



S.A.(MD)No.35 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2026

Pronounced on : 06.03.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.35 of 2026

G.Karthikeyan

... Appellant/
Appellant/
Plaintiff

Vs.

1.Pappayee

2.Karumayee

3.Murugesan

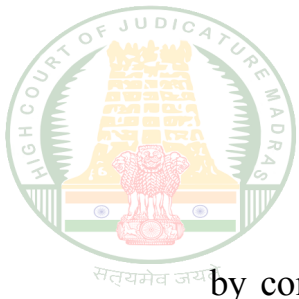
4.Dhanalakshmi

5.Indumathi

6.Umamaheswari

... Respondent/
Respondent/
Defendants

PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment dated 20.03.2025 passed in A.S.No.120 of 2010 on the file of Additional Subordinate Judge, Karur



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by confirming the decree and judgment passed by the Principal District Munsif, Karur in O.S.No.521 of 2008 dated 26.10.2010.

For Appellant : Mr.E.K.Kumaresan

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.120 of 2010 dated 20.03.2025 on the file of the Additional Subordinate Court, Karur, confirming the judgment and decree passed in O.S.No.521 of 2008 dated 26.10.2010 on the file of the Principal District Munsif Court, Karur.

2. The appellant is the plaintiff. He originally filed a suit claiming permanent injunction restraining the first respondent / original defendant and her men from in any manner interfering with the appellant / plaintiff's peaceful possession and enjoyment of the suit property. Pending suit, he amended the plaint and claimed the reliefs of declaration that the suit property is belonging to him and for recovery of possession.

3. The first respondents / original defendant filed her 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, Karur, after framing necessary issues and after full trial, passed a judgment and decree dated 26.10.2010 dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.120 of 2010 and the learned Additional Subordinate Judge, Karur, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 20.03.2025 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the first appeal, the plaintiff has preferred the present Second Appeal.

6. Pending first appeal, the plaintiff has impleaded the respondents 2 to 6 as defendants 2 to 6.

7. 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.”

8. 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.*

(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."

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

10. The case of the plaintiff is that the suit property and other properties were originally owned by one Kandhasamy, Ramasamy and Subramani. The plaintiff's father Ganesan filed a suit against the said Kandhasamy, Ramasamy and Subramani in O.S.No.496 of 1983 and obtained a decree. He filed an execution petition in E.P.No.539 of 1990 and brought the property for sale. In the Court auction conducted on 09.06.1999, the plaintiff has become the successful bidder and sale was confirmed in his favour on 12.08.1999. The plaintiff filed an execution petition in E.P.No.513 of 1999 seeking possession of the property and obtained possession on 07.08.2001. After getting possession of the property, he sold 20 cents of land to one Thiyagarajan, 4 cents and house situated therein in favour of one Susila and 2¾ cents and another 6 cents



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to one Rajendran and thereafter, 9 cents to one Vishalakshi. The plaintiff, by describing the boundaries, executed a gift deed in favour of the said Vishalakshi. The plaintiff has also gifted $4\frac{3}{4}$ cents for formation of road and the remaining $6\frac{1}{2}$ cents is in possession and enjoyment of the plaintiff. The plaintiff has been paying house tax and water consumption charges. The original defendant, who is a party in the execution petition, is attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. Pending suit, on 12.08.2008, the original defendant broke open the door and unlawfully entered into the suit property and the same was thwarted. Hence, the plaintiff was constrained to amend the plaint seeking the reliefs of declaration and recovery of possession.

11. The defence of the original defendant is that the suit property was originally owned by Kandhasamy, Ramasamy and Subramani. The plaintiff has filed the suit by suppressing true facts. The plaintiff's father filed a suit in O.S.No.496 of 1983 for refund of advance amount for the property measuring 3 cents and after getting decree, he filed an execution petition in E.P.No.475 of 1983 for bringing the said property for

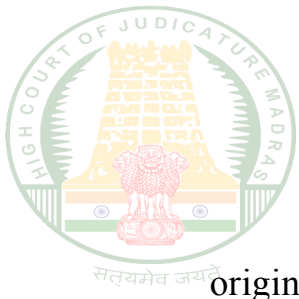


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attachment. The plaintiff's father had right only to bring the property, which was attached before the trial Court for sale. The plaintiff has never in possession of the suit property. The original defendant and her son Murugesan, daughter-in-law Dhanalakshmi and grandchildren have been in possession and enjoyment of the suit property. They have perfected their title by adverse possession also. In the suit property, one tiled house and one concrete house are there apart from vacant site. The above buildings were constructed 25 years back and she has been residing with her family. They have been paying house tax and electricity consumption charges. The allegation that the original defendant broke open the door and entered into the suit property unlawfully is false and untenable. The plaintiff has not impleaded the necessary parties. Hence, the suit is liable to be dismissed.

12. At the outset, it is pertinent to note that the plaintiff has originally filed a suit for bare injunction restraining the original defendant and her men from in any manner interfering with his possession and enjoyment of the suit property by alleging interference by the original defendant, but pending suit, the plaintiff, by alleging that the



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original defendant on 12.08.2008 broke open the door of the house property and entered into the property unlawfully, amended the plaint and claimed the reliefs of declaration that the suit property is belonging to him and for recovery of possession.

13. The plaintiff has claimed right and title over the suit property on the basis of Court auction sale certificate issued by the Court of the District Munsif, Karur in E.P.No.539 of 1990 in O.S.No.496 of 1983 dated 12.08.1999.

14. It is the specific case of the plaintiff that his father filed a suit against one Kandhasamy and two others in O.S.No.496 of 1983 claiming the refund of advance amount and obtained a decree and that his father filed an execution petition in E.P.No.539 of 1990 and brought the property for sale. It is the further case of the plaintiff that in the Court auction, the plaintiff had participated and became the successful bidder and that sale was confirmed and sale certificate came to be issued on 12.08.1999. According to the plaintiff, he filed another execution petition in E.P.No.513 of 1999 for possession and in pursuance of the orders of the Court, he took possession of the property.

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15. It is pertinent to mention that the plaintiff has alleged that he purchased an extent of 55 cents in the Court auction and after taking possession of the said property, he sold portions of the said property to five persons and retained the remaining extent of 6½ cents and the same is shown as the suit property.

16. The original defendant had taken a specific stand that the plaintiff's father entered into a sale agreement with Kandhasamy, Ramasamy and Subramani for purchasing 5 cents of land in Survey No. 609 of Andankovil East Village, Karur Taluk, that since the plaintiff's father's sellers have failed to perform their part of the contract, he filed a suit in O.S.No.496 of 1983 claiming the refund of advance amount, that the plaintiff's father also filed an application in I.A.No.475 of 1983 seeking attachment before judgment and the said property was attached, that the plaintiff's father, after obtaining a decree in his favour, laid an execution petition in E.P.No.539 of 1990 for sale of the property attached, but in the execution petition filed under Ex.B7, the plaintiff has shown an extent of 55 cents out of 5.14 acres in Survey No.609 and the buildings therein, which is apparently wrong and incorrect, that the



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plaintiff had purchased wrong property in the Court auction sale and only on that basis, sale certificate came to be issued to him, that the plaintiff had no right or title over the 55 cents of land, that the original defendant and her family have been in possession of the suit property and that the plaintiff has fraudulently filed the above suit to grab the property of the defendants.

17. It is evident from the records that the plaintiff's father had instituted a suit for recovery of the advance amount of Rs.7,000/- in respect of 5 cents of property. In the said suit, he filed an application in I.A.No.475 of 1983 and obtained an order of attachment before judgment over the said property. It is not in dispute that he subsequently obtained a decree for a sum of Rs.7,460/-. Thereafter, he initiated execution proceedings in E.P.No.539 of 1990 by bringing the attached property to sale. In Ex.B7, namely the execution petition, as rightly noted by the learned First Appellate Judge, it has been specifically stated that auction notice has been issued in respect of the attached property. The relevant portion is extracted hereunder:



“.... ஏற்கனவே இ.ம.எண்.475.:1983ல் உடன்
ஜப்தியாகி ஜப்தி ஊர்ஜிதத்தில் உள்ள சொத்துக்களை
சிபிசி ஆர்டர் 21 ரூல் 66 ன் படி ஏல நோட்டீசும்
ஏல இஸ்தியாரும் அனுப்பி ஏலம் போடுவதன் மூலம்
வாதிக்கு பாக்கி தொகை வகையறா பூராவும் வசூல்
தரவேண்டுமாய் வாதி பிரார்த்திக்கிறார்”

18. In the light of the above, it is clear that only the property measuring an extent of 5 cents, which was attached in I.A.No.475 of 1983 in O.S.No.496 of 1983, was brought to sale. However, the property was erroneously described as comprising 55 cents along with the buildings thereon, and on that basis, the sale certificate came to be issued. As rightly observed by the learned First Appellate Judge, in view of such incorrect description of the property, the plaintiff cannot be held to have acquired any right or title over 55 cents, particularly when only 5 cents of land was attached and brought to sale.

19. In view of the foregoing, it can reasonably be inferred that there has been some irregularity, if not fraud, in the proceedings. However, at this distance of time, this Court is not in a position to conclusively determine the same.



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20. Though the plaintiff, by alleging that he has been in possession and enjoyment of the suit property, filed the suit for bare injunction, but pending suit, he made allegation that the original defendant entered into the property unlawfully and amended the plaint.

21. As rightly observed by the Courts below, the original defendant has produced house tax receipt, electricity consumption charges receipt and ration card to prove her possession, but on the other hand, the plaintiff has only produced house tax receipt for the year 2008 and miserably failed to prove possession over the suit property.

22. Upon consideration of the entire evidence available on record, the Courts below have rightly arrived at the conclusion that the plaintiff has failed to establish his claim and, consequently, is not entitled to any of the reliefs sought. Such findings, being based on proper appreciation of evidence, do not warrant interference and cannot be faulted.

23. The plaintiff has not shown that material evidence available on record in the case had been ignored by the first appellate Court or that



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there was no evidence at all. The plaintiff has 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 plaintiff has not canvassed any stand that the Courts below have wrongly placed the burden of proof.

24. 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.

25. In the result, the Second Appeal is dismissed, confirming the judgment of the first appellate Court made in A.S.No.120 of 2010, dated 20.03.2025 on the file of the Additional Subordinate Court, Karur, confirming the judgment and decree made in O.S.No.521 of 2008 dated



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26.10.2010 on the file of the Principal District Munsif Court, Karur. No
costs.

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06.03.2026

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

To

1. The Principal District Munsif, Karur.
2. The Additional Subordinate Judge, Karur.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J

csm

**Pre-Delivery Judgment made in
S.A.(MD)No.35 of 2026**

Dated : 06.03.2026