



S.A(MD)No.626 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.01.2026

DELIVERED ON : 23.01.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.626 of 2025

1.K.Vijayana
2.K.Balan
3.K.Palanikumar
4.K.Karthickumar

: Appellants/Respondents/
Defendants

Vs./

1.G.Gunasekaran
2.G.Rajendran

: Respondents/Appellants/
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 31.07.2025, passed in A.S.No.68 of 2024, by IV Additional District Court, Madurai reversing the judgment and decree dated 02.02.2024, passed in O.S.No.494 of 2017, by the Subordinate Court, Thirumangalam.

For Appellants : Mr.S.Anand Chandrasekar



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JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.68 of 2024, dated 31.07.2025, on the file of IV Additional District Court, Madurai, reversing the judgment and decree passed in O.S.No.494 of 2017, dated 02.02.2024, on the file of the Subordinate Court, Thirumangalam.

2. The appellants are the defendants. The respondents/plaintiffs filed a suit in O.S.No.494 of 2017, on the file of the Subordinate Court, Thirumangalam claiming the relief of recovery of possession and for permanent injunction in respect of the suit properties.

3. Originally, the sole defendant filed a counter claim cum written statement and contested the suit. Pending suit, the sole defendant died and hence, his wife and sons were impleaded as defendants 2 to 6 and subsequently the second defendant also died. The learned Subordinate Judge, Thirumangalam after framing necessary issues and after full trial, passed the judgment and decree dated 02.02.2024 dismissing the suit as well as counter claim. Aggrieved by the dismissal of the suit, the plaintiffs preferred the appeal in A.S.No.68 of 2024 and the learned IV Additional District Judge, Madurai, upon considering the materials



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available on record and on hearing the arguments of both sides, passed the impugned judgment and decree dated 31.07.2025 allowing the appeal, setting aside the judgment and decree of the trial Court and decreed the suit granting the relief of recovery of possession and permanent injunction in favour of the plaintiffs and also directed the defendants 3 to 6 to hand over the possession of the suit property to the plaintiffs within three months from the date of judgment. Aggrieved by the impugned judgment and decree passed by the first appellate Court, the defendants 3 to 6 have preferred the present Second Appeal.

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



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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.”

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;



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“(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



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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."

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

7. The case of the plaintiffs is that the suit property measuring 5 cents of land was assigned in favour of the plaintiffs' father Gurusamy Thevar, who was a Burma Repatriate. The Tamil Nadu Housing Board constructed houses with the loan sanctioned by the Government, by taking the property on mortgage on 28.05.1979. The plaintiffs' father along with his family resided in the suit property. Subsequently he was forced to shift his residence owing to his employment for livelihood at far away places. The plaintiffs' father and the first plaintiff mortgaged the suit property with the deceased first defendant's father-in-law – Muthusamy Thevar for Rs.1,000/- and handed over the possession of the



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property for three years period. The plaintiffs' father disappeared from the working place and his whereabouts was not known till the date of the suit and hence, he was considered as dead in law. The plaintiffs on around third week of August 2003 demanded the first defendant to vacate the suit property and hand over the possession of the same for their own occupation. But the first defendant refused to hand over the possession of the suit property and filed a suit in O.S.No. 237 of 2003, on the file of the District Munsif Court, Thirumangalam, claiming permanent injunction alleging that he had purchased the suit property from Gurusamy Thevar on 25.02.1983 for valuable consideration of Rs.40,000/-. The deceased – first defendant has no title and he cannot have the same as alleged sale transaction is unknown to law and is invalid. The mortgage loan was waived by the Government and thereby mortgage was released and a separate patta was granted to every beneficiary and the same was also granted to the plaintiffs' father by the Government on 12.03.1992. Hence, the plaintiffs were constrained to file the above suit seeking recovery of possession and for mandatory injunction.

8. The defence of the defendants is that the first defendant orally purchased the suit property on 25.02.1983 from the plaintiffs' father Gurusamy Thevar and the first plaintiff for consideration of Rs.40,000/-, but no sale deed was executed and registered on the ground that the property was an assigned property. On the



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basis of the sale, the house tax in respect of the suit property was changed in the name of the first defendant and since the sale date, they have been in possession and enjoyment of the suit property. The plaintiffs in confirmation of the oral sale, handed over the patta with regard to the suit property. Due to the escalation of market value of the suit property, the plaintiff started giving troubles to the defendants. The plaintiffs attempted to trespass into the suit property on 07.09.2003, but the same was successfully thwarted. Hence the defendants were constrained to file a suit in O.S.No.237 of 2003 claiming permanent injunction before the District Munsif Court, Thirumangalam and after trial, the suit was decreed granting permanent injunction as prayed for. The plaintiffs have not even preferred any appeal challenging the judgment and decree passed in O.S.No. 237 of 2003. But after the lapse of six years, they filed the present vexatious suit. The defendants have been in possession and enjoyment of the suit property continuously for 30 years more than the statutory period and hence, they have perfected their title by adverse possession. The defendants had spent handsome amount to make further construction in the suit property. The suit is barred by limitation and by doctrine of res judicata. Hence, the counter claim is to be allowed declaring their title to the suit property and for permanent injunction.



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9. It is pertinent to note that the learned trial Judge, as already pointed out, dismissed the suit as well as counter claim. Challenging the dismissal of the suit, the plaintiffs preferred the appeal in A.S.No.68 of 2024 and the same came to be allowed and thereby the suit in O.S.No.494 of 2017 was decreed as prayed for. Aggrieved by the judgment and decree granting the reliefs claimed in the suit by the first appellate Court, the defendants have filed the present Second Appeal. But it is pertinent to mention that the defendants have not preferred any appeal challenging the findings rendered against them and also the dismissal of the counter claim by the trial Court.

10. When the above Second Appeal was taken up for admission, the learned Counsel for the appellants would contend that the defendants have filed the appeal challenging the dismissal of the counter claim with the delay condonation petition, but the fact remains that there was no appeal pending filed by the defendants while the appeal in A.S.No.68 of 2024 was disposed by the first appellate Court and even today, no first appeal filed by the defendants is pending. Hence, it can safely be inferred that the findings rendered against the defendants and the dismissal of their counter claim have attained finality.



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11. It is pertinent to note that the first defendant and after his death, his legal heirs specifically admitted that the suit property was owned by the plaintiffs' father Gurusamy Thevar as the suit property was assigned to him by the Government. But according to the defendants, the first defendant orally purchased the suit property from the said Gurusamy Thevar on 25.02.1983. It is their further defence that since the defendants had been in possession and enjoyment of the property continuously for 30 years, they have perfected their title by adverse possession.

12. No doubt, the defence taken by the defendants that the suit is barred by limitation and that the suit is hit by the doctrine of res judicata were rejected by the trial Court and also gave a finding against the defendants with regard to their claim of title by adverse possession. The trial Court after coming to a finding that the property was owned by the plaintiffs' father Gurusamy Thevar, since the plaintiffs have not impleaded the legal heirs of their deceased brother dismissed the suit for non-joinder of necessary parties. No doubt, the first plaintiff in his evidence would admit that his brother Sukumar had died leaving behind his wife and children.



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13. The learned first appellate Judge, taking note of the decision of this Court in ***Ramachandran Vs. Ganesan in S.A.No.1401 of 2011, in D.Akkamma (died) and others*** reported in ***(1976)89 L.W.666*** and in ***Ramachandran and others Vs. Valliammal and others*** reported in ***(1992)1 MLJ 188***, wherein it was held that one co-owner can maintain the suit for recovery of possession based on title and it is not necessary that all the co-owners must be added as parties to the suit, has held that the trial Court's finding that the suit is bad for non-joinder of necessary parties is legally unsustainable.

14. As already pointed out, since the defendants have claimed title to the suit property by adverse possession, it is not necessary that all co-owners must come forward to agitate the claim of adverse possession. As rightly observed by the learned first appellate Judge, since the plaintiffs' father had undisputed title over the suit property, the plaintiffs are certainly entitled to get the reliefs claimed in the suit and by so holding, the first appellate Court decreed the suit.

15. 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



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drawn by the first appellate Court from the proved facts by applying law erroneously. The appellants have also not canvassed any stand that the appellate Court has wrongly placed the burden of proof.

16. 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 have proved the suit claim and decreed the suit as prayed for and the same cannot be faulted.

17. 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.

18. In the result, the Second Appeal is dismissed, confirming the the judgment and decree made in A.S.No.68 of 2024, dated 31.07.2025, on the file of the learned IV Additional District Court, Madurai, reversing the judgment and decree passed in O.S.No.494 of 2017, dated 02.02.2024, on the file of the



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Subordinate Court, Thirumangalam. There shall be no order as to costs.

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

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To:

- 1.The IV Additional District Court, Madurai,
- 2.The Subordinate Court, Thirumangalam
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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