

In the Court of Principal District Judge, Kanyakumari District at Nagercoil.

Present : Thiru B. Karthikeyan, B.L.,  
Principal District Judge.

Thursday, the 13<sup>th</sup> day of February, 2025.

**I.A. No.2/2023 in OS 12/2021**

Selvan Gnanadhas Dennis ... Petitioner/Defendant

-Vs-

Gunamoni Perinbadhas Dennis ... Respondent/Plaintiff

This petition coming on 04.11.2024 for final hearing before me in  
the presence of

Thiru V.S. Akeesh - Advocate for the petitioner

Thiru M. Ashok Padmaraj - Advocate for the respondent

and upon hearing both side and upon perusing the materials available on record  
and having stood over for consideration till this day, this court delivered the  
following:

**ORDER**

This petition has been filed by the defendant seeking rejection of  
the plaint.

2. The suit has been filed by the respondent/plaintiff seeking  
declaration that document registered in Doc. No.1919/2002, dated 09.12.2002

before the Vadasery Sub Registry as settlement is null and void, besides for declaration that the plaintiff is the owner of the plaint 'A' schedule property under the settlement deed registered in Doc. No.253/2013 of Vadasery Sub Registry dated 01.02.2013.

3. The case of the plaintiff is that the plaint 'A' and 'B' schedule properties belonged to the mother of the plaintiff and defendant. The mother died on 07.05.2014. During her life time, the deceased mother wanted to give her property to her male children namely the plaintiff and the defendant equally. On 09.12.2002, the defendant took the mother to the Registrar Office at Vadasery, Nagercoil and made her sign on a document by saying it was delivering the properties for two male children. The deceased mother believed the words of the defendant and signed on the document without reading it. Accordingly, the defendant dishonestly registered the settlement deed Doc. No.1919/2002 before Vadasery Sub Registry on 09.12.2002. It is also claimed that the defendant cunningly retained the document without giving any copy to the deceased mother, eventhough she had demanded. Later, the deceased mother came to know that the defendant dishonestly deceived her and registered the settlement deed for her entire property in his favour and therefore, she cancelled the settlement deed on 01.02.2013 in Doc. No.252/2013 of Vadasery Sub Registry and on the very same day itself, she

executed another settlement deed in Doc. No.253/2013 of Vadasery Sub Registry, wherein she settled the property equally on the plaintiff and the defendant according to her own will. Based on the said settlement, the plaintiff had properly mutated the property records and accordingly, the plaintiff became the owner of the plaint 'A' schedule property and the defendant became the owner of the plaint 'B' schedule property. It is the further claim of the plaintiff that he is enjoying the 'A' schedule property by constructing a compound wall around the property and that in the meantime, the defendant filed a suit in OS 64/2015 before the I Additional District Munsif, Nagercoil to declare the cancellation deed in Doc. No.252/2013 before the Vadasery Sub Registry as null and void. Stating further that anyone can challenge the fraud at any point of time and the system of law never entertains the act of fraud at any means, it would be contended that the settlement deed Doc. No.1919/2002, dated 09.12.2002 is void and therefore, the suit can be filed at any time and the provisions of the Limitation Act not attracted, the suit has been filed.

4. The defendant has come up with the present petition contending that he had filed a suit in OS 64/2015 before the I Additional District Munsif to declare the unilateral cancellation deed Doc. No.252/2013 cancelling the earlier settlement deed Doc. No.1919/2002 executed in his favour as null and void and for a permanent injunction restraining the plaintiff

herein from disturbing the peaceful possession and enjoyment of the plaint schedule properties and the same was pending at the time of filing the present suit. The present suit has been filed after 5 years from the date on which the petitioner/defendant had filed OS No.64/2015, after the expiry of the period of limitation. According to the petitioner, the suit filed by the plaintiff is barred by limitation. This apart, it would also be contended the suit has been filed with vague averments with no specific allegation of fraud. Moreover, though the plaintiff has claimed that his mother was deceived dishonestly under the impression of execution of settlement deed for the benefit of the plaintiff and the defendant equally, but had cancelled the settlement deed by executing unilateral cancellation deed Doc. No.252/2013 by stating that she had voluntarily executed a settlement deed in favour of the defendant and therefore, apparently there is no recital as to dishonesty on the part of the defendant for making out the allegation of fraud. Therefore, there is no cause of action for the present suit.

5. Heard both. Perused the materials on record.

6. **The point for consideration that arises in this petition is :-**

(i) Whether the present petition deserves to be allowed?

7. **Point No.(i):-**

The petition has been filed on two grounds. One is that the suit is barred by limitation and the other is the suit lacks cause of action. Insofar as the question of limitation is concerned, the plaintiff has averred fraud to contend that the settlement deed dated 09.12.2002 is void. While the petitioner claims that there is no specific allegation of fraud made in the plaint, a perusal of the plaint shows that in paragraph 3, 4 and 5, there are effective pleadings describing the manner of fraud it was allegedly committed by the defendant. It is settled principle of law that fraud vitiates every act and therefore, if the settlement deed in question is vitiated by fraud, the same is a void document. However, the defendant claims that it is not a void document by pointing out to variation between the pleadings in the plaint and the recitals in the cancellation deed Doc. No.252/2013. However, these are all questions of fact which have to be looked into during trial. Thus, this court finds that the question of limitation in the present case is one of a mixed question of fact and law. The same can be considered only after looking into the evidence that can be adduced by the parties in a full-fledged trial.

8. Insofar as the allegation of lack of cause of action is concerned, it is based on the contention of the petitioner that there is variation between the pleadings and the recitals in the unilateral cancellation deed Doc. No.252/2013.

However, it is for the parties who rely on this document to adduce evidence and bring the same as evidence. Moreover, it is also possible for the parties to explain variations, if any. All these things can be done only during trial. Merely based on a bare reading of the plaint pleadings and comparing the same with the recitals of document relied on by the plaintiff, it cannot be concluded that the plaintiff is estopped from making claims contrary to the recitals in the document. This exercise can be done only after providing the parties an opportunity to explain such contradictions by entering into the witness box. As such, on this ground also, the present petition cannot succeed.

9. In the light of the above discussion, this court finds that the present petition deserves to be dismissed. Point No.(i) is answered accordingly.

10. In the result, this petition is dismissed.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, this the 13<sup>th</sup> day of February, 2025.

Sd/-  
Principal District Judge,  
Kanniyakumari at Nagercoil.

Principal District Court, Nagercoil.  
Fair Order in  
I.A.No.2/2023 in  
in OS 12/2021  
Dt.: 13.02.2025