the defendants cannot be permitted to contend that they were unaware of the earlier proceedings. Significantly, the defendants have not specifically disputed the said fact.

14. It is evident from the judgments and decrees in the earlier proceedings, produced on the side of the plaintiffs, that the plaintiffs' predecessors in title had been declared as the lawful owners of Items 1 and 2 of the suit properties, as rightly observed by the Courts below. The defendants, however, would contend that they had purchased the suit properties in the year 1995 and are therefore bona fide purchasers entitled to remain in possession. As already pointed out, in view of their knowledge of the earlier proceedings, and more particularly inasmuch as the defendants had purchased Items 1 and 2 of the suit properties during the pendency of the second appeals, they cannot be treated as bona fide purchasers.



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15. Admittedly, the defendants have purchased Items 1 and 2 of the suit properties during the pendency of the second appeals. It is well settled that an appeal is a continuation of the original proceedings, and therefore, the doctrine of lis pendens embodied in Section 52 of the Transfer of Property Act applies equally to transfers effected during the pendency of an appeal or second appeal. In ***Rajender Singh and others v. Santa Singh and others***, reported in ***(1973) 2 SCC 705***, the Hon'ble Supreme Court has held that the doctrine of lis pendens extends to the entire duration of the litigation, including appellate proceedings. The Apex Court has consistently reiterated in a catena of decisions that any transfer effected during the pendency of a suit or appeal is subject to the outcome of such proceedings, and the transferee pendente lite cannot claim any independent or superior right. Therefore, the purchase made by the defendants during the pendency of the second appeals is clearly hit by the doctrine of lis pendens and is bound by the result of the litigation.

16. As already pointed out, the second appeals filed by the predecessors in title of the defendants came to be dismissed, thereby confirming the judgments and decrees of the trial Court and the first



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appellate Court granting the reliefs of declaration and injunction in respect of Items 1 and 2 of the suit properties. Inasmuch as the plaintiffs' predecessors in title had been declared as the lawful owners of the suit properties and the claim of the defendants' predecessors in title stood rejected, the same is binding on the defendants, who claim through them.

17. The defendants, in their written statement, have also set up a plea that they have perfected title over Items 1 and 2 of the suit properties by adverse possession. It is pertinent to note that the second appeals came to be dismissed only in the year 2008, whereas the present suit has been instituted in the year 2011. In such circumstances, the plea of adverse possession is wholly untenable and devoid of any factual or legal basis. It is a settled principle of law that a plea of adverse possession necessarily implies an admission of the title of the true owner. A person who sets up a claim of adverse possession must acknowledge the title of another and establish that his possession is hostile to such title. Unless the claimant admits the title of the true owner, the question of holding the property adversely does not arise. In other words, a plea of adverse possession and a plea of independent title are mutually destructive and cannot co-exist.



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18. A defendant who denies the title of the plaintiff cannot, in the same breath, contend that his possession has ripened into title by adverse possession. In the present case, the defendants have nowhere admitted the title of the plaintiffs; on the contrary, they have asserted absolute ownership over the suit properties on the basis of their purchase in the year 1995. In the absence of any admission of the plaintiffs' title in respect of Items 1 and 2 of the suit properties, the plea of adverse possession set up by the defendants is legally unsustainable and liable to be rejected.

19. The defendants have also raised a contention that the suit for recovery of possession, in the absence of a prayer for declaration, is not maintainable and is further barred by limitation. As already pointed out, the plaintiffs' predecessors in title had already been declared as the lawful owners of the suit properties in the earlier proceedings. In such circumstances, there is no necessity for the plaintiffs to seek a declaration once again, and a suit for recovery of possession based on such established title is perfectly maintainable. Insofar as limitation is concerned, since the second appeals were dismissed in the year 2008 and



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the present suit has been instituted in the year 2011, the suit is clearly within the prescribed period of limitation, as rightly held by the learned appellate Judge. Hence, the objection raised by the defendants in this regard is liable to be rejected.

20. On a consideration of the entire evidence available on record, both the Courts below have rightly come to the conclusion that the plaintiffs are entitled to recovery of possession. The said concurrent findings, being based on proper appreciation of evidence, do not warrant any interference.

21. When the matter was taken up for admission, the learned Senior Counsel appearing for the appellants filed a memo incorporating additional substantial questions of law. On a careful consideration of the judgments and decrees of the Courts below, this Court is of the clear view that no question of law, much less any substantial question of law, arises for consideration in this Second Appeal. It is well settled that this Court, in exercise of its jurisdiction under Section 100 C.P.C., cannot reappreciate the evidence or sit in appeal over the concurrent findings of



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fact recorded by the Courts below. 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.

22. In the result, the Second Appeal is dismissed, confirming the judgment made in A.S.No.25 of 2021, dated 09.12.2025 on the file of the Subordinate Court, Theni, which in turn confirmed the judgment and decree made in O.S.No.20 of 2011 dated 07.04.2021 on the file of the District Munsif Court, Andipatti. Consequently, connected Miscellaneous Petition is closed. No costs

27.02.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
csm

To

1. The Subordinate Judge, Theni.
2. The District Munsif,
Andipatti.
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
S.A.(MD)No.47 of 2026
and
C.M.P.(MD)No.1956 of 2026

Dated : 27.02.2026