



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 15.10.2025

Order pronounced on : 28.11.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

A.S.No.456 of 2022

& CMP.No.16484 of 2022

Nougat Christian

... Appellant

Vs.

Jawad Hussain

... Respondent

Prayer: Appeal Suit filed under Section 96 r/w Order XLI of CPC, 1908, to set aside the decree and the judgment dated 06.06.2022 rendered in O.S.No.122 of 2013 on the file of the Principal District Judge, Puducherry.

For Appellant : Mrs.Elizabeth Ravi

For Respondent : No appearance

JUDGMENT

The defendant in O.S.No.122 of 2013 before the Principal District Judge, Puducherry, is the appellant.



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2.I have heard Mrs.Elizabeth Ravi, learned counsel for the appellant.

Despite service of notice in the appeal on the respondent, the respondent has neither chosen to appeared in person nor through counsel.

3.Pleadings:

The plaint in brief:

The plaintiff was the owner of the property bearing Door No.48, (Old No.22 and 32A) situated at Bhadar Sahib Street, Pondicherry, having purchased the same under a registered sale deed dated 30.03.1983 and also by virtue of final decree passed in I.A.No.354 of 1981 in O.S.No.184 of 1969 in a suit for partition on the file of the II Additional District Judge, Pondicherry. The plaintiff had sold the property to the defendant under the sale deed dated 29.09.2010 which was registered on 13.10.2010, for a consideration of Rs.49 lakhs, though the consideration was actually Rs.55 lakhs, as recited under an unregistered agreement dated 01.07.2010. Contending that the defendant had paid only Rs.40 lakhs and had not paid the remaining Rs.15 lakhs, the plaintiff caused a lawyer's notice, demanding



payment of the said sum of Rs.15 lakhs. As the demand was not met, the plaintiff instituted the suit for recovery of Rs.15 lakhs, together with interest at 18% per annum.

The Written statement in brief:

The defendant admits to the factum of having purchased the property of the plaintiff under the registered sale deed. The agreement of sale dated 01.07.2010 is an unregistered document, which has been superseded by the registered sale deed subsequently, executed on 29.09.2010 and registered on 13.10.2010 and therefore, the plaintiff cannot make a claim insofar as the excess amount of Rs.15 lakhs on the basis of the unregistered and superseded agreement of sale dated 01.07.2010. The various other allegations made in the plaint have also been totally denied.

4. Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

- “1. Whether the plaintiff is entitled for the amount as claimed?*
- 2. To what relief?”*



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5.Trial:

The plaintiff examined himself as P.W.1 and marked Ex.A1 to A11 and the power agent of the defendant was examined as D.W.1 and no document was exhibited on the side of the defendant.

6.The decision of the trial Court:

The trial Court, after considering the oral and documentary evidence, in the light of the pleadings, proceeded to hold that the plaintiff was entitled to the sum of Rs.15 lakhs and decreed the suit for the said sum of Rs.15 lakhs, together interest at 7.5% per annum from the date of plaint, till the date of realization.

7.Challenging the said decree, the defendant is on appeal.

8.Argument of the learned counsel for the appellant:

(a) Mrs.Elizabeth Ravi, learned counsel for the appellant would contend that the trial Court failed to see that the suit itself is based on an



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unregistered agreement of sale was not maintainable, when it stood superseded by a registered sale deed subsequently. She would further state that the trial Court also erred in discarding the evidence of D.W.1 while accepting the evidence of the power agent who alone instituted the suit on behalf of the plaintiff. She would therefore contend that same rule ought to have been applied to the plaintiff as well, if the trial Court had come to the conclusion that evidence of power agent of the defendant should not have any credence.

(b) The learned counsel for the appellant would further state that merely because the defendant subsequently sold the property under Ex.A9 and in turn, the purchaser under Ex.A9 sold the property under Ex.A10, it would not imply that the original document of titles were also handed over to the respective purchasers, especially when there is no recital in the registered sale deeds with regard to handing over the original documents in title. She would further contend that as against the registered agreement of sale dated 01.07.2010, no evidence could be adduced to contradict the terms of the registered agreement. She would therefore state that Ex.A1,



agreement of sale was clearly inadmissible in evidence in the teeth of the registered agreement in Ex.B1 dated 30.06.2010 as well as Ex.A2, sale deed dated 29.09.2010. She would therefore pray for the appeal suit being allowed.

9.I have carefully considered the submissions advanced by the learned counsel for the appellant.

10.Point for consideration:

The point for consideration that arises in this appeal suit is as follows:

i)Whether the plaintiff is entitled to fall back on the terms of an unregistered sale agreement, after the parties have proceeded to execute and register a sale deed in respect of the very same property?

11.The factum of the property belonging to the plaintiff is not in dispute. It is also not in dispute that the defendant, who is the appellant herein, has purchased the property belonging to the plaintiff under a sale deed dated 29.09.2010 which came to be registered on 13.10.2010. The



consideration that is mentioned and reflected in the sale deed is Rs.40 lakhs.

It is the case of the plaintiff that the actual consideration was Rs.55 lakhs which was captured in an agreement dated 01.07.2010 and on the date of the presentation of the sale deed for registration on 13.10.2010, two other agreements were executed between the plaintiff and the defendant, namely one a deed of agreement and two, a deed of deposit, which reiterated that the sale consideration was Rs.55 lakhs.

12.It is the admitted case of the plaintiff himself that the defendant has paid a total sum of Rs.40 lakhs and the claim is only in respect of Rs.15 lakhs which according to the plaintiff, was retained by the defendant as a deposit repayable by the defendant to the plaintiff, on performance of certain obligations by the plaintiff, as recited in the unregistered agreement dated 13.10.2010.

13.It is the case of the plaintiff that under the deed of agreement dated 13.10.2010, the plaintiff had agreed to submit original or certified copy of the final decree passed in O.S.No.184 of 1969; the Court order in a



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litigation between Meenachi Achi and the plaintiff; the judgment in the suit between one Jawad Hussain and Uma Kulsam and others and also the original sale deed registered in Doc.No.2885 of 1985. The case of the plaintiff is that only in order for these documents to be handed over to the defendant, the defendant had withheld a sum of Rs.15 lakhs out of the total agreed sale consideration of Rs.55 lakhs.

14.Relying on the clauses in the said agreement, the plaintiff has contended that if there was satisfactory verification of the documents and no claim over the property was made by any third party within 15 days after said verification, then the defendant or the defendant's power agent shall return the deposit amount of Rs.15 lakhs to the plaintiff, without interest and the deposit agreement would stand revoked. It is admitted case of the plaintiff that excepting the order passed in the litigation between the Meenachi Achi and the plaintiff, all other documents are available with the plaintiff, but only at the insistence of the defendant, the entire list of documents were mentioned in the agreement.



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15.The plaintiff further contends that as obtaining the certified copy of the order in E.P.No.63 of 1991 would consume more time than the stipulated period of agreement, the plaintiff informed the defendant and his power agent and the defendant has received all other documents on 07.01.2011. The defendant also proceeded to start construction work in the property. According to the plaintiff, the power agent of the defendant assured the plaintiff that the moment the order copy in E.P.No.63 of 1991 was produced, the balance sale consideration of Rs.15 lakhs would be paid to the plaintiff. The plaintiff further contends that the order in E.P.No.63 of 1991 was also obtained by the plaintiff on 09.05.2011 and produced to the defendant on 10.05.2011. However, despite receipt of the same, the defendant did not come forward to repay the said Rs.15 lakhs retained as deposit. The plaintiff caused a lawyer's notice, demanding the said amount and since no payment was forthcoming, the suit was filed.

16.The suit has been resisted by the defendant, contending that when the sale consideration was not Rs.55 lakhs, as contended by the plaintiff, it



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was not open to the plaintiff to fall back on the terms of unregistered agreements and claim some non-existing sale consideration of Rs.15 lakhs, especially when the parties had executed and registered a valid sale deed in respect of which the entire sale consideration has already been paid by the defendant to the plaintiff.

17.The trial Court, as rightly contended by the learned counsel for the appellant, has presumed that merely because the property has change hands, the original documents of title would also have been given to the various purchasers at respective points of time and proceeded to find that the plaintiff had complied with the conditions stipulated in the deed of agreement and deed of deposit agreement. The trial Court unfortunately failed to see that any agreement, that too, an unregistered instrument reflecting either a higher or lower consideration subsequently culminating in a registered sale deed admittedly in respect of the very same property, would lose all its value, because the said agreement gets superseded by a registered conveyance deed. Thereafter, it is only the sale deed that reflects a particular consideration, which admittedly has been paid in the present



case, would be the consideration for all legal purposes.

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18.The unregistered agreements mentioning a higher sale consideration of Rs.55 lakhs cannot be enforced by the plaintiff in the teeth of the registered sale deed admittedly having been executed by the plaintiff in favour of the defendant, admitting receipt of the entire sale consideration that is reflected in the registered sale deed. The trial Court has been unfortunately carried away by the fact that the defendant has not entered the witness box and that he has in turn alienated the property to third parties. The trial Court has lost sight of the fact that the agreement of sale which has served its purpose with the execution and registration of the sale deed gets superseded by the subsequent registered contract and it is not open to the either of the parties to fall back on the terms of the unregistered and earlier agreements and seek to enforce the terms thereunder.

19.Further, as rightly contended by the learned counsel for the appellant, when there is nothing brought on record by the plaintiff that he has handed over the documents of title, as agreed in the unregistered deeds,



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the trial Court has clearly fell in error in holding that the plaintiff has fulfilled the obligations on his part and thus he was entitled to the retained sale consideration of Rs.15 lakhs. Further, when the plaintiff had admitted to the execution of Ex.B1 dated 30.06.2010, the trial Court could not have fallen back on the other unregistered deeds or to come to a finding that the sale consideration was not Rs.40 lakhs, but Rs.55 lakhs.

20.Moreover, a bar under Section 91 of the Indian Evidence Act would also clearly operate and estop the plaintiff from contradicting the terms of registered agreement of sale as well as the sale deed and no other evidence can be admitted contrary to the written registered instruments. As rightly contended by the learned counsel for the appellant, with the execution and registration of the sale deed in Ex.A2, the sale transaction came to be concluded and it was not open to the plaintiff to thereafter contend, placing his claim on unregistered documents, that the defendant had agreed to a pay much higher sale consideration.

21.In fact, the agreement that is contrary to the registered sale deed is



also bordering violation of Section 23 of the Contract Act and such a contract, which is contrary to law and not permissible in the eye of law, cannot be sought to be enforced before a Court of Law. For all the above reasons, I am inclined to set aside the judgment and decree of the trial Court. The point is answered in favour of the appellant.

22. In fine, the Appeal Suit allowed. The judgment and decree dated 06.06.2022 in O.S.No.122 of 2013 on the file of the Principal District Judge, Puducherry, is set aside and resultantly, O.S.No.122 of 2013 shall stand dismissed. However, there shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

28.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The Principal District Judge, Puducherry



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P.B. BALAJI,J.

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Pre-delivery order made in
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