



S.A.(MD)No.26 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2026

Pronounced on : 27.02.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.26 of 2026
and
C.M.P.(MD)No.918 of 2026

1.Backiyam

2.Thavaraja

3.Chellapandi

4.Archunan

5.Vanitha

... Appellants/
Appellants/
Defendants 1 to 5

Vs.

1.Thangapandi

...1st Respondent/
Respondent/
Plaintiff

2.Dhanapandi

...2nd Respondent/
6th Appellant/
6th Defendant



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PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Sub Court, Theni made in A.S.No.4 of 2015 dated 19.08.2025 confirming the judgment and decree of the District Munsif cum Judicial Magistrate Court, Aandipatti, Theni District in O.S.No.60 of 2010 dated 12.08.2014 dismissing the suit.

For Appellants : Mr.Raja Karthikeyan
for Mr.D.Muruganantham

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.4 of 2015 dated 19.08.2025 on the file of the Subordinate Court, Theni, confirming the judgment and decree passed in O.S.No.60 of 2010 and the counter claim filed therein dated 12.08.2014 on the file of the District Munsif cum Judicial Magistrate Court, Andipatti.

2. The appellants are the defendants 1 to 5. The first respondent, as plaintiff, filed a suit in O.S.No.60 of 2010 before the District Munsif-cum-Judicial Magistrate Court, Andipatti, seeking a permanent injunction restraining the defendants 1 to 5 and their men from in any manner



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irrigating Items 1 and 2 of the suit properties once in three days in pursuance of his 1/3rd share in the well situated in Item No.3 of the suit properties, and for a further permanent injunction restraining the defendants 1 to 5 from taking the electricity service connection attached to the suit well for drawing water from their bore well. The defendants filed a written statement along with a counter claim seeking a permanent injunction restraining the plaintiff and his men from obstructing the defendants 1 to 5 from taking water from the suit well through the electricity service connection to their lands, and also for a permanent injunction restraining the plaintiff and his men from interfering with their proposal to shift electricity service connection No.118 attached to the suit well to another place through a changeover switch.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The learned District Munsif cum Judicial Magistrate, Andipatti, after framing necessary issues and after full trial, passed a judgment and decree dated 12.08.2014 granting the permanent injunction as prayed by



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the plaintiff and dismissing the counter claim. Aggrieved by the said judgment and decree, the defendants preferred an appeal in A.S.No.4 of 2015 and the learned Subordinate Judge, Theni, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 19.08.2025 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the first appeal, the defendants 1 to 5 have preferred the present Second 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 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



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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.”

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



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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."

7. The learned counsel appearing for the appellants / defendants 1 to 5 would rely on a decision of the Hon'ble Supreme Court in ***Divyagnakumari Harisinh Parmar and others Vs. Union of India and others*** reported in ***2025 SCC OnLine SC 2064***, wherein also, it was specifically held that Section 100 C.P.C. provides that an appeal would



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lie before the High Court, from every decree passed in appeal by any court subordinate to the High Court, if it is satisfied that the case involves a 'substantial question of law'. No doubt, the Hon'ble Apex Court has further observed that nothing in the section shall be deemed to take away or abridge the powers of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question. He would also rely on the following passages,

“42. In Hero Vinoth v. Seshammal, this Court has eruditely delineated the contours of interference with concurrent findings of fact in the exercise of jurisdiction under Section 100 CPC. It was expounded that where findings of fact are arrived at by ignoring material evidence, by taking into account inadmissible evidence, or where the conclusions are so perverse that no reasonable or prudent person could have reached them, a substantial question of law would arise, thereby warranting interference. This Court held thus:

“19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject



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witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(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



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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 High Court will not interfere with the concurrent findings of the courts below.



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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.””

8. The learned counsel appearing for the appellants / defendants 1 to 5 would also rely on a decision of the Hon'ble Supreme Court in ***Angadi Chandranna Vs. Shankar and others*** reported in **2025 SCC OnLine SC 877**, wherein, the Hon'ble Apex Court has clarified that the High Court can go into the findings of facts under Section 103 C.P.C. only under certain circumstances and it is necessary to refer the following passages:

“12.



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28. *It is thus clear that Under Section 100, Code of Civil Procedure, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.*

29. *The High Court in the Second Appeal can interfere with the findings of the trial Court on the ground of failure on the part of the trial as well as the first appellate Court, as the case may be, when such findings are either recorded without proper construction of the documents or failure to follow the decisions of this Court and acted on assumption not supported by evidence. Under Section 103, Code of Civil Procedure, the High Court has got power to determine the issue of fact. The Section lays down:*

Power of High Court to determine issue of fact: In any Second Appeal, the High Court may, if the evidence on the record is sufficient to determine any issue necessary for the disposal of the appeal,-

(a) Which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or



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(b) Which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100.”

9. Bearing the settled legal position in mind, let us proceed with the case on hand.

10. The case of the plaintiff, in short, is as follows:

(a) The plaintiff has filed the suit listing out three Items of the suit properties. Items 1 and 2 of the suit properties are owned by the plaintiff. 3rd Item of the suit properties, well in Survey No.67/6C and electricity service connection in S.C.No.118 and 5 HB Motor Pumpset attached therein are owned by the plaintiff and the defendants jointly. The suit properties and other properties originally belonged to Perumal Naicker, Samykannu @ Ganapathy, Subburaj, Seeni, Vellaisamy, Chinnasamy and Ramasamy, sons of Ganapathy Naicker. The plaintiff's father Ramasamy Naicker purchased other properties along with 1/3rd share in the well situated in 3rd Item of the suit properties on 26.01.1957 and thereby, Perumal Naicker retained the remaining 2/3rd share in the suit well.

(b) In the year 1970, they obtained electricity service connection



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and by fixing motor pumpset, the plaintiff as well as the defendants have been irrigating their respective lands. In the partition effected in Perumal Naicker's family, 2/3rd share in the 3rd Item of the suit properties was allotted to the share of Samykannu @ Ganapathy and Subburaj. After Subburaj, his heirs sold the property and lastly, his 1/3rd share in the 3rd Item of the suit properties was purchased by the sixth defendant. After the death of Samykannu @ Ganapathy, his heirs defendants 1 to 5 are having 1/3rd right in the 3rd Item of the suit properties. All the joint owners have been irrigating once in three days from the suit well, using electricity service connection. Though electricity service connection was obtained in the name of Samykannu @ Ganapathy in the year 1970, the same was for the benefit of all the joint owners. The defendants 1 to 5 claiming to be the exclusive owners of the electricity service connection and motor pumpset had dug a bore well in their lands and attempted to shift the electricity service connection attached to the 3rd Item of the suit properties to their newly dug bore well, but the same was thwarted. Since the sixth defendant, who is owning 1/3rd share in the 3rd Item of the suit properties, was not ready to join with the plaintiff to file the suit, he was impleaded as sixth defendant as a formal party. Since the defendants 1 to



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5 are making hectic attempts to shift the electricity service connection, the plaintiff was forced to file the above suit claiming permanent injunction.

11. The gist of the written statement and the counter claim of the defendants, in short, is as follows:

(a) Electricity service connection No.118 attached to the 3rd Item of the suit properties was not owned by the plaintiff or his father. There are two water shifting arrangements (kamalai) and the plaintiff's father purchased northern side kamalai along with 1/3rd right in the suit well. The contention of the plaintiff that his father and after his death, the plaintiff has been using the electricity service connection and motor pumpset to irrigate their Items 1 and 2 of the suit properties, is false and untenable.

(b) The first defendant's husband Samykannu @ Ganapathy obtained a electricity service connection bearing No.118 on 01.01.1970 separately and it was not for the benefit of the plaintiff. The plaintiff has no right or authority to restrain the defendants 1 to 5 from taking electricity service connection to the bore well dug in their own lands. The



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defendants 1 and 2 are having every right to transfer the electricity service connection attached to the suit well to their bore well through change over switch and the same cannot be prevented by the plaintiff. The plaintiff is not entitled to get any of the reliefs claimed. Hence, the suit is liable to be dismissed and the counter claim is to be allowed.

12. It is pertinent to note that Items 1 and 2 of the suit properties, admittedly, are owned by the plaintiff. The dispute is only with respect to 3rd Item of the suit properties, which comprises the suit well, two kamalais and the electricity service connection bearing No.118 with motor pumpset. It is not in dispute that the plaintiff's father purchased a 1/3rd share in the suit well situated in 3rd Item of the suit properties and also obtained a right over kamalai therein.

13. It is also not in dispute that the first defendant's husband Samykannu @ Ganapathy obtained an electricity service connection bearing No.118 for the suit well situated in 3rd Item of the suit properties. According to the plaintiff, the said connection was obtained in the name of Samykannu @ Ganapathy for the benefit of all the joint owners and



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that the plaintiff and other co-owners of the suit well have been using the said service connection to irrigate their respective lands. However, according to the defendants 1 to 5, the plaintiff has absolutely no right or interest in the service connection obtained by the first defendant's husband and that the plaintiff's father and after his demise, the plaintiff had been using northern kamalai for irrigating their Items 1 and 2 of the suit properties, whereas, the defendants 1 to 5 alone have the right and interest over the said service connection and have been using the same to irrigate their own lands.

14. The plaintiff has produced a copy of the mortgage deed dated 15.02.1999 executed by the defendants 1 to 5 in favour of Periyakulam Co-operative Land Development Bank under Ex.A4, wherein, it is evident that the defendants 1 to 5 mortgaged their lands situated in Survey Nos.67/6B, 67/6E, 67/6F and 67/6C. More importantly, they have stated therein that they were having a 1/3rd share in the well situated in Survey No.67/6C along with a 5 HP motor pumpset. It is also evident from Ex.A6 sale deed dated 02.01.1957 that Ramasamy Naicker, plaintiff's father, purchased the northern kamalai attached to the well



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situated in Jamin Survey No.78. In Ex.A7 partition deed entered into between Ramasamy Naicker and his sons, Items 1 and 2 of the suit properties and a $\frac{1}{2}$ right in the suit well, electricity service connection and motor pumpset were shown as allotted to the share of the plaintiff.

15. As rightly observed by the learned trial Judge, there is no evidence to show that the plaintiff's father Ramasamy Naicker had purchased a $\frac{1}{2}$ share in the suit well; however, it is admitted that he had purchased a $\frac{1}{3}^{\text{rd}}$ share in the suit well along with the northern kamalai attached thereto. The Courts below, on considering the evidence available on record, have found that while mortgaging their properties referred under Ex.A4, the defendants 1 to 5 themselves had referred to their $\frac{1}{3}^{\text{rd}}$ share in the suit well, electricity service connection and motor pumpset and had not claimed exclusive ownership over the electricity service connection and motor pumpset. As already pointed out, according to the plaintiff, his father and after his demise, the plaintiff has been using the suit service connection to irrigate their lands from the year 1970. Though the suit service connection was obtained though in the name of Samykannu @ Ganapathy, it was for the benefit of all the co-



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owners. The defendants 1 to 5 have not shown that their predecessors and subsequently the defendants 1 to 5 had been irrigating their lands through the motor pumpset attached to the suit service connection, on the other hand, the plaintiff has been using the northern kamalai to irrigate Items 1 and 2 of the suit properties.

16. It is the specific case of the defendants 1 to 5 that they had dug a bore well in their own lands and that since the service connection No. 118 stood in their name for the suit well, they were entitled to shift the same to the bore well through a changeover switch. However, as rightly observed by the Courts below, since the defendants 1 to 5 had only a 1/3rd share in the suit electricity service connection, the objection raised by the plaintiff for shifting the suit service connection through a changeover switch, cannot be found fault with.

17. Considering the entire evidence available on record, the Courts below have rightly come to the conclusion that the plaintiff has proved his case and is therefore entitled to the reliefs of permanent injunction, whereas, the defendants have miserably failed to establish their counter



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claim and the same is liable to be dismissed.

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

19. Considering the judgments of the Courts below, no question of law much less Substantial Question of Law is made out. As per the dictum laid down by the Hon'ble Supreme Court in **Chandrabhan's** case referred supra, 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. Consequently, 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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20. In the result, the Second Appeal is dismissed, confirming the judgment of the appellate Court made in A.S.No.4 of 2015, dated 19.08.2025 on the file of the Subordinate Court, Theni, confirming the judgment and decree made in O.S.No.60 of 2010 dated 12.08.2014 on the file of the District Munsif cum Judicial Magistrate Court, Andipatti. Consequently, connected Miscellaneous Petition is closed. No costs

27.02.2026

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

1. The Subordinate Judge, Theni.
2. The District Munsif cum Judicial Magistrate,
Andipatti.
3. The Record Keeper,
Vernacular 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
S.A.(MD)No.26 of 2026
and
C.M.P.(MD)No.918 of 2026

Dated : 27.02.2026