



S.A(MD)No.34 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.02.2026

DELIVERED ON : 10.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD).No.34 of 2026
and
C.M.P.(MD)No.2282 of 2026**

Royappan : / 1st Appellant/1st Plaintiff

Raja : Appellant/2nd Appellant/2nd Plaintiff

Vs.

1.Gurusamy
2.Vijaya
3.Sekar
4.Thomas
5.Frankelin
6.Asha Bonesle
7.Philominraja
8.Vijayan
9.Violet
10.Jeeva Latha

: Respondents/Respondents/
Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed by the Subordinate Court, Sivakasi, in A.S.No.23 of 2017, dated 07.11.2022, confirming the judgment and decree



S.A(MD)No.34 of 2026

passed by the District Munsif Court, Sivakasi, in O.S.No.67 of 2006, dated 13.04.2017.

For Appellants : Ms.Lakshmi Gopinathan

For Respondents : Mr.F.X.Eugene
for R.1 to R.7

: Mr.M.Prabhu
for R.8 to R.10

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.23 of 2017, dated 07.11.2022, on the file of the Subordinate Court, Sivakasi, confirming the judgment and decree passed in O.S.No.67 of 2006, dated 13.04.2017, on the file of the District Munsif Court, Sivakasi.

2. The appellant is the second plaintiff. The second plaintiff for himself and as power agent of the first plaintiff filed the suit in O.S.No.67 of 2006, before the District Munsif Court, Sivakasi claiming the reliefs of appointing the Arbitrator for the removal of the defendants 1 and 2 as partners of M/s Mary Fire Works and to fix the annual rent for the lands standing in the name of the first



S.A(MD)No.34 of 2026

defendant and the husband of the second defendant. The defendants filed their written statement and contested the suit.

3. The learned District Munsif, after framing necessary issues and after full trial, passed the judgment and decree, dated 13.04.2017, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiffs preferred an appeal in A.S.No.23 of 2017 and the learned Subordinate Judge, Sivakasi, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree, dated 07.11.2022, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the first appeal, the second plaintiff has preferred the present Second Appeal.

4. Pending the first appeal, the first plaintiff, who was represented by his son cum power agent – second plaintiff, had died and thereafter the second plaintiff had proceeded with the first 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***



S.A(MD)No.34 of 2026

others Vs. Lehna Singh (dead) by LRs., reported in ***AIR 2019 SC 1441***, that the

jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”



S.A(MD)No.34 of 2026

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



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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."

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



S.A(MD)No.34 of 2026

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

The second plaintiff is the son of the first plaintiff. In pursuance of the power of attorney executed by the first plaintiff, the second plaintiff has filed the suit on behalf of the first plaintiff also. The first defendant had married the first plaintiff's daughter and the first plaintiff's another daughter Vijaya was given in marriage to one Savariraj. The first plaintiff along with the first defendant and the said Savariraj had entered into a partnership agreement in the year 1989 and started a cracker firm in the name and style of Mary Fire Works in the lands in Survey Nos.519/1, 519/2, 519/3, 550/4, 445/1 at Anuppankulam Village, Sivakasi Taluk. The second plaintiff as power agent of the first plaintiff had conducted the entire business of the said firm and he was managing all the affairs of the firm. The first plaintiff had not invested any amount for the said firm. Since the said Savariraj had died, the first plaintiff along with Savariraj's wife Vijaya – first defendant and the second defendant had entered into another agreement dated 15.02.2005. The defendants 1 and 2 had acted against the terms of the agreement. They attempted to lease out some buildings in the suit properties and despite the objections raised by the plaintiffs, the defendants had taken serious efforts to lease out the properties. Hence, the plaintiffs were constrained to issue a legal notice dated 16.12.2005 and the first defendant having received the said



S.A(MD)No.34 of 2026

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notice, sent a reply notice with false and untenable allegations. The plaintiffs were also constrained to lodge a complaint before the Sivakasi East Police Station. Since the first defendant has failed to implement the terms of the agreement, both the defendants 1 and 2 have to be removed from the partnership firm and for that purpose, an arbitrator has to be appointed. Further, the annual rent has to be fixed for the lands standing in the name of the defendants 1 and 2. Hence, the above suit.

9. The defence of the first defendant is that he had no objection to appoint an arbitrator for conducting necessary enquiry with regard to the affairs of the firm and accounts, that the second plaintiff has absolutely no connection whatever with the partnership firm, that since the second plaintiff is not a partner of the said firm, he has no locus standi to file the suit for removal of partners of the firm, that the lands in which Mary fire works situated is owned by the first defendant and the second defendant's husband, that the first plaintiff has not executed any Will while he was alive, but subsequently the second plaintiff in collusion with the defendants 8 and 9 have created and fabricated a Will as if the same was executed by the deceased first plaintiff, that the deceased first plaintiff had four sons and four daughters, but the second plaintiff has purposely omitted



S.A(MD)No.34 of 2026

to add the other legal heirs and that therefore the suit is bad for non-joinder of necessary parties.

10. The defendants 8 to 10 filed a written statement in support of the plaintiffs.

11. It is pertinent to mention that even according to the plaintiffs, the first plaintiff, the first defendant and one Savariraj – husband of the second defendant and father of the defendants 3 to 7 were the partners of the partnership firm – Mary Fire Works. It is not in dispute that even before filing of the suit, one of the partners Savariraj had died and hence, his wife and children were impleaded as the defendants 2 to 7. As already pointed out, during the pendency of the first appeal, the first plaintiff who is also the partner of the firm, had also died. Though the second plaintiff has alleged that he alone has been conducting the business of the partnership firm and is managing all the affairs of the firm, admittedly, he is not the partner of the firm.

12. It is pertinent to note that the second plaintiff for himself and as power agent of the first plaintiff – partner of the firm, have laid the suit originally. The main relief sought for in the suit is to appoint the arbitrator for removing the



S.A(MD)No.34 of 2026

defendants 1 and 2 as partners of the said firm. But the fact remains, the second defendant has not been added as the partner of the firm officially. Though the second plaintiff has alleged that after the death of Savariraj, a new agreement came to be entered into between the plaintiffs 1 and 2 and the defendants 1 and 2, it is not the case of the plaintiffs that the second plaintiff and the second defendant were made partners officially.

13. As already pointed out, it is not in dispute that the suit has been instituted by the second plaintiff claiming that he has been managing the affairs of the partnership firm and also as a power agent of the first plaintiff, who was admittedly one of the partners of the firm. It is settled law that a partnership firm is not a separate legal entity independent of its partners and the rights and obligations of the firm are essentially the rights and obligations of the partners constituting the firm. Therefore, any dispute relating to the affairs of the partnership firm has to be agitated by the partners themselves. A person who is not a partner cannot maintain a suit in respect of the internal management of the partnership merely on the ground that he is managing the affairs of the firm or acting as power of attorney holder of one of the partners. A power agent can only represent the principal for acts which the principal himself is entitled to do, but cannot assert any independent right in respect of partnership. In the instant case,



S.A(MD)No.34 of 2026

the principal relief sought in the suit is for appointment of arbitrator for removing the defendants 1 and 2 from the partnership firm. Such a relief essentially pertains to the internal dispute between the partners of the firm. In the absence of any materials to show that the second plaintiff himself is a partner of the firm, he cannot maintain a suit or appeal relating to the internal dispute of the partnership firm. Therefore, the very continuation of the appeal at the instance of the second plaintiff cannot legally be sustained.

14. It is also pertinent to note that pending the first appeal, the first plaintiff who was also admittedly one of the partners of the firm, died. As per Section 42(c) of the Indian Partnership Act, subject to a contract between the partners, a firm stands dissolved on the death of a partner. Admittedly, no material has been placed. No doubt, in Ex.B.1 agreement, there was a clause in Sl.No.13 to the effect that the death, retirement, insolvency or lunacy of a partner shall not dissolve the firm automatically. It is well settled that a partnership is a relationship between two or more persons, who have agreed to share the profits of the business carried on by all or any of them acting for all. Therefore, the very concept of the partnership necessarily requires the existence of atleast two partners. Once the number of partners is reduced to one, the partnership cannot legally continue. In view of the death of the first plaintiff, who was the one of the



S.A(MD)No.34 of 2026

partners of the firm and taking note of the death of another partner Savariraj even before filing of the suit, the firm itself stands dissolved by operation of law. Once the firm stands dissolved, the reliefs sought for in the suit for removal of partners for appointment of arbitrator for that purpose becomes wholly infructuous.

15. Now turning to the next aspect, the second plaintiff claims to be instituted the suit as power agent of the first plaintiff. It is settled law that the power of attorney is a valid agreement by a principal to the agent and such authority ordinarily comes to an end on the death of the principal. In other words, the power of attorney automatically stands terminated with the death of the executant unless the one coupled with interest. In the present case there is nothing on record to show that the power of attorney executed in favour of the second plaintiff is coupled with any independent interest in the subject matter of partnership. Therefore, on the death of the first plaintiff, the authority conferred on the second plaintiff as power of attorney automatically comes to an end and he cannot continue to prosecute the proceedings on behalf of the first plaintiff. On that ground also, the continuation of the proceedings at the hands of the second plaintiff is legally unsustainable.



S.A(MD)No.34 of 2026

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16. No doubt, in the present case, the plaintiffs have canvassed a case that the Will was executed by the first plaintiff in favour of the second plaintiff and others bequeathing the interest in the partnership firm. Since the suit is connected with the partnership firm, the Courts below have refused to consider the validity and genuineness of the Will. The learned first appellate Judge has specifically observed that since the second plaintiff is now claiming the ownership of the properties through Will, he has to file a separate suit for deciding the validity of the Will and in the present proceedings, the same cannot be gone into. Viewing from any angle, as rightly observed by the Courts below, the very continuation of the first appeal at the instance of the second plaintiff and the present filing of the Second Appeal by the second plaintiff cannot legally be entertained. Hence, the decisions of the Courts below that the second plaintiff is not entitled to get any of the reliefs claimed cannot be faulted.

17. The appellant has not shown that material evidence available in the case had been ignored by the first appellate Court or that there was no evidence at all. The appellant has also not shown any wrong inference had been drawn by the first appellate Court from the proved facts by applying law erroneously. The



S.A(MD)No.34 of 2026

appellants have also not canvassed any stand that the Courts below have wrongly placed the burden of proof.

18. 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 failed to prove his claim and as such, dismissal of suit by the trial Court cannot be faulted.

19. 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. It is not open to this Court to sit in appeal over the factual findings arrived at by the first appellate Court reversing the findings of the trial Court. 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.

20. In the result, the Second Appeal is dismissed, confirming the judgment and decree made in A.S.No.23 of 2017, dated 07.11.2022, on the file of the Subordinate Court, Sivakasi, confirming the judgment and decree passed in O.S.No.67 of 2006, dated 13.04.2017, on the file of the District Munsif Court,



S.A(MD)No.34 of 2026

Sivakasi. Consequently, the connected Civil Misconstruction Petition is also dismissed. There shall be no order as to costs.

10.04.2026

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

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To:

- 1.The Subordinate Court, Sivakasi.
2. The District Munsif Court, Sivakasi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.34 of 2026

K.MURALI SHANKAR,J.

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**PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD).No.34 of 2026**

10.04.2026