



S.A(MD)Nos.53 and 54 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.02.2026

DELIVERED ON : 27.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).Nos.53 and 54 of 2026

and

C.M.P.(MD)Nos.2075 and 2078 of 2026

S.A.(MD)No.53 of 2026:

D.Muthammal(died)

: Appellant/Appellant/Defendant

1.Ayiram Padial

2.Karumpuli Andavar

3.Magudasuri

: Appellants/

(Legal Heirs of the deceased sole
appellant/Legal heirs of the deceased
sole defendant)

(cause title is amended vide order
dated 24.10.2025 made in
C.M.P.(MD)No.16630 of 2025
in S.A.(MD)SR No.97027 of 2024)

Vs.

N.Muthammal

: Respondent/Respondent/
Plaintiff



S.A(MD)Nos.53 and 54 of 2026

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 13.09.2023 made in A.S.No.73 of 2019, on the file of the Subordinate Court, Tiruchendur, confirming the judgment and decree dated 31.03.2011, made in Counter Claim in O.S.No.156 of 2009, on the file of the Principal District Munsif Court, Tiruchendur.

S.A.(MD)No.54 of 2026:

D.Muthammal(died) : Appellant/Appellant/Defendant

1.Ayiram Padial

2.Karumpuli Andavar

3.Magudasuri

: Appellants/
(Legal Heirs of the deceased sole
appellant/Legal heirs of the deceased
sole defendant)

(cause title is amended vide order
dated 24.10.2025 made in
C.M.P.(MD)No.16629 of 2025
in S.A.(MD)SR No.97083 of 2024)

Vs.

N.Muthammal

: Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 13.09.2023 made in A.S.No.60 of 2017, on the file of the Subordinate Court, Tiruchendur, confirming the judgment and decree dated 31.03.2011, made in Counter Claim in O.S.No.156 of 2009, on the file of the Principal District Munsif Court, Tiruchendur.



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For Appellants
in both appeals : Mr.Arun Ramnath
for Mr.I.Robert Chandra Kumar

COMMON JUDGMENT

These Second Appeals are directed against the common judgment and decrees made in A.S.No.60 of 2017 and A.S.No.73 of 2019, dated 13.09.2023, on the file of the Subordinate Court, Tiruchendur, partly reversing the judgment and decree passed in O.S.No.156 of 2009, dated 31.03.2011, on the file of the Principal District Munsif cum Judicial Magistrate Court, Tiruchendur.

2. The legal heirs of the deceased sole defendant are the appellants. The respondent as plaintiff filed a suit in O.S.No.156 of 2009, on the file of the District Munsif Court, Tiruchendur against the deceased defendant D.Muthammal to declare that the suit property is belonging to her and for recovery of possession. The original defendant filed a written statement cum counter claim claiming the relief of specific performance.



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3. The learned District Munsif, after framing necessary issues and after full trial, passed a judgment and decree dated 31.03.2011, dismissing the suit as well as the counter claim. Aggrieved by the dismissal of the suit, the plaintiff filed an appeal in A.S.No.60 of 2017 and the defendant, challenging the dismissal of the counter claim, filed an appeal in A.S.No.73 of 2019 and the learned Subordinate Judge, Tiruchendur, upon considering the materials available on record and on hearing the arguments of both sides, passed a common judgment dated 13.09.2023, partly allowing the appeal and thereby setting aside the judgment of the trial Court dismissing the suit and granted the reliefs of declaration and possession to the plaintiff. The first appellate Judge confirmed the judgment of the trial Court in rejecting the counter claim. After disposal of the first appeal, the sole defendant had died. Challenging the common judgment and decrees of the first appellate Court, the legal heirs of the sole defendant have 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



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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 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



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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



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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."

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

7. The case of the plaintiff, in brief, is as follows:

The suit property originally belonged to one Lusian Helan Grace, who obtained the same under a gift deed dated 08.11.1979 registered as Document No. 954 of 1979. The plaintiff purchased the said property from Lusian Helan Grace



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under a registered sale deed dated 31.01.1990 bearing Document No.85 of 1990.

Since the date of purchase, the plaintiff has been in possession and enjoyment of the suit property by paying the necessary taxes. The plaintiff's own sister, D. Muthammal, the original defendant, was in poor financial circumstances and was unable to take proper care of her children. Considering the family relationship and the economic condition of the defendant, the plaintiff, in the year 2001, put up a thatched shed in the suit property and permitted the defendant and her family to reside therein without payment of rent. It was agreed that the defendant should vacate and hand over vacant possession of the property after the completion of her children's education. Since the defendant's children had completed their education about one year prior to the filing of the suit, the plaintiff requested the defendant to vacate the premises as agreed. However, the defendant not only refused to vacate but also behaved in a hostile manner and threatened the plaintiff. Thereafter, the plaintiff issued a legal notice terminating the permission granted to the defendant to reside in the suit property and called upon her to hand over vacant possession of the property. Though the defendant received the said legal notice on 23.10.2009, she neither sent any reply nor complied with the demand. Hence, the plaintiff was constrained to file the present suit for declaration and recovery of possession.



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8. The defence of the defendant, in brief, is as follows:

(a). The defendant has one son and two daughters. Her son had completed his Engineering course in the year 2000 itself and is working as an Engineer. Therefore, the contention of the plaintiff that the defendant's children had completed their education only one year prior to the suit is false and untenable. The defendant was earlier residing with her family at Thenthiruperai. In the year 1987, the house in which the defendant and her family were residing collapsed, and in the said incident three of her daughters died. Thereafter, the plaintiff brought the defendant and her family and they resided together in the same house during the period from 1987 to 1990. Subsequently, the defendant put up a thatched shed in the suit property and has been residing therein with her family from February 1990 onwards. The property situated to the west of the suit property was purchased by the plaintiff in the name of her husband and a house was constructed therein. When the plaintiff was making constructions in the said property, she attempted to encroach upon about 2½ feet of the suit property. The same was objected to by the defendant's son and only at that time the plaintiff proclaimed that the suit property belonged to her.

(b). The plaintiff had promised to purchase the suit property in the name of the defendant and, on that representation, received a sum of Rs.15,000/- towards the sale consideration from the defendant's husband's brother. However, the



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plaintiff fraudulently got the sale deed executed in her own name. The defendant came to know about the said fraud only in December 2007 when the plaintiff attempted to encroach upon the suit property. When the plaintiff was questioned about her alleged fraudulent act in the presence of elders, she demanded that the defendant should pay an additional sum of Rs.50,000/- towards the sale price. The defendant agreed to the same and paid a sum of Rs.40,000/- on 23.01.2008 and agreed to pay the balance sum of Rs.10,000/- within a period of three months. The defendant has always been ready and willing to get the sale deed executed in her favour. However, the plaintiff, levelling false and untenable allegations, issued a legal notice dated 20.10.2009. After receiving the notice, the defendant met the plaintiff, who informed her that the notice had been issued at the instigation of her husband. Hence, the defendant did not send any reply notice. Since the plaintiff was not ready and willing to perform her part of the contract, the defendant, having no other option, was constrained to file a counter-claim seeking the relief of specific performance.

9. It is pertinent to note that the learned trial Judge, by observing that the plaintiff has only produced the certified copy of the sale deed, dated 31.01.1990 and not the original sale deed and no reason was given for non-production of the original sale deed, that there was alteration in the name of the purchaser, that



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there were no registration endorsements in Ex.A.2-copy of the sale deed and that the plaintiff has not chosen to depose before the Court and only her husband was examined, dismissed the suit of the plaintiff. It is not in dispute that the plaintiff has produced the original sale deed date 31.01.1990 under Ex.A.9 by alleging that the said original document was deposited with HDFC Bank, Tuticorin for taking a loan from them and that is why the same was not produced before the trial Court. The learned first appellate Judge, by perusing Ex.A.9 original sale deed, has specifically observed that there were no alterations in the name of the purchaser and the same was correctly mentioned as “ந.முத்தம்மாள்” and there is no alteration or changes in the first letter of the name.

10. It is admitted by both parties that the suit property was owned by Lusia Helan Grace vide gift deed dated 08.11.1979. It is the specific case of the plaintiff that she purchased the suit property from the said Lucia Helan Grace vide sale deed dated 31.01.1990 and she put up a thatched shed in the suit property and taking note of her sister/defendant's family and financial situations, permitted the defendant and her family to reside in the suit property. As already pointed out, it is the specific defence of the defendant that the plaintiff promised to get the suit property in favour of the defendant and received Rs.15,000/- towards sale price from the defendant's husband's brother, but when the plaintiff



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was attempting to encroach a portion of the suit property, they came to know that the plaintiff had taken the sale deed in her favour by committing fraud on the defendant.

11. As rightly observed by the learned First Appellate Judge, there is not even an iota of evidence to show that the plaintiff had promised to purchase the suit property in the name of the defendant and had obtained a sum of Rs.15,000/- for that purpose. The contention of the defendant that she came to know that the sale deed had been taken by the plaintiff in her own name only in the year 2007, after a lapse of about 17 years, is highly unbelievable. The defendant has not offered any explanation as to why she had not insisted upon receiving the original sale deed from the plaintiff or why she had not taken steps to have the tax assessment transferred to her name for more than 17 years. It is also not the case of the defendant that immediately after allegedly coming to know about the fraud, she initiated any civil or criminal proceedings against the plaintiff. On the other hand, the defendant has taken a further stand that when the plaintiff was questioned about the alleged fraud, she agreed, in the presence of elders, to execute a sale deed in favour of the defendant on payment of Rs.50,000/-, and that accordingly the defendant paid a sum of Rs.40,000/- and agreed to pay the balance amount of Rs.10,000/- within three months for obtaining the sale deed. In



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other words, the defendant has attempted to project a case of an oral agreement of sale allegedly entered into with the plaintiff.

12. Though the defendant claims that such an agreement was entered into in the presence of elders, she has neither furnished the particulars of those elders nor examined any of them to prove the alleged agreement. As rightly observed by the learned First Appellate Judge, when the defendant herself has taken a stand that the plaintiff committed fraud and that she came to know of it only in 2007 after a lapse of 17 years, the further claim that she paid Rs.40,000/- and agreed to pay the balance of Rs.10,000/- within three months for obtaining the sale deed creates serious doubt about the very case projected by her. Even assuming that the defendant came to know of the alleged fraud after 17 years, any prudent person would have immediately paid the entire amount of Rs.50,000/- and insisted upon the execution of the sale deed. The conduct attributed to the defendant, therefore, does not inspire confidence and renders her version wholly doubtful. The defendant in her cross-examination would admit

“வாதி 2007 மார்ச்சு மாதம் வீடு கட்டும் ஁பாது தடுத்துதன். வாதி அவருக்கு கிரையம் முடித்து கொடுப்பதாக சொன்னார். அதற்கு நான் என் பணத்தை வாட்கி விட்டு ஁மாசடி செய்து விட்டதாக கூறினன். அந்த சமயத்தில் சில பெரிய மனிதர்கள் வந்து என்னை வாதிக்கு ரூ.50இ000 / – கொடுக்க



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சொன்னார்கள். நான் உடனடியாக ரூ.40,000/- கொடுத்தேன். மீதி ரூ..

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10,000/- நான் கொடுக்க வண்டும் என்று சொன்னார்கள். உறுதுவம் எதுவும் உபசிக்கொள்ளப்படவில்லை. கமர்தானம் செய்த பெரிய மனிதர்கள் பெயர் எதுவும் எனக்கு தெரியாது. நாட்கள் கிரையம் உபசியதற்கு சாட்சிகள் எதுவும் கிடையாது. நாட்கள் கிரைய ஒப்பந்தம் செய்து கொண்டதற்கு எழுத்துமூல ஆதாரம் எதுவும் கிடையாது என்றால் சரிதான். எதிர்வழக்குரையில் உபாடப்பட்ட வருடம் மாதம் உததி அனைத்தும் எனது வழக்கறிஞரால் உபாடப்பட்டதுதான்.”

13. As already pointed out, the defendant, in her written statement, has specifically alleged that when the plaintiff was questioned in December 2007 regarding the alleged fraudulent execution of the sale deed in her name, the plaintiff demanded an additional sale consideration of Rs.50,000/- for executing the sale deed in favour of the defendant. If that were so, the subsequent contention of the defendant that the plaintiff had agreed, on 23.01.2008, to sell the suit property for a sale consideration of Rs.50,000/- itself appears inherently contradictory and creates serious doubt about the veracity of the defence projected by the defendant.

14. As rightly observed by the learned First Appellate Judge, the defendant,



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in her cross-examination, has stated that during the year 2008 she requested the plaintiff to complete the sale by receiving the balance sum of Rs.10,000/-.

However, in her chief-examination she has stated that the alleged oral sale agreement was entered into on 23.01.2008 and that at that time she was granted three months' time to pay the balance sale consideration of Rs.10,000/-. If that be so, the contention of the defendant that she had asked the plaintiff during January 2008 itself to complete the sale by receiving Rs.10,000/- appears to be false and inconsistent with her own version. The defendant's husband's brother was examined as D.W.2. According to him, there was an oral sale agreement fixing the sale consideration at Rs.50,000/-, out of which a sum of Rs.40,000/- was paid as advance and the balance sum of Rs.10,000/- was to be paid within one month, whereupon the sale deed was to be executed. He has further stated that he and his brother had asked the plaintiff to receive the balance amount and complete the sale, but the plaintiff refused to execute the sale deed and thereafter filed the present suit.

15. In the absence of any convincing evidence to prove the alleged oral sale agreement said to have been entered into between the plaintiff and the defendant in the presence of elders on 23.01.2008, and in view of the material contradictions in the evidence of the defendant and her witness D.W.2 with



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regard to the essential particulars of the alleged agreement, namely the payment of sale consideration and the time fixed for payment of the balance amount, the learned First Appellate Judge has rightly held that the defendant has failed to prove the existence of any sale agreement between the parties and consequently she is not entitled to seek the relief of specific performance. At the same time, taking note of the evidence adduced on the side of the plaintiff, the production of the original sale deed and the absence of any alterations therein, as observed by the trial Court, the learned First Appellate Judge has rightly concluded that the plaintiff has established her claim and is therefore entitled to the reliefs of declaration and recovery of possession.

16. Considering the entire evidence available on record, the decision of the first appellate Court in granting the decree as sought for by the plaintiff and thereby reversing the judgment of the trial Court in dismissing the suit and the decision of the first appellate Court rejecting the counter claim of the defendant, confirming the findings of the learned trial Judge, cannot be faulted.

17. The appellants have 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 appellants have also not shown any wrong inference had been drawn by



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

18. 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 has proved her claim and granted the reliefs of declaration and possession to the plaintiff.

19. 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 partly 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. Considering the other facts and circumstances, this Court further decides that the parties are directed to bear their own costs.

20. In the result, both the Second Appeals are dismissed, confirming the



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common judgment and decrees made in A.S.No.60 of 2017 and A.S.No.73 of 2019, dated 13.09.2023, on the file of the Subordinate Court, Tiruchendur, partly reversing the judgment and decree passed in O.S.No.156 of 2009, dated 31.03.2011, on the file of the Principal District Munsif cum Judicial Magistrate Court, Tiruchendur. Consequently, connected Miscellaneous Petitions are closed. The parties are directed to bear their own costs.

27.02.2026

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

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To:

- 1.The Subordinate Court, Tiruchendur.
2. The Principal District Munsif cum Judicial Magistrate Court, Tiruchendur.
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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27.02.2026