

(2009) 07 MAD CK 0045
In the Madras High Court
Case No : Second Appeal No. 510 of 2002

A. Philoman Raj	Vs	APPELLANT
S. Kunna Gounder, A. Arockiasamy and A. Chinnappan		RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Evidence Act, 1872 — Section 92
Specific Relief Act, 1963 — Section 34

Citation : (2009) 8 MLJ 267

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : K. Govindarajan, for Sarvabhauman Associates, for the Appellant;
R.T. Gopalakrishnan, for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—This second appeal has been preferred against the judgment and decree passed in Appeal Suit No. 49 of 2000 by the

Subordinate Court, Kulithalai.

2. The first respondent herein as plaintiff has instituted Original Suit No. 461 of 1997 on the file of the District Munsif Court, Kulithalai, for the

reliefs of declaration, permanent injunction and alternatively for recovery of possession, wherein the present appellant and the respondents 2 & 3

have been shown as defendants.

3. It is averred in the plaint that the suit property is originally belonged to the first defendant and the same has been assigned in his name. From the

date of assignment, the first defendant has enjoyed the suit property. On 20.08.1973 the defendants and their minor children have executed a sale

deed in favour of the plaintiff for a sum of Rs. 3,000/- and put him in possession of the suit property. Due to recent misunderstanding, the

defendants have interfered with the peaceful possession and enjoyment of the plaintiff and the plaintiff has filed Original Suit No. 892 of 1980 for

the relief of permanent injunction and the same has been dismissed and against the judgment and decree passed in Original Suit No. 892 of 1980,

an appeal has been preferred on the file of the Subordinate Court, Karur in Appeal Suit No. 37 of 1982 and the same has been allowed and

consequently the suit has been decreed as prayed for. The first defendant therein as appellant has filed Second Appeal No. 110 of 1984 on the file

of the High Court and the same has been allowed and consequently the judgment and decree passed by the first appellate Court are reversed.

Since the earlier suit has been filed for the relief of permanent injunction, the present suit has been filed for the reliefs of declaration, Permanent

injunction and alternatively for recovery of possession.

4. It is averred in the written statement filed by the first defendant that the defendants have not executed any sale deed in favour of the plaintiff with

regard to the suit property. The plaintiff has been doing money lending business. The first defendant has approached the plaintiff for getting loan by

way of mortgaging the suit property, but the plaintiff has insisted him to execute a sale deed and accordingly the defendants have executed the sale

deed mentioned in the plaint. Even though the sale deed mentioned in the plaint has been executed in favour of the plaintiff, patta for the suit

property stands in the name of the first defendant and he has been in possession and enjoyment of the suit property. The plaintiff is not entitled to

get the reliefs sought for in the plaint and altogether the present suit deserves dismissal.

5. On the basis of the rival contentions raised on either side, the trial Court has framed necessary issues and after perpending both the oral and

documentary evidence has dismissed the suit with costs. Against the judgment and decree passed by the trial Court, the plaintiff as appellant has

preferred Appeal Suit No. 49 of 2000 on the file of the first appellate Court.

6. The first appellate Court after hearing both sides and after reappraising the evidence available on record, has allowed the appeal and thereby set

aside the judgment and decree passed by the trial Court and consequently

decreed the suit with regard to the reliefs of declaration and recovery of possession. Against the judgment and decree passed by the first appellate Court, the present second appeal has been filed at the instance of the first defendant as appellant.

7. At the time of admitting the present second appeal, the following substantial questions of law have been settled for consideration;

a) Whether the lower appellate Court is correct in law in holding that the judgment of this Hon'ble Court in S.A. No. 110 of 1984 between the same parties would not bar the present suit filed by the 1st respondent?

b) Would not the finding regarding Ex.A1 by this Hon'ble Court in S.A. No. 110 of 1984 bind the parties as a precedent which the lower appellate Court ought to have followed and dismissed the suit filed by the 1st respondent?

8. The crux of the case of the plaintiff is that the suit property is originally belonged to the first defendant and he got the same by way of an

assignment and from the date of assignment he has enjoyed the same and on 20.08.1973 the defendants and their minor children have executed a

sale deed in favour of the plaintiff and put him in possession of the suit property. Since the defendants have tried to disturb the peaceful possession

and enjoyment of the plaintiff, the plaintiff has filed Original Suit No. 892 of 1980 on the file of the District Munsif Court Kulithalai and the same

has been dismissed and against the judgment and decree passed by the trial Court, an appeal has been preferred in Appeal Suit No. 37 of 1982

on the file of the Subordinate Court, Karur and the same has been allowed and consequently the suit has been decreed as prayed for and against

the judgment and decree passed by the first appellate Court in Appeal Suit No. 37 of 1982, the first defendant therein as appellant has filed

Second Appeal No. 110 of 1984 on the file of the this Court and this Court has reversed the judgment and decree passed in Appeal Suit No. 37

of 1982 and since the earlier suit has been filed for the relief of perpetual injunction, the present suit has been filed for the reliefs of declaration,

permanent injunction and alternatively for recovery of possession.

9. The sum and substance of the contention urged on the side of the first defendant is that the defendants have not executed any sale deed in favour

of the plaintiff much less on 20.08.1973 and the plaintiff has been doing money

lending business and the first defendant has approached him for getting loan by way of executing a mortgage deed in respect of the suit property, but the plaintiff has insisted him to execute a sale deed and only under the said circumstances, the sale deed dated 20.08.1973 has come into existence and the same has not conveyed any valid title to the plaintiff in respect of the suit property and therefore, the plaintiff is not entitled to get the reliefs sought for in the plaint.

10. The trial Court has dismissed the suit, but the first appellate Court has allowed the Appeal Suit No. 49 of 2000 and thereby reversed the judgment and decree passed by the trial Court and ultimately decreed the suit with regard to the reliefs of declaration and recovery of possession.

11. The learned Counsel appearing for the appellant/first defendant has contended with great vehemence that with regard to the suit property

Original Suit No. 892 of 1980 has been filed on the file of the District Munsif Court, Kulithalai for the relief of permanent injunction and the same

has been dismissed by the trial Court and against the judgment and decree passed by the trial Court, Appeal Suit No. 37 of 1982 has been filed on

the file of the Subordinate Court, Kulithalai, wherein the judgment and decree passed by the trial Court have been reversed and the present

appellant/first defendant as appellant has filed Second Appeal No. 110 of 1984 on the file of this Court and this Court has categorically held that

the sale deed in question is not at all a sale deed and ultimately reversed the judgment and decree passed in Appeal Suit No. 37 of 1982 by the

first appellate Court and further the permission given in Second Appeal No. 110 of 1984 to institute a fresh suit is not at all a valid permission and

the trial Court, after considering the finding given by this Court, has rightly dismissed the suit, but the first appellate Court has erroneously come to

the conclusion that the findings given in Second Appeal No. 110 of 1984 are nothing but opinion and the same are not binding upon the plaintiff

and therefore, the judgment and decree passed by the first appellate Court are liable to be set aside and the judgment and decree passed by the

trial Court are liable to be restored.

12. In order to repudiate the argument advanced by the learned Counsel appearing for the appellant/first defendant, the learned Counsel appearing

for the first respondent/plaintiff has also equally contended that Original Suit No.

892 of 1980 has been filed only for the relief of perpetual

injunction and no declaratory relief has been sought for and since the defendants have denied the title of the plaintiff, he instituted the present suit

for the reliefs of declaration, permanent injunction and alternatively for recovery of possession and therefore, the findings given by this Court in

Second Appeal No. 110 of 1984 are not at all binding upon the plaintiff and the plaintiff is having independent right of instituting the present suit

and therefore, the argument advanced by the learned Counsel appearing for the appellant/first defendant is liable to be rejected.

13. It is an admitted fact that with regard to the suit property, the plaintiff has instituted Original Suit No. 892 of 1980 on the file of the District

Munsif Court, Kulithalai for the relief of perpetual injunction. The trial Court has dismissed the suit. Against the judgment and decree passed by the

trial Court, the plaintiff as appellant has filed Appeal Suit No. 37 of 1982 on the file of the Subordinate Court, Kulithalai, wherein the judgment and

decree passed by the trial Court have been reversed. Against the judgment and decree passed by the first appellate Court, the first defendant

therein as appellant has filed Second Appeal No. 110 of 1984 on the file of this Court and this Court has allowed the same and in paragraph No.

11 of the said judgment, this Court has observed as follows;

When we come to the oral evidence also, we find the evidence of the defendant is acceptable rather than the evidence of the plaintiff, when there is

no discrepancy pointed out in the evidence of P.W.1, P.W.1's evidence is full of contradiction. In the first instance he has denied that he is a

money lender but however admits that he used to lend monies on promissory notes. Again he has stated that he has produced kist receipts before

the Co-op. society for raising a loan. Subsequently, he says that the kist receipts were lost, as he did not choose to keep them in safe custody. He

has stated that he raised loan on the property, but he says that without an application he was not able to raise such a loan. This is one aspect. That

apart, he has admitted that he never bothered to look into the encumbrance, original parent documents, etc. before he purchased the suit property.

Further he never bothered to find in whose name the property stood. He has categorically stated that since the defendant was in possession, he

took the sale deed from the defendant. If there was a genuine sale transaction,

the purchaser would have taken care to look into the encumbrance certificate and find out the original owner. The worst point of it is that he did not know how the defendant got the land whether by purchase or by assignment by the Government. Apart from that he has also admitted that the defendant filed an application before the Tahsildar claiming relief under Debt Relief Act. This strengthens the case of the defendant that the defendant actually executed the sale deed only for raising a loan. Another important aspect is that the defendant has categorically stated that there was a panchayat and in the panchayat the plaintiff demanded Rs. 3/- per hundred per month towards interest, but the panchayatdars settled it for lesser amount, but he did not accept the same. So, after going through the evidence, we have to record our finding about the title deed, which we are not called upon to do so in this second appeal. However, only for the purpose of ascertaining the possession, the aforesaid remarks have been made, and from the evidence it is not possible that the plaintiff had established possession on the date of the suit. On the other hand, the defendant has proved that he has been in possession. The lower appellate Court has simply relied upon Ex.A1, particularly, the recitals therein. The learned Counsel also relied upon the settlement and Section 92 of the Evidence Act. Section 92 of the Evidence Act except oral evidence with reference to a settlement contained in a document. But we have seen in this case that sufficient documentary evidence have been let in, in the form of Exs.B1, B2, B3, B4 & B6. Therefore, I am not in a position to sustain the finding of the lower appellate Court. Hence, the judgment and decree of the lower appellate Court is reversed, the decree and judgment and trial Court is restored. Since though proceedings relates only to injunction, it is open to the plaintiff to institute appropriate proceedings, if so advised for declaration. Accordingly, the appeal is allowed. There will be no order as to costs.

14. From the close reading of paragraph 11 of the judgment rendered by this Court, it is easily discernible that on the basis of evidence given by PW1 in the earlier case, this Court has made remark to the effect that the evidence given by PW1 strengthens the case of the defendant that he actually executed the sale deed only for raising a loan and ultimately this Court has opined that this Court is not called upon to decide the

genuineness of the sale deed in question.

15. It has already been pointed out that Original Suit No. 892 of 1980 has been filed only for the relief of perpetual injunction. The only question

that has to be decided in the said suit is as to whether the plaintiff therein is in possession and enjoyment of the suit property on the date of filing of

the suit. But this Court in Second Appeal No. 110 of 1984 has made its remark only to the extent that the evidence given by PW1 strengthens the

case of the defendant that he actually executed sale deed only for raising a loan. There is no definite finding given by this Court in Second Appeal

No. 110 of 1984 that the sale deed in question has been executed by the defendant therein only for raising a loan. This Court has simply observed

that the evidence of PW1 strengthens the case of the defendant that he has actually executed the sale deed only for raising a loan. If really in

Second Appeal No. 110 of 1984 this Court has given a definite finding to the effect that the sale deed in question has been executed by the

defendant therein only for the purpose of raising a loan, definitely this Court would not have observed to the effect that ""it is open to the plaintiff to

institute appropriate proceedings, if so advised for declaration"".

16. The learned Counsel appearing for the appellant/first defendant has mainly advanced his argument to the effect that the present suit cannot be

instituted on the basis of the permission given in Second Appeal No. 110 of 1984 and in support of his contention, he has relied upon the following

decisions;

In 1998 (3) LW 736 (K.N. Radhakrishnan v. P.M.M. Rajammal and 6 Ors.) this Court has held that observation made in the earlier Second

Appeal that ""the proper remedy would be to file a suit for declaration"", cannot be construed as permitting the plaintiff to file a suit on the ground

that the principle of res judicata will not apply.

17. It is an everlasting principle of law that each decision has to be applied according to the facts and circumstances of the given case. In the

decision referred to earlier, the plaintiff therein has filed a suit for specific performance stating that Ex.B1, sale deed is sham and nominal and as per

agreement for reconveyance he is entitled to get the reliefs sought for therein. The earlier suit has been dismissed mainly on the ground that Ex.B1 is

not a sham and nominal and subsequently the very same plaintiff has filed the

second suit for the reliefs of declaration and recovery of possession.

This Court has held that even though in the earlier suit it has been held that Ex.B1 is not a sham and nominal, that finding is not at all a liberty to file

a fresh suit for the reliefs of declaration and recovery of possession.

18. In the instant case, the earlier suit (Original Suit No. 892/1980) has been filed for the relief of permanent injunction in simpliciter, wherein the

question of deciding title does not arise. However in Second Appeal No. 110 of 1984 this Court, on the basis of evidence given by PW1 therein,

has observed that the evidence of PW1 strengthens the case of the defendant that the sale deed in question has actually been executed for raising a

loan. The present suit has been instituted for the reliefs of declaration, permanent injunction and alternatively for recovery of possession. Of-course

it is true that in Second Appeal No. 110 of 1984 this Court has observed that ""it is open to the plaintiff to institute the appropriate proceedings, if

so advised for declaration"".

19. At this juncture, it would be more useful to look into the provision of Section 34 of the Specific Relief Act, 1963 and the same reads as

follows;

Discretion of Court as to declaration of status or right.- Any person entitled to any legal character, or to any right as to any property, may institute

a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a

declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to

do so.

Explanation. - A trustee of property is a ""person interested to deny"" a title adverse to the title of some one who is not in existence, and for whom, if

in existence, he would be a trustee.

20. From the close reading of the provision of the said Section, it is easily discernible that if there is denial of title to a particular property, a suit for

declaration and other incidental reliefs can be instituted.

21. The present plaintiff has already filed Original Suit No. 892 of 1980 for the

relief of permanent injunction and the same has been dismissed by the trial Court and subsequently, decreed by the first appellate Court and in Second Appeal No. 110 of 1994, this Court has specifically held the plaintiff has failed to prove his possession and therefore, he is not entitled to get the relief of perpetual injunction and consequently set aside the judgment and decree passed by the first appellate Court and restored the judgment and decree passed by the trial Court.

22. The plaintiff has based his title to the suit property by virtue of the sale deed dated 20.08.1973 which has been marked as Ex.A1. Therefore, on the basis of Ex.A1 and also on the basis of the provision of Section 34 of the Specific Relief Act, 1963 he can very well maintain the present suit for the relief of declaration and also for other incidental reliefs. The right of filing the present suit for the reliefs sought for therein is recognized under the provision of Section 34 of the Specific Relief Act, 1963. Even in the absence of the liberty alleged to have been given by this Court in Second Appeal No. 110 of 1984, the plaintiff can very well maintain the present suit for the reliefs sought for in the plaint under the said Section. Therefore, the decision referred to supra is not applicable to the facts and circumstances of the present case.

23. In 1996 TLNJ 131 (K.M. Rathinam Nadar and Anr. v. Arulmigu Hanumantharayar Bhajanai Madam @ Hanumar Kovil rep. by its hereditary Trustee Tmt. L. Padmavathiammal) this Court has held that the judgment rendered in earlier proceedings is not a judgment in rem but a precedent in subsequent proceeding.

24. In Shiv Kumar Sharma Vs. Santosh Kumari, the Honourable Apex Court has held that a civil Court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made by superior Court.

25. In the instant case, it has already been pointed out that on the basis of the provision of Section 34 of the Specific Relief Act, 1963 the plaintiff is legally entitled to file the present suit for the reliefs sought for in the plaint. Of course it is true that as stated in many places, that in Second Appeal No. 110 of 1984, this Court has simply observed that "it is open to the plaintiff to institute appropriate proceedings, if so advised for declaration". This Court in Second Appeal No. 110 of 1984 has not specifically

directed the plaintiff to institute the suit for the reliefs of declaration and other incidental reliefs. Therefore, it is very clear that the plaintiff has instituted the present suit only on the basis of right available u/s 34 of the Specific Relief Act, 1963.

26. The learned Counsel appearing for the appellant/first defendant has also relied upon the following decisions, even though he has not advanced his argument to the effect that the decision rendered in Second Appeal No. 110 of 1984 would operate as constructive *judicata* to the present suit.

a) The first and foremost decision is reported in *Aanaimuthu Thevar (Dead) by LRs. Vs. Alagammal and Others*, wherein it is seen that the former suit has been instituted by "M" husband and his mortgagee for the relief of permanent injunction for restraining wife from interfering with the possession of the suit house. Plea of ownership to suit house substantially involved but not raised by "M". The suit dismissed in view of alleged settlement before village Panchayat in which "M" relinquished his right in suit house in favour of wife and her children. No appeal has been preferred and subsequently "M" sold house to "AT" and thereafter a suit has been instituted by the purchaser for the reliefs of declaration and possession from wife and her children. Under the said circumstances, the Honourable Apex Court has held that the subsequent suit is barred by constructive *res judicata* in view of the finding given in the earlier suit.

b) The second decision is reported in *Sulochana Amma Vs. Narayanan Nair*, wherein the Honourable Apex Court has held that an order or an issue which had arisen directly and substantially between the parties or their privies and decided finally by a competent Court or tribunal, though of limited or special jurisdiction, which includes pecuniary jurisdiction, will operate as *res judicata* in a subsequent suit or proceeding.

27. At this juncture, it would be more useful to look into Section 11 of the CPC and the same reads as follows;

Res judicata. - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such

Court.

Explanation I: The expression ""former suit"" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II: For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V: Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

Explanation VI: Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and Ors., all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII: The provisions of this Section shall apply to a proceeding for the execution of a decree and reference in this second to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII: An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

28. From the cursory perusal of the provision of the said Section, it is learnt that if any matter or issue has already been decided in any suit or proceeding between the same parties, the same issue or matter in a subsequent suit shall not be decided and the decision rendered in the earlier suit

would operate as res judicata. To put it in a nut-shell that the issue in question should be decided finally in the former suit.

29. In the instant case, even at the risk of jarring repetition this Court would like to point out that the question of title of the suit property is not an

issue in the earlier suit filed in Original Suit No. 892 of 1980. However in Second Appeal No. 110 of 1984 this Court has observed on the basis

of evidence given by PW1 therein to the effect that the evidence of PW1 strengthens the contention of the defendant that the sale deed in question

has been executed for raising a loan. There is no direct or substantial issue in the earlier suit to the effect as to whether the sale deed in question is a

real sale deed or not. For applying the principle of constructive res judicata, the issue in question must directly or substantially be an issue in the

earlier suit and the same should be decided finally. As pointed out earlier, there is no such issue to the effect, as to whether the sale deed in dispute

is a real sale deed or not and further the remark made by this Court in Second Appeal No. 110 of 1984 to the effect that the evidence of PW1

strengthens the case of the defendant to the effect that the sale deed has been executed for raising a loan, is not at all a definite finding and since the

said remark is not a definite finding and since there is no such issue either directly or substantially, it is needless to say that the decision rendered in

Second Appeal No. 110 of 1984 by this Court would not operate as either res judicata or constructive res judicata to the present case.

30. The next decision is reported in Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, wherein the honourable Apex Court has

held that where the plaintiff's title is under a cloud and he does not have possession, proper remedy is to file a suit for declaration and possession,

with or without consequential injunction. In case, where his title is not disputed or under a cloud but he is out of possession, held, the proper

remedy is to file a suit for possession with consequential relief.

31. On the basis of the provision of Section 34 of the Specific Relief Act, 1963 it has already been pointed out that if there is denial of title of a

particular property, the owner of the same can file a suit for declaration with incidental relief.

32. In the instant case, the plaintiff has sought for the reliefs of declaration, permanent injunction and alternatively for recovery of possession. The

first appellate Court has granted the reliefs of declaration and recovery of possession. It has already been pointed out that only on the basis of the

right recognized u/s 34 of the Specific Relief Act, 1963 the plaintiff has instituted the present suit for the reliefs sought for therein. Therefore,

viewing from any angle the entire argument advanced by the learned Counsel appearing for the appellant/first defendant as well as the decisions

accited by him are not suited to the facts and circumstances of the present case.

33. Now the Court has to anlyse the oral evidence available in the present case. The specific case of the plaintiff is that all the defendants have

executed the sale deed dated 20.08.1973 in his favour in respect of the suit property for a sum of Rs. 3,000/- and the said sale deed has been

marked as Ex.A1. It is an admitted fact that the defendants 2 & 3, brothers of the first defendant have also joined in execution of Ex.A1. The third

defendant viz., Chinnappan has been examined as PW3. He has categorically stated in his evidence that he and other defendants have executed the

sale deed dated 20.08.1973 which has been marked as Ex.A1. One of the attestors of Ex.A1 viz., PW2 has also clearly stated in his evidence that

Ex.A1 is a sale deed and the same has been executed by the defendants in favour of the plaintiff. Therefore, in the instant case, the plaintiff has

completely and satisfactorily proved that Ex.A1 is a sale deed and the same has been executed by the defendants in his favour.

34. The trial Court has dismissed the suit mainly on the ground of remark made by this Court in Second Appeal No. 110 of 1984, whereas the

first appellate Court has rightly decreed the suit for the reliefs of declaration and recovery of possession on the basis of the available evidence on

record. Therefore, viewing from any angle the judgment and decree passed by the first appellate Court are not liable to be interfered with.

35. The first and foremost substantial question of law framed in the second appeal is as to whether the first appellate Court is correct in law in

holding that the judgment of this Court in Second Appeal No. 110 of 1984 between the same parties would not create a bar to the present suit.

36. It has already been dealt with in detail that the judgment rendered in Second Appeal No. 110 of 1984 is not at all a bar to institute the present

suit for the reliefs sought for therein and therefore, the first substantial question of law is decided against the appellant/first defendant.

37. The second substantial question of law is as to whether the finding given in Second Appeal No. 110 of 1984 with regard to Ex.A1 is binding upon the parties as a precedent.

38. It has already been pointed out that there is no definite finding at all with regard to Ex.A1 by this Court in Second Appeal No. 110 of 1984.

This Court has made only remark about Ex.A1 on the basis of the evidence given by PW1 therein. Therefore, the second substantial question of law is also not legally maintainable.

39. It has already been pointed out that there is no illegality or infirmity in the judgment rendered by the first appellate Court. Under the said circumstances, the present second appeal deserves dismissal.

40. In fine, this second appeal deserves dismissal and accordingly is dismissed with costs. The judgment and decree passed in Appeal Suit No. 49 of 2000 by the Subordinate Court, Kulithalai are confirmed.