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A.S. No.179 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03-04-2025

PRONOUNCED ON : 25-04-2025

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

**A.S. No.179 of 2025
and W.M.P. No.3889 of 2025**

B. Senguttuvan

... Appellant/ Defendant

-VS-

S. Karthikeyan

... Respondent/ Plaintiff

Appeal filed under Section 96 of CPC R/W. Order 41 & 41-A of CPC and Order IV of the Madras High Court A.S. Rules, to set aside the Judgment and decree passed on 29.04.2024 in O.S. No.2521/2019 on the file of the III Additional City Civil Court of Chennai.

For Appellant : Mrs. R. Pushpalatha

For Respondent : Mr. R. Ramanlaal

ORDER



[Order made by K. RAJASEKAR, J.]

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This appeal has been filed by the appellant, who is the defendant in the original suit, to set aside the Judgment and decree passed on 29.04.2024 in O.S. No.2521/2019 by the III Additional City Civil Court of Chennai, wherein, he suffered decree that the agreement of sale dated 24.11.2016, which was executed in his favour has been cancelled and that awarding payment of Rs.10,00,000/- as damages along with cost.

2. The suit was originally filed by the plaintiff, who is the respondent herein before the Original Side of this Court, which is numbered as C.S.No.64 of 2018, later, it was transferred to the City Civil Court, Chennai based on the pecuniary jurisdiction and renumbered as O.S.No.2521 of 2019.

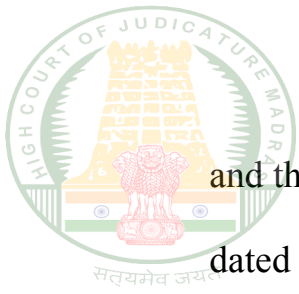
3.1 The case of the plaintiff is that he along with his family members were resided in their ancestral house at Melavalampettai, Karunguli, Madhuranthagam Taluk and his parents as well as his sister all died, committing suicide in their ancestral house. At that point of time, the plaintiff was a minor and he was taken care by his paternal aunt, namely



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Kanchana. The plaintiff's father namely Subramani, left behind a lot of properties at Melavalampettai, Karunguli, Madhuranthagam Taluk and also a property situated at Old No.38, New No.55, Venkatesa Naicken Street, Kosapet, Chennai to an extent of 1299 sq.ft., which was purchased by his father vide sale deed dated 11.04.2008 in Document No.1464 of 2008. The relatives of the plaintiff, taking advantage of the pathetic situation of the plaintiff, ransacked his ancestral house, took all the documents relating to the properties of the plaintiff's father, money and jewelery of the plaintiff's mother, thus there was no parent document available with the plaintiff with regard to the properties left behind by his father.

3.2 To safeguard his properties, the plaintiff's paternal aunt and uncle on the reference of one Vinayagam, took the plaintiff to the defendant, who is a practicing advocate. By taking advantage of the precarious situation of the plaintiff, the defendant took the signature of the plaintiff in various blank papers and stamp papers and also informed the plaintiff that execution of a rental of lease agreement in favour of somebody is necessary for creating encumbrance over the plaintiff's father's property to safeguard it. Later, the defendant has also suggested that he will take his property on rent



and thereby, paid an advance of Rs.4,00,000/- by means of two cheques both dated 29.02.2016 for a sum of Rs.2,00,000/- each. Further, the defendant called the plaintiff, his paternal aunt and uncle to meet him at Purasawalkam Sub Registrar Office on 24.11.2016 and subsequently, on the same day at late hours, the defendant rushed them in hurried manner, not allowed the plaintiff or plaintiff's aunt or uncle to read the document, obtained the signature of the plaintiff in the agreement of sale, under the guise of executing rental agreement, registered the same.

3.3 Since, the defendant has not paid the rent as agreed, the plaintiff was continuously asking the defendant to give the rent, thereby, the defendant gave a cheque for Rs.4,00,000/- drawn at Indian Overseas Bank, Anna Nagar West Extension, TVS Colony Branch, bearing No.534506, dated 11.11.2017. Thereafter, the defendant contacted the plaintiff and asked him not to present the cheque for collection, instead asked the plaintiff to sent his bank details, so that he will directly transfer Rs.4,00,000/- to the plaintiff's bank account, accordingly, the defendant transferred a sum of Rs.4,00,000/- to the plaintiff's account. Subsequently, the defendant issued an advertisement in "Makkal Kural" and "Trinity Mirror" both dated



25.08.2017, stating that the original title deeds of the suit property was missing. Later, the plaintiff's paternal aunt was informed that someone is demolishing the plaint schedule property, hence the plaintiff and his paternal aunt and uncle went there and found that the defendant has engaged some persons to demolish the suit property, while the same was questioned to the defendant, he threatened them stating that he is the agreement holder and he has got right to demolish the building, thereby, the defendant had taken various valuable things, doors and windows from the suit property. Thereafter, the plaintiff for the first time verified the EC of the suit property and found that there is an entry as if an agreement of sale, is registered.

3.4 Thereafter, the plaintiff lodged a police complaint at P-2 Otteri Police Station, and issued a legal notice on 05.12.2017, enclosing a Demand Draft bearing No.681773, Bank of India, Aminjikarai Branch for a sum of Rs.4,00,000/- dated 04.12.2017 and another notice on 13.12.2017. The defendant received the same and sent a reply notice dated 30.12.2017, stating that the plaintiff had agreed to sell the suit property to the defendant. The plaintiff further stated that the sale consideration of the suit property, as per the document of the plaintiff's father dated 11.04.2008 is Rs.30,00,000/-



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and the present market value of the property will be Rs.1.25 Crores and since, the defendant in order to purchase the property on a nominal consideration, illegally demolished and caused damages to the building in the suit property, hence, the plaintiff had taken the possession of the suit property and filed the suit for cancellation of agreement of sale deed dated 25.11.2016 and also seeking damages for the demolition of the superstructure of his property.

3.5 The written statement filed by the defendant is that, the plaintiff's parents and sister have committed suicide in the suit property and their dead bodies were taken to the plaintiff's ancestral property situated at Melavalampettai, Karunguli, Madhuranthagam Taluk and last rituals were performed there, due to which, the property was considered as a wretched and unlucky place among the locality. Further, the documents related to the said property were also missing and went not traceable, therefore, the plaintiff along with his paternal aunt and uncle, approached the defendant stating that no one was interested in dealing with the property and they requested the defendant to sell the property. Accordingly, the defendant agreed to purchase the suit property for a sale consideration of



Rs.40,00,000/- and thereby, paid a sum of Rs.4,00,000/- as advance by way of two cheques dated 29.02.2016 and entered into an agreement of sale dated 24.11.2016 vide Document No.5520 of 2016.

3.6 Thereafter, the plaintiff had demanded a sum of Rs.10,00,000/- from the defendant in the beginning of November 2017 towards the sale consideration in the strength of the sale agreement, hence the defendant gave a cheque for Rs.4,00,000/- dated 17.11.2017, however, the defendant paid Rs.4,00,000/- directly to the bank account of the plaintiff i.e., Rs.2,00,000/- on 21.11.2017 and another sum of Rs.2,00,000/- on 22.11.2017 and assured the plaintiff that the balance sum would be arranged before first week of December, for which the plaintiff had acknowledged the same through SMS. Since, original documents related to the suit property were not available with the plaintiff, a paper publication was effected on 25.08.2017 indicating missing of parent document of the suit property on the instigation of the plaintiff, in the capacity of the plaintiff's advocate by the defendant instead of prospective purchaser pursuant to sale agreement. The defendant was always ready and willing to perform the contract. Further, the building in the suit property is a three storied building, which was in bad condition and

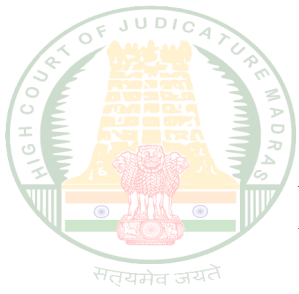


in the verge of collapse at any point of time, hence the building was not taken into account and the sale agreement was fixed only for the value of the land alone. Therefore, the plaintiff with a malafide intention filed the suit, claiming that it was not an agreement of sale and only for the purpose to support his case, a police complaint was lodged with false averments on 09.12.2017, which was not mentioned in the legal notice by the plaintiff dated 13.12.2017.

3.7 There was no fraud in registration of the agreement of sale dated 24.11.2016, executed by the plaintiff in favour of the defendant and also denied the contention of the plaintiff that the three storied building in the suit schedule property is in good condition and having market value of Rs.1.25 Crores, hence prayed to dismiss the suit.

4. Based on the pleadings, the Trial Court had framed the following issues:

1. *Whether the plaintiff is entitled for a sum of Rs.10,00,000/- as damages as prayed for with the cost of the suit?*
2. *Whether the plaintiff is entitled for cancellation of*



*Document No.5520/2016 dated 24.11.2016 at SRO,
Pursawalkam as prayed for?*

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3. *To what other relief the plaintiff is entitled?*

5. Before the Trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and plaintiff's paternal aunt namely Kanchana was examined as P.W.2, Exs.A.1 to A.25 were marked. On the side of the defendant, Ex.B.1 - original Registered sale agreement dated 24.11.2016 was marked and the Court document Ex.C.1 - Report filed by the Advocate Commissioner was marked. The Trial Court after considering the issues, more particularly issues 1 and 2 has held that the evidence adduced on the side of the plaintiff is probable and though the defendant has cross examined the plaintiff for several days, he was not able to prove any of the facts in favour of the defendant. Similarly, the defendant has not come forward to adduce his side evidence, so as to support his case. Therefore, the Trial Court after considering the evidence placed on record has held that the defendant has demolished the superstructure in the suit scheduled property and the agreement of sale was fraudulently executed by taking advantage of the Advocate - client relationship and decreed the suit in favour of the plaintiff, as prayed for.

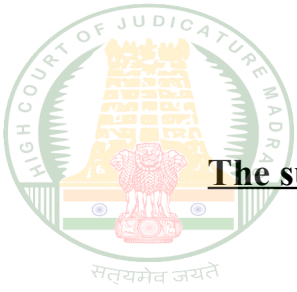


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6. Aggrieved over the judgment and decree passed by the Trial Court, the defendant has come forward with the present appeal.

The submissions on behalf of the appellant:

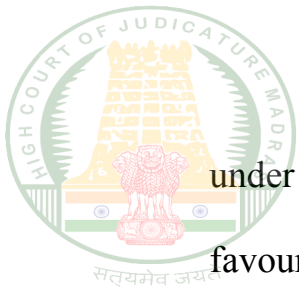
7. The learned counsel appearing for the appellant/ defendant submitted that the Trial Court had failed to give sufficient chance to the defendant to adduce his side evidence and without properly considering the evidence and the agreement of sale, decreed the suit, which is not sustainable. He further submitted that the plaintiff had received a sum of Rs.8,00,000/- as an advance from the defendant, which itself is sufficient to show that the document entered between the plaintiff and the defendant is agreement of same and not a rental agreement. Since, the original parent title deeds of the suit property was missing, the sale deed was not executed immediately between the parties and taking advantage of the same, the plaintiff cannot claim that the agreement entered between the parties is a rental agreement, hence prayed to set aside the judgment and decree of the Trial Court.



The submissions on behalf of the respondent:

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8. Per contra, the learned counsel for the respondent/ plaintiff submitted that the Trial Court has given sufficient opportunities to the defendant to probablise his case and to disprove the evidence adduced on the side of the plaintiff, and the defendant has not appeared before the Court to adduce evidence. He also submitted that the Trial Court has recorded in the judgment that the opportunities were extended to the defendant for examination as well as cross examining the plaintiff's witnesses, however, after availing sufficient opportunities, no fruitful information to disprove the evidence of the plaintiff was elicited from the plaintiff's witness. Further, the defendant has not come forward to subject himself for adducing oral evidence nor cross examination, therefore, the evidence adduced on the side of the plaintiff was accepted since there was no contra evidence adduced by the defendant. He further contended that the plaintiff has examined himself as P.W.1 and the plaintiff's maternal aunt was examined as P.W.2 and both have elaborately adduced evidence that how they have been cheated by the defendant and further under what circumstances, they were taken to the Registration Office and without showing them the document, the defendant

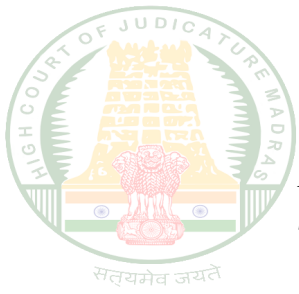


under the pretext of rental agreement, executed agreement of sale in his favour was also established. This itself is sufficient to prove the case of the plaintiff and their evidence was also supported by the bank statement and the photograph taken from the suit property. Further, the paper publications made for missing of the parent document related to the suit property, clearly supports the case of the plaintiff, thereby, the Trial has rightly accepted the case of the plaintiff and decreed the suit, as prayed for, hence prays to dismiss the appeal.

Discussions and Conclusion:

9. We have considered the submissions made on both sides and also perused the records. From the arguments and grounds raised, we once again consider the issues between the parties with the following points for consideration:

1. *Whether the plaintiff and the defendant had entered into an agreement of sale deed dated 25.11.2016, as reported by the defendant or it was a rental agreement as stated by the plaintiff?*
2. *Whether the plaintiff has established the fact that he had subscribed his signature for agreement of sale in the Registration Office on mis-representation by the defendant that it is a rental agreement?*
3. *Whether the defendant has taken advantage of the*



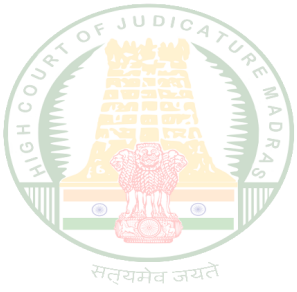
Advocate - Client relationship had executed the agreement of sale by way of mis-representation and with fraudulent intention?

4. *Whether the plaintiff is entitled for damages of Rs.10,00,000/- as prayed for?*

5. *Whether the judgment and decree of the Trial Court is liable to be set aside or not?*

Points 1 to 5:

10. The plaintiff deposed before the Trial court as P.W.1 and he has stated that his parents and his sister were suffered unnatural death. Thereby, taking advantage of the situation, the plaintiff's relatives from his mother side had ransacked his ancestral house, took all the documents relating to the properties of the plaintiff's father, money and jewelry of the plaintiff's mother. Therefore, he was not having the original parent documents of his properties, including the suit property, hence he was advised to approach the defendant, who was a practicing advocate through one Vinayagam. Thereby, the plaintiff and his paternal aunt and uncle regularly met the defendant. The defendant in turn suggested that since the original documents of the properties were missing, advised them to create some documents to show that the plaintiff has dealt with the properties. Accordingly, they come forward to execute the registered rental agreement in favour of the defendant.



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11. Both P.W.1 and P.W.2 have stated in their evidence that the defendant himself has come forward to take the suit property of the plaintiff for rent and entered into a rental agreement with the plaintiff by paying an advance of Rs.4,00,000/- on 29.02.2016 by issuing two cheques each for a sum of Rs.2,00,000/- as advance for the out of which, one cheque bearing No.542713 was drawn at Indian Overseas Bank, TVS Colony, Chennai and another cheque bearing No.316614 was drawn at State Bank of India, Perambur Branch, Chennai. Subsequently, on 24.11.2016, they have been advised to come to the Purasawalkam Sub-Registrar Office at 4:00 p.m., for execution of the rental agreement and since it was late office hours, everything was done in hurried manner and they have not even made to read the document and even the SRO had not questioned about the nature of the document to the plaintiff.

12. The evidence of P.W.1 and P.W.2 further states that, since the defendant has not paid the rent to the plaintiff, they have continuously demanded payment of rent, hence, the defendant gave a cheque for Rs.4,00,000/- dated 17.11.2017, however, the defendant requested them not



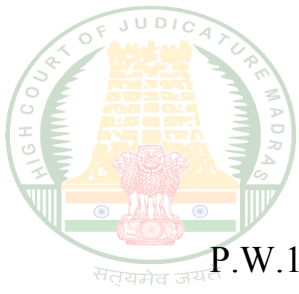
to present the cheque immediately, asked the bank details of the plaintiff and paid Rs.4,00,000/- directly to the bank account of the plaintiff i.e., Rs.2,00,000/- on 21.11.2017 and another sum of Rs.2,00,000/- on 22.11.2017. Subsequently, the defendant had made a paper publication in "Makkal Kural" and "Trinity Mirror" on 25.08.2017, stating that the original title deeds of the plaintiff's property were missing from 18.08.2017. In the mean time, the plaintiff came to know about the demolition of superstructure in his suit property by the defendant, the plaintiff questioned the same to the defendant, for which the defendant had given evasive reply and started threatening the plaintiff and his aunt, hence the plaintiff lodged a police complaint and after verifying the EC of the suit property, it was found that there is an entry on agreement of sale. Thereafter, the plaintiff had took photographs of the suit property to show about the demolition of the building in the suit property and also took possession of the property on 10.12.2017. The plaintiff also served legal notice along with Demand Draft bearing No.681773 for a sum of Rs.4,00,000/- dated 04.12.2017 to the defendant, which was returned back by the defendant.

13. Both P.W.1 and P.W.2 stated that by taking advantage of the



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Advocate - Client relationship, the defendant by mis-representation obtained the signature in the agreement of sale and they also stated that the present value of the suit property is Rs.1.25 Crores. Both P.W.1 and P.W.2 were extensively cross examined by the defendant and in the paragraph No.6.3 of the judgment, the Trial Judge has recorded the same that the P.W.1 was cross examined on 16.09.2021, 28.09.2021, 07.10.2021, 25.03.2021, 25.03.2022, 05.04.2022 and 19.04.2022. Similarly, P.W.2 namely Kanchana was cross examined by the defendant for two days. After cross examination, the plaintiff side evidence was closed and opened for defendant side evidence, but the defendant have never cared to appear before the Trial Court. It is recorded by the Trial Judge that the learned counsel appeared and conducted the case for the defendant had drafted the agreement of sale dated 24.11.2016, which was challenged and the said advocate was changed and the defendant engaged a new advocate. However, from 02.02.2023 till 14.03.2023, the defendant did not adduce any oral evidence , hence the evidence of the defendant was closed by the Trial Judge and the case was posted for arguments. Thereafter, the defendant has also filed interlocutory application to prolong the case.



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14. The entire reading of the judgment as well as the evidence of P.W.1 and P.W.2 only disclosed that the plaintiff and his paternal aunt were made to believe that the defendant had agreed to take the suit property as a rent and he had also come forward to pay a sum of Rs.4,00,000/- without any execution of document in the month of February 2016. Thereafter, almost after nine months, suddenly, the plaintiff and his aunt were called to the Purasawalkam SRO at about 4:00 p.m., and they were not allowed to read the document and in a hurry, the defendant made the plaintiff to subscribe his signature in the document of agreement of sale by misrepresenting the same as rental agreement.

15. Admittedly, the issuance of cheque for Rs.4,00,000/- was made in the month of February 2016 and the document of agreement of sale was executed on 24.11.2016, for which there is no explanation or reason that why the document was registered belatedly after nine months. It is also the evidence of P.W.1 and P.W.2 that they have demanded rent from the defendant i.e., from November 2016, therefore, the defendant again after one year, paid a sum of Rs.4,00,000/- directly to the account of the plaintiff. According to the defendant, it is part payment towards the sale



consideration, however, there is no endorsement or entry to this effect in the agreement of sale or in any other documents to show or prove that the another sum of Rs.4,00,000/- was paid by the defendant to the plaintiff towards the sale consideration entered between them. Hence, payment of another Rs.4,00,000/- supports the case of the plaintiff that the said amount was paid by the defendant towards rent.

16. On perusal of the legal notice issued on the side of the plaintiff also shows that they have never accepted to sell the suit property in favour of the defendant and the police complaint was also immediately lodged after they came to know about the registration of agreement of sale. The defendant has not adduced any explanatory evidence to support his case that the agreement of sale was not registered based on the mis-representation and it is only based on proper understanding and oral agreement entered between the parties, as early as in February 2016.

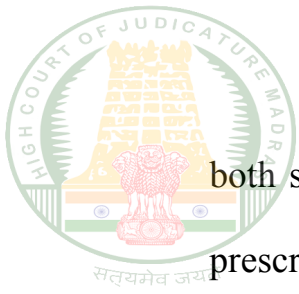
17. The evidence of P.W.1 and P.W.2 have been supported by the facts that the sum of Rs.4,00,000/- was paid by the defendant in the month of February 2016 and after nine months, they have been asked to execute the



agreement for sale, by mis-representation for the purpose of getting undue advantage of the Advocate - Client relationship. The paper publication dated 25.08.2017 also reveals that only on the professional relationship, the defendant have come forward to give public advertisement in the paper stating regarding the missing of the original title deeds related to the suit property, which also probablise the case of the plaintiff that they have executed the sale for agreement by mis-representation of rental agreement.

18. Since the facts pleaded by the plaintiff is supported by their oral and documentary evidence, further the proven facts also leads to conclusion that there is no consensus to enter into agreement for sale between the parties, the burden shifts on the defendant to establish his case that there is no mis-representation, but the defendant has not even come forward to adduce his evidence or subject himself to state the facts in respect of transactions taken place between the parties. Under the circumstances, the Court is entitled to take adverse inference against the defendant in this regard and the Trial Court has rightly accepted the case of the plaintiff.

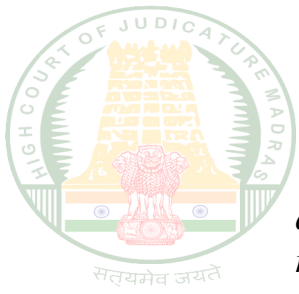
19. The Trial Court has further analysed the evidence adduced on



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both sides and held that the agreement of sale dated 24.11.2016 contains a prescribed period for execution of the sale i.e., three months from the date of execution of agreement of sale. After registration of agreement of sale deed, though it is admitted by the defendant that the value of the property was fixed as Rs.40,00,000/- and the defendant never taken any steps to register the property in his favour, if he has entered the agreement of sale with the intention to purchase the suit property, as claimed by him, he would have taken steps for registering the property, by making further payment, whereas, he has not shown any interest. Per contra, he started demolition of the building in the suit property i.e., by removing the valuable items such as doors and windows from the building.

20. Admittedly, at the time of making paper advertisement, he claims that he is an advocate and on behalf of his client, hence the relationship between the plaintiff and the defendant is only Advocate - Client relationship. The Trial Court has also recorded the judgment in ***R. Muthukrishnan vs. The Registrar General of the High Court [(2019) 16 SCC 407]***, wherein the Apex Court in paragraph No.23 has held as follows:



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" 23. The role of Layer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. his duty is to the court to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signature wherever asked by a Lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice delivered to his cause."

21. The above observation is squarely applicable to the fact of this case, the plaintiff, who was only aged about 18 years at the time of execution of agreement of sale and subscribed his signature in the documents by believing his advocate. Being the advocate by profession, he should not have taken advantage of the situation of the plaintiff and entered into the agreement of sale. The defendant has not even come forward to subject himself as a witness to adduce his evidence before the Trial Court, which creates several doubts regarding his conduct, more particularly the conduct as an advocate.

22. The Trial Court has also considered the Exs.A.16, A.17 and

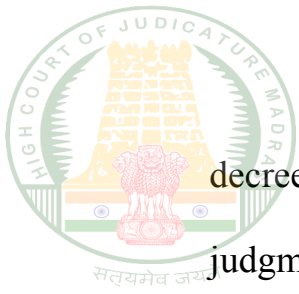


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A.19 i.e., the photographs taken from the suit property and also the learned Advocate Commissioner's Report marked as Ex.C.1, which states that the entire house in the suit property was in a demolished condition, except the front walls. The debris were also found all over the house and it has been recorded that with the help of a Engineer, the second floor of the building was completely demolished with the skeleton skin wall touching the other building on the northern side and the damages were also assessed with the help of the Advocate Commissioner.

23. As discussed above, the plaintiff has proved their case that the agreement for sale has been entered by mis-representation, and by taking advantage of the relationship between the parties i.e., Advocate - client, the defendant have involved in fraudulent act of demolition of the building in the suit property and tried to snatch away the property of the plaintiff, thereby this Court finds there is no merits in this appeal. Accordingly, the points 1 to 5 are answered.

24. In view of the discussions made above, this Court finds no merits, warranting interference of this Court, in the impugned judgment and



decree. Accordingly, this appeal is hereby dismissed by confirming the judgment and decree of the Trial Court in O.S. No.2521/2019 dated 29.04.2024. Consequently, connected writ miscellaneous petition stands closed. There shall be no order as to cost.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

25-04-2025

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
stn

To
The III Additional Judge,
City Civil Court, Chennai.

S.M. SUBRAMANIAM, J.
AND
K. RAJASEKAR, J.

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Pre-delivery Judgment made in
A.S. No.179 of 2025

25-04-2025