

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, [FTC]
THENI.**

**PRESENT : Tmt. G. Sree Devi, B.A., L.L.M
Additional District Judge, [FTC], Theni.**

Thursday, the 02nd day of April 2026.

**ORIGINAL SUIT No. 201 of 2022
(CNR No.TNTH010050932022)**

Amsarani ... Plaintiff

/Vs/

1. Seenivasagam
2. Kannan ... Defendants

This case came up for final hearing before me on 09.03.2026 in the presence of Thiru.M.Ramalingam, Advocate for the Plaintiff and Thiru.S.Ramaraj, Advocate for the Defendants and upon hearing both side arguments and upon perusing the case records, evidences and the written arguments filed by both the sides and having stood over for consideration till this day, this Court delivered the following ...

JUDGMENT

The Plaintiff has filed a suit for Declaration that the Plaintiff is the absolute owner of the suit property as per the Gift settlement deed dated 23.09.2010, for recovery of possession to declare the document no.237/2014 dated 17.01.2014 cancelling the Gift Settlement deed dated 23.09.2010 as null and void, restraining the Defendant from alienating or creating any encumbrance over the suit property.

2. The concise statement of the averments made in the plaint is as follows :

(2.1) Originally the suit property belonged to the Plaintiff's father V.Venkatasamy, he having purchased by way of the sale deed dated 01.10.1962, and the Partition deed dated 16.03.2005 and was in his exclusive possession and enjoyment. The Plaintiff and the Defendants are the legal heirs of V.Venkatasamy.

The Plaintiff was taking care of her father V.Venkatasamy during his last days. The Plaintiff's father by the gift settlement deed dated 23.09.2010 Doc.No.9399/2010 out of love and affection settled the suit property in favour of the Plaintiff, and the Plaintiff was in continuous possession and enjoyment of the suit property.

(2.2) Due to age related ailments the Plaintiff's father V.Venkatasamy was bedridden from 09.10.2013 and died on 01.02.2016 intestate. The Plaintiff was in possession and enjoyment of the suit property and as she was unable to maintain the property, as the 1st Defendant is an Advocate she gave permission to occupy the suit property as permissive occupier. Under the instructions of the Plaintiff the 1st Defendant collected rents and paid to the Plaintiff till January 2020. Due to Corona lock down the Plaintiff was unable to visit the suit property. During November 2021 the Plaintiff visited the suit property found the 1st Defendant had put asbestos shed in the suit property and let it out for rent. When the Plaintiff questioned the 1st Defendant, he informed that it was a temporary shed and can be removed at any time. He further stated that due to corona he is unable to collect the rent upto June 2021 and that it was having only 3 months rent.

(2.3) During January 2022 the Plaintiff demanded the 1st Defendant the rents from the suit property. However, the 1st Defendant gave lame excuses. On 27.06.2022 the Plaintiff went to the 1st Defendant's house and requested to hand over possession to the Plaintiff. However the 1st Defendant has refused to hand over the Possession.

(2.4) On 28.06.2022 the Plaintiff applied for E.C. and found that the Plaintiff's father under undue influence canceled the gift settlement deed unilaterally. The 1st Defendant making use of the permissive possession of the suit property created the document. The unilaterally cancellation of the gift settlement deed is not binding on the Plaintiff and is non est in law.

(2.5) On 30.06.2022 the 1st Defendant gave a false complaint against the Plaintiff before Theni police station. On 02.07.2022 the Plaintiff appeared for

enquiry. On 12.07.2022, the 1st Defendant issued a legal notice with false allegations and the said averments in the notice is denied by the Plaintiff and prayed to dismiss the suit.

3. The concise statement of the averments made in the written statement filed by the 1st defendant and adopted by the 2nd defendant is as follows :

These defendants deny all the allegations contained in the plaint except those that are specifically admitted. The gift settlement deed dated 23.09.2010 in favor of the plaintiff is not binding on the defendants as it was made only for name sake. Subsequently, on 17.01.2014 the plaintiff and the defendants father canceled the gift settlement deed Doc. No.237/2014. On 28.11.2014, the plaintiffs and defendants father executed a will in favor of the 1st and 2nd defendants. From then the 1st and 2nd defendants are in possession and enjoyment of the suit property. On execution of the Will, the plaintiffs and defendants father died on 01.02.2016. The settlement deed dated 23.09.2010 was canceled by their late father and the defendants are the absolute owners of the property and they are paying the electricity bills and are in possession and enjoyment and prayed to dismiss the suit.

4. The concise statement of the averments made in the reply statement filed by the plaintiff:-

(4.1) Venkitasamy Naidu, himself has given undertaking on 23.09.2010 deed that he has no right to cancel, modify or rescind the settlement. Further, the property which was given to this Plaintiff on the date of settlement is vacant site and he agreed in that deed itself to change the patta in the name of the Plaintiff. Further, he entrusted the original gift deed and partition deed on that day itself and the Plaintiff accepted the gift and the same was acted upon. The revocation deed dated 17.01.2014 is an invalid and void document. It is not correct to say that the settlement deed was executed with the consent of the Plaintiff in relief of Venkitasamy from the debts and the Plaintiff should after executed a document to Venkitasamy. The conduct of the

parties from 23.09.2010 to 17.01.2014 clearly reveals that the settlement was acted upon. In fact, the 1st Defendant resided along with the Plaintiff's family till 2013.

(4.2) The document dated 17.01.2014 is fraudulently created, and 1st Defendant, who knows that the document was invalid has created it. The document dated 17.01.2014 was not executed by Venkitasamy of his own wish. This, the 1st Defendant, in order to defraud permissive possession has created false complaints before Palanichettipatti police station. The 1st Defendant demanded that the Plaintiff sell the suit properties for one crore, but she refused to sell, and so he given a false complaint. Venkitasamy fell down on 09.10.2013 and then the Defendants created several invalid documents on 17.01.2014 and 28.11.2014. This Defendants is liable to hand over the possession to this Plaintiff. This 1st Defendant is infact in permissive possession from 2014. The Sub Registrar has no right to cancel the settlement deed unilaterally. This 1st Defendant has given a police complaint falsely in order to take defence. Further, the revocation deed dated 17.01.2014 and the Will dated 28.11.2014 are invalid documents in the eye of law. So, this Plaintiff is entitled to decree the suit as prayed for with costs.

5. Upon perusal of the pleadings and the documents filed this Court already framed the following issues.

1. தாவா சொத்துக்கள் வாதிக்கு 23.09.2010 ம் தேதிய தானசெட்டில்மென்ட் பத்திரப்படி தனித்துப் பாத்தியப்பட்டது என்ற விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
2. தாவா சொத்துக்களை 1ம் பிரதிவாதி வாதிக்கு காலியிடமாக சுவாதீனம் ஒப்படைக்க வாதி கோரும் சுவாதீன பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
3. 23.09.2010 ம் தேதியில் தானசெட்டில்மென்ட் பத்திரத்தை ரத்து செய்து ஏற்படுத்தியுள்ள 17.01.2014 ம் தேதிய தேனி சார்பதிவாளர் அலுவலக ஆவண எண்.237/2014 ஆக பதிவு செய்யப்பட்டுள்ள தான ரத்து பத்திரம் செல்லாது(Null and Void) என வாதி கோரும் விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
4. தாவா சொத்துக்களைப் பொறுத்து பிரதிவாதிகள் கிரையம் , ஈடு, தானம் போன்ற பத்திரங்களும் எந்த வில்லங்க விவகாரங்களும் உற்பத்தி செய்யக்கூடாதென

பிரதிவாதிகள் பெயரில் வாதி கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

5. இவ்வழக்கு செலவு தொகை பிரதிவாதியிடமிருந்து வாதிக்கு கிடைக்கத்தக்கதா?

6. வாதிக்கு கிடைக்கத்தக்க வேறு பரிகாரம் என்ன?

Upon perusal of the plaint, written statement and reply statement, the evidences on the both sides, this Court deems it necessary to frame additional issues.

Additional Issue :

(1) Whether the suit is barred by limitation?

The evidences both oral and documentary are sufficient to decide the additional issue and this court proceeds to pronounce judgment as follows:

6. Trial :-

On behalf of the Plaintiff, the Plaintiff was examined as PW1 and Ex.A1 to Ex.A5 were marked. During the cross examination of PW1 Ex.B1 was marked. On the defendants side, the 1st defendant was examined as DW1 and Ex.B2 to Ex.B19 marked. One Rajan was examined as DW2 and Ex.B20 marked. D.Rangesh was examined as DW3 and Ex.B21 marked. One Raja S/o Sabarimuthu was examined as DW4 and Ex.B22 marked. One Senthilkumar was examined as DW5 and Ex.B23 marked. One Logamani was examined as DW6 and Ex.B24 marked.

7. Discussions, Decisions with Reasons :-

Issue no 1 to 4 and Additional issue no.1 :-

(7.1) The plaintiff and the defendants are the children of late V.Venkatasami. He acquired the suit property by the sale deed dated 01.10.1962 and partition deed dated 16.03.2005. He was in possession of the suit property. When that be the case on 23.09.2010, the plaintiffs father executed a gift settlement deed in favor of the plaintiff in Doc.No 9399/2010. The case of the plaintiff is that she is in possession and enjoyment of the suit property.

(7.2) The plaintiff permitted the first defendant to occupy the suit property as a permissive occupier. The 1st defendant let the property for rent and paid the rental income to the plaintiff till January, after the corona period he has not paid the rental income. During November 2021 when the plaintiff visited the suit property, she found an asbestos shed in the suit property and it was let out for rent. When confronted with the 1st defendant he gave lame excuse that it was a temporary arrangement. Subsequently, the plaintiff came to know that the plaintiffs' father by the misrepresentation of the defendants executed a cancellation deed and a Will in favor of the defendants. To support the Plaintiff's contention, he relied upon several judgments of the Hon'ble Apex court and High court.

(7.3) Per contra, the defendants would submit that the gift settlement deed dated 23.09.2010 was executed only for name's sake and it is not binding on the defendants. They would further submit that the settlement deed was executed with a condition to wipe out certain loans and the gift deed with conditions is not at all a gift deed. And it is barred by section 126 of the Transfer of Property Act. That subsequently, the suit property was bequeathed in favor of the 1st and 2nd defendants by the father of the Plaintiff and Defendants the way of the registered Will dated 28.11.2014. That the defendants are in absolute possession and enjoyment of the suit property and have effected mutation of the revenue records in the name of the defendants. The settlement deed dated 23.09.2010 was not acted upon and is not binding on the defendants, and prayed to dismiss the suit. To support the Defendants contention, they relied upon several judgments of the Hon'ble Apex court and High court.

(7.4) The suit property is admittedly the property of Late.V.Venkatasamy, father of the Plaintiff and the defendants. He out of his own will and volition executed a settlement deed dated 23.09.2010 in favour of the Plaintiff in respect of the suit property measuring about 8600 Sq.ft situated at Allinagaram village vide Document No.9399 of 2010 marked as Ex.A2. It is pertinent to extract the recital of

the settlement deed for proper adjudication of the case. "நீ எனது மூத்த குமாரத்தி ஆவாய், நீ எனக்கு வேண்டிய மருத்துவ வசதிகளை நல்ல முறையில் செய்து கொடுத்ததாலும், எனக்கு ஏற்பட்டிருந்த தனி நபர் கடன்களை நீயே செலுத்தி தீர்த்துக் கொடுத்ததாலும், உன் மீது நான் கொண்டுள்ள அன்பினாலும் , பிரியத்தாலும், நல்லெண்ணத்தாலும், உனக்கு இதில் கண்ட சொத்தை ஆதரவு செய்து , வைக்க வேண்டும் என அபிப்பிராயப்பட்டு நான் இதன் மூலம் உனக்கு தானமாக எழுதிக் கொடுக்கின்ற படியாலும், இது முதல் இந்த தானசெட்டில்மென்ட் உனக்கு ஊர்ஜிதமாகின்றபடியாலும், இது முதல் இதில் கண்ட சொத்தை உனது கைவசம் சுவாதீனத்திற்கு விட்டு விட்டப்படியால் இதுமுதல் இதில் கண்ட சொத்தை நீ உன் இஷ்டம்போல் சர்வ சுதந்திரமாய் சகல பாத்தியங்களுடன் ஆண்டு அனுபவித்து கொள்வாயாகவும்..... இந்த தானசெட்டில்மென்ட் பத்திரத்தை எக்காரணத்தைக் கொண்டும், மாற்றவும், ரத்து செய்யவும் எனக்கு அதிகாரம் இல்லை என நான் மனப்பூர்வமாக சம்மதித்து எழுதிக் கொடுத்த தானசெட்டில்மென்ட் பத்திரம்."

(7.5) From the above recitals in Ex.A2, it is crystal clear that the settlor namely Late.Venkatasamy, out of his own will and volition and in a conscious state of mind, executed the settlement deed in favor of the plaintiff and handed over the possession to the Plaintiff / daughter on the date of execution of the settlement deed, further, it is an irrevocable settlement deed.

(7.6) However, the defendants put forth a plea that the said settlement deed Ex.A2 was created for name sake, to protect the property from the loan, as already a property of Late.V.Venkatasamy was auctioned and the defendant had produced documents to show that a property was sold to discharge the loan. Further, it was contented that the settlement deed is gift under Section 122 of the Transfer of Property Act 1882, that gift shall be made voluntarily and without consideration by the Donor and acceptance must be made during the life time of the Donor.

(7.7) It is needless to mention that for the validity of the gift, the Court has to find exactly, what is the disposition which the document has made, whether it has

transferred any interest in praesenti in favour of the settlee or is intended to transfer interest in favour of the settlee on the death of the settlor. Further, for the purpose of transfer of an immovable property by way of gift, the transfer may be effected by a registered instrument or by delivery. The contention of the defendant that Ex.A2 is not valid in the eye of Law as per Section 126 of the Transfer of Property Act 1882 is concerned, the gift should have been made on the happening of any specified event which does not depend on the will of the Donor, the gift may be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the Donor is void wholly or in part. A gift may also be revoked for want or failure of consideration and save as in any other case the gift cannot be revoked.

(7.8) DW1 who is the 1st Defendant is well aware of the settlement deed and he has signed as a witness to the document Ex.A2. It is not the case of the defendants that the settlement deed was not executed by the settlor. Further, DW1 has testified that, "எனது சகோதரிக்கு தானசெட்டில்மென்ட் பத்திரத்தை ரத்து செய்யப்போவதாக நானோ, எனது தந்தையோ அறிவிப்பு எதுவும் அனுப்பினோமா என்றால் இல்லை வா.சா.ஆ.3 ஆவணம் மூலம் ரத்து செய்தவுடன் உடனடியாக நானோ, எனது தந்தையோ எழுத்து மூலமாக வாதிக்கு அறிவிப்பு எதுவும் அனுப்பினோமா என்றால் இல்லை." The above testimony, fructifies the fact, even before or after cancellation of the settlement deed Ex A2 by Ex A3, the intention to cancel was not intimated to the plaintiff, further the said act will amount to unilateral cancellation of Ex A2, which is legally invalid.

(7.9) DW2 is known to DW1 and he has stood as a witness in the settlement deed Ex.A2 executed in favour of the Plaintiff. DW3 is an Advocate who wrote Ex.A2 and he has admitted that in the settlement deed Ex.A2, possession was handed over to the Plaintiff. DW4 is the witness who signed in Ex.A3. DW5 is the friend of DW4 who is the attestor of the Will. DW6 is an Advocate Logamani who is a second witnesses to Ex.A3 cancellation deed.

(7.10) It is pertinent to refer Ex.A3 the gift settlement cancellation deed dated 17.01.2014 Document No.237 of 2014 executed by Late.V.Venkatasamy marked as Ex.A3. It is relevant to extract certain recitals of the same (Ex.A3). G.அம்சராணி அவர்கள் பெயருக்கு 23.09.2010 ம் தேதியில் ஒரு தானசெட்டில்மென்ட் பத்திரம் எழுதி தேனி, சா.ப.அ.9399/2010 எண் ஆவணப்பட்டி பதிவு செய்துக்கொடுத்துள்ளேன் . தற்போது இதில் கண்ட சொத்து எனக்கு ஆதரவாக வேண்டும் என்பதால் என்னால் எனது குமாரத்தி G.அம்சராணி அவர்களுக்கு எழுதிக் கொடுக்கப்பட்ட தேனி , சா.ப.அ.9399/2010 எண் தானசெட்டில்மென்ட் ஆவணத்தை நான் இதன் மூலம் ரத்து செய்கிறேன்.

(7.11) It is pertinent note that nowhere in the Ex.A3, the settlor has narrated about the consideration or that the settlement deed Ex.A2 was not acted upon. That the Plaintiff has not complied with the conditions narrated in Ex.A2. The very recitals of Ex.A3 creates a doubt in the execution of Ex.A3 cancellation deed.

(7.12) The present case is where a father out of his own free will and affection executed a registered settlement deed dated 23.09.2010, in favor of his daughter, in respect of the suit property measuring 8600 sq.ft., situated at Allinagaram village, the plaintiff herein. Thereby transferring the suit property absolutely to her. The settlement deed was duly registered, accepted and acted upon and the settlor has specifically declared that he has no right to cancel or modify the settlement deed Ex.A2. This is a pure and unconditional transfer of the suit property. The settlement deed was executed in the presence of the DW1 and he has also accepted in his cross examination that he was an attesting witness to the settlement deed, and hence, estopped from disputing the validity in the eye of law. When once a settlement deed is executed by the settlor and accepted by the settlee, the settlor completely loses his rights over the property. On the date of execution, itself the settlor handed over possession of the suit property and also delivered the original title deeds including the partition deed to the plaintiff and the plaintiff was also accepted the settlement, and therefore, the title to the property stood transferred in favor of the plaintiff. The same

cannot be revoked unilaterally. The plaintiff has become the absolute owner of the suit property as per the recitals of settlement deed Ex A2.

(7.13) The defendants contention is that the gift was not accepted and that when gift is not accepted by the settle, it will not amount to a proper settlement. This court relies upon the judgment reported in 2008 (1) MLJ 193, the deed of gift was handed over to the settlee as soon as it was registered, will amount to handing over of possession.

(7.14) Gifts do not contemplate the payment of any consideration or beyond any doubt/ dispute. But in order to constitute a valid gift acceptance thereof is essential. Transfer of property act does not describe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a gift. The fact that possession had been given to the donee, also raises a presumption of acceptance. It should be voluntary one, should not be subjected to any undue influence. It is not the case of the defendants, Ex.A2 settlement deed, was executed under undue influence and pressure. Ex.A2 was executed on 23.09.2010, there is no objection by the defendants with regard to the execution of Ex.A2 from 23.09.2010, however, now contends that the settlement deed is not validly executed may not be acceptable. The settlor during his life time had not challenged the settlement deed within reasonable time, whereas on 17.01 2014 had unilaterally cancelled the document without issuing any notice to the plaintiff.

(7.15) The recitals in the settlement deed reads as the plaintiff assisted the settlor in discharging his debts and meeting his medical expenses is only a reflection of the motive, gratitude and affection of the father towards his daughter, such affection may not be treated as consideration in terms of money as PW 1 in cross stated that "தானம் என்பது அன்பினால் மட்டுமே எழுதிக் கொடுக்க வேண்டும் என்றும் கடனை தீர்த்தமைக்காக என்று எழுதிக் கொடுக்கப்பட்டுள்ளதால் வா.சா.ஆ.2 ஆவணம்

தானப்பத்திரம் கிடையாது என்று சொன்னால் நான் எனக்கு அப்பாவிற்ரு மருத்துவ உதவிகளை செய்து உடனிருந்து கவனித்து கொண்டேனே தவிர , நான் கடனை அடைக்கவில்லை என்னது கணவர் கடனை தீர்ப்பதற்காக உதவி செய்தார் ". This categorical deposition of PW1 would show, that the settlement deed was executed not for consideration and it was only a gratuitous gift in favour of his daughter, but not in terms of money.

(7.16) The evidence bearing on the question of acceptance of the gift deed have to be appreciated on the background of the circumstances relating to the execution of a deed. There may be cases where the slightest evidence of such acceptance would be sufficient. There may be still cases where the circumstances themselves eloquently speak to such acceptance. Normally, when a person gifts properties to another and it is not a onerous gift, one may expect the other to accept such a gift when once comes to his knowledge, since normally, any person would be only too willing to promote his own interest. May be in the particular cases there may be peculiar circumstances which may show that the donee would not have accepted the gift. But these are rather the exceptions than the rule. It is only normal to assume than the rule. It is only normal to assume that the donee would have accepted the gift deed. One would have to look into the circumstances of the case in order to see whether acceptance could be read. Mere silence may sometimes be indicative of acceptance, provided it is shown that the donee knew about the gift. Essentially, this is a question of fact to be considered on the background of the circumstances of each case.

(7.17) In the case reported in 2024 AIR SC 5641-N.Thajudeen -vs- Tamil Nadu Khadi and village industries board, held - Acceptance can be inferred from the terms of the gift, taking possession and applying for mutation- A valid gift deed cannot be ordinarily revoked, unless the right to revoke is reserved, or it falls under the specific categories under 126 of the Transfer of Property Act. The exceptions include, agreement between donor and donee, for revocation upon a specified event not dependent on the donors will. A gift revocable at the mere will of the donor or if the

gift is in the nature of the contract that could be rescinded is also to be seen. Non-utilization of the gifted property for the intended purpose does not automatically lead to revocation, unless stipulated in the gift deed.

(7.18) In simple words, ordinarily a gift deed cannot be revoked except for the three contingencies mentioned in section 126 of the Transfer of Property Act. The first, is whether, the donor and the donee agree for its revocation on the happening of any specified event. In the gift deed, there is no such indication that the donor and donee had agreed for the revocation of the gift deed, for any reason much less on the happening of any specified event. Therefore, the first exception permitting revocation of the gifted deed is not attracted, in the case on hand. Secondly, a gift deed would be void wholly or in part, if the parties agree that it shall be revocable wholly or in part at the mere will of the donor. In the present case, there is no agreement between the parties for the revocation of the gift deed wholly or part or at the mere will of the donor. Therefore, the aforesaid condition permitting revocation or holding such a gift deed to be void does not apply. Thirdly, a gift is liable to be revoked in case where it is in the nature of a contract which could be rescinded.

(7.19) Thus, none of the exceptions permitting revocation of the gift deed stands attracted in the present case. Thus, leading to the conclusion that the gift deed which was validly made could not have been revoked in any manner. Hence, the gift settlement deed, is validly executed in the manner known to law and is legally valid. Hence, issue no 3 is answered in favour of the plaintiff and against the defendants.

(7.20) Further, it is not out of contrast to state that, subsequent to the execution of the cancellation of the settlement deed (Ex.A3) neither the late father nor the 1st Defendant informed about the cancellation and only after the investigation of the Plaintiff she came to know about the handy work of the Defendants. Further, it is not the case of the Defendants also that she was informed about the cancellation rather he himself admitted that no information was given about the cancellation of the deed. In such circumstances, this court comes to a conclusion, that the unilateral cancellation

of the settlement deed by way of Ex.A3 is not valid and not binding the Plaintiff and is null and void in the eye of law. Hence, issue no.3 is answered in favour of the Plaintiff and against the Defendants.

8. Additional Issue no.1 :-

(8.1) The defendant contended that the suit is barred by limitation, as revocation deed Ex A 3 was executed on 17.01.2014, and that the plaintiff had the knowledge of the cancellation of Ex A 2, the plaintiffs keeping mum for several years had alleged that she had the knowledge of the cancellation only on 28.06.2022 and the suit has to be struck down as barred by limitation.

(8.2) In N. Thajudeen case held- Once it is held that the gift deed was validly executed resulting in the absolute transfer of title in favor of the plaintiff the same is not liable to be revoked and asserts a revocation deed is meaningless especially for the purposes of calculating the period of limitation for instituting the suit. The limitation for a suit for declaration is provided under part III of the Schedule to the Limitation Act, 1963. It is governed by Articles 56 to 58 of the schedule to the Limitation Act. Under all the aforesaid three articles the limitation for a suit for declaration is 3 years. The limitation under Article 52 and 57 of the schedule to the limitation with respect to declaration regarding forgery of an instrument issued or registered and validity of the adoption deed. Article 58 of the Schedule to the Limitation act, describes the limitation for a decree of declaration of any other kind and therefore the suit for declaration of title would essentially fall under Article 58 of the Schedule to the Limitation Act and the limitation would be three years from the date when the right to sue first accrues.

(8.3) In the case on hand, the suit is not simply for the declaration of title rather it is for the further relief of recovery of possession. A further relief is claimed in addition to a mere declaration, The relief of declaration, It would be governed by the relief that has been additionally claimed. The further relief claimed in the suit is for

recovery of possession based upon title and as such its limitation would be 12 years in terms of Article 65 of the schedule to the Limitation Act.

(8.4) In *C. Mohammad Yunus -vs- Syed Unnissa and others* held that- It has been laid down that in a suit for declaration with a further relief, The limitation would be governed by the article governing the suit for such further relief., suit for declaration of title to immovable property would not be barred so long as the right to such a relief for declaration would be a continuing right. The principle is that the suit for declaration for a right cannot be held to be barred so long as right to properties subsist.

(8.5) In the case on hand, the suit is for declaration and recovery of possession based on title, the limitation is 12 years as per Article 65 of the Limitation Act, 1963. Therefore, this suit for the relief of declaration and recovery of possession is not barred by the law of limitation. A unilateral revocation by the donor without a reserved right or falling under statutory exceptions is void, for a suit seeking both declaration of title and recovery of possession based on title, the limitation is governed under the period of recovery of possession twelve years under Article 65 of the limitation act, and this suit is not barred by the Limitation Act. Further, as stated *supra*, even after the cancellation deed (Ex.A3) was executed the same was admittedly not informed to the Plaintiff, until she finds it herself by obtaining necessary E.C. from the SRO office. Hence, the Defendants cannot expect the Plaintiff to file the suit within 3 years of the execution of the Cancellation deed. Therefore, the additional issue no.1 is decided in favour of the Plaintiff as the suit is not barred by the law of Limitation for the foregoing reasons.

(8.6) The plaintiff contended that the 1st defendant being the blood brother of the plaintiff, she permitted him to occupy the suit property as a permissive occupier. The very recitals of Ex A2 reveals, that on the date of the execution of the settlement deed, the possession was handed over to the plaintiff. DW1 has not disputed that he is

not in possession, that he had not let out the property on lease, and that he is not collecting the rent. However, claims that he is possession as the owner of the property by way of the Will Ex.B13. When this court decides the suit in favour of the plaintiff, that she has acquired the property, as per the gift settlement deed Ex.A2, the subsequent cancellation deed is not valid in the eye of law as it was cancelled unilaterally without any notice to the plaintiff and even after the cancellation the same was not disclosed to the Plaintiff till she finds it herself. Hence, this court decides that the plaintiff is absolute owner of the property having acquired the property from her late father by the gift settlement deed Ex.A2 and as such issue no.1 is decided in favour of the Plaintiff.

(8.7) Further the defendant also contended, that the plaintiff stole the settlement deed and filed the suit. He had also lodged a complaint and the same is pending. PW 1 denied the suggestion that she had stolen the documents and stated that she is possession of the original settlement deed and that it was a false case foisted against her. It is settled, proposition that delivery of possession is not sine quo non to validate a gift or settlement. Therefore, for the document to be valid, it is sufficient, it is proved that the same was acted upon during the lifetime of the executant. The stand of the defendants that the plaintiff took away the document later is unbelievable. Even assuming the original deed was returned after registration, the fact, that it was already acted upon cannot be altered. Once a gift has been acted upon, the same cannot be unilaterally canceled. As already held, delivery of possession is only one of the methods to prove acceptance and not the sole method. The receipt of the original document by the plaintiff and the registration of the same would amount to the acceptance of the gift and the transaction satisfies the requirement of section 126 of their Transfer of Property Act. Once the document is categorized as a gift/ settlement, in the absence of any clause or reservation to cancel, the executant has no right to cancel the same. The reasons for cancellation or

revocation of the gift have to be proved in a court of law. The unilateral cancellation of the document is void and as a natural corollary the Will is invalid

(8.8) Further, a person without title may not transfer the property to any other person. Nemo dat quod non habet ---a latin maxix - no one without a legal title to property cannot transfer a better title, the transaction is invalid, and ownership cannot be transferred simply by possession. As the Settlement deed is proved to be validly executed, Ex A3 the cancellation deed executed unilaterally, and the Will Ex.B13 is not binding on the plaintiff. Therefore, the 1st Defendant the brother of the Plaintiff who claims that he is possession based on the Will cannot be accepted. At the same time, the case of the Plaintiff that, she had permitted the 1st Defendant her brother to occupy the property as she was unable to often visit the property and accordingly the 1st Defendant was only a permissive occupier of the property cannot be just ignored as the same is probable, as the Plaintiff is held to be the title holder of the suit property and the Defendants are only a permissive occupier and as brother of the Plaintiff, who has valid title asked the Defendants to hand over the possession become unauthorised occupants. Therefore, the Plaintiff is entitled to the relief of recovery of possession from the Defendants and for Injunction. Thus, issue no.2 and 4 are decided in favour of the Plaintiff.

9. In the result, the suit is decreed,

- (i) declaring the plaintiff is the absolute owner of the suit property by way of the gift settlement deed dated 23.09.2010 document no.**9399/2010** on the file of SRO, Theni.
- (ii) Directing that the Cancellation deed dated 17.01.2014 document no.**237/2014** on the file of SRO, Theni is null and void,
- (iii) Directing the 1st defendant to deliver the possession of the suit property within 2 months to the plaintiff,

(iv) the permanent injunction is granted in favour of the plaintiff restraining the defendant from creating any encumbrance over the suit property by way of sale, lease, or mortgage, etc,

(v) considering the relationship of the parties there is no order as to costs.

Dictated by me, directly typed by Steno-Typist into computer, corrected and pronounced by me in the open Court, this the 02nd day of April 2026.

Additional District Judge,
Theni

Plaintiff side witnesses :

PW1 ... Amsarani

Plaintiff side exhibits :

Ex.A1 ... Partition deed dated 16.03.2005 – Certified copy

Ex.A2 ... Gift settlement deed dated 23.09.2010 – Certified copy

Ex.A3 ... Gift settlement cancellation deed dated 17.01.2014 – Certified
copy

Ex.A4 ... Legal notice dated 02.07.2022

Ex.A5 ... Reply notice dated 12.07.2022

Defendants side witness : -

DW1 ... Seenivasagam

DW2 ... Rajan

DW3 ... Rangesh

DW4 ... Raja

DW5 ... Senthilkumar

DW6 ... Logamani

Defendants side exhibits : -

Ex.B1 ... Palanichettipatti P.S. FIR

Ex.B2	...	Tamil Nadu Industrial investment corporation Ltd., Madras sanctioned letter dated 19.02.1996
Ex.B3	...	Acknowledgment of Registration Firm dated 25.03.1996
Ex.B4	...	Sanctioned letter dated 30.07.1996
Ex.B5	...	Kadamalaigundu Mayiladumparai Panchayat union payment of chalan dated 27.02.1996
Ex.B6	...	Kadamalaigundu Mayiladumparai Panchayat union payment of chalan dated 27.02.1997
Ex.B7	...	Hon'ble High court of Judicature at Madras in WMP No.30338/2000 in W.P.No.20862/2000 dated 18.12.2000
Ex.B8	...	Sale deed dated 20.01.2009 – Certified copy
Ex.B9	...	Tamil Nadu Industrial investment corporation Ltd., Theni Statement of loan account
Ex.B10	...	Theni Allinagaram Municipality notice dated 18.02.2014
Ex.B11	...	Theni Allinagaram Municipality notice dated 28.02.2014
Ex.B12	...	Gift settlement cancellation deed dated 17.01.2014 – Original
Ex.B13	...	Will deed dated 28.11.2014 – Original
Ex.B14	...	Manaivari thoraya patta no.456 stands in the name of the Defendants
Ex.B15	...	Charge sheet filed by Commissioner, Executive Authority of Theni, Allinagaram Municipality dated 25.08.2014
Ex.B16	...	Charge sheet filed by Commissioner, Executive Authority of Theni, Allinagaram Municipality – Certified copy
Ex.B17	...	STC No.2943/2014 affidavit – Certified copy
Ex.B18	...	Madurai Bench of Madras High Court in CrI.OP.(MD) No.14258/25 and CrI.MP (MD) Nos.11521 & 11522/2025 dated 28.08.2025 Order copy
Ex.B19	...	Tamil Nadu Electricity Board RTI Reply dated 22.09.2025
Ex.B20	...	Adhar card of T. Rajan

Ex.B21	...	Adhar card of Rangesh
Ex.B22	...	Adhar card of Raja
Ex.B23	...	Adhar card of Senthilkumar
Ex.B24	...	Adhar card of Logamani

Additional District Judge,
Theni.