



S.A(MD)No.502 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.01.2026

DELIVERED ON : 27.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD).No.502 of 2022
and
C.M.P.(MD)No.4629 of 2025**

1.Sivaraj

2.Kanagaraj

: Appellants/Respondents 1 and 2/

Defendants 1 and 2

Vs./

1.Shanthi

2.Chitra

3.Kamala

(Respondents 1 to 3 are given up
vide order dated 27.06.2025)

Sarbunnisa Begam(died)

4.Muhammed Assarudin

: Respondents/Respondents/
Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 28.03.2022 in A.S.No.71 of 2018, on the file of the Principal Subordinate Court, Kumbakonam, confirming the judgment



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and decree dated 09.07.2018 in O.S.No.3 of 2014, on the file of the Principal District Munsif Court, Kumbakonam.

For Appellants : Mr.V.Sasikumar

For Respondents : Mr.M.P.Senthil
for Mr.G.Aravindan
for R.4

: R.1 to R.3 given up
vide order dated 27.06.2025

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.71 of 2018, dated 28.03.2022, on the file of the Principal Subordinate Court, Kumbakonam, confirming the judgment and decree passed in O.S.No.3 of 2014, dated 09.07.2018, on the file of the Principal District Munsif Court, Kumbakonam.

2. The appellants are the plaintiffs 1 and 2. The deceased Sarbunnisa Begam filed a suit in O.S.No.3 of 2014 on the file of the Principal District Munsif Court, Kumbakonam claiming permanent injunction restraining the defendants and their men from any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Pending first appeal, the sole plaintiff died



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and her legal representative was impleaded as the second respondent in the first appeal and the fourth respondent in the present Second Appeal. The defendants 3 to 5 who also filed the first appeal are now shown as the respondents 1 to 3 in the present Second Appeal.

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

4. The case of the plaintiff, in brief, is as follows:

a). The suit properties comprise three items of cultivable wet (nanja) lands situated in Re-survey Nos. 258/4, 263/1 and 273/8 of Krishnapuram Village, Kumbakonam Taluk, measuring a total extent of 1.60 acres. The plaintiff purchased the said properties under two registered sale deeds dated 05.09.2001, bearing Document Nos. 452 and 453 of 2001. The plaintiff was also the owner of adjacent properties, a portion of which was subsequently sold to one Jeyabalan, specifically excluding the borewell portion. As the said Jeyabalan attempted to lay claim over the borewell, the plaintiff sought to sink a new borewell in the suit properties and, in that connection, put up a thatched shed in Items II and III of the suit schedule properties.



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b). The defendants have no manner of right, title or interest in the suit properties. Originally, one Sambantham Padayatchi, the father of the defendants, was cultivating the suit properties as a tenant under the plaintiff's predecessors-in-title, namely Hamida Beevi. Even prior to the plaintiff's purchase, the said Sambantham Padayatchi had sub-leased the suit properties to the plaintiff under two documents dated 01.02.1996 and 16.08.1999.

c). The said Sambantham Padayatchi died in the year 2000. However, taking advantage of the fact that his name continued to remain in the cultivating tenants register, the defendants 1 and 2 falsely claimed cultivating tenancy rights from the plaintiff, which was categorically denied. It is further stated that prior to the execution of the sale deeds, the plaintiff's predecessors-in-title had entered into a sale agreement dated 30.07.2001 in favour of the plaintiff agreeing to sell the suit properties. On 31.12.2013, the defendants 1 and 2 once again attempted to assert cultivating tenancy rights and, upon refusal, made attempts to trespass into the suit properties and to dismantle the thatched shed put up by the plaintiff. Such unlawful attempts were resisted by the plaintiff. Hence, the plaintiff was constrained to institute the present suit seeking the relief of permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit properties.



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5. The defence of the defendants, in brief, is as follows:

WEB COPY (a) The suit properties along with the other property in Survey No.262/2 originally belonged to Hameeda Beevi. The defendants' father Sambantham Padayatchi had obtained cultivating tenancy rights from the said Hameeda Beevi and his name was duly entered in the Cultivating Tenants Register. The defendants are disputing the documents dated 01.12.1996 and 16.08.1999 said to have been executed by their father Sambantham Padayatchi and are also disputing the signatures of Sambantham Padayatchi found therein. The said documents are unstamped and unregistered and therefore, liable to be rejected.

(b) After the demise of their father Sambantham Padayatchi, the defendants 1 and 2 have been in possession and enjoyment of the suit properties and have been cultivating the same. The allegation of the plaintiff that she had put up a thatched shed in connection with the sinking of borewell, is false and untenable. The first defendant being the elder son of Sambantham Padayatchi had approached the Krishnapuram Primary Agricultural Co-operative Bank and obtained crop loans upto 2012. The plaintiff has never been in possession of the suit properties. The plaintiff has no cause of action and alleged one is false and untenable. Hence, the suit is liable to be dismissed.



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6. The learned trial Judge, upon considering the pleadings of both parties, framed the following issues:

(i) Whether the plaintiff is entitled to get the relief of permanent injunction as sought for?

(ii) To what other reliefs?”

7. During trial, the plaintiff examined herself as P.W.1 and five other witnesses as P.W.2 to P.W.6 respectively and exhibited 12 documents as Exs.A.1 to A.12. The defendants 1 and 2 examined themselves as D.W.1 and D.W.3 respectively and examined one Annathurai as D.W.2 and adduced no documentary evidence. Five witness documents came to be exhibited as Exs.X.1 to X.5 and the Commissioner's report and plan came to be exhibited as Exs.C.1 and C.2 respectively. The learned Principal District Munsif, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the judgment and decree dated 09.07.2018, granting the relief of permanent injunction as sought for with costs. Aggrieved by the said judgment and decree, the defendants preferred an appeal in A.S.No.71 of 2018 and the learned Principal Subordinate Judge, Kumbakonam upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree, dated 28.03.2022, dismissing the appeal and



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thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the defendants 1 and 2 have preferred the present Second Appeal.

8. Though the Second Appeal has been pending since the year 2022, the same has not yet been admitted and consequently no Substantial Question of Law has been formulated. Pending Second Appeal, the appellants filed an application under Section 151 C.P.C., seeking to raise additional Substantial Questions of Law in the Second Appeal.

9. Heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondents and perused the materials available on record.

10. In the above petition, the appellants seek permission to raise six additional substantial questions of law. At the outset, it is to be noted that the Second Appeal, though pending since 2022, has not yet been admitted and no substantial question of law has been formulated by this Court under Section 100(4) of the Code of Civil Procedure. It is well settled that additional substantial questions of law can be considered only after the Court has framed the original



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substantial question(s) of law at the stage of admission. In the absence of such admission and formulation, the question of entertaining a petition to raise additional substantial questions of law does not arise. In the present case, when the Second Appeal itself is yet to be admitted and no substantial question of law has been framed, the petition seeking to raise additional substantial questions of law, that too after a lapse of more than three years, is clearly misconceived. Accordingly, this Court holds that the petition is not maintainable and the same is liable to be dismissed.

11. 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



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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.”

12. 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;



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“(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.



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(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."

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

14. The three items of Nanja lands measuring 88 cents in Re.Survey No. 258/4, 51 cents in Re.Survey No.263/1 and 21 cents in Re.Survey No.273/8 totalling 1.60 acres in Krishnapuram Village, Kumbakonam taluk are shown as the suit properties. It is not in dispute that the suit properties were originally owned by one Hamida Beevi, that the defendants' father Sambantham Padayatchi was inducted as a cultivating tenant under the said Hamida Beevi in respect of the suit properties and that the name of Sambantham Padayatchi came to be entered



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into cultivating tenants' register. It is also not in dispute that the plaintiff purchased the suit properties on 05.09.2001, vide Exs.A.1 and A.2 sale deeds.

15. It is the specific case of the plaintiff that, even prior to the execution of the sale deeds, she had entered into two agreements with Sambantham Padayatchi, dated 01.02.1996 and 16.08.1999, marked as Exs.A.4 and A.5 respectively, under which she claims to have acquired leasehold rights from Sambantham Padayatchi for valuable consideration, and that she has been in possession and enjoyment of the suit properties ever since. Admittedly, Exs.A.4 and A.5 are unstamped and unregistered documents. As rightly contended by the learned counsel for the defendants, the learned trial Judge overruled the objections raised with regard to the admissibility of the said documents and proceeded to rely upon them. However, the learned first appellate Judge, on a proper appreciation of the nature of the documents, and upon noting that they are insufficiently stamped under the Indian Stamp Act and unregistered as required under the Registration Act, has rightly held that the said documents are inadmissible in evidence and cannot be relied upon either for the main purpose or even for any collateral purpose.



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16. As already pointed out, it is the specific case of the plaintiff that she purchased the suit property from the original owner and after obtaining the possession of the suit properties from the cultivating tenant Sambantham Padayatchi, she has been in possession and enjoyment of the suit properties and that since there was an attempt to interfere with her possession, the above suit claiming permanent injunction came to be filed. It is the specific defence of the defendants that their father Sambantham Padayatchi was a registered cultivating tenant and after his demise, the defendants 1 and 2 have been cultivating the suit properties and that since the plaintiff has never been in possession and enjoyment of the suit properties, the suit is liable to be dismissed.

17. The plaintiff has produced patta pass book under Ex.A.7, kists receipts under Ex.A.6, agricultural loan waiver certificate under Ex.A.8, receipts for purchase of agricultural fertilizers under Ex.A.9, crop insurance scheme amount credit receipt under Ex.A.10, Aaruran Sugar Mills sugarcane amount distribution list under Ex.A.11 and the certificate issued by the Village Administrative Officer under Ex.A.12. As rightly pointed out by the learned Counsel for the plaintiff, the plaintiff summoned and examined the Village Administrative Officer who issued Ex.A.12 as P.W.6, as she deposed that after enquiring the Village workers and on perusal of the records available, she issued Ex.A.12 certificate. Moreover,



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the plaintiff through witnesses produced an application for loan submitted to Kumbakonam Central Co-operative Bank under Ex.x.1 and the copy of the said bank's loan ledger under Ex.X2. The trial Court as well as the first appellate Court, considering the above documentary evidence along with oral evidence of other witnesses, have come to a finding that the plaintiff has proved his possession of the suit properties.

18. The defendants have produced the copies of the registers relating to the agricultural loan availed by the defendants from Krishnapuram Primary Agricultural Cooperative Society under Exs.X.3 to X.5 and except the above documents, the defendants have not produced any iota of materials to substantiate their case. No doubt, since the plaintiff has come forward with the suit claiming permanent injunction, the plaintiff is duty bound to prove her case and she cannot be allowed to succeed in the suit by taking advantage of the loopholes in the defence. In the present case, as already pointed out, the Courts below have specifically held that the plaintiff has discharged his initial burden of proving the possession over the suit properties. As rightly contended by the learned Counsel for the plaintiff, since the defendants have taken a stand that after the demise of their father, they have been cultivating the suit properties, the burden now gets shifted to them to prove that they have been in possession and enjoyment of the



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suit properties since the death of their father.

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19. At this juncture, it is necessary to refer the decision of the Division Bench of this Court in ***Venkataswami Reddiar and another Vs. Sundaramoorthy*** reported in ***AIR 1972 Mad 171***, wherein this Court has held that a person claiming to be a cultivating tenant must establish that some one in their family has been contributing their physical labour in the cultivation of the land and the relevant passages are extracted hereunder:

“4. But, the learned Counsel for the appellants contends that the defendant's father was a cultivating tenant under the Act and that therefore his heirs would automatically become cultivating tenants and that they need not satisfy the test of 'contributing physical labour in the cultivation.' Assuming that the defendant's father was a cultivating tenant there is no warrant for this contention in the clear language of the provisions of the Act. In our opinion, the definition of "cultivating tenant", with reference to the heirs, could be paraphrased as follows: "Cultivating tenant, in relation to any land, means a person or the heirs of such person, who carried or personal cultivation on such land under a tenancy agreement express or implied." It is therefore clear that the heirs of the original tenants should also satisfy the test of personal cultivation, if they want to claim the benefits of the Act. The object of the enactment also does



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not lend support to the contention of the appellants. It is also seen from the decision of the Supreme Court in [Sudalaimuthu S. N. Chettiar v. Palaniyandavan](#) that before an heir can be given the benefit of the definition of "carry on personal cultivation", it is necessary for him to establish that some one is contributing his physical labour in the cultivation of the land and that that someone is a member of his family. We have, therefore, no doubt that the defendant's are not cultivating tenants within the meaning of the Act. 5. In view of our finding that the defendants are not cultivating tenants within the meaning of the Act and that they are not entitled to the benefits of that Act, the other points that have been decided by the lower Court do not arise."

20. The learned Counsel would also rely on a decision of this Court in ***E.K.M.G.Bakir Ali Vs. G.Sundarraaj and others*** reported in **2011(2) MWN (Civil) 754**, wherein also it was reiterated that to hold that a particular individual is a cultivating tenant, it should be proved that there was physical contribution of labour in raising crops in the property and the relevant paragraphs are extracted hereunder:

"14. If at all a person, as a tenant, has been cultivating a land for a decade or so, certainly there would be some records, which would enable him to prove before the court objectively that he cultivated the said piece of land. But in this case, the plaintiffs could not produce



any such evidence.

15. Indubitably and indisputably, for the said 10 years period, no rent was paid by the plaintiffs, who claim to be the cultivating tenants/tenants under the admitted land owners, viz., the defendants.

16. The law is clear on the point that a tenant is expected to pay the rent to the landlord and if there is refusal or even if there is any dispute relating to the rent, it is for the tenant to deposit it with the revenue authority concerned under the *Tamil Nadu Cultivating Tenants Protection Act* or the court under the general civil law. But, in this case, no such event occurred at all. If really for 10 years, the plaintiffs had been cultivating the said land, then the defendants would not have kept quiet without even demanding for rent. The plaintiffs also could not have continued in possession for 10 years without paying rent.

17. I hark back to the legal adage "Preponderance of probabilities would govern the adjudication in civil cases"; here, those preponderance are in favour of the defendants and not in favour of the plaintiffs.

18. The learned counsel for the plaintiffs would place reliance on the adangal records, viz., Exs.B3 to B13 and point out that no steps have been taken by the defendants to get mutated the said adangal by getting deleted the phrase "lease hold cultivation" and that itself is indicative of the fact that in reality, the defendants have not been in possession.

19. I would like to point out that in the adangal records, there is no specification of any tenant's name. What is found mentioned therein is



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the phrase "lease hold cultivation". However, one other important point should be noted that no where it is found stated that a particular kind of crop was cultivated during the said long 10 years' period. However, anterior to that, so to say, during the year 1993, in the adangal pertaining to the said land, it is found specified that Turmeric crop was cultivated therein. After 1993, that is to say, after the death of the cultivating tenant-Ganapathy Thevar, were there any cultivation continued, certainly that would have found place in the adangal. The plaintiffs while vociferously finding fault with the defendants for having not taken steps to get mutated the revenue records, have forgotten as to why they had not taken such steps to get incorporated their names in such records including the crops, which they allegedly cultivated in the suit property. As such, the plaintiff cannot approbate and reprobate and blow hot and cold. The adangal extracts, which the plaintiffs tried to place reliance bespeak against them. Both the courts below without au fait with law and au courant with facts, simply proceeded on the footing that the plaintiffs being the sons of deceased Ganapathy Thevar should be taken as the ones continuing in possession of the suit property.

20. The learned counsel for the defendant would invite the attention of this court to the depositions of PWs.1 and 2 and point out that PW1 happened to be the third son of deceased Ganapathy Thevar and PW2 is none but the close relative of PW1 and their evidence is nothing but their ipse dixit, which in no way throws light on the issue relating to possession. As claimed by PW1 were there any such physical contribution of labour by the plaintiffs in raising crops, then



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necessarily there would have been some documents in their favour. But no such document is available. The averments on plaintiffs' side are nothing but a load of baloney, which fails to carry conviction with this court.

27. My mind is reminiscent and redolent of the maxim "In re dubia magis infitatio quam affirmatio intelligenda [In a doubtful matter, the negation is to be understood rather than the affirmation]. But in this case, I could see no such reliable piece of evidence. Both the courts below misunderstood the gamut of the case and they proceeded on the mere assumption having no legs to stand that Ganapathy Thevar was the cultivating tenant and the plaintiffs being the sons should be presumed to have been in possession and enjoyment of the suit property. In my considered opinion, such a finding is not legally acceptable.

28. En passante, at this juncture, it would not be out of context to refer to some other more or less similar laws prevailing in some part of India other than Tamil Nadu; in those legislations, there are express provisions to the effect that there cannot be any resumption at all of a lease hold land by the land owner except through the intervention of the revenue authority; but in the Tamil Nadu Act, even though there are provisions for such resumption through Revenue authorities by citing and proving legal grounds, yet there is no legal embargo to the effect that even if there is any voluntary abandonment or surrender of the lease hold land, yet the landlord should not take possession of it.

.....

Those decisions would exemplify and demonstrate that in order to



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hold that a particular individual is a cultivating tenant, the individual should prove that there was physical contribution of labour in raising crops in the property concerned. There is no quarrel over such a proposition.”

21. In **Chinnaponnu (died) and others Vs. Mamundiand others** reported in **(2021)1 MWN (Civil) 595** relied on by the learned Counsel for the plaintiff, this Court has held that unless the appellants' name are recorded under Section 4 of the Act 10 of 1969, they cannot be considered as cultivating tenants and the relevant passages are extracted hereunder:

“15. Perusal of the entire written statement, it is made clear that except stating that the appellants are cultivating tenants and they are entitled to the benefits under the Act, no other pleadings whatsoever had been made as to the nature of the exercising the said right. The entire written statement when perused, except denial of the facts, which is in evasive nature, no specific denial is made. 16. Be that as it may, though the plaintiff in O.S. No. 2094 of 1993 claims to be a tenant, no documents whatsoever had been filed before the trial Court to show that the lands are cultivable and the appellants have the benefits from the lands. Further, no proof had been filed to show that the agricultural produce had been sold by plaintiff and her name had been included in the Tamil Nadu agricultural Lands Records under the Act 10 of 1969. It is to be noted that under Section 4 of the Act 10 of 1969, the tenants having interest in the land, in which they are



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cultivating shall make an application to the Record Officer for inclusion of the said lands in the approved record of tenancy rights. No such application was made under Section 4 of the Act 10 of 1969 to contend that her tenancy has been recognized under the statute. If such right was recognized, the person became statutorily a tenant. In such case, it is always open to the tenants to pay the rent regularly. No such rents whatsoever had been paid in this case. 17. Therefore, This Court is of the view that unless appellants' name are recorded as tenant under Section 4 of the Act 10 of 1969, they cannot be considered as cultivating tenant, merely on the basis of some documents namely, lease deeds said to have been executed in their favour. Admittedly, those documents also came to be executed as a result of fiduciary relationship and active confidence as discussed above. Therefore, merely on the basis of such documents, one cannot claim right as tenant without registering himself under Section 4 of the Act 10 of 1969.

18. Besides, even under Section 14 of the Tamil Nadu Cultivating Tenant Protection Act, if really the appellants are stated to be a cultivating tenant, three copies of the lease deeds ought to have been prepared in the prescribed form within a reasonable time after the commencement of such tenancy, specifying the name and description of the cultivating tenant, the name (if any) survey number. One of the three copies shall be kept by the landlord, one shall be kept by the cultivating tenant and the third shall be caused to be lodged in the Taluk Office/Revenue Divisional Officer by the landlord or his agent within a fortnight of the date on which the cultivating tenant signs it.



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This procedure is also not done in this case.

19. All these facts clearly show that the contention of the appellants that they are the cultivating tenants is nothing but an attempt to squat on the property forever.”

22. In the present case, it is not the stand of the defendants that their names were entered in the Cultivating Tenants Register subsequent to the demise of their father. It is also not their case that they had applied for substitution of their names in the said register and that such application is pending before the competent authority. As rightly observed by the Courts below, the defendants have not stated as to in what manner they have been cultivating and enjoying the suit properties, what crops were raised, or where the harvested produce was taken or sold. Significantly, there is no whisper regarding payment of lease rent. It is not their case that they paid lease amount either to the plaintiff or to the original owner, Hamida Beevi, or her legal representatives. Nor have the defendants 1 and 2 asserted that they were carrying on personal cultivation by contributing their own physical labour.

23. As rightly contended by the learned counsel for the plaintiff, the



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evidence of D.W.1 and D.W.3 clearly indicates that the first defendant (D.W.1) has been employed as a salesman in Prasanna Stores, Kumbakonam, for about 15 years, and the second defendant (D.W.3) has also been working as a salesman in a private concern for a similar period. The defendants have not adduced any evidence to show that they or their family members were engaged in the cultivation of the suit properties by deploying their physical labour. Even D.W.1 has admitted that no steps were taken to have their names entered in the relevant revenue records, and that no documents have been produced to establish payment of lease rent or any effort taken in that regard. In view of the above, the Courts below have rightly concluded that the defendants have miserably failed to establish that they were in cultivation and enjoyment of the suit properties as cultivating tenants.

24. The learned Counsel for the defendants placed reliance on the decision of the Hon'ble Supreme Court in ***Thimmaiah Vs. Shabira and Others*** reported in ***(2008)4 SCC 182*** and contended that in as much as the defendants have denied the possession of the plaintiff and the plaintiff not being in possession, ought to have sought for the relief of recovery of possession and not a mere injunction. The learned Counsel relied on the following paragraph from the said judgment:



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“10. Undisputedly, the suit was one for permanent injunction and in such a suit the plaintiff has to establish that he is in possession in order to be entitled to a decree for permanent injunction. The general proposition is well settled that a plaintiff not in possession is not entitled to the relief without claiming recovery of possession. Before an injunction can be granted it has to be shown that the plaintiff was in possession.”

25. In the above decision, it has been specifically clarified that only in case when the plaintiff is not in possession, is duty bound to seek the relief of recovery of possession. The learned Counsel would also rely on a decision of the Hon'ble Supreme Court in ***Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs and others*** reported in ***(2008)4 SCC 594***, wherein the Hon'ble Supreme Court summarized the principles with regard to the suits for prohibitory injunction relating to immovable properties and the first principle which is relevant to the present case is extracted hereunder:

“.....

Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is



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not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.”

26. The above principle is squarely applicable to the case on hand and since there is no cloud raised over the plaintiff's title and also the fact that the Courts below have rendered a concurrent finding that the plaintiff is in possession, claiming declaration or recovery of possession does not arise. Since there was an interference, as per the above principle, the suit for bare injunction is perfectly maintainable.

27. It is settled law of jurisprudence that the standard of proof required for establishing a fact in civil proceedings is that of a preponderance of probabilities and not proof beyond reasonable doubt. The Court is required to assess the entire evidence on record to determine as to whether the existence of a particular fact is more probable than its non-existence.

28. In ***Rattan Singh v. Nirmal Gill***, reported in (2024) 2 SCC 630, the Hon'ble Supreme Court has reiterated that the standard of proof in civil cases is



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that of preponderance of probabilities, and that the Court is required to determine the rights of the parties by assessing which of the rival versions appears more probable on the materials available on record. It has further been held that, while exercising jurisdiction under Section 100 of the Code of Civil Procedure, this Court would not ordinarily re-appreciate the evidence merely because another view is possible. However, if the findings of the Courts below are vitiated by misreading of evidence, non-consideration of material evidence, or application of an erroneous standard of proof contrary to the test of preponderance of probabilities, such findings would be rendered perverse, thereby giving rise to a substantial question of law warranting interference in a Second Appeal.

29. In the present case, the learned trial Judge, upon a proper appreciation of the oral and documentary evidence available on record, has rendered a categorical finding that the plaintiff has established her possession and enjoyment of the suit properties. The said findings were independently re-appreciated by the learned first appellate Judge, who concurred with the conclusions of the trial Court and held that the plaintiff was in possession and enjoyment of the suit properties as on the relevant date and was, therefore, entitled to the relief of permanent injunction. Thus, both the Courts below have concurrently recorded



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findings of fact regarding the plaintiff's possession, based on a proper appreciation of evidence.

30. As already pointed out, the appellants/defendants have not demonstrated that the concurrent findings of the Courts below suffer from any perversity, illegality, or misreading of evidence warranting interference by this Court. On a careful perusal of the judgments of the Courts below, and as rightly contended by the learned counsel for the plaintiff, no question, much less any substantial question of law, arises for consideration in this Second Appeal. Accordingly, this Court holds that the Second Appeal is liable to be dismissed. Considering the facts and circumstances of the case, the parties are directed to bear their own costs.

31. In the result, the Second Appeal is dismissed, confirming the judgment and decree made in A.S.No.71 of 2018, dated 28.03.2022, on the file of the Principal Subordinate Court, Kumbakonam, confirming the judgment and decree passed in O.S.No.3 of 2014, dated 09.07.2018, on the file of the Principal District Munsif Court, Kumbakonam. The Civil Miscellaneous Petition in



S.A(MD)No.502 of 2022

C.M.P(MD)No.4629 of 2025 is also dismissed. The parties are directed to bear their own costs.

27.02.2026

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

SSL

To:

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



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S.A(MD)No.502 of 2022

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD).No.502 of 2022

27.02.2026