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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.08.2026

Pronounced on : 27.10.2026

CORAM

THE HONOURABLE MR JUSTICE P.VADAMALAI

AS(MD) NO. 221 of 2021
{CNR: HCMD010618332021}
Case QR

and

AS(MD) NO. 222 of 2021
{CNR: HCMD010618342021}
Case QR

A.S(MD)No.221 of 2021

1.Chellammal
2.Kanimozhi rep. by her power agent
R.Manivannan. ... Appellants/Plaintiffs

Vs.

1.Vivek

2.Senthilpandian

3.The Sub Registrar,
Thallakulam Sub-Registrar Office,
Tnau Nagar, Rajagambeeram
Thirumogur Road,
Madurai North Taluk
Madurai District. ...Respondents/Defendants

PRAYER: This Appeal Suit is filed under Section 96 r/w Order 41 Rule 1 & 2 of CPC, to set aside the judgment and decree passed in O.S.No.12 of 2015 dated 07.07.2021 on the file of the IV Additional District Court, Madurai by allowing this appeal.

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For Appellants : Mr.H.Arumugam
For R1 : Mr.M.Vallinayagam
Senior Counsel
for Mr.PT.S.Narendravasan
For R2 : No Appearance
For R3 : Mr.S.Vashik Ali
Government Advocate

A.S(MD)No.222 of 2021

1.Chellammal
2.Kanimozhi ... Appellants/Defendants

Vs.

Vivek ...Respondent/Plaintiff

PRAYER: This Appeal Suit is filed under Section 96 r/w Order 41 Rule 1 & 2 of CPC, to set aside the judgment and decree passed in O.S.No.224 of 2017 dated 07.07.2021 on the file of the IV Additional District Court, Madurai by allowing this appeal.

For Appellants : Mr.H.Arumugam
For Respondent : Mr.M.Vallinayagam
Senior Counsel
for Mr.PT.S.Narendravasan

COMMON JUDGMENT

These Appeal Suits are directed against the common judgment and decree dated 07.07.2021 passed in O.S.Nos.12 of 2015 and 224 of 2017 on the file of the IV Additional District Court, Madurai.

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2. The appellants in both appeals are the plaintiffs in O.S.No.12 of 2015 and defendants in O.S.No.224 of 2017 on the file of the IV Additional District Court, Madurai.

2.1 The respondents 1 to 3 in A.S.(MD)No.221 of 2021 are the defendants 1 to 3 in O.S.No.12 of 2015 on the file of the IV Additional District Court, Madurai.

2.2 The respondent in A.S.(MD)No.222 of 2021 is the plaintiff in O.S.No.224 of 2017 on the file of the IV Additional District Court, Madurai.

3. The appellants as plaintiffs filed the suit in O.S.No.12 of 2015 on the file of the IV Additional District Court, Madurai, seeking for the reliefs: (i) to declare that the settlement deed dated 11.01.2010 under registered Document No.89 of 2010 of the Sub-Registrar, Tallakulam, executed by the 1st plaintiff in favour of the 1st defendant is sham & nominal, null & void and invalid under law; (ii) to declare that the deed of cancellation dated 13.12.2013 cancelling the registered gift deed under Document No.89/2010 dated 11.01.2010 and registered as Document No.4379 of 2013 of the Sub-Registrar,

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Tallakulam, is valid under law; (iii) to declare the mortgage deed dated 12.05.2014 executed by the 1st defendant in favour of the 2nd defendant, registered under Document No.1726 of 2014, is null and void and invalid under law and for permanent injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiffs over the suit property and from alienating the suit property.

3.1 The 1st respondent as plaintiff filed the suit in O.S.No.224 of 2017 on the file of the IV Additional District Court, Madurai, seeking for reliefs: (i) to declare that the cancellation of the settlement deed executed by the 1st defendant dated 13.12.2013 registered as Document No.4379/2013 at the office of the Tallakulam Sub Registrar Office is null and void; (ii) to declare that the settlement deed dated 13.12.2013 executed by the 1st defendant in favour of the 2nd defendant, registered as Document No.4381/2013 at the office of the Tallakulam Sub-Registrar, is null and void and will not bind the plaintiff and (iii) for permanent injunction restraining the defendants and their men from alienating or encumbering the suit property.

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4. For the sake of convenience, the parties are referred to as per their rank in O.S.No.12 of 2015 before the trial Court.

5. The brief facts are as below:

(a) The case of the plaintiffs (appellants in A.S.(MD)Nos.221 & 222 of 2021 herein):-

The 1st plaintiff purchased the suit property through a registered sale deed dated 16.10.1980 from Sri Karpaga Vinayagar Kovil Nagarathargal Trust, through its trust secretaries, Ramanathan Chettiar and Annamalai Chettiar. She has been in possession and enjoyment of the suit property from the date of purchase. During the years 2008-2011, there was a misunderstanding between the 1st plaintiff and her husband, Chinnasamy. So, the 1st plaintiff's paternal uncle's son, one Jagadeesan, who was a powerful and well known person in Madurai, was supporting the 1st plaintiff. Taking advantage of this, Jagadeesan told the 1st plaintiff that her husband would grab the suit property from her by threat, as the suit property is situated in the main city. By saying so, he wanted the 1st plaintiff to execute a settlement deed in favour of his son, the 1st defendant herein, and after the family problems were solved, the property would be reconveyed to the 1st plaintiff by way of a revocation deed.

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Believing the words of the said Jagadeesan, the 1st plaintiff executed a sham and nominal settlement deed dated 11.01.2010 in favour of the 1st defendant (son of Jagadeesan) and registered as Document No.89/2010. At the time of execution of the settlement deed, the 1st defendant was a minor, and he was not a blood relative of the 1st plaintiff. Moreover, the 1st plaintiff was not in possession of sufficient means to register the settlement deed by spending Rs.35,470/- towards registration charges. The said settlement deed was not acted upon as it was sham and nominal. In the meanwhile, the said Jagadeesan died six months after execution of the settlement deed. Hence, the 1st plaintiff asked the 1st defendant to execute a deed of reconveyance or cancellation of the settlement deed. But the 1st defendant has dragged it out for days. The 2nd plaintiff is the daughter of the 1st plaintiff and she is living with her husband. In order to make arrangements for her future life, the 1st plaintiff cancelled the settlement deed dated 11.01.2010 by way of a cancellation deed dated 13.12.2013 and on the same day, the 1st plaintiff executed a settlement deed dated 13.12.2013 in favour of the 2nd plaintiff. The 1st plaintiff handed over possession of the suit property to the 2nd plaintiff. The 1st defendant was aware of those documents and kept mum without any objection. In this circumstance, the 1st defendant suddenly filed a suit in O.S.No.339 of 2014 on

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the file of the Principal District Munsif Court, Madurai Town, against the plaintiffs with false allegations. Moreover, prior to filing the suit, the 1st defendant has mortgaged the suit property to the 2nd defendant by way of a registered mortgage deed dated 12.05.2014, which was admitted by the 3rd defendant. Hence, the plaintiffs have filed the suit in O.S.No.12 of 2015.

(b) The case of the 1st defendant (1st respondent in A.S(MD)No.221 of 2021 and respondent in A.S(MD)No.222 of 2021.)

The plaintiffs have filed the suit only as an afterthought after filing of the suit by this defendant in O.S.No.399 of 2014. The averments regarding the misunderstanding between the 1st plaintiff and her husband, and taking advantage of the same, this 1st defendant's father, Jagadeesan, staged to get the property by way of settlement deed and other averments are all denied as false. In fact, the 1st plaintiff, voluntarily of her own wishes and out of love and affection for this defendant and considering the family support extended by this defendant's father, executed the registered settlement deed dated 11.01.2010 in favour of this defendant. There is no condition attached to the settlement and the settlement deed is unconditional. Similarly, the 1st plaintiff has not reserved any right of cancellation in the contents of the settlement

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deed. The 1st plaintiff handed over the original sale deed and possession of the suit property to this defendant. This defendant has also accepted the same and became the absolute owner. The settlement deed dated 11.01.2010 was acted upon. Hence, the plaintiffs have no right or interest over the suit property after execution of the registered settlement deed. The 2nd plaintiff is the daughter of the 1st plaintiff. The 2nd plaintiff and her husband forced the 1st plaintiff to execute the cancellation deed dated 13.12.2013 cancelling the settlement deed dated 11.01.2010 and, in turn, executed the settlement deed dated 13.12.2013 in favour of the 2nd plaintiff. Since the 1st plaintiff has no title or interest over the suit property after execution of the settlement deed, she could not execute any further settlement deed in respect of the same in favour of anybody. The recitals of the cancellation deed itself would show that the cancellation deed is not valid. The 1st defendant, being the absolute owner, has mortgaged the suit property to the 2nd defendant under a registered mortgage deed dated 12.05.2014. Hence, the 1st defendant has filed the suit in O.S.No.399 of 2014 to declare that the cancellation of the settlement deed executed by the 1st plaintiff dated 13.12.2013 under Document No.4379/2013 and the subsequent settlement deed under Document No.4381/2013 are null and void. Hence, the suit is liable to be dismissed.

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6.The suit in O.S.No.399 of 2014 filed by the 1st defendant has been transferred to the IV Additional District Court, Madurai as per order dated 10.11.2016 passed in Tr.O.P.No.22 of 2016 on the file of the Principal District Court, Madurai and renumbered as O.S.No.224 of 2017. The pleadings of the plaint and written statement in O.S.No.224 of 2017 are one and the same as stated in the suit O.S.No.12 of 2015.

7. The trial Court framed the following issues upon the pleadings of both parties.

In O.S.No.12 of 2015

1) Whether the plaintiff No.1 has executed the settlement deed dated 11.01.2010 in favour of the 1st defendant due to the undue influence of the 1st defendant's father over the 1st plaintiff?

2) Whether the settlement deed dated 11.01.2010 in favour of the 1st defendant is sham and nominal, null and void?

3) Whether the cancellation of the settlement deed dated 11.01.2010 by deed dated 13.12.2013 and execution of settlement deed dated 13.12.2013 by the 1st plaintiff in favour of the 2nd plaintiff are valid?

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4) Who is in actual possession of the suit schedule property?

5) Whether the mortgage deed dated 12.05.2014 executed by the 1st defendant in favour of the 2nd defendant is valid?

6) What other reliefs are the plaintiffs entitled to?

In O.S.No.224 of 2017

1) Whether the plaintiff is entitled to get the relief of declaration as prayed for?

2) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

3) To what other relief the parties are entitled to?

8. Since the issues to be decided in both suits are one and the same, the trial Court has conducted a joint trial. The evidences were taken in O.S.No.12 of 2015 as per its parties rank, which is deemed to be taken in O.S.No.224 of 2017.

9. During trial, on the plaintiffs' side, P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.15 were marked. On the defendants' side, the 1st defendant was examined as D.W.1 and Ex.B.1 to Ex.B.7 were marked.

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10. After hearing both sides, on appreciation of evidences and considering the submissions made on behalf of the parties, the trial Court has held that the settlement deed dated 11.01.2010 executed by the 1st plaintiff in favour of the 1st defendant is not under undue influence of 1st defendant's father and it is proved and acted upon, thereby dismissed the suit in O.S.No.12 of 2015 and decreed the suit in O.S.No.224 of 2017 by its common judgment and decree dated 07.07.2021.

11. Aggrieved by the common judgment and decree of the trial Court dated 07.07.2021, the plaintiffs in O.S.No.12 of 2015 have preferred these appeals.

12. Both parties have made lengthy arguments in respect of their respective cases along with catena of citations.

13. The learned counsel for the appellants/plaintiffs has submitted that the 1st plaintiff is the owner of the suit property measuring 27 cents situated in main city as per Ex.A.1 sale deed. As there was domestic dispute between the

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1st plaintiff and her husband regarding property, the 1st plaintiff's cousin brother (paternal uncle's son) Jagadeesan, being influenced man, used to pacify them and advised her to execute a document to his son Vivek, the 1st defendant herein and it would be revoked after family problems solved. Hence, the 1st plaintiff executed a sham and nominal settlement deed dated 11.01.2010 in favour of the 1st defendant. The said settlement deed has not come to effect and possession of the suit property was not handed over to the 1st defendant. Mutation in revenue records was also not effected. After that, the said Jagadeesan died on 20.12.2012. Upon request, the 1st defendant did not come forward to revoke the deed, so the 1st plaintiff cancelled the settlement deed dated 11.01.2010 by way of cancellation deed dated 13.12.2013 and on the same day executed a settlement deed in favour of her daughter. The 1st defendant has stated in his written statement only an evasive denial. He purposely created a mortgage deed in favour of the 2nd defendant, who is none other than his sister's husband. The 1st defendant stated in his written statement that there is no condition for revocation mentioned in the settlement deed, so the settlement deed cannot be revoked, and also there is no valid reason for cancellation of the same. The trial Court held that both parties' families are of seminal financial standing and social status and the settlement

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deed dated 11.01.2010 is an absolute and unconditional one, so subsequent cancellation is unilateral one, decided the case against the plaintiffs.

13.1 The learned counsel for the appellants/plaintiffs further argued that the trial Court has shifted the burden of proof upon the plaintiffs by framing an issue as to whether the plaintiffs proved the settlement deed to be sham/nominal. The issue itself is wrong without considering the pleadings of the plaintiffs. The plaintiffs and the 1st defendant's father are close relatives, so believing the words of Jagadeesan, the 1st plaintiff has not read the document on faith. She also gave the same in her evidence. It is admitted by the 1st defendant that his father has done much help to the 1st plaintiff in family dispute matters. There is undue influence. So, the 1st defendant has to prove the absence of undue influence as per Section 16 of the Contract Act read with Section 111 of the Indian Evidence Act. But he has not established the same. Hence, the burden is on the 1st defendant, who is the beneficiary, to prove the absence of undue influence, and the counsel relied on the ruling of the Hon'ble Supreme Court reported in **2001 (2) SCC 652** in the case of **Makhan Lal Bangal /v/ Manas Bhunia & Ors.**

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13.2 The learned counsel for the appellants/plaintiffs further submitted that the trial Court has failed to consider the presumption of the natural course of events and human conduct. The 1st plaintiff has a son and two daughters, she had a dispute with her husband only, so she had no thought of settling the suit property to the 1st defendant, who is the son of her cousin brother. The 1st defendant has also admitted that he had no knowledge of the execution and payment of the amount towards execution of the document, and there was no mutation, which confirms the suspicion regarding his evidence. The contents mentioned in the settlement deed state that the 1st defendant's father has monetarily assisted the 1st plaintiff, which is not correct one. Both families are financially well off families and it was observed by the trial Court also. The 1st defendant has not stated any special reason for the execution of the settlement deed in his favour by the 1st plaintiff, ignoring her own children. The 1st defendant has not examined any third party witness to prove his case, and the witnesses to the settlement deed have also died. The 1st plaintiff only knows about the settlement deed. So, her evidence is admissible. The trial Court ought to presume that an ordinary and natural course of conduct of a human being is that a mother would not settle valuable property on a remote cousin's son by leaving her own living children.

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Hence, the trial Court ought to presume that the settlement deed is involuntary and sham in character as per Section 114 of the Indian Evidence Act. The trial Court relied on the bare fact that the 1st plaintiff signed in English, so she is a literate person and she knew about the settlement deed, which is incorrect. The 1st plaintiff pleaded compulsion and explained the secrecy as to why she signed, and the same does not reflect her true intention at that time. There was a family dispute between the 1st plaintiff and her husband, which was utilized by the 1st defendant's father to play undue influence for getting the property. The 1st defendant has to prove the document is *bona fide*, and the burden lies on him only as he first asserts a fact and relies on a transaction, so he has to establish the genuineness of the document. The learned counsel has relied on the rulings reported in **(2011) 12 SCC 220** in the case of **Rangammal /v/ Kuppuswami and Anr. and 2000 (3) SCC 312** in the case of **Subhra Mukherjee and Anr. /v/ Bharat Coking Coal Ltd. And Ors.**

13.3 The learned counsel for the appellants/plaintiffs further submitted that the 1st defendant claims title over the suit property only upon a settlement deed. The 1st defendant admits that the 1st plaintiff has children and that he is the son of her cousin brother. So, it is an established fiduciary relationship

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between the parties. Moreover, this fact is strengthened by P.W.1 and D.W.1 in their evidence. P.W.1 has stated in her proof affidavit in paragraph No.19, as her evidence as follows:

> "வா.சா.ஆ.3 ஆவணம் 1ம் பிரதிவாதிக்கு முழுமையான உரிமை கொடுக்க வேண்டுமென்ற எண்ணத்தில் நான் எழுதி வைக்கவில்லை. வா.சா.ஆ.3 காலத்தில் நான் 1ம் பிரதிவாதியின் வீட்டில் அவருடைய தகப்பனாரின் பாதுகாப்பிலும் ஆதிக்கத்திலும் இருந்ததால் அவருடைய ஆலோசானையின் பேரில் என் கணவருடைய அச்சுறுத்தல்களிலிருந்து விடுபடுவதற்காக நம்பிக்கையின் பேரில் எழுதி வைக்கப்பட்ட ஆவணமாகும். மேற்படி ஆவணம் ஜெகதீசன் அவர்களால் முழுக்க முழுக்க தயாரிக்கப்பட்டதாகும்....."

The 1st defendant as D.W.1, has stated his chief in paragraph Nos.5 and 10 as follows:

> "5. 1ம் வாதியாகிய என்னுடைய அத்தை வழக்கிடைச் சொத்தை என் மீது கொண்ட அன்பினாலும் அபிமானத்தாலும் என்னுடைய தகப்பனார் என் அத்தைக்கும் அவர் குடும்பத்திற்கும் செய்த உதவி ஒத்தாசையினாலும் எனக்கு 1ம் வாதியே தாமாகவே முன் வந்து 11.01.2010ம் தேதிய பதிவு தானசெட்டில்மென்ட் சாசனப் பிரகாரம் பாத்தியப்படுத்தி உள்ளார்.....

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10. .....எனக்கு வழக்குச் சொத்தை உரிமைப்படுத்த வேண்டுமென்ற நோக்கத்தில் அவராகவே விருப்பப்பட்டு அதற்கு உண்டான பதிவுசெலவை செய்து என்னுடைய பெயரில் எழுதி வைத்தார்....”

As the 1st defendant’s father reposed trust on her during marital disputes between her and her husband, the 1st defendant’s father drafted the deed, and upon belief, she signed. Though it is stated that only on the love and affection of the 1st defendant shown to the 1st plaintiff she executed the settlement deed, the 1st defendant has not proved such love and affection, he has not proved the necessity to execute the deed in his favour and also has not paid any consideration to her. He also admitted in his evidence that he had no knowledge about the settlement transaction. Moreover, the 1st defendant’s father kept the registered document secret, which is admitted by D.W.1 in his evidence. So, the trial Court has not considered the fiduciary relationship, but wrongly laid a heavy burden on the 1st plaintiff to prove the deed as a sham. If the trial Court had considered the facts in the light of the provisions of Section 16 of the Contract Act read with Section 111 of the Indian Evidence Act, the burden would be different. According to Section 16(2) & (3) of the Contract Act, where a person in a fiduciary relationship or in a position to

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dominate the will of another enters into a transaction that appears unconscionable, the burden of proving that the transaction was not induced by undue influence lies on the beneficiary, i.e., the 1st defendant herein. The 1st defendant failed to discharge his burden. The trial Court's approach of casting the burden on the 1st plaintiff is contrary to the settled law. For this argument, the learned counsel has relied on the following rulings.

(i) 1982 (1) SCC 4 Hon'ble Apex Court rendered in Gangabai /v/ Chhabubai case.

(ii) AIR 1967 SC 878 in the case of Subhas Chandra Das Mushib /v/ Ganga Prasad Das Mushib.

(iii) 1970 (3) SCC 159 in the case of Lakshmiamma and Anr. /v/ Talengala Narayana Bhatta and Anr.

(iv) 2004 (9) SCC 468 = AIR 2003 SC 4351 in the case of Krishna Mohan Kul Alias Nani Charan Kul and Anr. /v/ Pratima Maity and Ors.

(v) 2008 (2) CTC 433 in the case of Suguna and Anr. /v/ Vinodh G.Nehemiah and Ors.

13.4 The learned counsel for the appellants/plaintiffs has further put forth the argument that there was no mutation of revenue records in the name of the 1st defendant after execution of Ex.A.4 settlement deed. The 1st plaintiff

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is in continuous possession of the suit property and produced kist receipts to show the same. The 1st defendant as D.W.1 has also admitted this fact in his evidence. So, the plaintiff has established that the Ex.A.4 settlement deed did not come into effect and was created only as a sham and nominal. For this argument, the learned counsel relied on the ruling reported in **(1953) 2 SCC 21** in the case of **Yerraguntala Ramireddi vs. Ratchepalli Atchamma and Anr.**

13.5 The learned counsel further contended that there are no family members of the 1st plaintiff who signed the Ex.A.4 = Ex.B.2 settlement deed. It is the specific case of the 1st plaintiff that she executed the settlement under compulsion and without knowledge of her children and other family members, and also no one from her family accompanied her for execution of the said deed. This fact was also categorically admitted by D.W.1 in his evidence as **"மேற்படி பி.வா.சா.2 ஆன ஆவணத்தில் செல்லம்மாளின் குடும்பத்தார் யாரும் சாட்சி கையொப்பம் செய்யவில்லை...."**. This factum was not even questioned in the cross examination of the plaintiffs. P.W.1 and P.W.2 deposed about the dispute between the 1st plaintiff and her husband. So, failure to cross examine on a specific part of the chief examination means that part of the evidence remains unchallenged and so the same ought to have been accepted, as per the

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provisions of Section 138 of the Indian Evidence Act. The learned counsel has relied on the following rulings for this argument.

(i) (2013) 4 SCC 97 = AIR 2013 SC 1204 in the case of Laxmibai (dead) through LRs. and Anr. /v/ Bhagwantbuva (dead) through LRs. and Anr.

(ii) 1998 (3) SCC 561 in the case of State of U.P /v/ Nahar Singh (Dead) and Others.

(iii) (2001) 7 SCC 69 in the case of Rajinder Pershad (Dead) by LRs. /v/ Darshana Devi.

13.6 The learned counsel has further submitted that the defendants' side has raised the point of limitation in this case. This point is raised in this appeal only. There is no such allegation in the written statement or evidence. As per the article, the 1st plaintiff has cancelled the settlement deed within three years from her knowledge that after the death of Jagadeesan on 20.12.2012, the 1st defendant intended to grab the property and refused to cancel it as already agreed. So, there is no question of limitation in this case. Moreover, without pleadings, the question of limitation cannot be entertained as it is a mixed question of law and fact. The learned counsel relied on the following rulings:

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(i) 2026 (2) MWN (Civil) 257 in the case of Adhi Narayanan (Deceased) & Ors /v/ T.Duraisamy (Died) and Ors.

(ii) 2001 (7) SCC 549 in the case of Pallav Sheth /v/ Custodian and Ors.

(iii) 1996 (7) SCC 767 in the case of MD.Noorul Hoda /v/ Bibi Raifunnisa and Ors.

(iv) 2006 (5) SCC 353 in the case of Prem Singh and Ors. /v/ Birbal and Ors.

13.7 The learned counsel has further submitted that the 1st plaintiff has not given her property as gift, she has executed a settlement deed. The gift has no consideration, but for settlement, there should be consideration. The 1st defendant, as D.W.1, has admitted that the 1st plaintiff executed the settlement deed as his father helped her in many ways. So, consideration was there. Hence, unless the 1st defendant establishes the fact of love and affection, the settlement deed would be invalid. The recitals in the cancellation deed cannot be taken into consideration as a determining factor. The 1st defendant has also contended in his written statement only by way of an evasive reply, and he has not specifically denied the pleadings of the plaint as required under Order VIII Rule 3, 4 and 5 of CPC. The trial Court has not considered all these aspects. Hence, the finding of the trial Court is not sustainable in law and it is

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prayed for allowing the appeal. In support of these arguments, the learned counsel relied on the following rulings:

(i) (2025) 7 SCC 502 in the case of N.P.Saseendran /v/ N.P.Ponnamma & Ors.

(ii) AIR 1964 SC 538 in the case of Badat and Co., /v/ East India Trading Co.

(iii) (2016) 12 SCC 288 in the case of Muddasani Venkata Narsaiah (Dead) Through LRs. /v/ Muddasani Sarojana

(iv) 2024 (4) SCC 247 in the case of Thangam and Anr. /v/ Navamani Ammal.

14. The learned counsel for the 1st respondent/1st defendant submitted that the 1st plaintiff is the executant of the settlement deed dated 11.01.2010, so she is a party to the document and had full knowledge of the document. She herself presented the document for registration and she signed the document with knowledge. She admitted that no one prevented her from reading the document during registration. Hence, the limitation starts from 11.01.2010. Though there is no specific pleading regarding limitation, the same can be raised in this appeal as it is a pure question of law, as the limitation is covered under Article 59 of the Limitation Act. The suit filed by the plaintiffs is for declaring the settlement as null and void. The 1st plaintiff has to seek

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cancellation of the document as per the provisions of Article 59 of the Limitation Act. But the plaintiffs sought a declaration that the settlement is null and void, hence, Article 58 of the Limitation Act is applicable. Hence, the suit has to be filed within three years from 11.01.2010. But the plaintiffs pleaded that they came to know of it upon obtaining an encumbrance certificate, which is imaginary and unbelievable, because the 1st plaintiff herself handed over the settlement deed on 11.01.2010 before the Sub Registrar for registration and she, being the executant party, had full knowledge of the deed. The plaintiffs in para 8 of the plaint specifically pleaded that "1ம் வாதி உடன்பட்டு ஒப்புக்கொண்டார்..." Admittedly, the father of this defendant, namely Jagadeesan, died in 2012. The 1st plaintiff has full knowledge of the settlement deed. If she really executed the deed as per her stand, she had to take steps immediately on the death of Jagadeesan, but the 1st plaintiff failed to do so. The suit was filed on 12.12.2014 after a lapse of 4 years, 11 months and one day. Therefore, the 1st plaintiff has not filed the suit within three years, and hence the suit is obviously barred by limitation. Even, the cancellation deed was executed on 13.12.2013 after the lapse of 3 years 11 months and 2 days. So, the suit filed by the plaintiffs is clearly time barred. For invoking Section 3 of the Limitation Act, no pleading or evidence is necessary. The learned

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counsel relied on the following rulings:

(i) 2026 (2) MWN (Civil) 257 in the case of Adhi Narayanan (Deceased) and Ors. /v/ T.Duraisamy (Died).

(ii) (2000) 7 Supreme Court Cases 702 in the case of Dilboo (Dead) by LRs. and Ors. /v/ Dhanraji (Dead) and Ors.

(iii) 2025 SAR Online (SC) 406 in the case of R.Nagaraj (Dead) Through LRs and Anr. /v/ Rajmani and Ors.

14.1 The learned counsel for the 1st respondent/1st defendant further submitted that the plaintiffs argued that the trial court shifted the burden of proof on the plaintiffs instead of on the defendant. If the plaintiffs feel that the issues were wrongly framed, they can very well file an application to recast the issues. Law regarding framing of issues cannot be disputed. As per Order 14 Rule 5 of the CPC, the Court is empowered to amend or strike out the issues. Hence, the plaintiffs cannot put up an argument regarding the shift of the burden of proof on wrong issues framed by the trial Court.

14.2 The learned counsel for the 1st respondent/1st defendant further argued that the plaintiffs put forth argument that the 1st plaintiff has three

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children and it is to be presumed that she would not think of settling her property in favour of her cousin brother's son and the 1st respondent has not stated any special reason for execution of settlement deed in his favour. The provisions of the Transfer of Property Act deal with transfer of property in favour of third parties. Sections 122 and 123 of the Transfer of Property Act deal with the gift and the effect of a gift. The gift deed must be registered and attested by two witnesses. Therefore, the donee has no role in execution of a gift deed by the donor. Hence, the argument of the plaintiffs that the 1st respondent's pleading of 'no knowledge or special reason for execution of settlement deed' is unsustainable in law and hence, the rulings reported in **2011 (12) 220 and 2000 (3) SCC 312** relied on by the plaintiffs are not relevant to the facts of this case.

14.3 The learned counsel for the 1st respondent/1st defendant further submitted that the plaintiffs raised the issue of undue influence/fiduciary relationship and the burden of proof when the undue influence/fiduciary relationship is pleaded. Mere influence is quite natural between two persons for so many reasons. But, the plaintiffs have to prove the ingredients: (a) one person must be in a position to dominate the will of the other; (b) the other

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party must be in a weaker position making it possible to be unduly influenced by the dominating person; (c) the person in dominating position shall misuse his position; and (d) the dominating person must obtain an unfair advantage. The mere existence of a relationship and mere advice is not enough to substantiate undue influence. The 1st plaintiff is not in a weaker position either financially and status wise as per their case and evidence. She is a rich lady and well educated. So she cannot plead that her cousin brother Jagadeesan has unduly influenced her to execute the settlement deed in favour of the 1st defendant. The plaintiffs stated in their plaint that the 1st defendant is a minor, which is not correct. According to evidence of P.W.1, the 1st defendant was a major at the time of execution of the settlement deed. As per document, the plaintiffs gave different reasons. In Ex.A.4/Ex.B.2, the settlement deed dated 11.01.2010 the recitals is that the settlement deed is executed out of her own will and volition and in consideration of help and support made in her favour by Jagadeesan. But in the cancellation deed dated 13.12.2013 under Ex.A.3/Ex.B.3 the 1st plaintiff stated that only because of a condition stipulated in settlement deed that the 1st defendant has to take care of her and maintain her, since the 1st defendant failed to maintain her she executed the cancellation of settlement deed. In fact, no such condition is mentioned in

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Ex.A.4 settlement deed. At one place, the 1st plaintiff stated in her evidence that since the mother of the 1st defendant did not give respect to her, she cancelled the settlement deed, at another place that the 1st defendant's mother asked her to cancel the deed, and in another place, as she needs funds or necessity, she cancelled the settlement deed. So the 1st plaintiff took inconsistent pleas at various places. Hence, the plaintiffs failed to substantiate the plea of undue influence for execution of the settlement deed.

14.4 The learned counsel for the 1st respondent/1st defendant further submitted that the plaintiffs argued that there is no mutation or transfer of tax assessment and hence, the settlement deed did not come into effect. As per Section 122 of the Transfer of Property Act, the handing over of the original settlement deed is enough for acceptance of the same and for it to be acted upon. Handing over of possession is not a sine qua non and non-mutation of revenue records and payment of tax are not essential for a valid gift. The production of the original settlement deed amounts to showing that the settlement deed is acted upon. In this case, the 1st defendant produced the original settlement deed on his side, and the deed is acted upon. The learned counsel has relied on the decision of this Court reported in **2021 (5) Law**

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14.5 The learned counsel for the 1st respondent submitted that the plaintiff took another stand that she executed the settlement under compulsion, that too without the knowledge of her children and family members and that no one accompanied her for execution and registration, for these aspects, she was not cross examined. The said assertions are not pleaded in the plaint, and therefore she cannot canvass for cross examination on those aspects. This kind of submission amounts to misreading and misleading regarding their own deposition to sustain unsustainable submissions. The learned counsel for the 1st respondent relied on Section 138 of the Evidence Act, and hence the citations of the appellants/plaintiffs reported in **AIR 2013 SC 1204 and 1998 (3) SCC 561 and 2001(7) SCC 69** do not apply to the facts of this case.

14.6 The learned counsel for the 1st respondent/1st defendant has submitted that the appellants/plaintiffs repeatedly spoke about fiduciary relationship and also the difference between a settlement deed and a gift by relying on citation **2025 (7) SCC 502**. But, as per the provisions of the Transfer of Property Act, it does not deal with transfer of property by

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settlement deed, which is defined in the Stamp Act in Section 2 (24) for the purpose of distributing property among the settlors or those for whom it is intended to be provided. So, a transaction made voluntarily without consideration, titled as a settlement deed, and the Stamp Act provides a concession in the payment of stamp duty. There is no separate application of law to decide the validity of a settlement deed other than the gift deed. The provisions of Chapter VII of the Transfer of Property Act are squarely applicable to the settlement deed also.

14.7 The learned counsel for the 1st respondent/1st defendant further contends that the evidence of D.W.1 is natural and reliable. When the execution of the Ex.A.4/Ex.B.2 settlement is admitted by the 1st plaintiff, the contentions and evidence of D.W.1 stating no knowledge, etc., cannot be taken as an evasive reply. Hence, the arguments in this aspect put forth by the appellants are untenable and unsustainable. The appellants' side relied on as many as totally 21 judgments, which do not apply to the facts and circumstances of this case. But, the judgments relied on by the 1st respondent/1st defendant in respect of the limitation point, establishment of undue influence, acted upon of settlement deed, and testimony of evidence of

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D.W.1 are all applicable to the facts of this case. The trial Court has elaborately discussed all these points and rightly decided the suits. Therefore, there is no necessity arisen to set aside the findings of the trial Court, and so, the appeals may be dismissed.

15. The points for consideration in this appeal are:

1.Whether the Ex.A.4/Ex.B.2 registered settlement deed dated 11.01.2010 was executed by the 1st plaintiff in favour of the 1st defendant under undue influence and whether it is a sham and nominal one, which was not acted upon?

2. Whether the Ex.A.3/Ex.B.3 cancellation of the settlement deed dated 13.12.2013 executed by the 1st plaintiff is unilateral one and valid in law? and based on that, whether the Ex.A.2/Ex.B.4 settlement deed executed by the 1st plaintiff in favour of the 2nd plaintiff is valid in law?

3. Whether the reliefs sought by the plaintiffs are barred by limitation?

4. Whether the common judgment and decree of the trial court are not sustainable in law?

5.Whether the appeals are to be allowed?

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16. Point Nos.1 to 5:

The counsel for both sides have elaborately argued at length in respect of their respective cases, along with a catena of rulings of this Court, other High Courts and of the Hon'ble Supreme Court, mainly upon fiduciary relationship and touching upon the registered Ex.A.4/Ex.B.2 settlement deed. The learned counsel for the 1st respondent has filed a memo of proposed points for determination in this appeal and submitted that the point No.4 is to be mainly decided. The point No.4 is "When the 1st plaintiff is the executant of the settlement deed dated 11.01.2010, whether the suit to declare the said settlement deed executed by her is sham and nominal, null and void and invalid is barred by time?" If this point is decided, all other issues will stand answered and there is no dispute in it.

17. On careful consideration of the arguments of both side and both side evidence, along with material records, it is clear that the 1st plaintiff is the absolute and exclusive owner of the suit property by virtue of Ex.A.1 = Ex.B.1 sale deed dated 16.10.1980 and that she has executed a registered settlement deed under Ex.A.4 = Ex.B.2 settlement deed in favour of the 1st defendant. The plaintiffs' case is that when there was a family dispute and

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misunderstanding between the 1st plaintiff and her husband, the 1st defendant's father, Jagadeesan, being the cousin brother of the 1st plaintiff, assisted her, and she executed the settlement deed as per the advice of Jagadeesan in order to save the property from being grabbed by her husband and that after the family problems were solved, the settlement deed was to be revoked. It is the specific case of the 1st defendant that the 1st plaintiff, being the exclusive owner of the suit property, has executed the settlement deed dated 11.01.2010 in his favour voluntarily and on her own volition and the settlement is unconditional, and so, it cannot be revoked or cancelled. The plaintiffs pleaded that the settlement deed dated 11.01.2010 was executed under undue influence and is therefore sham and nominal, and that the 1st plaintiff by settling it on the 1st defendant, her cousin brother's son, ignored her biological children. So, the plaintiffs submit that the 1st defendant must prove the absence of undue influence. It is not correct one. Because it is a settled principle that the beneficiary of a registered settlement deed need not automatically prove the absence of undue influence, but the initial burden rests on the person alleging undue influence. The burden of proof shifts to the 1st defendant, who is the beneficiary under the settlement deed, if a fiduciary relationship, domination of Will, or undue influence is established, as rightly

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argued by the learned counsel for the 1st respondent/1st defendant. However, there is no dispute regarding the relationship between the parties, and the fact remains that Ex.A.4/Ex.B.2 settlement deed is a registered one. There is a rival dispute only regarding the settlement deed. It was not disputed.

18. At this juncture, the case of the 1st respondent/1st defendant is that the execution of settlement deed is admitted by the 1st plaintiff, if it is so, the settlement deed being a registered one is proved under proviso of Section 68 of the Indian Evidence Act. The material records of this case reveal that the disputed document is a registered one and therefore, as guided by the settled legal principle, that a document is presumed to be genuine if the same is registered, as held by the Hon'ble Supreme Court in ***Prem Singh and Ors. v. Birbal and Ors.*** The relevant portion of the said decision reads as below:

> *"27.There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption. "*
>
> (emphasis supplied)

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In view thereof, in the present case, the initial onus was on the plaintiffs, who challenged the registered document on the ground that it was executed under undue influence. The plaintiffs have to prove the undue influence after making specific pleadings under Order VI Rule 4 of CPC. As rightly argued by the learned counsel for the 1st respondent/1st defendant, the plaintiffs have to prove the following ingredients to establish undue influence.

> *"(a) one person must be in a position to dominate the will of the other; (b) the other party must be in a weaker position to be unduly influenced by the dominating person; (c) the person in the dominating position shall misuse his position and (d) the dominating person must obtain an unfair advantage."*

19. From perusal of the material records and evidence shows that both families are financially sound and have a number of properties. The 1st plaintiff admitted that her cousin brother, Jagadeesan and his family members assisted her while she was facing family disputes with her husband. The plaintiffs have not pleaded that her cousin brother, namely the 1st defendant's father, Jagadeesan, dominated her at the time of the dispute and attempted to grab her property, because her cousin brother is not financially

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weak, and the 1st plaintiff is also not weak in her family status. P.W.1 in her evidence admitted that **"ஜெகதீசன் எந்த அளவுக்கு வசதியானவரோ அதற்கு இணையான வசதி எனக்கும் என் தகப்பனார் குடும்பத்திற்கும் என் கணவர் குடும்பத்திற்கும் உண்டு என்றால் சரிதான்.....எனக்கும் என் கணவருக்கும் இடையில் இருந்த பிரச்சனையை ஜெகதீசன் தீர்த்து வைப்பார்..... நான் என் அண்ணன் ஜெகதீசன் பெயரில்தான் பத்திரத்தை பதிவு செய்து கொடுக்க விரும்பினேன்.....ஜெகதீசன் தான் செட்டில்மென்ட் பத்தரத்தை மோசடியாக அவர் மகன் பெயரில் பதிந்து கொண்டார் என்று காவல் நிலையத்தில் புகார் எதுவும் நான் கொடுக்கவில்லை....."**. So, it is clear that she has not stated that her cousin brother Jagadeesan caused the execution of the settlement deed using his influence, whereas it is clear that the 1st plaintiff has the intention to execute the deed in favour of Jagadeesan.

20. The Hon'ble Supreme Court has distinguished between undue influence and influence in **Subhas Chandra Das Mushib** case reported in **AIR 1967 SUPREME COURT 878** which extracted as follows:

> *"It must also be noted that merely because the parties were nearly related to each other no presumption of undue influene can arise. As was pointed out by the Judicial Committee of the Privy Council in Poosathurai v. Kappanna*

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Cheittiar and others(2):-

> *It is a mistake (of which there are a good many traces in these proceedings) to treat undue influence as having been established by a proof of the relations of the parties having been such that the one naturally relied upon the other for advice, and the other was in a position to dominate the will of the first in giving it. Up to that point "influence" alone has been made out. Such influence may be used wisely, judiciously and helpfully. But whether by the law of India or the law of England, more than mere influence must be proved so as to render influence, in the language of the law, "undue". "*

21. It was further observed that there was no presumption of imposition merely because a donor was old and weak. Mere close relation was also insufficient to presume undue influence, observing as follows:

> *"Before, however, a court is called upon to examine whether undue influence was exercised or not, it must scrutinise the pleadings to find out that such a case has been made out and that full particulars of undue influence have been given as in the case of fraud. See Order 6, Rule 4 of the Code of Civil Procedure.*

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This aspect of the pleading was also given great stress in the case of Ladli Prasad Jaiswal(1) above referred to. In that case it was observed (at p. 295):

"A vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other."

22. In this case, a careful perusal of the plaint shows that the plaintiffs have not specifically pleaded about the undue influence made by the said Jagadeesan. The plaintiffs must specifically plead with full particulars, the undue influence of Jagadeesan. A mere or vague plea will not be sufficient to prove the undue influence. A perusal of the settlement under Ex.A.4 = Ex.B.2 clearly mentions as

"இந்நிலையில் உன் மேல் எனக்கு இருக்கிற அன்பினாலும் பாசத்தினாலும் உன் எதிர்கால நலன் பொருட்டு உனக்கு ஒரு நல்லவித ஏற்பாடு செய்ய வேண்டுமெனக் கருதி எனக்கு சர்வசுதந்திர பாத்தியப்பட்ட அடியில் காணும் சொத்து முழுவதையும் இதன்முலம் உனக்கு நான் தான செட்டில்மென்ட்டாக கொடுத்து இந்த தான

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செட்டில்மென்ட் பத்திரம் எழுதிக் கொடுத்திருக்கிறேன். இந்த தான செட்டில்மென்ட் பத்திரத்தை இனிமேல் நான் ரத்து செய்யவோ வேறுவிதமாய மாற்றி எழுதி வைக்கவோ எனக்கு எவ்வித அதிகாரம் கிடையாதென்றும் அவ்வாறு ரத்து செய்தாலோ, மாற்றி அமைத்தாலோ அது சட்டப்படி செல்லத்தக்கதல்ல என்றும் உறுதி கூறுகிறேன்...".

From the above recital, the settlement deed is an unconditional one and there is no undue influence mentioned therein. From the evidence of P.W.1, it is also clear that the 1st plaintiff has not stated any kind of undue influence made by the said Jagadeesan. So, the plaintiffs have not established the undue influence as pleaded by them, as rightly held by the trial Court.

23. The next point is whether the 1st plaintiff has the right to cancel the settlement deed unilaterally. The learned Senior Judge of the Principal Seat of this Court observed and held regarding cancellation of settlement deed in the judgment delivered in **S.A.No.1072 of 2006 on 03.03.2015** and the same is extracted hereunder.

> *9. Assailing the cancellation deed marked as Exhibit B3, the counsel for the plaintiffs has relied upon the following judgments:*

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(i) In the judgment reported in 2004 (3) CTC 9 (Govindaraju Vs. Rathinammal), the Division Bench of this court has held as follows:

"25. Applying the abovesaid principles of law dealt with in the decisions cited above, the averment in the plaint cannot be taken as denial of execution of the document or attestation therein. Only two facts have been set out in the written statement, namely, (1) the said document is involuntary document which was extracted from Murugesh by the 2nd defendant; (2) the said document was executed in result of threat, intimidation, coercion and undue influence. Similar defence had been construed in the abovesaid decisions and found that the similar averment taken cannot be construed as "specific denial" so as to prevent the 2nd defendant to rely on Ex.B1 on the ground that she did not examine any one of the attestors. As stated already and also as found by the learned Judge, the execution of Ex.B1 by the 2nd defendants's father was proved otherwise as the executor had admitted the execution of Ex.B1 under Ex.A2, the cancellation deed. The 2nd defendant had proved the execution of Ex.B1 through other evidence, though not examined any one of the attestors. The learned Judge also found that the execution of Ex.B1 has been proved and has been acted upon. So the submission of the learned counsel

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for the appellants that the 2nd defendant cannot rely on Ex.B1 claiming right in the suit property and to resist the plaintiff's claim for specific performance cannot be countenanced. Since the suit property has been settled in favour of the 2nd defendant, the vendor has no right to cancel the same under Ex.A2 and so the said cancellation deed cannot be put against the 2nd defendant and consequently the 1st appellant/plaintiff did not derive any right under Ex.A6 agreement which is sought to be enforced in the suit. The learned Judge also safeguarded the interest of the 1st appellant/plaintiff to recover the amount paid to his vendor.

(ii) In the Judgment reported in 2009 (5) CTC 558 (S.Ganesan Vs Bharathirajan) this court has held as follows:

"7. I have heard the learned counsel for the appellant as well as the respondent. It is seen from the records that the settlement deed has been executed by mere appeal in favour of the vendors of the defendant under Ex.B3. The settlement deed being a registered settlement deed and inrevocable there is no power vested with the said Balu to revoke the same under Ex.A57. Therefore, the Court below has rightly held that the unilateral cancellation of the settlement deed by the said Balu is void since he did not have the title to the suit property. The Trial Court has also referred

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with the specific Clause in the settlement deed. In pursuant to the settlement deed the defendant has purchased the suit property under Ex.B5 dated 02.09.1992 which is registered sale deed. Therefore, it is clear notwithstanding the fact that the possession has not been handed over to donee under a settlement the same would not invalid the transaction. Similarly under Section 127 of the Transfer of Property Act, 1882 a minor is competent to accept a gift. As held earlier that the settlement itself makes it clear about the existence of the mortgage. It has been held in the Judgment reported in K.Balakrishnan V. K.Kamalam and others, 2004(1) CTC 146, that gift of title and ownership of property to the donee need not include actual possession and the minor is competent to accept the gift..... In fact in the judgment referred above in K.Balakrishnan V. K.Kamalam and others, 2004 (1) CTC 146, the Hon'ble Supreme Court has also held that apart from non-delivery of possession and non- exercising of any rights over the ownership of the property the fact that the donee has failed to make mutation in the records would not make the gift deed invalid. This Court feels that the said Judgment of the Supreme Court applies to the facts on hand as well. For the reason stated above, this Court finds that no interference is called for. Accordingly, the appeal is

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dismissed. Consequently, the C.M.P. is closed. No costs."

(iii). In the judgment reported in 2014 (3) CTC 113 (D.V.Loganathan V. The Sub-Registrar, Pallavaram, Chennai) this court has held as follows:

"6. In fact the registration of cancellation of the Settlement Deed is against the Public Policy as it was not open to the Sub-Registrar to register the cancellation of the Deed, when the Settlement Deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the Settlement Deed, he could have very well approached the Civil Court to set it aside, but certainly could not unilaterally cancel it, by getting the Deed of Cancellation registered with the Sub-Registrar. The Cancellation Deed and its registration, therefore, being without jurisdiction, is liable to be set aside. In fact in the above unreported judgment dated 01.03.2012 made in W.P.No.17983 of 2011 (cited supra), the learned Single Judge of this Court has held as follows:

"10. On consideration, I find that this Writ Petition deserves to succeed, as per Section 156 of Transfer of Property Act, except for the condition stipulated therein, the Gift Deed is irrevocable. It is not disputed that the none of the condition entitling

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revoking of Gift Deed exists in this case, as the Gift Deed was irrevocable and unconditional, it was not open to Respondent No.2 to register the Cancellation Deed being opposed to the public policy. The impugned order of registration, therefore, cannot be sustained in law, in view of the decision of the Hon'ble Full Bench of this Court and decision of the Hon'ble Kerala High Court in Latif Estate Line India limited v. Hadeeja Ammal. For the reasons stated above the registration of impugned deed of cancellation therefore cannot be sustained in law against public policy".

iv). In the judgment reported in 2010 (2) CTC 379 (Kamalammal Vs. Girija), this court has held as follows:

"16 (xiv).In view of the above discussion and of the law holding the field, it is held that the cancellation by means of Ex.B-7 is not valid. There is no evidence with regard to fraud, misrepresentation, undue influence or coercion repeatedly perpetrated upon Vidhuthuvalli Thayar at the time of excution of Ex.A-3 Settlement deed. The competent persons connected to Ex.A-3 were not brought before the Court to show the alleged coercion and undue influence exerted upon the executant. In the absence of specific pleadings to prove, the contention that it was obtained through such devices could not be countenanced.

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16 (xv). Since both the settlement deeds were duly accepted and it is indicated through documents that delivery of possession was also effected in favour of the first respondent, subsequent cancellation through Ex.B-7 by Vidhuthavalli Thayar is not legally valid."

v) In the judgment reported in AIR 2004 SC 1257 (K.Balakrishnan Vs. K.Kamalam& Others), the Apex Court has held as follows:

" 11.We have critically examined the contents of the gift deed. To us, it appears that the donor had very clearly transferred to the donees ownership and title in respect of her 1/8th share in properties. It was open to the donor to transfer by gift title and ownership in the property and at the same time reserve its possession and enjoyment to herself during her lifetime. There is no prohibition in law that ownership in property cannot be gifted without its possession and right of enjoyment. Under S.6 of the Transfer of Property Act " property of any kind may be transferred" except those mentioned in Cls. (a) to (i). Section 6 in relevant part reads thus:-

"6.What may be transferred._Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.- (a) .....

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(b) A mere right to re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) .....

(d) All interest in property restricted in its enjoyment to the owner personally can not be transferred by him.

(e)A mere right to sue [***] cannot be transferred.

12. Clause (d) of S.6 is not attracted on the terms of the gift deed herein because it was not a property, the enjoyment of which was restricted to the owner personally. She was absolute owner of the property gifted and it was not restricted in its enjoyment to herself. She had inherited it from her maternal father as a full owner. The High Court was, therefore, apparently wrong in coming to the conclusion that the gift deed was in effectual merely because the donor had reserved to herself the possession and enjoyment of the property gifted.

26. .. we have examined the terms of the gift deed. Non-delivery of possession of the gifted property, non exercise of any rights of ownership over it, and failure by the donee, on attaining majority. In getting his name mutated in official records are not circumstances negativing the presumption of

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acceptance by the minor during his minority or on his attaining majority."

10. From the above judgments, it is clear that the settlement deed cannot be cancelled unless either one of the elements of fraud, misrepresentation, undue influence or coercion is present. Such revocation is also possible only through a civil court....".

24. In view of the above settled position, unless the plaintiffs establish their plea of execution of the settlement under undue influence, the settlement deed cannot be cancelled, the cancellation is possible only through a civil Court. But, in this case, the 1st plaintiff unilaterally cancelled the settlement deed by way of Ex.A.3 = Ex.B.3, which is not valid in the eye of law.

25. The next contention raised by the plaintiffs is that the settlement deed did not come into effect as possession was not handed over to the 1st defendant and mutation of revenue records was not made in the name of the 1st defendant. As per the above judgment of this Court in **S.A.No.1072 of 2006**, this Court clearly held in that judgment as follows:

"In S.Ganesans case (Supra), relying upon the judgment of the Apex Court reported in 2004 (1) CTC 146 SC (K.Balakrishnan case), this court has

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held that the settlement deed would not be invalidated on the ground that possession was not handed over to the donee or because donee failed to mutate the records. The judgment is squarely applicable to the present facts of the case. In the present case, though the plaintiffs could not establish that they were in possession, the fact that the revenue record was mutated in the name of the 3rd plaintiff vide exhibit A2, would only imply that the 3rd plaintiff had acted upon the settlement deed and was in possession till at least 1994. The documents produced by the defendant are of the year 1996. The defendant has only pleaded that the settlement document is a sham document. He has not pleaded that the document was obtained by fraud, misrepresentation, undue influence or coercion. No evidence was produced to that effect. Upon perusal of the settlement deed marked as Exhibit A1, it is clear that the settlement deed was irrevocable under any circumstances, voluntary and out of abundant love and affection the defendant had on his father. However, in the cancellation deed, the defendant had claimed that he had executed the settlement without any intention to enforce it. Such a plea does not fall within the ambit of section 126 of the Transfer of

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Property Act which reads as under:

> *"126. When gift may be suspended or revoked. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall 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 valid wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want of failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."*

26. From the above, it is clear that merely because possession was not handed over and mutation of revenue records was not transferred to the name of the 1st defendant, the settlement deed cannot be held to have not come into effect. It is pertinent to note here that the original settlement deed was produced by the 1st defendant in this case. The ruling reported in **2021 (5) Law Weekly 452 in Vasanthiri case** is applicable to the present case.

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27. The appellants have submitted that the 1st respondent has raised the point of limitation in this appeal, which is not entertainable without any pleading and evidence. The learned counsel for the 1st respondent submitted that, in the absence of a pleading, the question of limitation can be raised in appeal also by quoting the judgment relied on by the appellant side itself in **2026 (2) MWN (Civil) 257** case, specifically relying on paragraph No.41(iii), which as follows:

> *"41.(iii) When the question of limitation is a pure question of law, capable of being determined on the basis of the pleadings, admitted facts or evidences before the Court, then a Court is bound under the provisions of Section 3 of the Limitation Act to raise such a question suo motu and answer the same."*

So, the question of limitation can be raised in the appeal also, and there is no restriction on answering the same as it is a pure question of law, as clearly held in the above judgment **(2026 (2) MWN (Civil) 257)**.

28. Keeping the above principle in mind, from perusal of the material records of this case shows that the 1st plaintiff is the sole executant of Ex.A.4 settlement deed, which was attested by Jagadeesan and one another.

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Admittedly, both attestors have died, and the same was also affirmed by the executant. So the executant admitted the execution of the settlement deed on 11.01.2010. The 1st plaintiff/executant is an educated person, and she is not illiterate. She is capable of transacting property as she has several immovable properties. She pleaded that it was advised by Jagadeesan that, when the problem is solved, the settlement deed would be revoked in her favour. There is no dispute that the said Jagadeesan died in 2012. She has not taken any steps to revoke the settlement deed. But unilaterally, she executed the cancellation of the settlement deed on 13.12.2013, which is after a lapse of 3 years 11 months and 2 days from the date 11.01.2010, on which date the settlement deed was executed. The suit was filed on 12.12.2014 after a lapse of 4 years 11 months, and one day for declaration that the settlement deed is null and void. As already stated supra, the settlement deed can be cancelled only through the Civil Court by the executant who made allegations of undue influence. But the 1st plaintiff unilaterally executed the cancellation of the settlement deed, that too beyond the limitation period. Therefore, as rightly argued by the learned counsel for the 1st defendant, the suit for declaration that the settlement deed is null and void has to be filed within three years from the date of execution of the settlement deed on 11.01.2010, as per Article 59 of the

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Limitation Act. The 1st plaintiff herself is the executant of the document, so she has clear knowledge of the settlement deed on 11.01.2010. She cannot claim that she was not aware of the same and she came to the knowledge of the same only after obtaining the encumbrance certificate after the death of Jagadeesan, which is not acceptable in law.

29. The next point urged by the appellant side is regarding specific denial by the 1st defendant in respect of the pleadings of the 1st plaintiff. Of course, as per the argument of the appellants/plaintiffs side, quoting the provisions of Order VIII Rule 3 & 4 of CPC, the 1st defendant has not specifically denied the plaint averments, and in such absence, the same is to be deemed an admission. But, the Hon'ble Supreme Court has clarified the said circumstances in various cases that a "deemed admission" due to faulty denial is not absolute proof, and the plaintiff has to prove his/her case on her own stand, upon discussion of Order VIII Rule 5 (1) of CPC.

Order VIII Rule 5(1) of the CPC reads thus:

> *"Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:*

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Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission."

30. This provision must be read in conjunction with Order VIII Rule 3 of CPC, which requires that the denial by the defendant be specific, and Order VIII Rule 4 of CPC, which cautions against evasive denials. A general denial or a vague statement of non-admission is insufficient to counter the plaintiff's factual assertions. By invoking the Proviso to Order VIII Rule 5(1) of CPC, the Court clarifies that the "deemed admission" is neutralized, and the Court has to decide the case based on the proved documentary evidence rather than the technical contention in the written statement. The Court has the judicial discretion to look at the entire case. The proviso to Order VIII Rule 5(1) of CPC grants the Court discretionary power to require any fact, though deemed admitted, to be proved otherwise than by such admission. This is a crucial safeguard to prevent injustice, particularly where a plaint may be collusive, fraudulent, or where the defendant, due to ignorance or other reasons, fails to file a proper denial, or where the Court itself feels that proof is necessary in the interest of justice.

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31. The **Hon'ble Supreme Court in its recent verdict in Thangam & Anr. /v/ Navamani Ammal case**, reported in **2024 INSC 164** held as follows:

> *"15. In the absence of para-wise reply to the plaint, it becomes a roving inquiry for the Court to find out as to which line in some paragraph in the plaint is either admitted or denied in the written statement filed, as there is no specific admission or denial with reference to the allegation in different paras.*
>
> *15.1 Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.*
>
> *15.2 The requirement of Order VIII Rules 3 and 5 CPC are specific admission and denial of the pleadings in the plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise. In the absence thereof, the respondent can always try to read one line from one paragraph*

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and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.

15.3 In case, the defendant/respondent wishes to take any preliminary objections, the same can be taken in a separate set of paragraphs specifically so as to enable the plaintiff/petitioner to respond to the same in the replication/rejoinder, if need be. The additional pleadings can also be raised in the written statement, if required. These facts specifically stated in a set of paragraphs will always give an opportunity to the plaintiff/petitioner to respond to the same. This in turn will enable the Court to properly comprehend the pleadings of the parties instead of digging the facts from the various paragraphs of the plaint and the written statement.

15.4 The issue regarding specific admission and denial of the pleadings was considered by this Court in Badat and Co. Bombay Vs. East India Trading Co7. While referring to Order VIII Rules 3 to 5 of the CPC it was opined that the aforesaid Rules formed an integrated Code dealing with the manner in which the pleadings are to be dealt with. Relevant parts of para '11' thereof are extracted below:

"11. Order 7 of the Code of Civil Procedure

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prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order VIII provides for the filing of a written-statement, the particulars to be contained therein and the manner of doing so; These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its noncompliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary."

15.5 The matter was further considered by this Court in Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar8 after the 1976 Amendment Act in CPC whereby the existing Rule 5 of Order VIII of the CPC was numbered as

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sub-rule (1) and three more sub-rules were added dealing with different situations where no written statement is filed. In paras 14 and 15 of the aforesaid judgment, the position of law as stated earlier was reiterated. The same are extracted below:

> *"14. What is stated in the above is, what amount to admit a fact on pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.*
>
> *15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted."*

15.6 We have made the aforesaid observations as regularly this Court is faced with the situation where there are no specific para-wise reply given in the written statement/counter affidavit filed by the defendant(s)/respondent(s). In our opinion, if the

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aforesaid correction is made, it may streamline the working.

16.For the reasons mentioned above, we do not find any merit in the present appeal. The same is, accordingly, dismissed."

32. As per the above ruling, it is clear that there should be at least a statement that the fact is not admitted, which is sufficient to deny the plaint averments as per Rule 5 of Order VIII of the CPC. The 1st defendant has made a contention in his written statement denying the pleadings of the plaintiffs. Therefore, this argument regarding specific denial is not fatal to the case of the 1st defendant.

33. As discussed above, the settlement deed dated 11.01.2010 under Ex.A.4/Ex.B.2 has not been proved by the appellants/plaintiffs to have been executed under undue influence, so it is valid in the eye of law. Consequently, the cancellation of the settlement deed dated 13.12.2013 under Ex.A3/Ex.B3 executed unilaterally by the 1st plaintiff is bad in law and void *ab initio* and also the claim of the plaintiffs is strictly barred by limitation. Therefore, the trial Court has properly appreciated the evidence and correctly decided the

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matter against the plaintiffs and so, the judgment of the trial Court is sustainable in law. Thus, the appeal suits are liable to be dismissed. The points are answered accordingly.

34. In the result, the Appeal Suits are dismissed. The common judgment and decree dated 07.07.2021 passed in O.S.Nos.12 of 2015 and 224 of 2017 on the file of the IV Additional District Court, Madurai are confirmed. No costs.

27.10.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

1.The IV Additional District Court,
Madurai

2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
A.S(MD)Nos.221 and 222 of 2021

27.10.2026

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