



S.A.(MD)No.7 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2026

Pronounced on : 19.02.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.7 of 2026
and
C.M.P.(MD)No.33 of 2026

Jeyamurugan

... Appellant/
Appellant/
Plaintiff

Vs.

Natarajan

... Respondent/
Respondent/
Defendant

PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.24 of 2021 dated 06.02.2025 on the file of the Sub Court, Thoothukudi confirming the judgment and decree passed in O.S.No.112 of 2017 dated 24.08.2021 on the file of the Additional District Munsif Court, Thoothukudi.

For Appellant : Mr.S.Muthu Malai Raja



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JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.24 of 2021 dated 06.02.2025 on the file of the Subordinate Court, Thoothukudi, confirming the judgment and decree dated 24.08.2021 passed in O.S.No.112 of 2017 and the counter claim filed therein on the file of the Additional District Munsif Court, Thoothukudi.

2. The appellant is the plaintiff (hereinafter referred as 'plaintiff'). The plaintiff filed a suit claiming permanent injunction restraining the respondent / defendant (hereinafter referred as 'defendant') and his men from trespassing or interfering with the plaintiff's peaceful possession and enjoyment of the suit 2nd schedule property. The defendant filed a counter claim cum written statement to declare that the suit 2nd schedule property belongs to him and for consequential permanent injunction restraining the plaintiff from in any manner interfering with the defendant's peaceful possession and enjoyment of the suit property. The learned Additional District Munsif, Thoothukudi, after framing necessary issues in the suit as well as in the counter claim and after full trial, passed



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a judgment and decree dated 24.08.2021 dismissing the suit and allowed the counter claim granting the reliefs of declaration and permanent injunction as sought for by the defendant. Aggrieved by the said judgment and decree, the plaintiff filed an appeal in A.S.No.24 of 2021 and the learned Subordinate Judge, Thoothukudi, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 06.02.2025 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiff has preferred the present Second Appeal.

3. 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:



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

4. The Hon'ble Supreme Court in the case of ***Chandrabhan Vs.***



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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."

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



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6. The case of the plaintiff is that the suit 1st schedule property belonged to one Guruvammal, mother of the plaintiff and the defendant. The said Guruvammal had allotted southern portion of the suit 1st schedule property to the plaintiff during 1992 to reside therein along with his family by putting up house therein and the said property allotted to the plaintiff is shown as suit 2nd schedule property. The plaintiff constructed asbestos roofing house and he has been in possession and enjoyment of the suit property along with his family. The said Guruvammal borrowed a sum of Rs.4 lakhs from the plaintiff and since the said Guruvammal did not repay the loan amount, the plaintiff filed a suit in O.S.No.21 of 2011 against his mother Guruvammal before the Subordinate Court, Thoothukudi. The plaintiff also filed a petition claiming attachment before judgment in respect of the suit 1st schedule property and the suit was pending. The defendant, brother of the plaintiff is residing in the northern portion of the suit 1st schedule property, which is shown as 3rd schedule. For the house situated in the suit 2nd schedule property, access is only through east west street running south of the suit 2nd schedule property. Likewise for the house situated in the suit 3rd schedule property, access is only through east west street running north



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of the suit 3rd schedule property. The plaintiff has been using the east west street running south of the suit 2nd schedule property and the defendant has been using the east west street running north of the suit 3rd schedule property. Due to family enmity, the defendant tried to dispossess the plaintiff from the suit 2nd schedule property right from 2011, which was successfully thwarted by the plaintiff. The defendant gave a police complaint alleging, as if, the plaintiff was obstructing the defendant from using the suit 2nd schedule property to reach east west street running south of the suit 2nd schedule property but the plaintiff attended the enquiry and explained about the mode of enjoyment of the property. Subsequently, the defendant had set up his mother and got her admitted in Government Hospital and lodged an FIR against the plaintiff's wife and on that basis, police summoned the plaintiff and obtained a settlement by threatening him. Thereafter, the police had also directed the plaintiff's wife and unmarried daughter to come to the police station for enquiry. The defendant has no right to go over or pass over the suit 2nd schedule property and his access is north of the suit 2nd schedule property. Since the defendant with his men power, money power and police power has been trying to trespass into the suit 2nd schedule



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property, the plaintiff was constrained to file the above suit claiming permanent injunction.

7. The defence of the defendant is that the plaintiff has nowhere stated as to how he got the title over the suit 2nd schedule property, that though the plaintiff has claimed that he has been in possession of the suit property for 25 years, he has not claimed any adverse possession, that the plaintiff has absolutely no right, title or interest over the suit 2nd schedule property, that since the plaintiff had attempted to interfere with the defendant's possession, complaint was lodged before the Thenpaga Police Station and FIR was registered in Crime No.352 of 2017, that the defendant's mother obtained the property through gift on 06.03.1980 given by one Mahamayee Ammal, W/o.Ponnaiya Nadar and out of the gifted property, the said Guruvammal executed a settlement deed in favour of the defendant in respect of the land measuring 1.422 cents and the house property bearing Door No.106 and water service connection obtained in the name of Guruvammal and also right over the pathway in 2nd item of the suit property and that thereafter the said Guruvammal executed another settlement deed dated 02.03.2012 settling her half



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rights in the suit 2nd schedule property and the defendant became the owner of the entire suit 2nd schedule property and is in possession and enjoyment of the same and hence, the defendant was constrained to file the counter claim to declare that the suit 2nd schedule property belongs to him and for permanent injunction restraining the plaintiff from interfering with the defendant's peaceful possession and enjoyment of the suit property.

8. At the outset, it is pertinent to note that the plaintiff as well as the defendant, in their pleadings and in their evidence, admitted that the suit 1st schedule property which includes items 2 and 3 of the suit property was owned by their mother Guruvammal. It is also not in dispute that there are two house properties bearing Door Nos.103 and 106 which came to be owned by the said Guruvammal in the suit property.

9. As already pointed out, the main contention of the plaintiff is that his mother Guruvammal had allotted southern portion of the suit 1st schedule property (which is suit 2nd schedule property) and permitted him



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to construct a house therein and to reside therein with his family. As rightly observed by the Courts below, it is not the case of the plaintiff that the said Guruvammal had transferred her right and title in the suit 2nd schedule property in favour of the plaintiff.

10. Though the plaintiff has taken a stand that his mother Guruvammal had executed a Will in his favour, the same came to be cancelled subsequently.

11. It is pertinent to note that the plaintiff, in his evidence, has admitted that there are no documents to show that the southern portion of the suit 1st schedule property was allotted to him in the year 1992; that he has no right over the suit 2nd schedule property; and that, since he has no right over the house situated in the suit 2nd schedule property, he cannot claim any right over Items 2 and 3 therein. More importantly, the plaintiff has further admitted that he would vacate the property if the loan amount is repaid to him. Considering the evidence available on record, the Courts below have rightly held that the plaintiff was in possession of the house bearing Door No.103, but not in possession of the entire suit 2nd schedule property.



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12. The defendant produced two settlement deeds dated 04.10.2010 under Ex.D1 and 02.03.2012 under Ex.D2 executed in his favour by his mother Guruvammal. It is evident from Ex.D1 that the said Guruvammal had settled the house property bearing Door No.106 along with half right over the common pathway in favour of the defendant. Moreover, the said Guruvammal through Ex.D2 settlement deed had settled the remaining half share in the common pathway owned by her in favour of the defendant. Considering the evidence available on record, the Courts below have come to a decision that the defendant became the owner of the suit 2nd schedule property and as such, he is entitled to get the reliefs of declaration and permanent injunction as sought for.

13. Though an attempt was made by the plaintiff before the trial Court that license coupled with interest was given by his mother in respect of the suit 2nd schedule property and since the license is irrevocable, he is entitled to get the relief of permanent injunction as sought for. But admittedly, the plaintiff has not pleaded irrevocable license in the plaint and he has also not produced any evidence in that regard and that the trial Court, considering the above, has rightly rejected



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the above contention.

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14. The Courts below rightly appreciating the evidence available on record have rightly come to a conclusion that the plaintiff is not entitled to get the relief of permanent injunction but the defendant is entitled to get the reliefs sought for and as such, the same cannot be faulted.

15. Considering the judgments of the Courts below, no question of law much less Substantial Question of Law is made out. As per the dictum laid down by the Hon'ble Supreme Court in **Chandrabhan's** case referred supra, 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. Consequently, this Court concludes that since no substantial question of law is made out in the second appeal, the same is liable to be dismissed.

16. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.112 of 2017 on



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the file of the Additional District Munsif Court, Thoothukudi and in
A.S.No.24 of 2021 on the file of the Subordinate Court, Thoothukudi.

Consequently, connected Miscellaneous Petition is closed. No costs.

19.02.2026

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

To

1. The Subordinate Judge, Thoothukudi.
2. The Additional District Munsif, Thoothukudi.
3. The Record Keeper,
Vernacular 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
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and
C.M.P.(MD)No.33 of 2026

Dated : 19.02.2026