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S.A(MD)No.09 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.02.2026

Delivered on : 19.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.09 of 2026

A.Chandra

: Appellant

/Vs./

R.Bothumani

: Respondent

S.A.Ramdoss (died) (Exonerated)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 18.09.2025 made in A.S.No.79 of 2024 on the file of the Subordinate Court, Bodinayakanur, Theni District, confirming the judgment and decree, dated 30.06.2008 made in O.S.No.35 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Bodinayakanur.

For Appellant : Mr.N.Vallinayagam

JUDGMENT

The Second appeal is directed against the judgment and decree made in A.S.No.79 of 2024, dated 18.09.2025 on the file of the Subordinate Court,



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Bodinayakanur, Theni District, confirming the judgment and decree passed in O.S.No.35 of 2004, dated 30.06.2008 on the file of the District Munsif cum Judicial Magistrate Court, Bodinayakanur.

2. The appellant is the plaintiff. She filed a suit in O.S.No.35 of 2004, on the file of the District Munsif cum Judicial Magistrate Court, Bodinayakanur, claiming permanent injunction restraining the first defendant from encumbering or alienating the suit property till the execution of the sale deed by the first defendant in favour of the plaintiff.

3.The defendants filed their written statement and contested the suit. The learned District Munsif cum Judicial Magistrate, Bodinayakanur, after framing necessary issues and after full trial, passed a judgment and decree, dated 30.06.2008, dismissing the suit. Aggrieved by dismissal of the suit, the plaintiff filed an appeal in A.S.No.79 of 2024 and the learned Subordinate Judge, Bodinayakanur, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment, dated 18.09.2025, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiff has filed the present second appeal.



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4. 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 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*



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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.”

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

case.

7. The case of the plaintiff is as follows :

a) The suit property originally belongs to the first defendant. The plaintiff's husband and the defendant's husband are brothers and both families were living jointly ten years prior to the filing of the suit. The brothers had purchased the properties in their respective wives name. In that property, plot Nos. 10 and 11 situated on the south-east corner remained as vacant land. The first defendant agreed to sell 500 sq.feet of land in that area and the plaintiff, agreeing to purchase, had paid an advance amount of Rs.50,000/- to the first defendant. Since the parties are close relatives, no written sale agreement was entered into between them.

b) Since the first defendant did not execute the sale deed as agreed by her, a panchayat was convened by the family elders on 08.05.2003 and a document came to be executed. Since the same was not complied with, the plaintiff lodged a complaint with the Superintendent of Police, Theni on 23.02.2004 against the first defendant and her husband. Meanwhile, the second defendant made a paper publication on 01.03.2004 calling for objections for purchasing the suit property from the first defendant. The plaintiff sent a legal notice to the defendants



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1 and 2, objecting for the said sale on the ground that the earlier sale agreement was pending. The defendants, having received the legal notice, have not chosen to send any reply.

c) The plaintiff filed a compliant before the Sub Registrar, Bodinayakkanur, directing him not to register any document in respect of the suit property, but the Sub Registrar directed the plaintiff to take appropriate legal action. Since the first defendant attempted to alienate the suit property, the plaintiff was constrained to file the above suit claiming permanent injunction.

8. The learned counsel for the appellant would submit that the right of the plaintiff can only be considered as an agency coupled with interest and as such, he is entitled to maintain a suit for permanent injunction and relied on a decision of this Court in ***S.V.Doraisamy Vs. T.Dayalan and others*** reported in **2002 (2) CTC 46**.

9. But the plaintiff has nowhere pleaded in the plaint that he was given an agency coupled with interest. It is settled law that any amount of pleadings without evidence and any amount of evidence without pleadings are of no use. Hence, the above decision cannot be made applicable to the case on hand.



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10. The defence of the first defendants is that the first defendant never agreed to sell the suit property to the plaintiff nor received any advance amount from the plaintiff; that no panchayat was convened and no document was executed; that though the second defendant has made a paper publication, the plaintiff has not sent any legal notice and that therefore, the plaintiff is not entitled to get the relief claimed and as such, the suit is liable to be dismissed.

11. The defence of the second defendant is that he entered into a sale agreement with the first defendant to purchase the suit property; that he made a paper publication calling for objections in Tamil Daily Dinamalar on 01.03.2004; that the plaintiff issued a legal notice to the defendants with false and untenable allegations; that the second defendant sent a reply notice, dated 08.03.2004 to the plaintiff; that the plaintiff does not have any right or title or possession over the suit property; that the oral agreement alleged by the plaintiff is not true; that the suit for permanent injunction without seeking the relief of specific performance is not maintainable and that therefore, the suit is liable to be dismissed.

12. The learned District Munsif, taking the main issue whether the suit is maintainable for permanent injunction without seeking the relief of specific



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performance and by referring to Section 4(h) of Specific Relief Act, has come to a decision that the suit property for bare injunction restraining alienation, without seeking the relief of specific performance, is not maintainable and since the suit itself is not maintainable, there was no need to go into the other issues, dismissed the suit. Aggrieved by the dismissal of the suit, the plaintiff filed an appeal in A.S.No.60 of 2008 before the Sub Court, Periyakulam, which came to be transferred to the Sub Court, Theni and renumbered as A.S.No.148 of 2008 and the learned Subordinate Judge, Theni, allowed the appeal and remanded the suit back to the trial Court, with a direction to consider all the issues framed by it. Challenging the remand order, the first defendant filed an appeal in C.M.A(MD)No.340 of 2022 before this Court and this Court vide judgment, dated 14.06.2023, by setting aside the order of remand, directed the first appellate Court to dispose of the first appeal on its own merits within the stipulated time.

13. In pursuance of the directions of this Court, the appeal was restored and the learned appellate Judge, considering the evidence available on record and taking note of the legal position, confirming the judgment and decree of the trial Court, dismissed the appeal.



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14. It is pertinent to mention that though the plaintiff has alleged that himself and the first defendant entered into an oral sale agreement, he has not even mentioned the date or year, in which, the said agreement was entered into.

15. No doubt, the plaintiff has produced a document, dated 08.03.2003 alleged to have been executed before the panchayatars under Ex.A.1, but as rightly observed by the learned first appellate Judge, there was no reference to the oral agreement alleged to have been entered into between the first defendant and the plaintiff in Ex.A.1. Moreover, Ex.A.1 has been shown as a condemnation document, wherein the plaintiff was shown to be condemned by the panchayatars.

16. According to the plaintiff, since the second defendant made paper publication calling for objections for purchasing the suit property, the plaintiff was constrained to send a legal notice informing the pending oral sale agreement between him and the first defendant and that since the first defendant was attempting to sell the suit property to the second defendant, he was forced to file the above suit.



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17. As rightly observed by the Courts below, even according to the plaintiff, cause of action arose on 29.02.2024, the date on which, paper publication was made by the second defendant and the date on which, he came to know about the sale agreement between the defendants 1 and 2.

18. It is not the case of the plaintiff that any time limit was fixed for performance in the oral agreement alleged to have been entered into with the first defendant. Even according to the plaintiff, he lodged a complaint before the Superintendent of Police, Theni on 23.02.2004 under Ex.A.2, wherein, the plaintiff has stated that she purchased 500 sq.feet of land from the first defendant 10 years back for a sum of Rs.50,000/-. But admittedly, that was not the case of the plaintiff in the present suit.

19. Moreover, according to the plaintiff, an advance amount of Rs.50,000/- was paid to the first defendant pursuant to the alleged agreement of sale. It is pertinent to note that on the date of filing of the suit for permanent injunction, the plaintiff had a cause of action to institute a suit for specific performance of the agreement as well. However, the plaintiff has chosen to file the present suit for bare injunction alone. It is not even the case of the plaintiff that the time



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stipulated for performance had not expired and that a suit for specific performance could not have been instituted at that stage, and therefore, the present suit for injunction was maintainable independently.

20. Section 41 of the Specific Relief Act enumerates the circumstances under which an injunction cannot be granted. Clause (h) thereof provides that an injunction may be refused when an equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in cases of breach of trust.

21. As rightly observed by the Courts below, when the plaintiff had an efficacious alternative remedy of seeking specific performance of the agreement of sale, the relief of bare injunction cannot be granted. As further observed by the learned first appellate Judge, the relief of injunction being equitable and discretionary in nature, cannot be claimed by the plaintiff as a matter of right.

22. In the present case, as already pointed out, the first defendant is admittedly owner of the suit property. The plaintiff has miserably failed to prove the oral sale agreement allegedly entered into with the first defendant. Even assuming that there was a sale agreement, the proper remedy open to the plaintiff



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is to file a suit for specific performance and without filing the said suit, he cannot claim permanent injunction restraining the first defendant from alienating or encumbering his own property. Hence, the decision of the Courts below in rejecting the relief of permanent injunction cannot be faulted.

23. The appellant has 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 appellant has also not shown any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. The appellant has also not canvassed any stand that the Courts below have wrongly placed the burden of proof.

24. It is pertinent to note that the first appellate Court, on appreciating and re-appreciating the evidence available on record, has come to a definite decision that the plaintiff is entitled to get the preliminary decree, confirming the decision of the trial Court.

25. Considering the judgments of the Courts below, this Court is of 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



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the first appellate Court confirming 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.

26. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.35 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Bodinayakanur and in A.S. No.79 of 2024 on the file of the Sub Court, Bodinayakanur, Theni District. No costs.

19.02.2026

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

To:

- 1.The District Munsif cum Judicial Magistrate Court,
Bodinayakanur.
- 2.The Sub Court, Bodinayakanur,
Theni District.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.09 of 2026

Dated: 19.02.2026