

S.A.No.142 of 2025

S.A.No.142 of 2025

T.V.THAMILSELVI, J.

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This matter is taken up for hearing under the caption “For Being Mentioned” today at the instance of the appellant/party in person.

2. The appellant/party in person appeared and submitted that earlier, this Court, by an order dated 22.01.2026 allowed the Second Appeal. However, he would submit that in the said order, at the page no. 8, para 10, the date of promissory agreement was mentioned as 21.01.2017 instead of 31.01.2017. Hence, he prayed for modify the same in the order and issue fresh order copy.

3. Considering his submissions, the date viz., 21.01.2017 mentioned at the page No. 8 in Para 10 6th line shall be substituted as “**31.01.2017**”.

4. Registry is directed to incorporate above correction in the judgment of this Court in S.A.No. 142 of 2025 dated 22.01.2026 and issue fresh order copy to the appellant.

18.03.2026

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S.A.No.142 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2026

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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

Versus

Sathiabama

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

.. Respondent

Prayer: Second Appeal filed under Section 100 of CPC against the Judgement and Decree dated 06.06.2024 passed in A.S.No.06 of 2024 on the file of the Sub Judge, Kangayam, Thiruppur District confirming the Judgement and Decree dated 02.08.2023 passed in O.S.No.218 of 2018 on the file of the District Munsif Court, Kangayam, Thiruppur District and thus render justice.

For Appellant(s): Mr.P.G.Sethuram, Party-in -Person

For Respondent(s): Mr.M.Murugesan

JUDGMENT

This Second Appeal arises out of the order dated 06.06.2024 in

A.S.No.6 of 2024 passed by the Sub Court, Kangayam, Tiruppur District
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confirming the order dated 02.08.2023 in IA.No.471 of 2022 in O.S.No.218 of 2018 passed by the District Munsif Court, Kangayam, Tiruppur.

2. Before the trial Court, the plaintiff filed a suit for declaration and consequential relief of injunction against the defendant, who is the wife 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 over the same, the plaintiff preferred a suit A.S. No. 6 of 2004, which was also dismissed by the lower appellate Court. Challenging these findings, the plaintiff has now preferred the present Second Appeal.

4. This Court, vide order dated 21.02.2025, framed the following substantial questions of law:

A) Whether the Courts are right in rejecting the Plaint based on the averments and documents submitted by the defendant alone without reading the Plaint as a whole and its



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averments and giving an opportunity to the Plaintiff to prove his case?

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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?

5. 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 Plaintiff 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.

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

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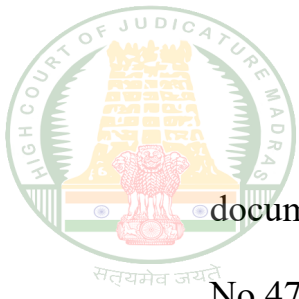


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settlement deed dated 14.09.2010 as null and void, when the settlement deed is said to have been accepted by the Plaintiff executed in favour of the Defendant, the suit is to be filed within 3 years from the date of settlement deed dated 14.09.2010 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 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



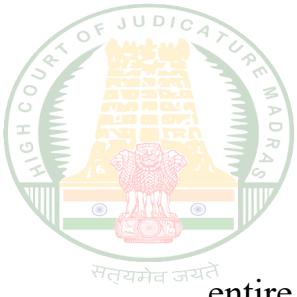
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documentary evidence is necessary in the Petition to reject Plaintiff in I.A.

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 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.

6. On the other hand, the learned counsel for the respondent/defendant would contend that the Courts below having considered the entire facts and circumstances, particularly, the settlement deed executed by the plaintiff in favour of the defendant, have rightly rejected the plaintiff, which requires no interference.



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7. Heard the learned counsel for both the parties and perused the entire materials placed on record.

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8. According to the appellant/plaintiff, he executed a settlement deed in favour of his wife, the respondent/defendant herein, on her promise that she would live with him and as such, without handing over the possession of the property, on 14.09.2010, he executed the settlement deed, however, later, the respondent/defendant never joined and lived with the appellant and she acted contrary to the terms of the settlement and further, she was attempting to alienate the property in favour of the third parties. It is the specific case of the appellant/plaintiff that as they are in fiduciary relationship and subsequently, the marriage between him and his wife got dissolved by virtue of marriage dissolution agreement dated 31.01.2017 and the document settlement deed is incomplete by virtue of Section 122 of the Transfer of Property Act since the respondent/defendant was not given possession of the subject property and later, the defendant started causing disturbance with the possession of the appellant in the year 2018 and hence, cause of action arose to seek declaration that the settlement deed dated 14.09.2010 as null and void and rightly filed the suit on 03.10.2018, which is well within the limitation period.

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9. According to the respondent/defendant, the plaintiff himself had written the settlement document dated 14.09.2010 and got it registered by himself and since the suit was filed after the three-year period and hence, the plaint is liable to be rejected under Order 7 Rule 11 CPC and the Courts below, having taken note of the fact that the possession of the subject property under the settlement deed was with the respondent who mortgaged the same with the Bank, have rightly rejected the plaint.

10. On a perusal of the orders passed by the Courts below, it appears that since the contents of the settlement deed dated 14.09.2010 would clearly establish that the plaintiff himself written the document and handed over the possession of the subject property in favour of the respondent/defendant and as such, the version of the appellant/plaintiff that no possession was given by the appellant/plaintiff was contradictory to the settlement deed and as such, the Courts below rejected the case of the appellant/plaintiff that the settlement is incomplete and accordingly, rejected the plaint as barred by limitation as per Section 59. However, it is pertinent to note that the appellant/plaintiff executed the settlement deed in favour of the respondent/defendant solely believing upon the promise given by the

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respondent/wife that she would join and live with him and she committed breach of the promise and later, both parties entered into MoU-marriage dissolution agreement and promissory agreement dated 21.01.2017, which superseded the settlement deed and further, the possession has been with him and thereby the settlement deed is incomplete by virtue of Section 122 of the Transfer of Property Act not acted upon and as rightly contended by the learned counsel for the appellant that the issue is a mixed question of law and facts and cannot be decided at threshold merely based upon the documents filed on behalf of the respondent/defendant. The Courts below ought to have extended an opportunity to the appellant/plaintiff to putforth his case. In fact, the trial Court, while rejecting the Interlocutory Application moved by the appellant/plaintiff under Order 39 Rule 1 and 2 CPC for grant of interim injunction, has observed that this Court cannot hold a pre- trial without conducting one and decide whether the respondent has the right to sell the property or restrain her from doing so and the suit is awaiting trial and the issues have to be discussed and decided. Therefore, this Court is of the view that the findings rendered by the Courts below are not sustainable and accordingly, the same are set aside. Accordingly, the substantial questions of law 'A' and 'B' are answered in favour of the appellant/plaintiff.

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11.The Second Appeal is allowed and the Judgement and Decree dated 06.06.2024 passed in A.S.No.06 of 2024 on the file of the Sub Judge, Kangeyam, Thiruppur District confirming the Judgement and Decree dated 02.08.2023 passed in I.A.No.471 of 2022 in O.S.No.218 of 2018 on the file of the District Munsif Court, Kangeyam, Thiruppur District are set aside. Consequently, connected miscellaneous petition is closed. No costs.

12. It is to be noted that already, this Court vide order, dated 18.07.2022 in CRP PD No.2193 of 2022 directed the trial Court to dispose of the suit in O.S.No.218 of 2018 expeditiously since the appellant/plaintiff is a senior citizen. Therefore, this Court further directs the trial Court to dispose of the suit in O.S.No.218 of 2018 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this judgment.

22.01.2026

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To

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1. The Sub Judge, Kangeyam, Thiruppur District

2. The District Munsif Court, Kangeyam, Thiruppur District

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