



S.A.(MD)No.43 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2026

Pronounced on : 18.03.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.43 of 2026

1.Venkatesan

2.Lakshmi

3.Kavitha

4.Sangeetha

5.Arumugam

... Appellants/
Appellants/
Plaintiffs

Vs.

1.Marimuthu

2.Mariappan

... Respondents/
Respondents/
Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 04.11.2025 made in A.S.No.13 of 2022 on the file of the Sub Court, Veda sandur confirming the judgment and decree



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dated 04.01.2020 made in O.S.No.20 of 2007 on the file of the Principal District Munsif Court, Vendasandur.

For Appellants : Mr.G.Gomathi Sankar

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.13 of 2022 dated 04.11.2025 on the file of the Subordinate Court, Vendasandur, confirming the judgment and decree passed in O.S.No.20 of 2007 dated 04.01.2020 on the file of the Principal District Munsif Court, Vendasandur.

2. The appellants are the plaintiffs. They filed the suit in O.S.No.20 of 2007 before the Principal District Munsif Court, Vendasandur, claiming the reliefs to declare that the suit properties are exclusively belonging to them and for permanent injunction restraining the respondents / defendants and their men from in any manner interfering with the appellants / plaintiffs' peaceful possession and enjoyment of the suit properties.

3. The respondents / defendants filed their written statement and contested the suit.



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

5. The learned Principal District Munsif, Vendasandur, after framing necessary issues and after full trial, passed a judgment and decree dated 04.01.2020 granting the reliefs of declaration and permanent injunction in respect of Items 1 and 3 of the suit schedule properties and dismissed the suit with regard to 2nd Item of the suit properties. Aggrieved by the dismissal of the suit with regard to 2nd Item of the suit properties, the plaintiffs preferred an appeal in A.S.No.13 of 2022 and the learned Subordinate Judge, Vendasandur, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 04.11.2025 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the first appeal, the plaintiffs have preferred the present Second Appeal.

6. At the outset, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under



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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*



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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.”

7. 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



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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



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

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

(a) The suit properties and other properties were originally belonging to one Palaniyandi and his brother Muruganambalam. Both of them entered into a partition 60 years back, whereunder, the suit properties were allotted to the share of Palaniyandi and the properties situated on the West of the suit properties were allotted to the share of Muruganambalam. There was a well in the land allotted to Muruganambalam and both brothers had been irrigating their respective lands through the said well and both are having equal rights in the said well.



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(b) After the demise of Palaniyandi, his son Arumugam became the owner and after his demise in 1977, his wife was managing the properties. After the demise of Muruganambalam, his legal heirs Palaniyandi, Theethan, Maruthavelan, Marimuthu and Arumugam had been enjoying their father's properties. Due to the floods in 1977, the well came to be closed by river sand and hence, they were not in a position to carry out agricultural operations. Arumugam's wife approached the legal heirs of Muruganambalam to restore the well but they informed that they can dig well in their respective properties. Accordingly, Arumugam's wife had dug a well in their land in the year 1978 and was irrigating through their northern kamalai. Subsequently, she installed oil motor pump sets and also constructed a shed on the east of the said well and is in possession and enjoyment of the same. The first plaintiff, his mother (Arumugam's wife) and other brothers and sisters had entered into an oral partition 5 year prior to the suit and in that partition, the suit properties and the well situated therein were allotted to the share of the first plaintiff and his brother jointly. Since the first plaintiff's brother Palaniyappan @ Palaniyandi had died leaving behind the plaintiffs 2 to 5 as his legal heirs, all the plaintiffs have been in



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possession and enjoyment of the suit properties including the well.

(c) The plaintiffs, after coming to know that the first defendant has been attempting to sell the plaintiffs' well to the second defendant, they sent a legal notice dated 20.03.2006 and the defendants having received the same sent a reply notice dated 08.07.2006 with false and untenable allegations. The plaintiffs came to know that a patta was issued in favour of several persons in respect of the suit well, hence, they were forced to take necessary steps. Since the defendants attempted to interfere with the plaintiffs' possession and enjoyment, they were constrained to file the above suit seeking declaration and permanent injunction.

10. The defence of the defendants is that the contention of the plaintiffs that the suit well was their separate well and they were alone using the said well for irrigating their lands, are all false and untenable. The plaintiffs have no right or interest or connection with the 2nd Item of the suit properties situated in Survey No.1074/2A including the well and the vacant space therein. For the land in Survey No.1074/2A, patta was issued in Patta No.2449 in favour of 10 persons but the plaintiffs' names does not find place therein. The second defendant purchased 3 cents of



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the well land portion in Survey No.1074/2A and half right in the well situated therein and also half right in the water tank, vaari, vaaikal from the first defendant, his son and first defendant's brother Arumugam vide sale deed dated 06.07.2006 for valuable consideration. The second defendant also purchased 1½ cents of land and 1/4th share in the said well on 25.01.2002. The plaintiffs, who were fully aware of the above facts, filed the above suit with an evil intention to grab the property. The plaintiffs have no cause of action and the alleged one is untenable. Hence, the suit is liable to be dismissed.

11. At the outset, it is pertinent to note that since the defendants have admitted the ownership and possession of the plaintiffs over the Items 1 and 3 of the suit schedule properties, the learned trial Judge has rightly granted the reliefs of declaration and permanent injunction in respect of Items 1 and 3 of the suit schedule properties. Admittedly, the defendants have not filed any cross-appeal or cross-objection, challenging the reliefs granted to the plaintiffs. The plaintiffs have preferred the appeal challenging the dismissal of the suit with regard to the 2nd Item of the suit schedule properties.



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12. A well available in 0.02.5 hectares of land situated in Survey No.1074/2A of Ayyalur Village, Vendasandur Taluk along with oil motor pump sets and thatched shed are shown as the 2nd Item of the suit properties. Considering the pleadings and evidence of both the parties, it is clearly evident that the dispute is only with regard to the well situated in Survey No.1074/2A and pump sets and sheds attached therein.

13. It is the specific case of the plaintiffs that the old well got destroyed during the floods in 1977 and that Arumugam's wife (first plaintiff's mother) approached the defendants and requested their co-operation for restoring the said old well, but they informed that both parties could have separate wells. Pursuant thereto, Arumugam's wife dug a new well in the said property by erecting kamalai and had been irrigating her lands using the said well and kamalai. Subsequently, she is stated to have installed an oil motor pump set and also put up a shed therein. Per contra, the specific defence of the defendants is that the alleged destruction of the old well and the digging of a new, separate well by the plaintiffs are wholly false and untenable.



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14. It is not in dispute that the well in dispute is situated in Survey No.1074/2A with an extent of 0.02.5 hectares.

15. The plaintiffs have produced patta under Ex.A3 and Ex.A4 vide Patta Nos.2449 and 2329 respectively, old field map under Ex.A10 and the lease deed alleged to have been executed by Palaniyandiambalam to Kalimuthu Nadar dated 31.05.1940 under Ex.A11. It is not in dispute that well was not shown in Ex.A3 patta and in Ex.A10 field map. But the defendants have produced the sale deed dated 06.07.2006 executed by the first defendant and others in favour of the second defendant under Ex.B1, the sale deed executed in favour of the second defendant by Arumugam and others dated 25.01.2002 under Ex.B2, pattas under Ex.B4 and Ex.B5, old FMB under Ex.B7, chitta stands in the name of Palaniyandi under Ex.B8 and also the certified copies of the Adangal in favour of Palaniyandi for 1389 Pasali under Ex.B9. According to the defendants, the suit well has been shown in Ex.B1, Ex.B2, Ex.B7 and Ex.B9 and also Ex.X1 witness document, survey plan for Survey No. 1074.



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16. It is pertinent to note that before the trial Court, an Advocate Commissioner was appointed to inspect the suit properties and the learned Advocate Commissioner upon inspection filed his report and plan under Ex.C1 and Ex.C2 respectively. The learned Advocate Commissioner, in his report, has specifically stated that he found a well in Survey No.1074/2A, that he also noticed coconut trees in the south-eastern corner of the said land and that no excavation was carried out to ascertain whether any well existed at the said place. Though the plaintiffs would contend that the Commissioner had noticed the new well of the plaintiffs, as rightly observed by the Courts below, the report of the the learned Advocate Commissioner does not support such a case. On the contrary, the learned Advocate Commissioner has categorically stated that he was not shown, by digging the land, whether any well was available at the alleged location.

17. The Courts below, on a proper appreciation of the evidence, have specifically held that the plaintiffs have miserably failed to establish that the old well was destroyed during the floods in the year 1977, that a new well was subsequently dug by them for their exclusive use and that



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they have been solely irrigating their lands from the said well.

18. On an overall consideration of the entire evidence available on record, the Courts below have rightly come to a conclusion that the plaintiffs have failed to prove their claim in respect of the 2nd Item of the suit properties and consequently, they are not entitled to any of the reliefs claimed and that the same cannot be faulted.

19. The plaintiffs 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 plaintiffs 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 plaintiffs have not canvassed any stand that the Courts below have wrongly placed the burden of proof.

20. 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



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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.

21. In the result, the Second Appeal is dismissed, confirming the judgment of the appellate Court made in A.S.No.13 of 2022, dated 04.11.2025 on the file of the Subordinate Court, Vendasandur, confirming the judgment and decree made in O.S.No.20 of 2007 dated 04.01.2020 on the file of the Principal District Munsif Court, Vendasandur. No costs

18.03.2026

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

To

- 1.The Principal District Munsif, Vendasandur.
- 2.The Subordinate Judge, Vendasandur.
- 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.43 of 2026**

Dated : 18.03.2026