



S.A(MD)No.96 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 13.11.2025

Pronounced on : 10.02.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.96 of 2018

and

C.M.P(MD)Nos.2139, 8104 & 2140 of 2018

and

C.M.P(MD)No.16698 of 2025

A.David,
S/o. Appavoo,
Umalagundru, Karungal Post,
Midalam Village, Vilavancode Taluk,
Kanyakumari District. ...Appellant/Appellant/1st Defendant

Vs.

1.N.Natarajan,
S/o.Nagamony,
Umalagundru, Karungal Post,
Midalam Village, Vilavancode Taluk,
Kanyakumari District. ...1st Respondent/1st Respondent/
Plaintiff

2.A.Dennis,
S/o. Appavoo,
Umalagundru, Karungal Post,
Midalam Village, Vilavancode Taluk,
Kanyakumari District. ... 2nd Respondent/2nd Respondent/
2nd Defendant



S.A(MD)No.96 of 2018

WEB COPY

PRAYER:-This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 02.11.2017 passed in A.S.No.28 of 2015 on the file of the Sub Court, Padmanabhapuram, confirming the judgment and decree, dated 30.01.2015 passed in O.S.No.90 of 2012 on the file of the Additional District Munsif Court, Padmanabhapuram and allow the Second Appeal.

For Appellant : Ms.J.Anandhavalli
For R1 : Mr.C.Kishore
R2 : Ex-parte vide in E.B

JUDGMENT

This Second Appeal is preferred against the judgment and decree, dated 02.11.2017 passed in A.S.No.28 of 2015 on the file of the Sub Court, Padmanabhapuram, confirming the judgment and decree, dated 30.01.2015 passed in O.S.No.90 of 2012 on the file of Additional District Munsif Court, Padmanabhapuram.

2.The appellant is the 1st defendant and the respondents are the plaintiff and 2nd defendant in O.S.No.90 of 2012 on the file of the Additional District Munsif Court, Padmanabhapuram. The 1st respondent/plaintiff filed the suit for



S.A(MD)No.96 of 2018

permanent injunction and mandatory injunction directing the defendants to remove the newly erected eight stone pillars and newly put up barbed wire fence existing within the suit property on its western side.

3.For the sake of convenience, the parties are referred to as plaintiff and defendants as in O.S.No.90 of 2012 on the file of the Additional District Munsif Court, Padmanabhapuram.

4.Case of the plaintiff:

The suit property is six cents in R.S.No.371/9 situated in Alinchicode of Vilavancode Taluk. The suit property absolutely belongs to the plaintiff, who purchased the same by virtue of a registered sale deed, dated 07.12.1994. He has been in valid title and possession of the suit property by paying land tax periodically. The 1st defendant purchased one property, which lies further west of the suit property. In between the suit property and the defendant's property, there is a well defined mud kassala boundary fence on the western side of the suit property. The defendants have no right over the said mud kassala boundary fence, as well as further east of the said fence. While the facts being so, with *malafide* intention, the defendants attempted to trespass into the suit property



S.A(MD)No.96 of 2018

and encroach on the western portion of the suit property and the same was prevented by the plaintiff. Again, on 07.03.2012, the defendants made an attempt to do so. Hence, the plaintiff preferred a police complaint and then filed the suit for permanent injunction against the defendants. Pending suit, on 16.04.2013, the defendants erected eight stone pillars within the suit property on its western portion towards north to south and put up a barbed wire fence. Therefore, the plaint was amended and mandatory injunction was sought against the defendants to remove the pillars and fence. Hence, the suit.

5.Case of the Defendants:

The suit property does not belong to the plaintiff. The sale deed refers to R.S.No.371/14 and not R.S.No.371/9. The plaintiff and his vendor were in possession of property in R.S.No.371/14, the survey number 371/9 was mentioned in the sale deed out of ignorance. The suit property is in possession of the 1st defendant in continuation of his father, Appavu Nadar. R.S.No.371/9 is bounded by old compound wall. The property comprised in R.S.No.371/9 and the remaining portion of R.S.No.371 originally belonged to the defendant's ancestor, Samuel. On his death, his sons Appavu Nadar, Muthuswami and Chellakkannu inherited the property. The property was



S.A(MD)No.96 of 2018

partitioned as per the possession of the parties. The suit property was allotted to the defendants. In the said partition deed Re survey number was wrongly mentioned. The boundary is between R.S.No.371/14 and the suit property on the southern side of R.S.No.371/9 and not on the western side. The defendants never made any attempt to demolish the boundary. The plaintiff is not entitled 6 cents. As per the plaintiff's document, his vendor was entitled to only 1/3 share in the suit survey number. The plaintiff is not entitled to any portion west of the western barbed wire fence. The said portion lies as a pathway. The wire fence does not come within the property of the plaintiff. The suit is liable to be dismissed.

6. During trial, on the plaintiff's side, the plaintiff Natarajan was examined as P.W.1 and marked 3 exhibits as Ex.A.1 to Ex.A.3. On the defendants' side, the 1st defendant David was examined as D.W.1, but no document was marked. Advocate/Commissioner Tr.Robinson was examined as C.W.1. The Commissioner's reports and sketch were marked as Ex.C.1 to Ex.C.3.



S.A(MD)No.96 of 2018

WEB COPY

7.After hearing both sides, the learned Additional District Munsif, Padmanabhapuram, concluded that the plaintiff has proved his title and possession over 5.830 cents marked as 'ABCDA' in Ex.C3. Commissioner's report and that the defendants put up barbed fence marked as 'OP' and thereby granted the reliefs of permanent injunction and mandatory injunction to the plaintiff. Accordingly, judgment and decree dated 30.01.2015 was passed.

8.Aggrieved by the judgment and decree in O.S.No.90 of 2012, the 1st defendant preferred the Civil Appeal in A.S.No.28 of 2015 before the Subordinate Court, Padmanabhapuram. The first Appellate Court after hearing both sides, passed judgment dated 02.11.2017 dismissing the appeal in A.S.No. 28 of 2015 and confirmed the judgment and decree passed in O.S.No.90 of 2012.

9.Challenging the judgment and decree of the First Appellate Court, the 1st defendant preferred this Second Appeal and the same has been admitted on 12.03.2018 on the following substantial questions of law:-

(1) Whether the judgment and decree of the Courts below for granting decree for 5.830 cents in favour of 1st respondent is sustainable,



S.A(MD)No.96 of 2018

when admittedly, the 1st respondent vendor do not have more than 5.500 cents, including of the land used for pathway by the parties?

(2) Is not the judgment and decree of the Courts below vitiated as the same has been granted on the misunderstanding of the issues between the parties?

10. Heard both sides and perused the records in this Second Appeal.

11. The learned counsel for the appellant/1st defendant has submitted that the plaintiff filed the suit for 6 cents, but he is in possession of 5.830 cents as per the Commissioner's report and he confined his relief to that extent. The predecessor in title was having 1/3rd share in a larger extent of 16.5 cents, so the plaintiff is entitled to 5.5 cents. The Commissioner marked ABCDA as the plaintiff's property, which would come to 5.5 cents, the BCOP is 0.271 cents. The plaintiff is not entitled for 0.271 cents. If the alleged 0.271 cents is an open place, anyone can use the same, including the defendant, so the 1st defendant cannot be restrained from using the same. Moreover, the plaintiff stated that the defendant purchased property on the western side of the suit property, but during the Commissioner's visit, he relied upon the northern



S.A(MD)No.96 of 2018

and eastern portions, and he has not mentioned anything about the western portion. The plaintiff has also admitted in his evidence that there is no property of the defendant on the west of survey number 371/9. Hence, the cause of action pleaded by the plaintiff is false one, this fact has not been looked into by the Courts below. The trial Court has given findings only based on presumptions and assumptions. Hence, in the absence of a declaration, the plaintiff is not entitled to beyond 5.50 cents i.e., the said 0.271 cents which is an open place, but the trial court has granted decree on the ground that there is no denial, that the defendant, who claimed 1/3 share from the predecessor in title, has not filed any document to show his title to more than 5.50 cents and that the 1st defendant has not objected the Commissioner's report. There is cloud on the plaintiff's title in respect of 6 cents. In the absence of valid title deed and any evidence, the trial Court granted the decree only based on the Commissioner's report. The same was confirmed by the first Appellate Court. Therefore, the findings of the Courts below are without any evidence and perverse, the substantial questions of law framed is entertainable, therefore, the Second Appeal may be allowed.



S.A(MD)No.96 of 2018

12.In support of his argument, the learned counsel for the appellant/
1st defendant has relied on the following rulings.

(1) (2008) 4 SCC 594 in the case of Anathula Sudhakar /v/ P.Buchi

Reddy, it is held in paragraph No.21 as follows:

“21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over the 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 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.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of



WEB COPY



S.A(MD)No.96 of 2018

title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding



S.A(MD)No.96 of 2018

title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

(2) Judgment of the Hon'ble Supreme Court in Kayalulla Parambath Moidu Haji /v/ Namboodiyil Vinodan in Cvl.Appeal Nos. 5575-5576 of 2021, it is held in paragraph Nos.9 and 10 as follows:

“9.Per contra, Shri V. Chitambaresh, learned Senior Counsel appearing on behalf of the respondent-defendant submitted that even from the report of the Advocate Commissioner, it could be seen that the identification of the property was not beyond doubt. He submitted that the learned trial court as well as the learned



S.A(MD)No.96 of 2018

*Appellate Court had grossly erred in decreeing the suit inasmuch as it could not be said that the title of the appellant-plaintiff was clear. He also relied on the judgment of this Court in the case of **Anathula Sudhakar (supra)**.*

10.The short question that falls for consideration before us is:

Whether the learned Single Judge of the High Court was right in holding that the suit simpliciter for permanent injunction without claiming declaration of title, as filed by the plaintiff, was not maintainable?"

(3) Judgment of the Hon'ble Supreme Court in T.V.Ramakrishnan Reddy /v/ M.Mallapa & Anr. in Cvl.Appeal No.5577 of 2021 it is held in paragraph Nos.10 and 11 as follows:

"10.It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for



WEB COPY



S.A(MD)No.96 of 2018

declaration of title, instead of deciding the issue in a suit for mere injunction.

11.No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction."

(4) (2020) 18 Supreme Court Cases 317 in Illoth Valappil Ambunhi /v/ Kunhambu Karananvan case, it is held in paragraph Nos.14 and 19 as follows:

"14.It is now well settled that perversity in arriving at a factual finding gives rise to a substantial question of law, attracting intervention of the High Court under Section 100 of the CPC.

19.A careful reading of the judgment of the High Court under appeal makes it absolutely clear that those are the questions which have, in effect and substance, been



WEB COPY



S.A(MD)No.96 of 2018

addressed. In our view, a mere error in framing a question of law would not render a judgment in Second Appeal liable to be set aside, if it is found that a substantial question of law existed and such substantial question of law has in fact been answered by the High Court as in this case."

(5) 2025 SCC Online SC 1896 in the case of C.P.Francis /v/

C.P.Joseph and Others, it is held in paragraph No.17 as follows:-

"17. The impugned judgment records that an additional substantial question of law (sic) was framed and opportunity was provided to the counsel to address the Court on the said question of law. Section 100 of the CPC reads as follows:

100. Second appeal.--(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.



S.A(MD)No.96 of 2018

(3) *In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.*

(4) *Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.*

(5) *The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: **Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.***

(Emphasis supplied)

(6) (2001) 4 Supreme Court Cases 262 in Kulwant Kaur & Ors. /v/

Gurdial Singh Mann & Ors., it is held in paragraph No.34 as follows:-

“34. Admittedly, Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High



S.A(MD)No.96 of 2018

Court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stands vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the issue of perversity vis-a-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication - what is required is a categorical finding on the part of the High Court as to perversity. In this context reference be had to Section 103 of the Code which reads as below:

103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of



WEB COPY



S.A(MD)No.96 of 2018

the appeal-

(a) which has not been determined by the lower Appellate Court or by both the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or (c) Courts by reason of a decision on such question of law as is referred to in the Section 100.

The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 since the issue of perversity will also come within the ambit of substantial question of law as noticed above. The legality of finding of fact cannot but be termed to be a question of law. We reiterate however, that there must be a definite finding to that effect in the judgment of the High Court so as to make it evident that Section 100 of the Code stands complied with.”

13.Per contra, the learned counsel for the 1st respondent/plaintiff has argued that there is no dispute that the suit property with larger extent of 16 ½ cents, originally belonged to one Samuel and that after his demise, his three sons, Appavu Nadar, Muthusamy and Chellakkan became entitled to 1/3 share each. The plaintiff purchased the suit property from Muthusamy.



S.A(MD)No.96 of 2018

The 1st defendant alleged that each son of Samuel is entitled to 5.5 cents, but the Advocate/Commissioner stated that the plaintiff's property is measuring 5.830 cents, if so, the plaintiff has no title over 0.330 cents, hence, in the absence of declaration, the suit for injunction is not maintainable. As per the Commissioner's plan, the extent of property in the suit survey number comes to 15.03 cents against 16 ½ cents, if it is so, the first defendant has also claimed more than the extent. Moreover, the defendant's property is described with a compound wall. The suit was filed in March 2012, the first defendant filed the written statement on 05.12.2012, thereafter, he high-handedly installed 8 stone pillars with a barbed fence in the suit property. This was categorically deposed by the Advocate/Commissioner. Till Commissioner's report is filed, the first defendant has not raised any cloud on the title of the plaintiff. So, there is no specific denial against the title of the plaintiff, the first defendant has raised such plea only after filing of the Commissioner's report. Further, there is no plea of pathway by the first defendant, whereas the Commissioner's report and his evidence clearly show that there is a pathway from the suit property to reach the main road and also the BCOP area, in which stone pillar put up is part and parcel of the suit property. This evidence has not been specifically denied by the first defendant. The first defendant has not filed any objection to



S.A(MD)No.96 of 2018

the Commissioner's report and has not filed any counterclaim. Hence, the first defendant has no title or right over the suit property. The first defendant has not filed any single document to show his title or right over the suit property, even not filed any partition deed said to have taken place among the three sons of Samuel.

14.The learned counsel for the 1st respondent/plaintiff further argued that the plaintiff has clearly established that the first defendant has put stone pillars with barbed fence in the suit property. There is no evidence regarding the possession of the first defendant in the said portion of the suit property. The plaintiff has proved his title and possession over the suit property and also proved about the installation of stone pillars by the first defendant. The trial Court has come to a conclusion on the appreciation of evidence along with the Advocate/Commissioner's report, it has not relied on the Commissioner's report alone. Since there is no denial of title, there is no need for seeking declaration. Therefore, there is no question of law to be decided has arisen in this second appeal. When the Courts below have given concurrent findings based on the evidence regarding the plaintiff's title and possession over the suit property, the same need not be interfered by discussing the questions of law in



S.A(MD)No.96 of 2018

this Second Appeal. The Courts below correctly appreciated the evidences adduced on both sides and correctly passed a decree in favour of the plaintiff. The finding of the Courts below is concurrent one. The questions of law could not be decided in favour of the appellant as the suit was factually decided by the Courts below. Therefore, this Second Appeal may be dismissed.

15.In support of his argument, the learned counsel relied on the following judgments.

(1) 2014 (2) MWN (Civil) 337 in the case of C.Chonachalam and Ors. /v/ Veerananarayanamangalam Vellala Samudayam Muthalamman Koil Trust in S.A(MD)No.65 of 2007 of Madras High Court, in which it is held in paragraph No.17 as follows:

"17. From the reading of the above said rulings, it is made clear that when both the Courts below have decided the question of fact that, who is in possession of the property, the High Court should not interfere with the above question of fact, which has become final. Therefore, this Court is of the considered view that the respondents/plaintiffs are in possession and enjoyment of the suit properties and they are entitled for permanent injunction as prayed for



S.A(MD)No.96 of 2018

and there is no illegality or irregularity in the concurrent findings of the Courts below... ”.

(2) S.A.No.1005 of 2011 of Madras High Court in the case of ‘Varadhan @ S.R.Varadharajan /v/ S.Mariappan, it is held in paragraph Nos.12 & 13 as follows:

“12. In the decision in *Anathula Sudhakar vs. P. Buchi Reddy (dead) by Lrs.* reported in (2008) 4 SCC 594, the Hon'ble Supreme Court has held as follows:

"13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.



WEB COPY



S.A(MD)No.96 of 2018

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown.



WEB COPY



S.A(MD)No.96 of 2018

An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."



WEB COPY



S.A(MD)No.96 of 2018

Therefore, it is clear from the above decision that the prayer for declaration of title would be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property and on the other hand, where the plaintiff has clear title supported by documents and if a trespasser without any claim to title and if a person without any apparent title, merely denies the plaintiff's title, it would not amount to raising a cloud over the title of the plaintiff. In such circumstances, it is not necessary for the plaintiff to sue for declaration and a suit for injunction would be sufficient.

13. In the instant case, as already observed, the defendant did not file any acceptable evidence to show that he has title over the suit property. The sale deed relied on by him is of the year 1939 and the property conveyed under the said document is in Survey No.99/4 of Seelanaikenpatty Village. In the circumstances, mere denial of the plaintiff's title over the suit property is not sufficient to hold that the plaintiff's suit for bare injunction is not maintainable. It is also contended by the counsel for the appellant that even the plaintiff, in the cause of action



WEB COPY



S.A(MD)No.96 of 2018

paragraph, has mentioned that on 10.04.2003 the defendant denied his title and attempted to trespass into the suit property and tried to put up a fence. He would, therefore, contend that when the plaintiff admitted that the defendant denied the title of the plaintiff and therefore, he should have sought for the relief of declaration of title. As already observed, the defendant till date has not taken any action against the plaintiff to recover the possession of the suit property in the manner known to law. No notice was issued by the defendant to the plaintiff in this regard. If really the defendant and his predecessors in title had a valid title over the suit property since the year 1928 as alleged by the defendant, they would not have kept quite. As far as the present case is concerned, the plaintiff has established his possession over the suit property and the adangal extract also shows that he has been cultivating crops. In a suit for bare injunction, the question of title need not be gone into. However, both the courts below had incidentally gone into the title of the plaintiff and the defendant over the suit property and held that the plaintiff is entitled for a permanent injunction. The findings recorded by both the courts below cannot be said to be



S.A(MD)No.96 of 2018

perverse and therefore, the substantial questions of law are answered against the appellant. In fine, the second appeal fails and is dismissed.”

(3) 2024 SCC Online SC 3864 in the case of **Jaichand (Dead) through Lrs and Ors. /v/ Sahnulal and Anr.**, wherein it is held in paragraph Nos.22 to 32 as follows:

"22. In the overall view of the matter, we have reached the conclusion that the impugned order passed by the High Court is not sustainable in law. The High Court ought not to have disturbed a well reasoned judgment and order passed by the first appellate court.

23. We are thoroughly disappointed with the manner in which the High Court framed the so-called substantial question of law. By any stretch of imagination, it cannot be termed even a question of law far from being a substantial question of law. How many times the Apex Court should keep explaining the scope of a second appeal under Section 100 of the CPC and how a substantial question of law should be framed? We may once again explain the well-settled principles governing the scope of a second appeal under Section 100 of the CPC.



S.A(MD)No.96 of 2018

24. In *Navaneethammal v. Arjuna Chetty* reported in AIR 1996 S.C. 3521, it was held by this Court that the High Court should not reappreciate the evidence to reach another possible view in order to set aside the findings of fact arrived at by the first appellate Court.

25. In *Kshitish Chandra Purkait v. Santhosh Kumar Purkait* reported in (1997) 5 S.C.C. 438, this Court held that in the Second Appeal, the High Court should be satisfied that the case involves a substantial question of law and not mere question of law.

26. In *Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor* reported in 1999 (2) S.C.C. 471, this Court held:-

“Keeping in view the amendment made in 1976, the High Court can exercise its jurisdiction under Section 100, C.P.C. only on the basis of substantial questions of law which are to be framed at the time of admission of the Second Appeal and the Second Appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. A judgment rendered by the High Court under Section 100 C.P.C. without following the aforesaid procedure cannot be sustained.”



WEB COPY



S.A(MD)No.96 of 2018

27. *This Court in Kondira Dagadu Kadam v. Savitribai Sopan Gujar reported in AIR 1999 S.C. 2213 held:-*

“The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

28. *It is thus clear that under Section 100, C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.*

29. *The High Court in the Second Appeal can interfere with the findings of the trial Court on the ground of failure on the part of the trial as well as the first appellate Court, as the case may be, when such findings are either recorded without*



S.A(MD)No.96 of 2018

proper construction of the documents or failure to follow the decisions of this Court and acted on assumption not supported by evidence. Under Section 103, C.P.C, the High Court has got power to determine the issue of fact. The Section lays down:-

“Power of High Court to determine issue of fact: In any Second Appeal, the High Court may, if the evidence on the record is sufficient to determine any issue necessary for the disposal of the appeal,-

(a) Which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) Which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100.”

30. In Bhagwan Sharma v. Bani Ghosh reported in AIR 1993 S.C. 398, this Court held:-

“The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate court which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature. But, after



S.A(MD)No.96 of 2018

setting aside the findings of fact on that ground the Court had either to remand the matter to the first appellate Court for a rehearing of the first appeal and decision in accordance with law after taking into consideration the entire relevant evidence on the records, or in the alternative to decide the case finally in accordance with the provisions of Section 103(b). If in an appropriate case the High Court decides to follow the second course, it must hear the parties fully with reference to the entire evidence on the records relevant to the issue in question and this is possible if only a proper paper book is prepared for hearing of facts and notice is given to the parties. The grounds which may be available in support of a plea that the finding of fact by the court below is vitiated in law does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a reappraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot be prejudged.”

31. In the case of Hero Vinoth v. Seshammal reported in (2006) 5 SCC 545 this Court explained the concept in the following words:

“It must be tested whether the question is of general public importance or whether it directly



S.A(MD)No.96 of 2018

and substantially affects the rights of the parties.

Or whether it is not finally decided, or not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

32. It is not that the High Courts are not well-versed with the principles governing Section 100 of the CPC. It is only the casual and callous approach on the part of the courts to apply the correct principles of law to the facts of the case that leads to passing of vulnerable orders like the one on hand.”

(4) 2011 (2) MWN (Civil) 81 in the case of “Vadseri Unnamalaikadai Malaiyam Saliyar Nainar Madar Pirai Kanda Sastha Kovil Trust /v/ Baby & Ors.” wherein this Court held in paragraph No.24 as follows:

“24.Moreover, a report of the Commissioner is a part of record. It cannot be overlooked or rejected merely because of the fact that the Commissioner has not been examined.



S.A(MD)No.96 of 2018

Also, the report of the Commissioner can only be an aid to a Court of law in arriving at its findings. The Commissioner's report can be proved on evidence. Whether the commissioner is examined or not, his report forms part and parcel of the record and a Court of law is bound to consider the same. The parties are bound by the report of the Commissioner which is not influenced by extraneous considerations."

16.It is admitted by both the plaintiff and the defendants that originally the suit property with larger extent belonged to one Samuel, that after his death, his property was shared among his three sons, Appavu Nadar, Muthusamy and Chellakkan, entitling 1/3 share each, that the defendants are sons of Appavu Nadar and that the plaintiff purchased 1/3rd share from Muthusamy.

17.The plaintiff states that the suit property is 6 cents comprised in S.No.371/9. The first defendant stated that the suit property with larger extent 16 ½ cents comprised in S.No.371/14 and the plaintiff purchased 1/3rd share from his predecessor in title, who had 5.5 cents, but the plaintiff claims 6 cents, however as per the Commissioner report 5.830 cents. It is the specific case of



S.A(MD)No.96 of 2018

the first defendant that when the plaintiff's predecessor had no title to more than 5.50 cents the plaintiff cannot claim 5.830 cents and so in the absence of a declaration, the suit is not maintainable. The plaintiff's side submitted that as per the Commissioner's plan the measurement of the entire property comes to 15.03 cents. This fact was not denied by the first defendant side. However, as per Ex.A.1 - sale deed the entire extent is mentioned as 16 ½ cents comprised in S.No.371/9. The Courts below found that the suit property is situated in S.No.371/9 on the basis of evidences from either side. There is no dispute in it. Though the plaintiff pleaded in his plaint that the first defendant's property is situated on the western side of the suit property, as per the Commissioner's report and plan, it is situated on the northern side. The first defendant has not denied the suit property and he has not stated that he has property on the western side of the suit property. However, as per the Commissioner's plan and report the plaintiff is in possession of 5.830 cents and stone pillars with barbed wire fence were put up on the western side of the suit property and also within the suit property.

18.On perusal of records and evidence, there is no denial by the first defendant's side and even in his written statement the first defendant has not



S.A(MD)No.96 of 2018

denied that the plaintiff is not entitled to 6 cents. The plaintiff has established his title and possession over the suit property by producing the sale deed and kist receipts. The first defendant has not produced any document to prove his title over the western side of the suit property and has not produced any other material to show his possession. The first defendant orally pleaded after filing of the Commissioner report that the plaintiff is not entitled to more than 5.50 cents. Except this oral averment, the first defendant has not produced any document to substantiate that the plaintiff is not entitled to more than 5.50 cents. Though it was argued by the first defendant's side, that the Commissioner's report cannot be taken as the basis for deciding the suit, as per the citation relied on by the plaintiff's side, this Court held in the case of **Vadseri Unnalaikadai Malaiyam Saliyar Nainar Madar Pirai Kanda Sastha Kovil Trust /v/ Baby & Ors. (2011(2) MWN (Civil) 81)** that “the report of the Commissioner can only be an aid to a Court of law in arriving at its findings, the Commissioner's report can be proved on evidence. Whether the Commissioner is examined or not, his report forms part and parcel of the record and a court of law is bound to consider the same and the parties are bound by the report of the Commissioner which is not influenced by extraneous considerations.”



S.A(MD)No.96 of 2018

WEB COPY

19.In this case, the Commissioner was examined as C.W.1 and was also subjected to cross examination by the first defendant. It is pertinent to note here that the first defendant has not filed any objection to the Commissioner's report. The Commissioner's report alone can not be used as the sole basis for decision making. However, it can be used as an aid in arriving at a decision on an issue by the Court. In this case, the trial Court has not taken decision only based on Ex.C.3 - Commissioner's report. The contents of the documentary evidence in Ex.A1, conjoined with Ex.C.3 Commissioner's report and oral evidences adduced by both parties and Commissioner as C.W.1, the trial Court held that the plaintiff has title to the suit property to an extent of 5.830 cents. So, the argument that the decision was arrived only on considering the advocates/Commissioner's report is not sustainable is untenable.

20.In these circumstances, the trial Court has considered the Commissioner's report and plan along with the plaintiff's side evidences come to the conclusion that the plaintiff is entitled to 5.830 cents in the suit survey number and decreed the suit in the absence of any evidence adduced by the first defendant to show his possession on the western side of the suit property. Therefore, considering the evidences of both sides conjoined with the



S.A(MD)No.96 of 2018

Commissioner's report and plan the Courts below came to the conclusion that the plaintiff has proved his title over the suit property to the extent of 5.830 cents and also 8 pillar stones with barbed wire fence put by the first defendant, thereby decreed the suit as prayed for. The findings of the Courts below are not vitiated by any irregularity or perversity, but they are only based on oral, and documentary evidences including the Commissioner's report and evidence. This Court does not find any error committed by the Courts below in arriving the conclusion.

21.The next contention is that the plaintiff has not sought declaration for rest of 0.330 cents i.e., as the plaintiff's predecessor had a 1/3 share in 16 ½ cents. On perusal of pleadings made in the written statement filed by the first defendant as well as in his evidence, there is no specific denial of the plaintiff's title. Considering the ruling relied by both side in **Anathula Sudhakar's** case the Hon'ble Supreme Court clearly clarified that

“A prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima



S.A(MD)No.96 of 2018

facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient”.

In this case, there is no specific denial or cloud on the plaintiff's title over the suit property and also, there is no counterclaim by the first defendant claiming title over the suit property. Therefore, the suit for bare injunction is sustainable in law. In the above facts and circumstances, this Court is of the considered view that the Courts below correctly appreciated the evidence adduced on both sides and gave findings. The evidence cannot be reappreciated by the High Court in the Second Appeal.

22.It is a settled proposition of law that after giving concurrent findings given by the Courts below, the High Court will not interfere with the concurrent findings of the Courts below, except in some exceptions, as held by



S.A(MD)No.96 of 2018

the Hon'ble Supreme Court in the case **Nazir Mohamed v. J.Kamala** case
WEB COPY
reported in (2020) 19 SCC 57, held as follows:

“33.4 The general rule is, that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well recognized 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. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

But, in this case, the concurrent findings of the Court below do not fall in the above criteria. Both the Courts below correctly appreciated the evidences adduced on both sides and correctly came to the conclusion that the plaintiff has established his case.



S.A(MD)No.96 of 2018

WEB COPY

23.From the above facts and circumstances, conjoined with evidences oral and documentary adduced in this case, the Courts below found concurrent findings and the said findings need not be interfered by this Court by way of Second Appeal. Hence, the questions of law framed in this appeal are answered against the appellant/1st defendant. Thus, this Second Appeal fails.

24.In the result, the Second Appeal is dismissed. The judgment and decree, dated 02.11.2017 passed in A.S.No.28 of 2015 on the file of the Sub Court, Padmanabhapuram, confirming the judgment and decree, dated 30.01.2015 passed in O.S.No.90 of 2012 on the file of the Additional District Munsif Court, Padmanabhapuram is confirmed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

10.02.2026

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



WEB COPY



S.A(MD)No.96 of 2018

To

- 1.The Sub Court,
Padmanapapuram.
- 2.The Additional District Munsif Court,
Padmanapapuram.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.96 of 2018

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.96 of 2018
and
C.M.P(MD)Nos.2139, 8104 & 2140 of 2018
and
C.M.P(MD)No.16698 of 2025**

10.02.2026