



S.A(MD)No.650 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 21.01.2026

Delivered on : 06.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.650 of 2025

and

C.M.P.(MD)No.20581 of 2025

1.Nallammal

2.Venkatesh

3.Satish Kumar

: Appellants

/Vs./

1.Rajeshwari

2.The Branch Manager,
Karur Vysya Bank,
Vedasunthur Town,
Dindigul District.

: Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 11.09.2024 passed in A.S.No.29 of 2019 on the file of the Principal District Court, Dindigul, confirming the judgment and decree, dated 28.02.2019 made in O.S.No.191 of 2015 on the file of the Sub Court, Vedasandur.



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For Appellant : Mr.R.Ramadurai,

For Respondents : Mr.S.Sarvagan Prabhu, for R1.

JUDGMENT

The Second appeal is directed against the judgment and decree, dated 11.09.2024 made in A.S.No.29 of 2019 on the file of the Principal District Court, Dindigul, confirming the judgment and decree, dated 28.02.2019 made in O.S.No.191 of 2015 on the file of the Sub Court, Veda sandur.

2. The appellants are the defendants. The first respondent as plaintiff filed a suit claiming partition and allotment of 1/3 share in the suit properties.

3.The defendants 1 to 3 filed their written statement and contested the suit. The learned Subordinate Judge, Veda sandur, after framing necessary issues and after full trial, passed a judgment and decree, dated 28.02.2019, granting preliminary decree declaring that the plaintiff is entitled to get 1/3 share in the suit property and dismissing the suit as against the fourth defendant/Bank. Aggrieved by the passing of preliminary decree, the defendants 1 to 3 preferred an appeal in A.S.No.29 of 2019 and the learned Principal District Judge, Dindigul, upon considering the materials available on record and on hearing the



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arguments of both the sides, passed the impugned judgment, dated 11.09.2024, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the defendants 1 to 3 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



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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.”

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



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"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."

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

7. The case of the plaintiff is as follows :

a) The plaintiff is the legally wedded wife of the deceased Chellappan. The said Chellappan purchased the suit properties vide sale deeds dated 23.08.1985 and 30.09.1992. He was doing money lending business in Andhra and thereafter, shifted to Veda sandur. The plaintiff after coming to know that there existed some illicit affairs between her husband Chellappan and the first defendant, she arranged for their marriage and due to that relationship, the defendants 2 and 3 were born to the first defendant. The plaintiff's husband Chellappan, died intestate on 09.12.2014, leaving behind the plaintiff and defendants 2 and 3 to succeed to his properties.

b) The plaintiff's husband, while alive, had mortgaged the properties with the fourth defendant Bank and hence, the Bank was impleaded. Since the defendants were attempting to alienate the suit properties, the plaintiff was forced to file the above suit for partition and allotment of 1/3 share in the said properties.



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8. The defence of the defendants 1 to 3 is that the said Chellappan not satisfying with the activities of the plaintiff convened a Panchayat and the plaintiff had agreed to receive Rs.5 lakhs and to give divorce to the said Chellappan and accordingly, the said Chellappan paid Rs.5 lakhs and the same was received by the plaintiff and invested the same in money lending business; that the defendants had obtained loan of Rs.8 lakhs from the fourth defendant Bank to meet out the medical expenses of the said Chellappan and the loan is still pending; that the plaintiff had taken Rs.50,000/- as loan from the defendants 1 to 3 and that the plaintiff, suppressing the above factual aspects, filed the above suit and therefore, the suit is liable to be dismissed.

9. It is pertinent to note that defendants 1 to 3 filed a suit in O.S. No.18 of 2015 before the District Munsif Court, Vendasandur, claiming legal heirship status, and in pursuance of the decree obtained therein, the Tahsildar, Vendasandur, issued a legal heirship certificate marked as Ex.P.4, wherein the plaintiff is shown as first wife of the deceased Chellappan. Moreover, the defendants 1 to 3 have specifically admitted that the plaintiff is the first wife of the deceased Chellappan.



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10. It is not in dispute that, during the subsistence of the plaintiff's marriage with Chellappan, the said Chellappan married the first defendant. Therefore, as rightly contended by the plaintiff, the first defendant cannot be regarded as the legally wedded wife of the deceased Chellappan. However, the plaintiff has specifically admitted that defendants 2 and 3 were born to the first defendant through the said Chellappan and, consequently, they are the illegitimate children of the deceased Chellappan and are entitled to claim shares in the suit properties.

11. The main defence of the defendants 1 to 3 is that during lifetime of the said Chellappan, the plaintiff, by receiving Rs.5 lakhs as life time maintenance, had divorced the said Chellappan and released her rights in the suit property orally and that therefore, the plaintiff is not entitled to get any share in the suit properties.

12. Admittedly, the defendants 1 to 3 have not produced any iota of evidence to prove that the plaintiff was paid Rs.5 lakhs and on that basis, she orally relinquished her rights and that she divorced the said Chellappan. Moreover, the first defendant, in her evidence, admitted that the plaintiff, being the first wife, is entitled to get 1/3 share in the suit properties.



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13. Considering the above, the Courts below have rightly come to a decision that the plaintiff being the first wife, is the legally wedded wife of the deceased Chellappan and that since the said Chellappan died intestate, she is entitled to get 1/3 share in the suit properties and as such, the same cannot be faulted.

14. The appellants have not shown that the 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 the law erroneously. The appellant has also not canvassed any stand that the Courts below have wrongly placed the burden of proof.

15. It is pertinent to note that the first appellate Court, on appreciating and re-appreciating the evidence available on record, has come to a definite decision that the plaintiff is entitled to get the preliminary decree, confirming the decision of the trial Court.



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16. Considering the judgments of the Courts below, this Court is of 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.

17. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.191 of 2015 on the file of the Sub Court, Veda sandur and in A.S.No.29 of 2019 on the file of the Principal District Court, Dindigul. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

06.02.2026

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

DAS

To:

- 1.The Principal District Court, Dindigul.
- 2.The Sub Court, Vedasandur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
S.A.(MD).No.650 of 2025
and
C.M.P.(MD)No.20581 of 2025

Dated: 06.02.2026