



S.A(MD)No.655 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.01.2026

DELIVERED ON : 12.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD).No.655 of 2025
and
C.M.P.(MD)No.20625 of 2025**

Chellamuthu : Appellant/Appellant/Plaintiff

Vs.

Karuppannan(died)

**1.Natarajan
2.Thangavelu
3.Gomathi
4.Rasammal**

Palaniappan(Died)

Ramayee (Died)

**5.Murugaiyan
6.Ramasamy
7.Meenakshi
8.Muthusamy @ Meesaikaran
9.Kamakshi Ammal
10.K.Palanivel
11.Saroja
12.Nagarathinam**

1/14



S.A(MD)No.655 of 2025

13.Soundaram

: Respondents/Respondents/
Defendants

WEB COPY

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 25.07.2025 passed in A.S.No.25 of 2019, on the file of the learned Principal Subordinate Judge, Karur, confirming the judgment and decree dated 20.06.2011, passed in O.S.No.123 of 2007, on the file of learned Principal District Munsif Court, Karur.

For Appellant : Mr.V.R.Shanmuganathan

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.25 of 2019, dated 25.07.2025, on the file of the Principal Subordinate Court, Karur, confirming the judgment and decree passed in O.S.No.123 of 2007, dated 20.06.2011, on the file of the Principal District Munsif Court, Karur.

2. The appellant is the plaintiff. He filed a suit in O.S.No.123 of 2007, on the file of the Principal District Munsif Court, Karur seeking partition and allotment of 1/16th shares in the suit properties. The defendants 1, 2, 4 and 5 filed their written statement and contested the suit.



S.A(MD)No.655 of 2025

3. The learned Principal District Munsif, Karur after framing necessary issues and after full trial, passed the judgment and decree dated 20.06.2011, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff filed an appeal in A.S.No.25 of 2018 and the learned Principal Subordinate Judge, Karur, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree dated 25.07.2025 dismissing the appeal and thereby confirmed the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiff has filed 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



S.A(MD)No.655 of 2025

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.”

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.



S.A(MD)No.655 of 2025

(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."

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

7. It is pertinent to mention that the genealogy tree filed in Ex.A.1 is not disputed. It is not in dispute that one Palaniappa Gounder and his wife Arukkani Ammal had two sons viz., Marappa Gounder and Subburaya Gounder, that Marappa Gounder had two wives viz., Nagammal and Kulandayee and the said Marappa Gounder had a son by name Karuppannan (first defendant) and a daughter by name Papayee through his first wife and had a son by name Natarajan (second defendant) and a daughter by name Rasammal (fifth defendant)



S.A(MD)No.655 of 2025

through second wife and that Marappa Gounder's daughter Papayee had a son by name Thangavelu (third defendant) and a daughter by name Gomathi (fourth defendant). It is also not in dispute that Subburaya Gounder had three sons viz., Palaniappan (sixth defendant), Ramasamy (ninth defendant) and Ponnusamy, that the said Palaniappan had a son by name Chellamuthu, plaintiff herein and a daughter Meenakshi (10th defendant), that the said Ponnusamy died in the year 1996 leaving behind his wife Ramayee(7th defendant) and a son my name Murugian (8th defendant).

8. The case of the plaintiff is that the suit properties are the ancestral joint family properties of Palaniappa Gounder's family, that the suit properties were purchased in the name of Marappa Gounder with the aid of the income derived from the ancestral properties, that the legal heirs of Marappa Gounder and Subburaya Gounder had entered into a partition deed dated 04.02.1978, but the suit propertie were not included and the same remained to be common properties, that after the death of Marappa Gounder and Subburaya Gounder, the legal heirs of both brothers had been in possession and enjoyment of the suit properties as joint family properties, that the said Marappa Gounder himself had alienated some of the properties covered in the sale deed dated 07.09.1935, that since the value of the suit properties increased suddenly, the defendants were not amenable



S.A(MD)No.655 of 2025

for amicable partition and that therefore, the plaintiff was constrained to file the above suit for partition for allotment of 1/16th share therein.

9. The defence of the defendants 1, 2, 4 and 5 is that the suit properties were the separate and self-acquired properties of the said Marappa Gounder, that the said Marappa Gounder had purchased common 5.50 1/2 acres out of 11.01 acres in S.F.No.234 and common 2.54 1/2 acres out of 5.09 acres in the said village vide sale deed dated 07.09.1935, that the said Marappa Gounder subsequently had dealt with some of the properties and thereafter he was entitled to Hectare 0.54.0 in S.F.No.241/1, Hectare 0.05.00 in S.F.No.241/2, Hectare 1.09.5 in S.F.No.234/1A and Hectare 1.01.0 in S.F.No.234/2A, that all the properties covered in the sale deed dated 07.09.1935 are not shown in the suit properties, that the parties entered into a partition in the year 1972 and since the suit properties were the separate properties of Marappa Gounder, the said properties were not included in the partition, that since the plaintiff has not impleaded the subsequent purchasers, the suit is bad for non-joinder of necessary parties and that the suit is barred by time and hence the suit is liable to be dismissed.



S.A(MD)No.655 of 2025

10. At the outset, it is pertinent to note that the plaintiff himself has admitted that there was a registered partition deed dated 04.02.1972 entered into between the legal heirs of Marappa Gounder and Subburaya Gounder in respect of ancestral joint family properties. But admittedly the suit properties were not included in the said partition. The plaintiff has alleged that the suit properties remained as common properties and the legal heirs of both brothers have been in possession and enjoyment of the same. As rightly observed by the Courts below, it is not the case of the plaintiff that the suit properties were left out in 1972 partition purposely and allowed the same to be owned by all the heirs jointly. It is not the case of the plaintiff that there was no such recitals in the partition deed and more importantly, the plaintiff has not chosen to produce the copy of the partition deed.

11. At this juncture, it is necessary to refer the decision referred by the learned first appellate Judge reported in **2022(3) CTC 702 (Ramasamy Gounder @ Senban (died) and others Vs. Chinnapillai @ Nallammal and others)**, wherein this Court has observed as follows:

“The proof of the existence of a joint family does not lead to the presumption that the property held by any member of the family is joint. The plaintiff is expected to prove that there was a joint family



S.A(MD)No.655 of 2025

nucleus and the joint family properties were capable of earning income and further there was surplus income to purchase the suit property after meeting other commitments of the joint family. The property standing in the individual name of a co-owner will be presumed to be his property and the burden of proof is upon the plaintiff to establish that it was purchased from the surplus income from the joint family nucleus. This is not a matter of assumption and it has to be necessarily pleaded and proved through evidence.”

12. In the light of the above legal position, it is incumbent upon the plaintiff to first establish the existence of a joint family nucleus and that the same was income-yielding and possessed of sufficient surplus to enable the purchase of the suit properties in the name of Marappa Gounder. Only upon discharge of such initial burden would any presumption arise that the acquisition was made out of the joint family income, thereby shifting the onus to the defendants to prove that the suit properties were purchased by Marappa Gounder from his independent funds and not from the ancestral or joint family income. Admittedly, the plaintiff has not produced even an iota of evidence to discharge the initial burden of proving the existence of any such income-yielding joint family nucleus. Moreover, the plaintiff has also failed to produce any evidence to show that the suit properties were treated as joint family properties and were possessed and



S.A(MD)No.655 of 2025

enjoyed jointly by all the legal heirs of Marappa Gounder and Subburaya Gounder.

13. The defendants have taken a specific stand that all the properties covered under the sale deed dated 07.09.1935 have not been included as suit properties and that the plaintiff has not offered any reason or explanation for omitting certain properties covered under Ex.A.3. It is pertinent to note that even according to the plaintiff, the suit properties were purchased in the year 1935, whereas the present suit for partition has been filed only in the year 2007. In such circumstances, the Courts below have rightly come to the conclusion that the suit properties, being the separate properties of Marappa Gounder, were not included in the partition that took place in the year 1972 and, therefore, the plaintiff is not entitled to seek partition in respect of the suit properties.

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



S.A(MD)No.655 of 2025

WEB COPY

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 failed to prove his claim for partition and as such, dismissal of suit by the trial Court 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. It is not open to this Court to sit in appeal over the factual findings arrived at by 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. Considering the other facts and circumstances, this Court further decides that the parties are directed to bear their own costs.

17. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.123 of 2007, dated 20.06.2011, on the file of the Principal District Munsif Judge, Karur and in A.S.No.25 of 2019, 25.07.2025, on the file of the Principal Subordinate Judge,



S.A(MD)No.655 of 2025

Karur. Consequently, connected Miscellaneous Petition is closed. There shall be
no order as to costs.

12.02.2026

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

To:

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



WEB COPY



S.A(MD)No.655 of 2025

K.MURALI SHANKAR,J.

SSL

**PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD).No.655 of 2025**

12.02.2026