



S.A(MD)No.27 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.02.2026

DELIVERED ON : 02.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.27 of 2026

and

C.M.P.(MD)No.970 of 2026

1.V.Saravanakumar

2.V.Sivakumar

: Appellants /Appellants/Defendants

Vs.

V.Sivashankar

: Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 03.08.2019, made in A.S.No.31 of 2018, on the file of the Principal District Judge, Thanjavur, confirming the judgment and decree, dated 23.02.2018, made in O.S.No.135 of 2011, on the file of the Principal Subordinate Judge, Thanjavur.



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For Appellants : Mr.K.Chenkiz Khan
for Ms.S.Bharathi

For Respondent : Mr.N.Tamilmani

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.31 of 2018, dated 03.08.2019, on the file of the Principal District Court, Thanjavur confirming the judgment and decree made in O.S.No.135 of 2011, dated 23.02.2018, on the file of the Principal Subordinate Court, Thanjavur..

2. The appellants are the defendants. The respondent as plaintiff filed the suit in O.S.No.135 of 2011, on the file of the Subordinate Court, Thanjavur claiming partition and allotment of 1/3rd share in the suit property. The defendants filed their written statement and contested the suit. The learned trial Judge, after framing necessary issues and after full trial, passed a judgment dated 23.02.2018, granting the preliminary decree declaring that the plaintiff is entitled to 1/3rd share in the suit property. Challenging the preliminary decree, the defendants preferred an appeal in A.S.No.31 of 2018 and the learned Principal District, Thanjavur, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree,



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dated 03.08.2019 dismissing the appeal and thereby confirming the judgment and preliminary decree passed by the trial Court. Challenging the dismissal of the first appeal, the defendants have 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:

“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



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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. 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



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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.

6. Admittedly, the plaintiff and the defendants 1 and 2 are brothers and are the children of Late Venugopal and Tamilselvi. The case of the plaintiff is that the suit property was originally purchased by their mother Tamilselvi out of her own funds and that the said Tamilselvi had constructed a house with her funds thereon and was in absolute possession and enjoyment of the property till her death on 28.08.2001. After her death, her husband Venugopal and the plaintiff and the defendants were in possession and enjoyment of the property and the said Venugopal died in the year 2006. Thereafter, the plaintiff and the defendants have been in joint possession and enjoyment of the suit property. Despite repeated requests for an amicable partition, the defendants failed to effect same, thereby constraining the plaintiff to file the above suit for partition and allotment of 1/3rd share in the suit property.



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7. The defence canvassed by the defendants is that the first defendant purchased the property in the name of his mother, that he had provided the sale consideration, but took the sale deed in the name of his mother, that the plaintiff's love marriage was not accepted by their parents and hence, there is no contact between the plaintiff and the defendants and their parents, that the first defendant had spent more than Rs.4,00,000/- for the treatment of his mother and that the last rites and rituals were performed by the defendants. The plaintiff has never been in possession and enjoyment of the suit property. Since the suit property is owned by the first defendant, the plaintiff is not entitled to claim any share therein. Hence, the suit is liable to be dismissed.

8. Admittedly, the sale deed in respect of the suit property stands in the name of the mother of the plaintiff and the defendants – Tamilselvi under Ex.A.1. According to the plaintiff, their mother Tamilselvi was owning a property at Brindavan Nagar, Mannargudi and she sold the said property in 1996 and purchased the suit property as vacant site in the year 1997. But according to the defendants, the first defendant alone had paid the entire sale consideration for Ex.A.1 sale deed and that since he was serving for Air force outside, the sale deed was taken in the name of their mother.



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9. It is well settled that when a property stands in the name of a person, the presumption is the said person is the real owner and the burden of proof lies on the person who asserts otherwise to establish that the transaction is a benami transaction and that the registered owner is not the real owner. Such burden being of a serious nature, has to be discharged by cogent, clear and convincing evidence. In the present case, as rightly observed by the Courts below, the first defendant has miserably failed to discharge the said burden.

10. It is pertinent to note that except the bald assertion of the first defendant, there is absolutely no acceptable evidence to show either that the first defendant had the financial capacity at the relevant point of time or that he had contributed sale consideration for the purchase of the suit property. On the other hand, the evidence adduced by the plaintiff probablise the case that the mother, who owned a property at Mannargudi, sold the same in the year 1996 and purchased the suit property in the year 1997.

11. Though the defendants in the written statement have nowhere pleaded the concept of Binami, a cursory perusal of the written statement averments would only indicate that the first defendant seeks to contend that the suit property



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was purchased in the name of his mother Benami and he is the real owner of the suit property. Notably, the plea of Binami is clearly hit by the provisions of the Binami Transactions (Prohibition) Act, 1988 and in the absence of legally permissible exception being established, such a plea cannot be countenanced. Considering the entire evidence available on record, both the Courts below have rightly held that the mother was the absolute owner of the suit property and that she died intestate and hence, the plaintiff and the defendants, being her legal heirs are each entitled to 1/3rd share in the suit property.

12. No doubt, the learned Counsel for the appellants would submit that the Courts below failed to properly appreciate the evidence particularly the evidence of D.W.2 – second defendant, who deposed in support of the stand taken by the first defendant and have erroneously decreed the suit.

13. A finding can be termed as perverse only when it is based on no evidence or when relevant evidence has been ignored or when the conclusion arrived at is such that no reasonable person could have reached on the materials on record. As already pointed out, in the present case, the findings of the Courts below are based on admitted title documents standing in the name of the mother; the proved prior sale her property in the year 1996 and the complete absence of



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evidence on the side of the defendants to substantiate their plea. Hence, the conclusion of the Courts below in granting the preliminary decree as prayed for by the plaintiff cannot be found fault with.

14. The appellants have not shown that the material evidence available in the case had been ignored by the first appellate Court or that there was no evidence at all. The appellants have also not shown any wrong inference had been drawn by the first appellate Court from the proved facts by applying law erroneously. The appellants have also not canvassed any stand that the Courts below have wrongly placed the burden of proof.

15. It is pertinent to note that the first appellate Court on appreciating and re-appreciating evidence available on record, has come to a definite decision that the plaintiff has proved his claim and as such, the decreeing of the suit cannot be faulted.

16. Considering the judgments of the Courts below, this Court is the clear view that no question of law much less Substantial Question of Law is made out. Hence, this Court concludes that since no substantial question of law is made out in the second appeal, the same is liable to be dismissed.



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17. In the result, the Second Appeal is dismissed, confirming the judgment and decree made in A.S.No.31 of 2018, dated 03.08.2019, on the file of the Principal District Court, Thanjavur confirming the judgment and decree made in O.S.No.135 of 2011, dated 23.02.2018, on the file of the Principal Subordinate Court, Thanjavur.. There shall be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

02.04.2026

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

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To:

- 1.The Principal District Court, Thanjavur.
- 2.The Principal Subordinate Court, Thanjavur.
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
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