



S.A.(MD)No.194 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.06.2026

DELIVERED ON : 24.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.194 of 2022

and

C.M.P.(MD)Nos.2289 of 2022 & 19131 of 2025

1.Pandi @ Appayasamy

2.Perumal Samy

3.Manikandan

... Appellants

Vs.

D.Jakkammal

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree passed in A.S.No.25 of 2014, on the file of the Sub Court, Theni dated 23.11.2021, confirming the judgment and decree passed in O.S.No.83 of 2012, on the file of the District Munsif Court, Theni dated 21.02.2014 and thus allow the appeal with costs.

For Appellants : Mr.S.A.Ajmal Khan

For Respondent : Mr.C.Kishore,

for Mr.S.Sivathilakar



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JUDGMENT

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The unsuccessful defendants in a suit for declaration and recovery of possession and permanent injunction are the appellants, challenging the concurrent findings rendered in O.S.No. 83 of 2012 as well as A.S.No.25 of 2014.

2.I have heard Mr.S.A.Ajmal Khan, learned Counsel for the appellants and Mr.C.Kishore, learned Counsel for Mr.S.Sivathilakar, learned Counsel for the respondent.

3.The Second Appeal has not yet been admitted. Learned Counsel for the appellants, despite the suggested substantial questions of law in the memorandum of grounds of Second Appeal, has also filed additional substantial questions of law suggesting 12 more substantial questions of law on 20.04.2026.

4.The brief facts that are necessary for deciding the above Second Appeal are as hereunder:

4.1.The case of the plaintiff is that the suit properties situated at Veerapandi Revenue Village, Theni Taluk, originally belonged to one B.Nataraj, father of the plaintiff who inherited the properties ancestrally. He was issued patta as well and he was in



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enjoyment of the suit properties. The father of the plaintiff died on 03.01.1997, leaving behind his wife Kovurlingammal and the plaintiff as the only legal heirs and after the demise of the plaintiff's mother on 14.05.1999, the plaintiff as the sole legal heir, has become the absolute owner. Patta has been mutated in her name and she has been paying kist in respect of the suit property. Plaintiff also sold 55 ½ cents to one B.Palanichamy, on 18.02.2005, under a registered sale deed in Doc.No.957 of 2005 and has been in possession and enjoyment of the remaining properties.

4.2.The defendants are the paternal uncles of the plaintiff, who have no right in the suit properties. Defendants, taking advantage of the plaintiff's absence, in May 2012, encroached into the suit properties. On coming to know of the same, the plaintiff lodged a police complaint which did not bear any fruit. In order to recover possession and also damages for illegal occupation, the suit came to be filed, including seeking declaration that the plaintiff is the absolute owner of the suit property.

4.3.A written statement was filed by the defendants contending that there is no tracing of title of the suit properties in the hands of B.Nataraj and the claim that he got it ancestrally is incorrect. The mutation of patta has been brought out with



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connivance of revenue officials. The plaintiff and her mother never owned any lands in S.No.1548/1A and what all they owned was only 55 ½ cents which was sold to B.Palanichamy. Defendants have not encroached into the suit property as alleged by the plaintiff. According to the defendants, late T.Bommaya Samy Naicker had four wives and the family of the plaintiff and the defendants hail from Raja Kambala Naicker Community and they belong to a Zamin family. Bommaya Samy Naicker was married for the first time when he was 7 years and he married Bommammal, as the second wife when he was 22 years. Thereafter, he married third wife Seeni and a fourth wife, Bommammal.

4.4.B.Nataraj, father of the plaintiff is the son of the first wife. No children were born to the second wife. Defendants were all born to Bommaya Samy Naicker through the third wife Seeni. Through the fourth wife, one son and two daughters were born. Child marriage was recognised in the community. Family arrangement was arrived at during the life time of Bommaya Samy Naicker. Since his first wife Thottilingammal, intended to live separately with her children, an oral partition was effected and properties were given to the first wife. However, suit properties were not allotted to the first wife and her children in the oral partition. Suit properties were retained by Bommaya Samy Naicker



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and has been in possession and enjoyment of the defendants for several years. The defendants have in fact leased out suit item 2 to various persons and maize (Cholam), ground nut, tomato, kambu, bengal gram and sugarcane crops are being raised in the suit property.

4.5.Bommaya Samy Naicker, died only in the year 2007, when he was 93 years and even during his life time, there was misunderstanding between him and the plaintiff's family. Despite the same, Bommaya Samy Naicker magnanimously gave Rs.80,000/- to the plaintiff in the presence of the plaintiff's husband even in the year 1990. Taking advantage of the same, the suit has been filed in order to grab the suit properties.

4.6.The parties went to trial and before the Trial Court, one Thevar Lingusamy was examined as P.W.1, one Nagarathinam was examined as P.W.2 and one Kumaresan was examined as P.W.3 and exhibits A.1 to A.12 were marked on the side of the plaintiff. On the side of the defendants, first defendant was examined as D.W.1, second defendant was examined as D.W.2 and one Ponniah and Samyraj were examined as D.W.3 & D.W.4. On the side of the defendants, Exs.B.1 to B.19 were marked. Exs.X.1 to X.4 were marked through P.W.3.



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4.7.The Trial Court, after framing relevant issues and on appreciation of the pleadings, in the light of the evidence adduced by the parties, found that the plaintiff was entitled to the suit properties and consequently, decreed the suit as prayed for. Aggrieved by the judgment and decree of the Trial Court, the defendants preferred A.S.No.25 of 2014, before the Sub-Court, Theni. The First Appellate Court, confirmed the findings of the Trial Court, after framing necessary points for consideration. Challenging the concurrent findings, the present Second Appeal has been filed.

5.Learned Counsel for the appellants Mr.S.A.Ajmal Khan, would state that excepting for contending that the properties belong ancestrally to B.Nataraj, the plaintiff has not been able to clinchingly establish title to the suit properties and that the Courts below have been misled by the revenue records that have been relied upon. He would also contend that the documents filed on the side of the defendants in Exs.B.1 to B.19 were not considered in a proper perspective and the plaintiff has also miserably failed to establish that the suit properties belonged to B.Nataraj absolutely and that they were not joint family or Hindu Un-divided properties of Bommaya Samy Naicker. He would also contend that the Courts



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below failed to see that the appellants were direct descendants of the deceased Bommaya Samy Naicker and mere mutation of the revenue records in the name of the father of the plaintiff would not disentitle the defendants from seeking a share in the suit properties.

6.Mr.S.A.Ajmal Khan, would also state that the burden was only upon the plaintiff, having come to Court seeking the relief of declaration and when the plaintiff has failed to discharge the said burden, the Courts below erred in decreeing the suit as prayed for. He would further state that the Courts below have also relied on the weakness in the defence, which is totally irrelevant in a suit for declaration, where the plaintiff has to independently make out a case for entitlement of the relief prayed for. Learned Counsel would therefore, state that when the Courts below have granted a decree for declaration as well as recovery of possession, in the absence of any acceptable evidence produced by the plaintiff, to establish title and when the Courts have been carried away by Exs.X.1 to X.4, which were only revenue documents, substantial questions of law arise for consideration in the Second Appeal.

7.Pending Second Appeal, C.M.P.(MD)No.19131 of 2025, has been taken out by the appellants for adducing additional evidence



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invoking Order 41 Rule 27 of CPC. The application has been taken out to receive the certified copy of the registered sale deed dated 27.05.1998, certified copy of Adangal Register dated 05.11.2025, certified copy of Patta No.1189 in the name of the Bommaya Samy Naicker, certified copy of Patta No.1102 in the name of Palanisamy and note of patta receipts in the name of Bommaya Samy Naicker.

8.In the affidavit filed in support of the said application, casually the petitioners / appellants contend that when they searched their father's records in almirah, they found these documents and that these documents are vital to prove that the suit property is not the self acquired property of respondent's father Nataraj and that based on wrong entry in the revenue records, the respondent has claimed it to be his absolute property. Though no counter affidavit was filed to the said application, learned Counsel for the respondent would contend that mandate of Order 41 Rule 27 of CPC, has not been made out and hence, these documents cannot be received as additional evidence, that too, in the second appellate stage.

9.As seen from paragraph No.6 of the affidavit, no justifiable reasons have been set out as to why these documents have not been exhibited either before the Trial Court or even before the



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First Appellate Court. There is not even a mention of the date on which the petitioners claim to have laid their hands on these documents. In such circumstances, I do not see how the petitioners / appellants can be permitted to rely upon these documents, that too, during the final hearing of the Second Appeal, which is being decided under Section 100 of CPC alone. Further, I also do not see that these documents are going to be of any assistance to this Court to decide the substantial questions of law that have been suggested challenging the concurrent findings rendered by the Courts below. C.M.P.(MD)No.19131 of 2025 is therefore, dismissed.

10.I have carefully gone through the substantial questions of law suggested along with the memorandum of grounds of Second Appeal and also the additional substantial questions of law that have been suggested on 20.04.2026.

11.Per contra, Mr.C.Kishore, for Mr.S.Sivathilakar, learned Counsel appearing for the respondent / plaintiff would state that the Trial Court as well as the First Appellate Court have arrived at concurrent findings of fact, which cannot be interfered with under Section 100 of CPC, by this Court, exercising jurisdiction at the Second Appellate Stage, especially when the Courts below have



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rendered findings based on pleadings and evidence available before them. He would also state that the findings of the Courts below are not perverse and also not based on no evidence as well. In such circumstances, it is his primordial submission that when no substantial questions of law arise and all suggested questions of law are also not substantial in nature, the Second Appeal cannot be entertained.

12. Learned Counsel for the respondent would also invite my attention to the written statement, where the defendants admit that there was a family arrangement and sufficient properties of Bommaya Samy Naicker, were given to the first wife Thottilingammal and her family. He would therefore, state that when such an oral partition has been pleaded by the defendants themselves, the mutation of revenue records exclusively in the name of the father of the plaintiff and subsequently, in the name of the plaintiff would together establish that the properties were the absolute properties of the plaintiff's father and on the demise of the parents of the plaintiff, it vested with the plaintiff absolutely. Learned Counsel would also refer to the various exhibits marked on the side of the plaintiff as well as the evidence of revenue official who has been examined as P.W.3, who also marked Exs.X.1 to X.4. He would therefore, pray for dismissal of the Second Appeal,

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reiterating that no substantial question of law arises for consideration.

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13.I have carefully considered the submissions advanced by the learned Counsel on either side.

14.The plaintiff is the niece of the defendants. The relationship between the parties is not in dispute. It is her specific case that her father B.Nataraj ie.,the brother of the defendants has inherited the suit properties ancestrally. He died only in the year 1997. Admittedly, revenue records have been mutated in his name, in respect of which, satisfactory documentary evidence is adduced on the side of the plaintiff. Subsequent to his death, revenue records have been mutated in the name of the plaintiff and the plaintiff has been in enjoyment of the suit properties, including alienating an extent of 55 ½ cents, vide registered sale deed to one B.Palanichamy. Alleging that the defendants have encroached into the suit property in May, 2012, the suit came to be filed.

15.In defence, the paternal uncles of the plaintiff, while admitting the relationship between the parties only contended that the properties continued to belong to Bommaya Samy Naicker and there is no partition of the suit properties and in fact, alleged that



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there was an oral partition 50 years back, in which, certain & sufficient properties were allotted to the first wife Thottilingammal and her children and that the suit properties continued to be retained by Bommaya Samy Naicker and subsequent to his demise, the defendants are in possession and enjoyment of the suit property. The defendants have not been able to substantiate such tall claims by adducing any satisfactory documentary evidence. The documents filed by them claiming to be in possession have all been thread-bare discussed by the Courts below and found to be not coming to the aid of the defence raised by the defendants.

16.On the contrary, the Courts have concurrently found from the pleadings as well as the evidence that there was no claim made in respect of the suit properties by the defendants either as ancestral properties or their absolute properties and the plaintiff alone has been in possession of enjoyment of the said properties. The Courts below have assessed the oral and documentary evidence judiciously in a proper perspective and arrived at concurrent findings, entitling the plaintiff to a decree as prayed for. I do not see any misreading of pleadings or any perversity in the appreciation of oral and documentary evidence, warranting interference under Section 100 of CPC.



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17.In *Hero Vinoth (Minor) Vs. Seshammal* reported in **2006 (5) SCC 454**, the Hon'ble Supreme Court held that inference on appreciation of facts from recitals or contents of documents are questions of fact and the Second Appeal cannot be decided on equitable grounds. The Hon'ble Supreme Court further held that if there is no misconstruction of documents or wrong application of principles of law, then interference is not permissible under Section 100 of CPC. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the final and last Court of facts, which is the First Appellate Court and even when two inferences of facts are possible, the High Court should not interfere with the inference drawn by the First Appellate Court, adopting the other view or approach. Applying these settled principles governing Section 100 of CPC, I do not find any of the suggested substantial questions of law even arising for consideration in the present matter.

18.For all the foregoing reasons, there is no merit in the Second Appeal. Accordingly, the Second Appeal stands dismissed and the judgment and decree of the First Appellate Court in A.S.No.25 of 2014, on the file of the Sub Court, Theni dated 23.11.2021, confirming the judgment and decree in O.S.No.83 of



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2012, on the file of the District Munsif Court, Theni dated 21.02.2014, are confirmed. However, considering the relationship between the parties, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.06.2026

Index : Yes / No

NCC : Yes / No

MR



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To

1.The Subordinate Judge,
Theni.

2.The District Munsif,
Theni.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN

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