

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(CIRCUIT BENCH AT PORT BLAIR)**

Present:

The Hon'ble Justice Ajay Kumar Gupta

SAT 12 of 2024

**Smti Ilaka Muthu
Vs.
Shri P.Abdul Majeed and Another.**

For the Appellant : Mr. K.M.B. Jayapal, Adv.

For the Respondents : Mr. Prohit Mohan Lall, Adv.

Heard on : 18.02.2026

Judgment on : 25.02.2026

Ajay Kumar Gupta, J:

1. The instant second appeal is directed against the judgment and decree dated 30.07.2024 and 05.08.2024 respectively passed by the Learned District Judge, Andaman & Nicobar Islands at Port Blair in Other Appeal No. 03 of 2020, thereby affirming the ex parte Judgment and decree dated 03.09.19 and 06.09.2019 respectively

passed by the learned Civil Judge (Senior Division), South Andaman District at Port Blair in Other Suit No. 227 of 2011.

FACTS OF THE CASE

2. The specific case of the Appellant/Plaintiff is that she is the recorded tenant in respect of the suit Property. The appellant got this land after regularization by the A&N Administration in the year 1989. Since then, the Plaintiff has been enjoying the said plot of land peacefully and without any disturbance and hindrances from any corner.
3. The Respondent/Defendant no.1 developed an ulterior and dishonest intention to acquire the suit property and repeatedly requested the plaintiff to sell the same in his favour. The appellant, being an illiterate lady with no knowledge of reading and writing English, did not agree to such request. On one occasion, when the appellant needed the installation of a water connection in her dwelling house, she informed the same to the Respondent no.1. He assured her that he would make the necessary arrangements for a new water connection, and represented certain formalities were required to be completed, which would require her signature.
4. Taking advantage of her illiteracy, the Respondent no. 1 fraudulently obtained her signature on some bond papers on the pretext of

applying for a water connection. The appellant has alleged that the said paper was purportedly an agreement for sale dated 08.09.2009.

5. The consideration had been fixed at Rs. 23,50,000/- to purchase the property, and an advance amount disclosed as “paid”, to the tune of Rs. 5,00,000/- to the appellant at the time of execution. The case of the appellant is that she never agreed to sale her property to the Respondents. However, upon coming to know about the existence of the alleged agreement, she expressed her willingness to consider selling the property only if the respondents agreed to a fresh consideration of Rs.40,00,000/-, subject to obtaining an NOC from her family.
6. It was further case of the Appellant that due to the failure of the respondents to act upon such proposal, she treated the advance amount as forfeited in terms of the alleged agreement.
7. The purported agreement for sale was executed before the notary public by the Respondent no. 1 via unlawful means and impersonation, with a view to grabbing the property of the appellant .
8. The Appellant filed the suit, when she knew that the Respondent no.1 is trying to create third party interest over the suit land on the basis of alleged forged agreement for sale, resulted a cloud that case upon her title on the suit property.

9. Appellant filed the suit for declaring the purported agreement for sale void, and further sought a decree of permanent injunction against the Respondents restraining them from interfering with the peaceful possession of the Appellant over the suit property.
10. The Trial court, after appreciating and considering the evidence adduced by the appellant, dismissed the suit ex parte filed by the appellant.
11. Being aggrieved by the said dismissal of the suit ex parte, the appellant preferred an appeal before the District Judge. However, after hearing the appeal, the learned judge also dismissed the appeal, affirming the judgment and decree of the Trial Court. Hence, this Second appeal.
12. At the time of admission of the appeal, the division bench of this court framed the following substantial question of law to be decided in this Second appeal, as under:
 - a) Whether the First Appellate Court erred in law in passing the impugned judgment holding that the plaintiff is not entitled to a decree as prayed for in view of the inconsistent pleas raised in the plaint?
 - b) Whether the first Appellate court erred in law in failing to give reasons?

SUBMISSIONS ON BEHALF OF THE APPELLANT

13. Mr. K.M.B. Jaypal, learned counsel appearing on behalf of the appellant/plaintiff, submitted that the First Appellate Court, without going into the merits of the case and law, concluded that the Trial Court had rightly dismissed the suit ex parte, even though the legal provision is very clear. The appellant can raise two or more inconsistent allegations and claim relief thereunder in the alternative. There is no bar in law, but the First Appellate Court decided the suit, contending therein that the appellant took two inconsistent pleas in the present case. Firstly, she stated that the signature of the appellant was obtained by practising fraud and in a manner of disguise on an alleged agreement for sale. Whereas, later stage, she stated that she was ready and agreeable to sell the suit property if the consideration amount was increased to 40,00,000/- in place of 23,00,000/-; as such the allegation of obtaining signature and converting the said signature into an agreement for sale is not proved. Such finding is wholly unsustainable in the law. Mr Jaypal has placed reliance on a decision passed by the Supreme Court in the case of ***Srinivas Ram Kumar Vs. Mahabir Prasad***¹ to buttress his aforesaid contention.

¹ AIR 1951 SC 177

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. On the other hand, Mr Lall, learned counsel representing the Respondents/Defendants, vociferously argued and submitted that the First Appellate Court examined the facts and law as applicable with regard to the issue involved in the present case and did not find any ground warranting interference with the judgment of the Trial Court.
15. Learned counsel further strongly opposed the submissions made by the learned counsel representing the appellant. It is true that making more inconsistent allegations and claiming the relief thereunder in the alternative is permissible in law but in the present case the appellant has taken two contradictory statements, firstly, she made an allegation that her signature was misused by practising fraud in an agreement for sale and on the other hand, she did not deny the payment of earnest money /advance amount of Rs. 5 Lacs on the date of execution of the agreement for sale rather she agreed to sale the property by enhancing the consideration amount from 23 lakhs to 40 lakhs. Once she admits her signature appearing in the agreement for sale, she cannot deny the terms and conditions of the contract appearing in the agreement for sale. She also cannot deny that she has accepted the agreement for sale. Learned counsel submitted that a party may raise multiple pleas, it cannot simultaneously rely upon mutually destructive and irreconcilable statements. Such

contradictory pleas, it was contended, are impermissible in law and were rightly rejected by the courts below.

16. Learned counsel further supported the reasoning of the Trial Court that the appellant had failed to establish any real or imminent apprehension of creation of third-party rights. It was submitted that an unregistered agreement for sale does not confer any right, title, or interest in respect of immovable property in favour of the proposed purchaser, nor does it enable transfer of the property to any third party. In the absence of any legal threat to the appellant's title or possession, the relief sought for declaration and cancellation of the agreement for sale was wholly misconceived.
17. It is, therefore, contended that the judgment and decree passed by the trial court is justifiable and calls for no interference. It was further contended that the present Second appeal, as well, is meritless and is accordingly, liable to be dismissed with costs.

ANALYSIS AND FINDINGS OF THIS COURT

18. In light of the submissions made by the parties and on perusal of the judgment and decree passed by the First Appellate Court dated 20.04.2018, it appears that while considering the judgment of the Trial Court, the First Appellate Court held that the Trial Court had rightly dismissed the suit filed by the appellant. The appellant is unable to prove her case for her relief.

19. It is an admitted fact that she had never denied receiving ₹ 5 lakh as earnest money, and subsequently, she forfeited the said amount as the respondents did not enhance the consideration amount as per her subsequent demand. Once a consideration amount is agreed upon, it cannot be changed subsequently by the parties. If one of the parties violates the terms and conditions of the agreement, that would constitute a breach of contract.
20. It is further admitted that the appellant is ready to sell the property if the amount is enhanced to ₹ 40 lakhs instead of 23 lakhs. Such demands, presently appearing prima facie not sustainable. The prayer made by the appellant in the suit that the decree declaring the agreement dated September 8, 2009 notarized by Serial number 5889 as null and void cannot be allowed because the allegation of the appellant that the respondents are trying to create 3rd party interest over the suit property on the basis of forced agreement for sale, resulting in a cloud, cast upon her title over the suit property, is baseless and unreasonable. The same cannot be acceptable.
21. The Trial Court has rightly dismissed the suit. The observations of the trial court are stipulated herein below in verbatim for the sake of convenience and assessment for its disposal of the Second appeal is required as under:

“It is the settled law that transfer of an immovable property exceeding the value of Rs. 100/-can be effected only by a registered instrument So far as the plaintiff's case is concerned, she has not executed any registered sale deed in favour of the defendants. What she has executed is an unregistered instrument and that too a mere agreement for sale. Needless to say, that an agreement for sale does not confer, any right, title and interest in respect of any immovable property in favour of the intended purchaser. Therefore, apprehension of the plaintiff that the defendants may create third party interest over the suit property banking upon such unregistered agreement for sale, is baseless and unreasonable. Such baseless and unreasonable apprehension of the plaintiff therefore cannot be said to have cast any cloud in the plaintiff's title to the suit property. Consequently, the court is constrained to hold that the cause of action as shown by the plaintiff behind filing of this suit is also baseless and imaginary. Hence, by no stretch of imagination can this court grant any relief to the plaintiff as sought for in this suit”.

22. This Court has carefully perused judgement and decree passed by the trial court as well as 1st appellate Court and finds no infirmity or illegality in the law.
23. The judgment relied upon by the Learned counsel of the appellant is not at all applicable in the present case, as the case in hand is totally different. The law is well settled that making two or more inconsistent

allegations and claiming the relief thereunder in the alternative is permissible in law, but in the present case, the appellant did not make inconsistent allegations; rather, she made contradictory statements from time to time for her plea, which is not at all permissible in law. Inconsistent means two or more claims cannot all be true simultaneously, though they might both be false. Whereas contradictory statement is a stronger, specific type of inconsistency where claims are exactly opposites. Like if one is true, the other must be false, and vice versa.

24. She alleged that the respondent misused her signature by practising fraud on an agreement for sale. At the same time, she agreed to sell the suit property to the Respondents if they enhanced the consideration amount from Rs. 23 lakhs to Rs. 40 lakhs. She did not deny the payment of earnest money of Rs. 5 Lacs at the time of execution of the agreement for sale rather she claims forfeiture of the said amount for non-compliance of terms and conditions of his request to enhance the consideration amount which is not at all permissible in law as the terms and condition already settled in the agreement for sale executed between the parties.
25. Consequently, the appellant has failed to satisfy any of the substantial questions of law. There is no other substantial question of

law to be decided in the case in hand. This court is of the view that there is no merit in the instant appeal.

26. Consequently, the appeal being **SAT 12 of 2024** stands **dismissed**.
27. There shall, however, be no order as to costs.
28. Registry is directed to send down a copy of this judgment and order together with Trial Court record to the Learned Trial Court for information.
29. All parties shall act on a server copy of the judgment and order obtained from the official website of High Court.
30. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Ajay Kumar Gupta, J.)