



S.A(MD)No.45 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.02.2026

DELIVERED ON : 27.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD).No.45 of 2026
and
C.M.P.(MD)No.1908 of 2026**

1.Chinnakaruppan
2.Rajendran

: Appellants/Appellants/Defendants

Vs.

P.Jeyalakshmi

: Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 19.12.2025, made in A.S.No.32 of 2024, on the file of the Subordinate Court, Melur, confirming the judgment and decree, dated 21.09.2024, made in O.S.No.252 of 2014, on the file of the District Munsif Court, Melur.

For Appellants : Mr.N.Tamilmani
for Mr.K.P.Thiyagarajan

For Respondent : Ms.Dhanaseeli
for Mr.J.Gunaseelan Muthiah



S.A(MD)No.45 of 2026

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JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.32 of 2024, dated 19.12.2025, on the file of the Subordinate Court, Melur, confirming the judgment and decree passed in O.S.No.252 of 2014, dated 21.09.2024, on the file of the District Munsif Court, Melur.

2. The appellants are the defendants. The respondent as plaintiff filed a suit in O.S.No.252 of 2014, before the District Munsif Court, Melur claiming recovery of possession. The defendants filed their written statement and contested the suit.

3. The learned District Munsif, after framing necessary issues and full trial, passed a judgment and decree dated 21.09.2024, granting the relief of recovery of possession as prayed for. Aggrieved by the said judgment and decree, the defendants filed an appeal in A.S.No.32 of 2024 and the learned Subordinate Judge, Melur, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree, dated 19.12.2025, dismissing the appeal and thereby confirming the judgment and



S.A(MD)No.45 of 2026

decree of the trial Court. Challenging the dismissal of the appeal, the defendants have 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 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*



S.A(MD)No.45 of 2026

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;

“(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,*



S.A(MD)No.45 of 2026

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 in short is as follows:

(i) The suit property is owned by the plaintiff. He obtained the suit property through the settlement deed dated dated 04.08.11984 executed by her father and since then, the plaintiff started cultivation at her own accord. Subsequently, the second defendant, a Thalayari approached the plaintiff to render assistance to her. Accordingly, an arrangement has been made and the second defendant has been looking after the agricultural operation as Supervisor and received due remuneration. The second defendant approached the plaintiff and requested her to erect a thatched shed at first and titled shed in S.No.169/4 and the same were constructed at the costs of the plaintiff and the same was used for his stay and storing paddy bags and hay rigs and other agricultural equipments. The second defendant stayed with his family members without any rent in the shed erected. Even when there was no water, he continued to stay there as a watchman.



S.A(MD)No.45 of 2026

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(ii) The plaintiff visited the suit property around 10.02.2013, suspecting that the second defendant had committed some irregularities, and asked him to vacate the property. Upon making a thorough enquiry, the plaintiff came to know that the second defendant had been indulging in unlawful activities in respect of the suit property and therefore directed him to vacate the same. When the second defendant requested some more time to vacate the property, the plaintiff granted such time. However, to the plaintiff's surprise, the second defendant filed a suit in O.S.No.495 of 2013 before the District Munsif Court, Melur, seeking a decree of permanent injunction restraining the plaintiff from interfering with his alleged peaceful possession of the suit property, and the said suit is still pending.

The second defendant has also filed proceedings before the Tahsildar, Melur, in T.R. No.7 of 2013, claiming tenancy rights through his father. The first defendant is an aged person who cannot even walk without assistance and has never personally looked after the suit property. In such circumstances, the plaintiff was constrained to file the present suit seeking recovery of possession.

8. The defence of the defendants is that they have constructed a house in the suit property 25 years back with the permission of the plaintiff and since then, the defendants have been in possession and enjoyment of the suit property, that



S.A(MD)No.45 of 2026

since the defendants have been in continuous peaceful possession and enjoyment of the suit property, they have perfected their title by adverse possession, that the defendants have already filed a suit in O.S.NO.495 of 2013 against the plaintiff claiming permanent injunction, restraining the plaintiff herein from interfering with his peaceful possession and enjoyment of the suit property. The second defendant also filed a petition in TR No.7/2013 before the Tahsildar, Melur for registering his cultivating tenancy rights and the same is pending, that the defendants have been cultivating the suit lands for more than the statutory period, that the plaintiff has no cause of action and the alleged cause of action is false and untenable and that the suit is liable to be dismissed.

9. At the outset, it is pertinent to note that the defendants have not disputed the title of the plaintiff. According to the plaintiff, the suit property was settled in her favour by her father vide Ex.A.2 settlement deed, dated 04.08.1984. It is the specific case of the plaintiff that the second defendant who was a Thalaiyari was allowed to look after the suit property as Supervisor and subsequently at his request, a thatched shed and then titled shed was put up and the second defendant was also permitted to reside with his family.



S.A(MD)No.45 of 2026

10. Admittedly, the second defendant is the son of the first defendant and the second defendant has allegedly claimed cultivating tenancy right through his father – first defendant. It is not in dispute that the second defendant has filed a suit in O.S.No.495 of 2013 claiming permanent injunction against the plaintiff restraining plaintiff and her men therein from any manner interfering with the second defendant's peaceful possession and enjoyment of the suit property. It is also not in dispute that the trial of the suit in O.S.No.495 of 2013 was conducted simultaneously with the present suit and the learned District Munsif, Melur passed the judgment dated 21.09.2024 dismissing the said suit. It is also not in dispute that the second defendant has also filed a petition in TR No.7/2013 before the Tahsildar, Melur under the Tamil Nadu Cultivating Tenants Protection Act and the same was pending.

11. The main defence of the defendants is that they had constructed a house in the suit property with the permission of the plaintiff 25 years back and that since the defendants have been in possession and enjoyment of the same, they have acquired title by adverse possession. It is the second contention of the defendants that they are the cultivating tenants entitled to get protection under the Tamil Nadu Cultivating Tenants Protection Act and that therefore, the plaintiff cannot seek recovery of possession through the present proceedings.



S.A(MD)No.45 of 2026

12. It is pertinent to mention that the plaintiff produced the proceedings of the Tahsildar, Melur in TR No.7/2013 under Ex.A.19 wherein it was decided that the second defendant is not a cultivating tenant and that the plaintiff is entitled to the suit property. The plaintiff has also produced the order passed by the District Revenue Officer, dated 22.07.2021, wherein the District Revenue Officer has confirmed the order of the Tahsildar. Since the competent authorities have already rejected the claim of the second defendant that he is not the cultivating tenant in respect of the suit property, he cannot be allowed to take the same stand again.

13. Now turning to the plea of adverse possession, as already pointed out, the case of the second defendant is that he obtained permission from the plaintiff about 25 years ago to construct a house in the suit property and that since then he has been in continuous and uninterrupted possession and enjoyment of the same, and therefore he has perfected title by adverse possession. In a claim founded on adverse possession, the burden lies entirely on the person who sets up such a plea. Mere long possession or permissive occupation will not suffice. The claimant must establish the well-settled legal ingredients of adverse possession through clear pleadings and cogent evidence. The possession must be nec vi, nec clam, nec precario, that is, not by force, not in secrecy and not with permission.



S.A(MD)No.45 of 2026

The claimant must specifically plead and prove when the possession became hostile, how such possession became adverse to the true owner, that the true owner had knowledge of such hostile possession and that the possession continued openly, continuously and uninterruptedly for the entire statutory period. In other words, the person claiming adverse possession must establish by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of the owner's title to the knowledge of the true owner. Mere long possession by itself is not sufficient to establish adverse possession unless it is accompanied by animus possidendi and is maintained continuously and uninterruptedly throughout the statutory period. The burden lies heavily on the person who sets up such a plea to establish all the essential ingredients of adverse possession. In the present case, though the second defendant has alleged that he constructed a house about 25 years ago with the permission of the plaintiff and has been in possession and enjoyment of the suit property since then, there is absolutely no evidence placed on record to substantiate the same.

14. Considering the evidence available on record, the Courts below have rightly come to the conclusion that the defendants are not in lawful possession of the suit property and that therefore, the plaintiff being the owner of the property, is entitled to get possession of the same and as such, the same cannot be faulted.



S.A(MD)No.45 of 2026

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15. The appellants have 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 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.

16. 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 has proved her claim and as such, granting the relief as sought for by the plaintiff by the trial Court cannot be faulted.

17. 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 directs the parties to bear their own costs.



S.A(MD)No.45 of 2026

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18. In the result, the Second Appeal is dismissed, confirming the judgment and decree made in A.S.No.32 of 2024, dated 19.12.2025, on the file of the Subordinate Court, Melur, in confirming the judgment and decree passed in O.S.No.252 of 2014, dated 21.09.2024, on the file of the District Munsif Court, Melur. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

27.02.2026

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

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To:

- 1.The Subordinate Court, Melur,
2. The District Munsif Court, Melur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.45 of 2026

K.MURALI SHANKAR,J.

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**PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD).No.45 of 2026**

27.02.2026