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SA NO. 142 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-02-2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA NO. 142 of 2025

and

CMP.No.4132 of 2025

P.G.Sethuram
S/o. Late. P. Govindasamy, Perandaikaduvalasu,
Velappanaickenvalasu Post, Kangayam Taluk,
Tiruppur Dt.

Appellant(s)

Vs

Sathiabama
D/o. latchumana Gounder, Periyar Colony, 176,
Vivekanandar Colony Privu, Anupparpalayam
Post, Tiruppur Taluk and Dt.

Respondent(s)

For Appellant(s):

Mr.K.S.Jeyaganesan
for P.Navaneetha Krishnan

For Respondent(s):

ORDER

Challenging the concurrent findings of the courts below, the plaintiff
preferred this appeal.



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2. Before the trial court, the plaintiff filed a suit for declaration and consequential relief of injunction against the defendant, who is the husband of the plaintiff. Upon receipt of notice, the defendant filed I.A. No. 471 of 2022, praying for the rejection of the plaint on the ground that the suit filed by the plaintiff was barred by limitation. In response, the plaintiff objected, arguing that the issue involved a mixed question of law and fact.

3. After hearing both sides, the trial court rejected the plaint. Aggrieved by this decision, the plaintiff preferred A.S. No. 6 of 2004, which was also dismissed, with the appellate court confirming the findings of the trial court. Challenging these findings, the plaintiff has now preferred this appeal, seeking relief.

4. The learned counsel for the appellant / plaintiff challenges the findings of the Courts below on the following grounds:

i) The Courts below failed to consider the Plaint as a whole and the documents submitted along with the plaint but surprisingly considered only the defendant's version and documents No.1 to 10 filed by the Defendant in the Petition, which is a patent error of Law and against Order Rule 7 Rule 11 of C.P.C.



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ii) The Courts below failed to consider that the Plaintiff and Defendant are in fiduciary relationship as husband and wife and thus the Courts below failed to consider the provisions of Section 10 of Limitation Act as claimed by the Plaintiff that the suit is filed within the limitation period from the date of arising of cause of action.

iii) The Courts below erred in holding that irrespective of the allegation and contention raised by the Plaintiff for the declaration of settlement deed dated 14.09.2010 as null and void, when the settlement deed is said to have been accepted by the Plaintiff executed in favour of the Defendant, the suit is to be filed within 3 years from the date of settlement deed dated 14.09.2010 is against statutory provisions of Law.

iv) The Courts below failed to consider that the settlement deed is executed by the Plaintiff (Husband) to the Defendant (wife) on the promise made by the wife to come and live with the Plaintiff. But the Defendant failed to come and live with the Plaintiff as promised and vide Marriage dissolution agreement dated 31.01.2017, the relationship was broken and the



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defendant started causing disturbance with the possession of the Plaintiff in the year 2018 and hence cause of action arose to declare the settlement deed as null and void. Hence as per the plaintiff the cause of action arises only on 31.01.2017 and thereafter and the suit was filed on 03.10.2018 by the Plaintiff by giving due legal notice to the defendant within 3 years of limitation period.

v) The Courts below while dismissing the I.A.854/2018 (Injunction Petition) in O.S.No.218/2018 filed by the Plaintiff vide order dated 21.01.2022 held that oral witness has to be examined to decide the issue and cannot conduct a pre-trial. However contrary to the findings of the above order, the Trial Court conducted pre-trial and decided no oral and documentary evidence is necessary in the Petition to reject Plaintiff in I.A. No. 471/2022 in O.S. No. 218/2018 filed by the defendant and rejected the plaintiff which caused great prejudice to the plaintiff and against the principles of law.

vi) The Courts below erred in holding that the possession of property was handed over by the Plaintiff to the Defendant on the date of Settlement deed itself (i.e) 14.09.2010 based on the customary words of deed without



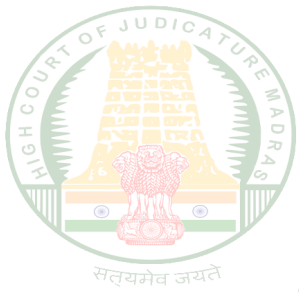
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taking into consideration the conduct of parties subsequently entering into Marriage dissolution agreement dated 31.01.2017 and Letter of Declaration dated 31.01.2017 whereby the parties have decided to end their marriage life and the Defendant has accepted that the Possession of the suit property is with the Plaintiff and the undertaking given by the Defendant that she will not disturb the possession of the Plaintiff.

5. This Court admits this second appeal on the following substantial questions of law:

A) Whether the Courts are right in rejecting the Plaintiff based on the averments and documents submitted by the defendant alone without reading the Plaintiff as a whole and its averments and giving an opportunity to the Plaintiff to prove his case?

B) Whether the Courts are right in rejecting the Plaintiff on the ground of limitation which is based on mixed question of fact and law and without requiring the Plaintiff to produce oral and documentary evidences to determine the real disputed facts between the Plaintiff and the Defendant?



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C) Whether the Courts are right in rejecting the plaint on the point of limitation alone, when the case of the Plaintiff is that the settlement deed was not accepted by the defendant as per Sec. 122 of Transfer of Property Act?

6. Issue notice to the respondents, returnable by 02.04.2025.

7. List the second appeal on 02.04.2025.

8. Till then, no encumbrance shall be created over the property.

9. Private notice is also permitted.

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T.V.THAMILSELVI, J.

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