



S.A.(MD)No.41 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2026

Pronounced on : 18.03.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.41 of 2026
and
C.M.P.(MD)No.1777 of 2026

Syed Kani

... Appellant/
Respondent/
Defendant

Vs.

Mohammed Kani
through his power agent
A.Mohideen Pitchai

... Respondent/
Appellant/
Plaintiff

PRAYER : Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 06.01.2023 made in A.S.No.41 of 2022 on the file of the Principal District Judge, Tirunelveli reversing the judgment and decree dated 29.11.2021 made in O.S.No.300 of 2017 on the file of First Additional Subordinate Judge, Tirunelveli.



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For Appellant : Mr.A.S.Krishnan

For Respondent : Mr.T.Selvan

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.41 of 2022 dated 06.01.2023 on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree passed in O.S.No.300 of 2017 dated 29.11.2021 on the file of the Additional Subordinate Court, Tirunelveli.

2. The appellant is the defendant. The respondent as plaintiff filed a suit for recovery of Rs.5 lakhs due by the appellant / defendant with interest at 12% per annum from the date of the suit till payment and costs. The appellant / defendant filed his written statement and contested the suit.

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

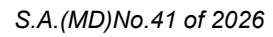


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4. The learned Additional Subordinate Judge, Tirunelveli, after framing necessary issues and after full trial, passed a judgment and decree dated 29.11.2021 dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.41 of 2022 and the learned Principal District Judge, Tirunelveli, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 06.01.2023 allowing the appeal and thereby setting aside the judgment and decree of the trial Court and granted the relief sought for. Challenging the impugned judgment and decree, the defendant has preferred the present Second Appeal.

5. 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



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

8. The case of the plaintiff, in short, is as follows:

(a) The suit property originally belonged to the defendant by virtue of a sale deed dated 24.06.2009. The defendant offered to sell the suit property and the plaintiff agreed to purchase the same and in pursuance of the said agreement, the defendant executed a registered power of attorney deed dated 03.10.2016 in respect of the suit property. Since there was stay by the High Court for registering the documents, the plaintiff paid the total consideration of Rs.5 lakhs to the defendant on 10.10.2016 and the defendant having received the same executed a receipt therefor. The defendant has also handed over the original sale deed stands in his favour to the plaintiff.

(b) The plaintiff in order to sell the suit property obtained encumbrance certificate and came to know that the defendant had cancelled the power of attorney deed on 19.06.2017 without informing the plaintiff. The defendant having received Rs.5 lakhs and executed a receipt therefor and by handing over the original title deed is not in a



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position to cancel the power of attorney deed. Therefore, the plaintiff has sent a legal notice to the defendant and the defendant having received the same sent a reply notice with false and untenable allegations. Hence, the plaintiff was constrained to file the above suit for recovery of Rs.5 lakhs with interest and costs.

9. The defence of the defendant, in brief, is as follows:

(a) The suit property is owned by the defendant. The plaintiff approached the defendant and agreed to purchase the suit property. The defendant had also agreed to sell the suit property and they have fixed the sale price at Rs.20 lakhs. In pursuance of the same, the defendant executed a power of attorney deed dated 03.10.2016 in favour of the plaintiff. The plaintiff had only paid Rs.1,50,000/- towards advance through bank transaction and agreed to pay Rs.10,00,000/- out of the balance amount of Rs.18,50,000/- at the time of sale agreement. The defendant was constrained to sign in a Rs.20/- stamp paper for the receipt of the advance amount.

(b) The plaintiff, by alleging that the title deeds are to be shown to the advocate for getting loan, compelled the defendant and received the



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original documents. The plaintiff has neither paid the balance amount nor come forward for completing the same. Since the defendant was in need of money, he mortgaged the suit property in favour of one Ahamed Kani on 19.06.2017 and at that time, cancelled the power of attorney executed in favour of the plaintiff. Subsequently, mortgage was redeemed and power of attorney was executed in favour of the plaintiff and Abdul Haggeem. The plaintiff has not suffered any loss or damages. The plaintiff has no cause of action and the alleged one is false and untenable. Hence, the suit is liable to be dismissed.

10. It is pertinent to note that the plaintiff as well as the defendant had admitted that there was an agreement between both the parties, wherein, the defendant offered to sell the suit property to the plaintiff and the plaintiff agreed to purchase the same. It is the specific case of the plaintiff that in pursuance of the said agreement between the parties, the defendant executed a power of attorney deed dated 03.10.2016 under Ex.A2 and the plaintiff had paid sale price of Rs.5 lakhs to the defendant and the defendant having received the said amount executed a receipt dated 10.10.2016 under Ex.A3 in the presence of Mohamed Abdul Ajis



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and Haja Mytheen. No doubt, the defendant had admitted the execution of Ex.A2 power of attorney deed but according to him, sale price was fixed at Rs.20 lakhs and in pursuance of the same, the plaintiff had paid Rs.1,50,000/- through bank transaction and agreed to pay Rs.10 lakhs out of the balance amount of Rs.18,50,000/- on the agreement date. It is the further case of the defendant that he was constrained to sign in a Rs.20/- stamp paper for acknowledging the receipt of the advance amount.

11. During trial, the plaintiff examined himself as P.W.1 and also examined one Haja Mytheen allegedly present at the time of payment of Rs.5 lakhs to the defendant and the execution of receipt by the defendant therefor. The plaintiff as P.W.1 and his witness P.W.2 had deposed about the payment of Rs.5 lakhs by the plaintiff to the defendant and receipt of the same by the defendant and the execution of Ex.A3 receipt.

12. It is pertinent to note that the defendant has admitted his signature found in Ex.A3 – receipt. It is further relevant that the original sale deed dated 24.06.2009, standing in the name of the defendant, is in the custody of the plaintiff and the same has been produced and marked



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as Ex.A1. According to the plaintiff, upon payment of the sale consideration of Rs.5,00,000/-, the defendant had handed over the original title deed (Ex.A1). However, the defendant, in his reply notice dated 19.07.2017 (Ex.A7), has taken a stand that the said original document was forcibly taken by the plaintiff. As already pointed out, in the written statement, the defendant has taken a slightly different stand that the plaintiff had obtained the original document from him on the pretext that it was required to be shown to an advocate for the purpose of availing a bank loan, and the relevant portion is extracted hereunder:

“வாதி பிரதிவாதிமிடம் மேற்படி அசல் பத்திரம்
வங்கி கடனுக்காக வழக்கறிஞரிடம் காட்ட வேண்டும்
என்று கூறி வற்புறுத்தி பெற்றுக் கொண்டு சென்றார்.”

13. Though the defendant has alleged, both in the reply notice and in his evidence, that Ex.A1 was forcibly taken from him, it is not his case that he had lodged any police complaint or initiated any other proceedings to recover the original document from the plaintiff. This omission casts serious doubt on the veracity of the defendant's plea.

14. As rightly observed by the learned Appellate Judge, the learned



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Trial Judge, by merely observing that there is no specific clause or recital in Ex.A3 – receipt obligating the defendant to repay the amount, has rejected the case of the plaintiff, without advertng to the surrounding circumstances and the evidence on record.

15. It is not the specific case of the defendant that the sale transaction was completed and, therefore, he is not liable to return the sum of Rs.5,00,000/-.

16. Though the defendant would contend that the receipt was obtained from him by deceit and that the original title deed was handed over only for the purpose of availing a bank loan, it is pertinent to note that once the execution of the document and the signature therein are admitted, the initial burden cast upon the plaintiff stands discharged. Thereafter, the burden shifts upon the defendant to establish that the document was not supported by consideration or that it was vitiated by fraud, coercion, or misrepresentation.

17. In the case on hand, except making bald allegations that the



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receipt was obtained deceitfully and that the document was taken forcibly, the defendant has not adduced any independent or cogent evidence to substantiate the plea of fraud or coercion. On the contrary, in the reply notice issued by him, he has taken a different stand stating that the document was forcibly taken. Such inconsistent and mutually destructive pleas taken by the defendant would probabalise the case of the plaintiff.

18. Moreover, admission of the defendant with regard to the signature in Ex.A3 receipt, coupled with the evidence of P.W.2 clearly establishes that the receipt was executed by the defendant acknowledging the receipt of Rs.5 lakhs. In the absence of any acceptable or cogent evidence on the side of the defendant to rebut the same, the plea that the receipt was obtained deceitfully cannot be countenanced. Considering the above, this Court is of the considered view that the plaintiff has satisfactorily proved the execution of the receipt and the payment of Rs.5 lakhs and that the burden, which shifted upon the defendant to disprove the same, has not been discharged.



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19. On considering the entire evidence available on record, the learned first appellate Judge has rightly come to the conclusion that the plaintiff has proved his claim and is entitled to recover the sum of Rs.5 lakhs with interest at 9% per annum from the date of the suit till the date of decree and at 6% per annum thereafter till realisation and that the said finding cannot be faulted.

20. It is pertinent to note that the first appellate Court on appreciating and re-appreciating the evidence and the legal aspects in proper perspective has arrived at a definite decision that the plaintiff is entitled to the relief claimed.

21. Considering the judgments of the Courts below, as rightly contended by the learned counsel for the respondent, 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. Hence, this Court concludes that since no substantial question of law is made out in the second appeal, the



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same is liable to be dismissed.

22. In the result, the Second Appeal is dismissed, confirming the judgment of the first appellate Court made in A.S.No.41 of 2022, dated 06.01.2023 on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree made in O.S.No.300 of 2017 dated 29.11.2021 on the file of the Additional Subordinate Court, Tirunelveli. Consequently, connected Miscellaneous Petition is closed. No costs.

18.03.2026

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

To

1. The Principal District Judge, Tirunelveli.
2. The Additional Subordinate Judge, Tirunelveli.
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
S.A.(MD)No.41 of 2026
and
C.M.P.(MD)No.1777 of 2026

Dated : 18.03.2026