



S.A(MD)No.6 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.01.2026

DELIVERED ON : 19.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.6 of 2026

and

C.M.P.(MD) No.32 of 2026

P.Kalaiselvan : Appellant/Appellant/Defendant

Vs./

**S.Rama Kazhanjiyam : Respondent/Appellant/
Plaintiff**

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 23.01.2025 passed in the appeal in A.S.No. 7 of 2021, on the file of the Additional Subordinate Court, Tenkasi, confirming the judgment and decree, dated 09.03.2020, passed in the suit in O.S.No.203 of 2018, on the file of the Principal District Munsif Court, Tenkasi.

For Appellant : Mr.J.Barathan



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JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.7 of 2021, dated 23.01.2025, on the file of the Additional Subordinate Court, Tenkasi, confirming the judgment and decree passed in O.S.No.203 of 2018, dated 09.03.2020, on the file of the Principal District Munsif Court, Tenkasi.

2. The appellant is the defendant. The respondent/plaintiff filed a suit for recovery of possession of the suit property, mandatory injunction for removal of asbestos sheet put up by the defendant in the suit property, rent arrears and for compensation for use and occupation of the suit property. The defendant filed his written statement and contested the suit. The learned Principal District Munsif, Tenkasi, after framing necessary issues and after full trial, passed a judgment and decree, dated 09.03.2020 directing the defendant to vacate and hand over the possession of the suit property within two months, granting mandatory injunction directing the respondent to remove the asbestos roofing within two months and to pay Rs.1,300/- as rental arrears and also to pay Rs.50/- per month towards compensation for use and occupation of the suit property till the handing over the



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possession of the same. Aggrieved by the said judgment and decree, the defendant preferred an appeal in A.S.No.7 of 2021 and the learned Additional Subordinate Judge, Tenkasi, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree, dated 23.01.2025, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the defendant has preferred the present Second Appeal.

3. 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 High Court to re-appreciate the evidence on record and interfere



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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.”

4. 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.



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(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."*

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

6. The case of the plaintiff in short is as follows;

The suit property was originally owned by one Micheal Raj and he sold the suit property in favour of the plaintiff vide sale deed dated 27.11.2015 for valuable consideration. The suit property was leased out to the defendant fixing ground rent at Rs.500/- per month and the defendant by putting asbestos sheet roofing, is running a tea stall. The defendant failed to pay the monthly ground rent for merely 26 months. When the rent arrears was demanded, the defendant



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lodged a false police complaint before the Pavor Chathiram police. The plaintiff sent a legal notice dated 17.03.2018 terminating the lease and directed the defendant to vacate the suit property and hand over the vacant possession of the same. The defendant having received the notice on 18.03.2018, has not chosen to send any reply. Since the notice demand was not complied with, the plaintiff was constrained to file the above suit seeking recovery of possession, mandatory injunction for removal of asbestos sheet roofing, rental arrears and for compensation for use and occupation of the suit property.

7. The defence of the defendant is that he was in possession of the suit property as a tenant from the year 2012 under its original owner Micheal Raj on a monthly rent of Rs.50/- per month, that the said Micheal Raj offered to sell the suit property to the defendant and accepting the same, he paid an advance amount of Rs.1,00,000/-, that the defendant sought the help of the plaintiff for paying the remaining sale amount of Rs.4,00,000/- to the said Micheal Raj, that the plaintiff originally demanded to execute a mortgage deed in respect of the suit property, but the plaintiff on the date fixed for sale, compelled the defendant to execute a sale deed in his favour and therefore, with no other option, a sham and nominal sale deed was executed in favour of the plaintiff by the said Micheal Raj, that the defendant had been paying the interest at Rs.12,000/- per month to the plaintiff



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continuously till December 2017, that the defendant had then paid the principal amount of Rs.4,00,000/- and requested the plaintiff to execute the sale deed in his favour, that the plaintiff by giving lame excuse, had been postponing the same on some pretext or the other and hence, the defendant was constrained to lodge a police complaint, that the plaintiff after sending a legal notice, approached the defendant and agreed that he would execute sale deed within two months and requested him not to send any reply notice, that the defendant trusting the words of the plaintiff, did not send any reply, but the plaintiff filed the suit with false and fraudulent contentions and that therefore, the suit is liable to be dismissed.

8. At the outset, it is pertinent to note that the suit property was originally owned by Micheal Raj, who in turn executed a sale deed dated 27.11.2015 in favour of the plaintiff under Ex.A.1. It is evident from the records that the defendant was inducted as a tenant in respect of the suit property under the previous owner Micheal Raj and that he was paying ground rent at Rs.50/- per month to the said Micheal Raj. As already pointed out, it is the specific defence of the defendant that he entered into an oral sale agreement with the said Micheal Raj agreeing to purchase the suit property for Rs.5,00,000/- and paid an advance amount of Rs.1,00,000/- and that since he was unable to arrange the balance sale price of Rs.4,00,000/-, he approached the plaintiff for lending a loan of



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Rs.4,00,000/- and that the plaintiff had agreed to advance the said loan, but on condition that the defendant has to execute a mortgage deed.

9. It is the further case of the defendant that the plaintiff instead of taking mortgage deed, compelled the defendant and got the sale deed executed in his favour by the said Micheal Raj and that the said sale deed was executed only as a security for the loan transaction and that despite paying the principal amount of Rs.4,00,000/- and interest, the plaintiff has not chosen to execute the sale deed and that the defendant being the owner of the suit property has been in possession and enjoyment of the same. No doubt, the defendant examined the previous owner Micheal Raj as D.W.2 and the attestor to Ex.A.1 sale deed, Kartheesan as D.W.3. D.W.2 in his evidence has reiterated the version of the defendant about the sale agreement alleged to have been entered into between himself and the defendant and the payment of advance amount of Rs.1,00,000/- by the defendant and the execution of the sale deed in favour of the plaintiff at the request of the defendant. D.W.3 has also deposed about the loan alleged to have been advanced by the plaintiff to the defendant and the sale deed executed in favour of the plaintiff at the instance of the defendant. Though the defendant as well as D.W.2 Micheal Raj had alleged that both of them entered into a sale agreement and on that basis, D.W.2 received Rs.1,00,000/- from the defendant, except the oral



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testimony, they have not produced any iota of documentary evidence to prove the alleged sale agreement and payment of advance of Rs.1,00,000/-. Though the defendant has alleged that the plaintiff compelled him for executing the sale deed in favour of the plaintiff, D.W.2 in his evidence has stated that the defendant alone requested him to execute the sale deed in favour of the plaintiff.

10. As already pointed out, the defendant had taken a stand that he borrowed Rs.4,00,000/- from the plaintiff and paid interest at Rs.12,000/- till December 2017. But the defendant has not produced any iota of evidence to substantiate the same. As rightly observed by the Courts below, the said Micheal Raj executed Ex.A.1 sale deed in favour of the plaintiff, admitting the payment of sale consideration and that the said sale was completed in all respects. As rightly observed by the Courts below, the evidence of D.W.2 and D.W.3 against the contents of the registered document under Ex.A.1 cannot be entertained. Though the defendant had alleged that Ex.A.1 sale deed was executed as security and that the same is sham and nominal document, there is absolutely no evidence to substantiate the said stand. Hence, the Courts below have rightly held that after purchase under Ex.A.1, the plaintiff became the owner of the suit property and hence, the ownership claim by the defendant cannot be countenanced.



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11. The plaintiff, in his evidence, has admitted that the defendant had become a tenant under the previous owner, Micheal Raj, by paying ground rent and that the defendant has been running a tea stall in the suit property. Hence, the contention of the plaintiff that the defendant became a tenant under him on a monthly ground rent of Rs.500/- came to be rejected by the Courts below. The plaintiff, alleging that the defendant had failed to pay the ground rent for nearly 26 months, issued a legal notice dated 17.03.2018 under Ex.A.2 terminating the tenancy and calling upon the defendant to vacate and hand over vacant possession of the suit property. Admittedly, though the defendant received the said legal notice, he did not send any reply.

12. As rightly observed by the Courts below, the explanation offered by the defendant for not issuing a reply notice, namely that the plaintiff, after sending the legal notice, approached him and informed him that he would execute a sale deed within two months and requested him not to send any reply, is difficult to believe. In such circumstances, as the tenancy had been validly terminated and in the absence of any legally acceptable defence, the defendant is bound to vacate and hand over possession of the suit property.



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13. Considering the evidence available on record, the Courts below have held that the asbestos sheet roofing and other constructions put up by the defendant are only temporary in nature and that, since the plaintiff is entitled to recover possession of the suit property, the defendant is bound to remove the temporary structure and hand over vacant possession of the same. The fixation of ground rent at Rs.50/- per month by the Courts below and the consequential direction issued to the defendant to pay arrears of rent amounting to Rs.1,300/- for 26 months, as well as to continue to pay the same at the said rate till delivery of possession, cannot be found fault with. Upon appreciation of the oral and documentary evidence adduced by both parties, the Courts below have rightly concluded that the plaintiff is entitled to recovery of possession of the suit property, mandatory injunction for removal of the temporary structure put up therein, and payment of arrears of rent and compensation for use and occupation till handing over possession, and as such, the said findings do not warrant interference.

14. The appellant has 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



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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 appellate Court has wrongly placed the burden of proof.

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 is entitled to the reliefs, confirming the decision of the trial Court.

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.

17. In the result, the Second Appeal is dismissed, confirming the judgment and decree passed in A.S.No.7 of 2021, dated 23.01.2025, on the file of the Additional Subordinate Court, Tenkasi, confirming the judgment and decree passed in O.S.No.203 of 2018, dated 09.03.2020, on the file of the Principal



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District Munsif Court, Tenkasi. There shall be no order as to costs. Consequently
the connected Miscellaneous Petition is closed.

19.02.2026

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

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To:

- 1.The Additional Subordinate Court, Tenkasi.
- 2.The Principal District Munsif Court, Tenkasi.
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
S.A.(MD).No.6 of 2026

19.02.2026