



S.A(MD)No.320 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.01.2026

DELIVERED ON :18.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.320 of 2023

and

C.M.P.(MD)Nos.7172 of 2023 and 19372 of 2025

1.Akshaya(died)

2.SAjeela

: Appellants/Appellants/Defendants

3.C.K.Ajukumar

4.Minor Adwaith

5.Minor Aswanth

(Appellants 4 and 5 are represented
through their father and guardina

3rd appellant C.K.Ajukumar,
S/o Karunakaran Nai, who is appointed
as guardina of minors 4th and 5th appellants)

(Appellants 3 to 5 are brought on record as
LRs of the deceased 1st Appellant vide common
order dated 21.06.2024, made in
C.M.P.(MD)Nos.6082 and 6084 of 2024)

Vs./

Sreedharan

: Respondent/Respondent/Plaintiff



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.5 of 2022, dated 23.09.2022, on the file of the Additional District Judge, Kuzhithurai confirming the judgment and decree in O.S.No.1 of 2025, dated 20.11.2021, on the file of the Sub Court, Kuzhithurai.

For Appellants : Mr.C.Godwin

For Respondent : Mr.K.N.Thampi

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.5 of 2022, dated 23.09.2022, on the file of the Additional District Court, Kuzhithurai, confirming the judgment and decree passed in O.S.No.1 of 2005, dated 20.11.2021, on the file of the Subordinate Court, Kuzhithurai.

2. The appellants are the defendants. Pending Second Appeal, the first appellant died and her Legal Representatives were impleaded as the appellants 3 to 5. The respondent/plaintiff filed a suit in O.S.No.1 of 2005, before the Subordinate Court, Kuzhithurai, claiming the relief of declaration that “A” schedule property belongs to him and for recovery of possession of “B” schedule property situated in “A” schedule property.



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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 short is as follows:

The suit properties and other properties originally belonged to one Uthuman Pillai and another and after the death of Uthuman Pillai, his legal heirs entered into a partition deed dated 26.11.1997 whereunder “A” schedule property therein was allotted to one Shahul Hameed, S/o Uthuman Pillai. Since then, he was in possession and enjoyment of the same. The plaintiff purchased “A” schedule property from the said Shahul Hameed for a valid consideration of Rs.4,80,000/- by virtue of a sale deed dated 15.03.2004. The second defendant is the daughter of the said Shahul Hameed and the first defendant is the daughter of the second defendant. The second defendant by colluding with the first defendant executed a sham and collusive gift deed dated 25.09.2003 in respect of “B” schedule property in favour of the first defendant and filed a false and vexatious suit against the plaintiff in O.S.No.506 of 2004. The second defendant has no right to execute any gift deed in favour of the first defendant and the first defendant will not acquire any right over the “B” schedule property. Moreover, the second defendant filed an unnumbered suit against her father and the same was rejected holding that the second defendant has no right in the property.



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Hence, the plaintiff was constrained to file the above suit claiming declaration and for recovery of possession.

5. The defence of the defendants 1 and 2 in brief is as follows:

The second defendant's father Shahul Hameed orally gifted the suit “B” schedule property in favour of the second defendant on 17.05.1990 and put her in possession of the same. The said gift was accepted by the second defendant and the same was acted upon. The second defendant along with her husband has been running a tea shop in the building available in “B” schedule property. While so, the second defendant executed a settlement deed dated 25.09.2003 in favour of the first defendant in respect of “B” schedule property and put her in possession. The settlement deed was also accepted by the first defendant and acted upon and it has become final and irrevocable. The defendants are not aware of the sale deed in favour of the plaintiff. If any sale deed as alleged was brought into existence including “B” schedule property, it would be a fraudulent creation of the plaintiff knowing well about the possession of the defendants. The second defendant bonafidely believes that her father Shahul Hameed would not have executed such a document to the detriments of the second defendant in such a way including plaintiff “B” schedule property. The sale deed relied on by the plaintiff is a sham document and it was not supported by consideration and



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therefore, it is void so far as “B” schedule property is concerned. The second defendant was in possession and enjoyment of “B” schedule property since 17.05.1990. The plaintiff has no manner of right, title and possession over plaintiff “B” schedule property. Hence the suit is liable to be dismissed.

6. It is the further defence of the defendants 1 and 2 raised through the additional written statement that “A” schedule property shown in partition deed dated 26.11.1997 allotted to the second defendant's father Shahul Hameed does not refer to any buildings, but the plaintiff had brought a sale deed fraudulently including the building stood in the eastern side property already gifted by the said Shahul Hameed to the second defendant. Hence, the plaintiff is not entitled to claim any relief in respect of “B” schedule property.

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

- “(a) Whether the plaintiff is entitled for declaration of the plaintiff “A” schedule property as prayed for?
- (b) Whether the plaintiff is entitled for recovery of possession of the “B” schedule including three shops?
- (c) Whether the sale deed obtained by the plaintiff is fraud?



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(d) To what other reliefs and cost?”

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8. During trial, the plaintiff examined himself as P.W.1 and two other witnesses Thiru.Devadhas and Thiru.Maheen Abubucker as P.W.2 and P.W.3 respectively and exhibited 8 documents as Exs.A.1 to A.8. The defendants examined the second defendant as D.W.1 and exhibited 21 documents as Exs.B.1 to B.21. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the judgment and decree dated 20.11.2021 decreeing the suit as prayed for with costs. Aggrieved by the said judgment and decree, the defendants preferred an appeal in A.S.No.5 of 2022 and the learned Additional District Judge, Kuzhithurai, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree dated 23.09.2022, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the defendants have preferred the present Second Appeal.

9. Though the Second Appeal has been pending since 2023, the same has not yet been admitted and consequently, no Substantial Question of Law has been formulated.



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10. 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 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



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question of law or on framing erroneous substantial question of law.”

11. 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, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."



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

13. It is pertinent to note that an extent of 6 cents of land in R.Sy.No.419/6, situated in Vilavancode Vilage was allotted to the plaintiff's vendor Shahul Hameed under the partition deed daed 26.11.1997 marked as Ex.A.1. According to the plaintiff, the said Shahul Hameed executed a sale deed dated 15.03.2004 under Ex.A.2 in favour of the plaintiff in respect of 6 cents of land together with the building thereon. However, according to the defendants, the second defendant's father Shahul Hameed had orally gifted an extent of two cents in Re.Sy.No.419/6 shown as “B” schedule property in the present suit on 17.05.1990 and that subsequently the second defendant settled the said property in favour of her daughter – first defendant vide settlement deed dated 25.09.2003 under Ex.A.3.

14. It is not in dispute that suit “A” schedule property measures 6 cents and that the “B” schedule property, measuring 2 cents is situated within and forms part of the “A” schedule property. The plaintiff has claimed title over the entire “A” schedule properties and possession over “B” schedule property, whereas the defendants claimed title and possession over the “B” schedule property.



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15. The trial Court, on appreciation of entire evidence available on record came to the conclusion that the plaintiff has established the title of his vendor and the execution of the sale deed in his favour. The trial Court has further held that the defendants have failed to prove the alleged oral gift deed set up by them and accordingly decreed the suit granting the relief of declaration and recovery of possession. The said findings of the trial Court were confirmed by the first appellate Court, on re-appreciation of the entire evidence on record.

16. The principal defence of the defendants is that Shahul Hameed, the father of the second defendant, had orally gifted the “B” schedule property to the second defendant on 17.05.1990, and that, on the strength of such oral gift, the second defendant subsequently executed a settlement deed in favour of the first defendant. However, it is not in dispute that Shahul Hameed acquired title to the suit property only under the partition deed dated 26.11.1997, entered into between himself and his parents. In view of this admitted position, the plea that he had orally gifted a portion of the property as early as on 17.05.1990, i.e., prior to acquiring title thereto, cannot be countenanced. It is a settled principle of law that a person who has no title to a property cannot convey or transfer any valid right therein. Consequently, the alleged oral gift set up by the defendants is



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legally untenable. The very foundation of the defence, therefore, stands discredited by the defendants' own admission.

17. The next limb of defence raised by the defendants is that the plaintiff's vendor, Shahul Hameed, had obtained only an extent of 6 cents of land in R.S. No.419/6, Vilavancode Village, under the partition deed. It is contended that, while so, the sale deed executed in favour of the plaintiff purports to convey not only the land but also a building standing thereon. The learned counsel for the defendants would submit that the plaintiff has fraudulently included the building bearing Old Door No.18/13 and New Door No.18/53, consisting of a superstructure measuring 30 sq. metres, stated to be about 30 years old and provided with an electricity service connection. According to the defendants, since Shahul Hameed had obtained only 6 cents of land under Ex.A1 and no independent right over the said superstructure is evidenced therein, he could not have validly conveyed the building to the plaintiff under Ex.A2. It is therefore contended that the plaintiff does not acquire any valid title or right over the superstructure by virtue of the said sale deed.

18. The learned counsel appearing for the plaintiff would contend that the expression 'land' comprehends not only the surface but also everything attached



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to the earth and lying beneath it. According to him, when a parcel of land is conveyed, all things standing on and embedded in or attached to the earth pass along with such conveyance, and it is not necessary for the document of conveyance to expressly specify each such component. He would further submit that the term 'land' has been defined under Section 3(a) of the Land Acquisition Act, 1894 (since repealed) and Section 3(p) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and that both definitions make it clear that land includes benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth, including buildings standing thereon. In support of his submissions, the learned counsel placed reliance on the following decisions:

(i) ***AIR 1975 SC 1234 (The Anant Mills Co. Ltd., etc. Vs. State of Gujarat)***

“The word "land", according to the learned counsel, denotes the surface of the land and not the underground strata. We are unable to accede to the above submission. Entry 49 of List II contemplates a levy of tax on lands and buildings or both as units. Such tax 'is directly imposed on lands and buildings and bears a definite relation to it. Section 129 makes provision for the levy of property tax on buildings and lands. Section 139 merely specifies the persons who would be primarily responsible for the payment of that tax. The 'word "land" includes not only the face of the earth, but everything under or



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over it. and has in its legal signification an indefinite extent upward and downward, giving rise to the maxim, Cujus eat solum ejus est usque ad coelum (see p. 263 72 Corpus Juris Secundum). According to Broom's Legal Maxims. 10th ed., P. 259, not only has land in its legal signification an indefinite extent upwards, but in law it extends also downwards. so that whatever is in a direct line between the surface and the centre of the earth by-the common law belongs to the owner of the surface (not merely the surface, but all the land down to the centre of the earth and up to the heavens) and hence the word "land" which is nomen generalissimum, includes, not only the face of the earth, but everything under it or over it."

(ii) (1988)3 SCC 433 (P.Rami Reddy and others Vs. State of Andhra

Pradesh and others):

"The expression 'land' in its legal sense is a comprehensive expression which is wide enough to include structures, if any, raised thereon. While this proposition hardly needs to be buttressed, support can be sought from the following sources:

"The Dictionary of English Law.' LAND, in its restrained sense, means soil, but in its legal acceptation it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, waters, marshes, furze, and heath; it includes also houses, mills, castles, and other buildings; for with the conveyance of the land, the structures upon it pass also.



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And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxim, Cujus est solum ejus est usque ad caelum et ad inferos; or, more curtly expressed, Cujus est solum A ejus est altum (Co . Litt. 4a)"

"Words And Phrases Judicially Defined:1 The word 'land' would be variously understood by different persons. To a farmer the word 'land' would not mean his farm buildings; to a lawyer the word would include every thing that was upon the land fixed immovably upon it. Smith v. Richmond, [1899] A.C. 448, per Lord Halsbury, L.C., at p.448."

"The Law Lexicon:2 The word "land" is a comprehensive term, including standing trees, buildings, fences, stones, and waters, as well as the earth we stand on. Standing trees must be regarded as part and parcel of the land in which they are rooted and from which they draw their support."

19. The learned Counsel for the plaintiff would also refer to P.Ramanatha Aiyar's Advanced Law Lexicon (Seventh Edition) (Volume 3) and the relevant portion is extracted hereunder:

"The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. [Land Acquisition Act (1 of 1894), section 3(a) [Now repealed & replaced by Right to Fair Compensation and



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Transparency in Land Acquisition, Rehabilitation and Resettlement Act.

"LAND" includes houses and buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure; and Ben Act I of 1889 (General Clauses), section 5(1).

Land includes any ground, soil or earth, such as meadows, pastures, woods, moors, waters, marshes and heath; houses and other buildings upon it; the air space above it and all mines and minerals beneath it. It includes anything fixed to the land; and growing trees and crops, except those which broadly speaking, are produced in the year by the labour the year. HALSBURY, 3rd Edition, Vol. 32, p. 249."

20. Under Section 3(26) of the General Clauses Act, 1897, "immovable property" is defined in an inclusive manner to mean land, benefits arising out of land, and things attached to the earth or permanently fastened to anything attached to the earth. The expression "things attached to the earth" encompasses items rooted in the earth, such as trees and shrubs; embedded in the earth, such as walls and buildings; or attached to what is so embedded for the permanent beneficial enjoyment of that to which they are attached.



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21. Section 8 of the Transfer of Property Act, 1882, lays down the operation of a transfer and delineates the rights that pass to the transferee. It provides that, unless a different intention is expressed or necessarily implied, a transfer of property passes to the transferee all the interest which the transferor is then capable of passing in the property, together with all the legal incidents thereof. The provision further clarifies that such transfer includes easements, rents, and all things attached to the earth, such as buildings, trees, and other permanent features, as well as the benefits arising out of the property. In other words, whatever is permanently attached to the land passes along with the land, in the absence of a contrary intention.

22. If a person owns 6 cents of land with a house standing thereon and executes a sale deed conveying the said land, the transfer would ordinarily include the house/building, the appurtenant features, and all things attached to the earth. Therefore, the contention that the vendor owned only 6 cents of land and has conveyed merely the land, without the building, cannot be accepted, as the building, being attached to the earth, passes along with the land by operation of law under Section 8 of the Transfer of Property Act, 1882.



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23. Both the Courts below, on a proper appreciation of the oral and documentary evidence available on record, have concurrently held that the plaintiff has established his title to the suit property through a registered sale deed executed by the father of the second defendant, and that the defendants have failed to substantiate their claim based on the alleged oral gift. The Courts below have also concurrently recorded a finding of fact regarding the plaintiff's possession of the suit property, based on a correct and comprehensive evaluation of the evidence. The learned counsel for the defendants has not been able to demonstrate that the concurrent findings of the Courts below suffer from any perversity, misreading of evidence, or non-consideration of material evidence warranting interference in this Second Appeal.

24. In a Second Appeal under Section 100 C.P.C., this Court can interfere only when the case involves a Substantial Question of Law. In the present case, the appellants have not been able to show that the present appeal involves any such Substantial Question of Law warranting interference of this Court. On a perusal of the judgments of the Courts below and as rightly contended by the learned Counsel for the plaintiff, no question of law, much less a Substantial Question of Law arises for consideration. Hence, this Court concludes that since no Substantial Question of Law is made out in the Second Appeal, the same is



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liable to be dismissed. In the facts and circumstances of the case, the parties are to be directed to bear their own costs.

25. In the result, the Second Appeal is dismissed, confirming the judgment and decree made in A.S.No.5 of 2022, dated 23.09.2022, on the file of the Additional District Court, Kuzhithurai, confirming the judgment and decree passed in O.S.No.1 of 2005, dated 20.11.2021, on the file of the Subordinate Court, Kuzhithurai. Consequently, the connected Miscellaneous Petitions are also dismissed.. The parties are directed to bear their own costs.

18 .03.2026

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

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To:

1. The Additional District Court, Kuzhithurai,
2. The Subordinate Court, Kuzhithurai.
3. The Section Officer,
VR 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.320 of 2023**

18.03.2026