



EBONEY LAW

CASE ANALYSIS

Moideenkutty v. Abraham George

2025 INSC 1428 - Civil Appeal No. 5405 of 2023

Supreme Court of India

Judgment dated: 15 December 2025

**Coram: Hon'ble Mr. Justice Vikram Nath
& Hon'ble Mr. Justice Sandeep Mehta**

In *Moideenkutty (“Appellant – Purchaser”) v. Abraham George (“Respondent – Seller”)*, the Supreme Court of India reaffirmed the principle that suppression of material facts—particularly subsisting encumbrances—vitiates contractual fairness in property transactions. Setting aside the judgment of the Kerala High Court, the Court restored the trial court’s decree directing refund of the advance amount to the purchaser, holding that the seller’s conduct amounted to deception.

Background

On September 10, 2008, the Respondent entered into an Agreement for Sale with the Appellant for conveyance of 77 acres and 26 cents of land for a total consideration of ₹4.45 Crore. An advance of ₹50 Lac was paid in two instalments (i.e. on September 10, 2008 & October 10, 2008). The balance amount was to be paid in stages, with the final date for execution of the sale deed fixed as December 26, 2008.

Subsequently, the Appellant discovered that the property was subject to an equitable mortgage in favour of Federal Bank, a fact expressly denied in the agreement, which stated that the property was free from encumbrances. Despite assurances from the Respondent that the mortgage would be cleared, no effective steps were taken.

In 2009, the Respondent agreed to reduce the sale consideration by ₹35 Lac due to delays and continued assurances. Acting on this, the Appellant paid an additional ₹5 Lac and issued a post-dated cheque of ₹3.55 Crore, which was later dishonoured after the Appellant realised that the mortgage remained unpaid.

Feeling deceived, the Appellant filed O.S. No. 34 of 2010 before the Subordinate Judge, Manjeri, seeking refund of ₹55 lakh with interest.



Trial Court by its decision on November 27, 2013, held that:

The Respondent suppressed the existence of the mortgage, despite a clear recital to the contrary in the agreement. The Appellant was justified in withholding further payment.

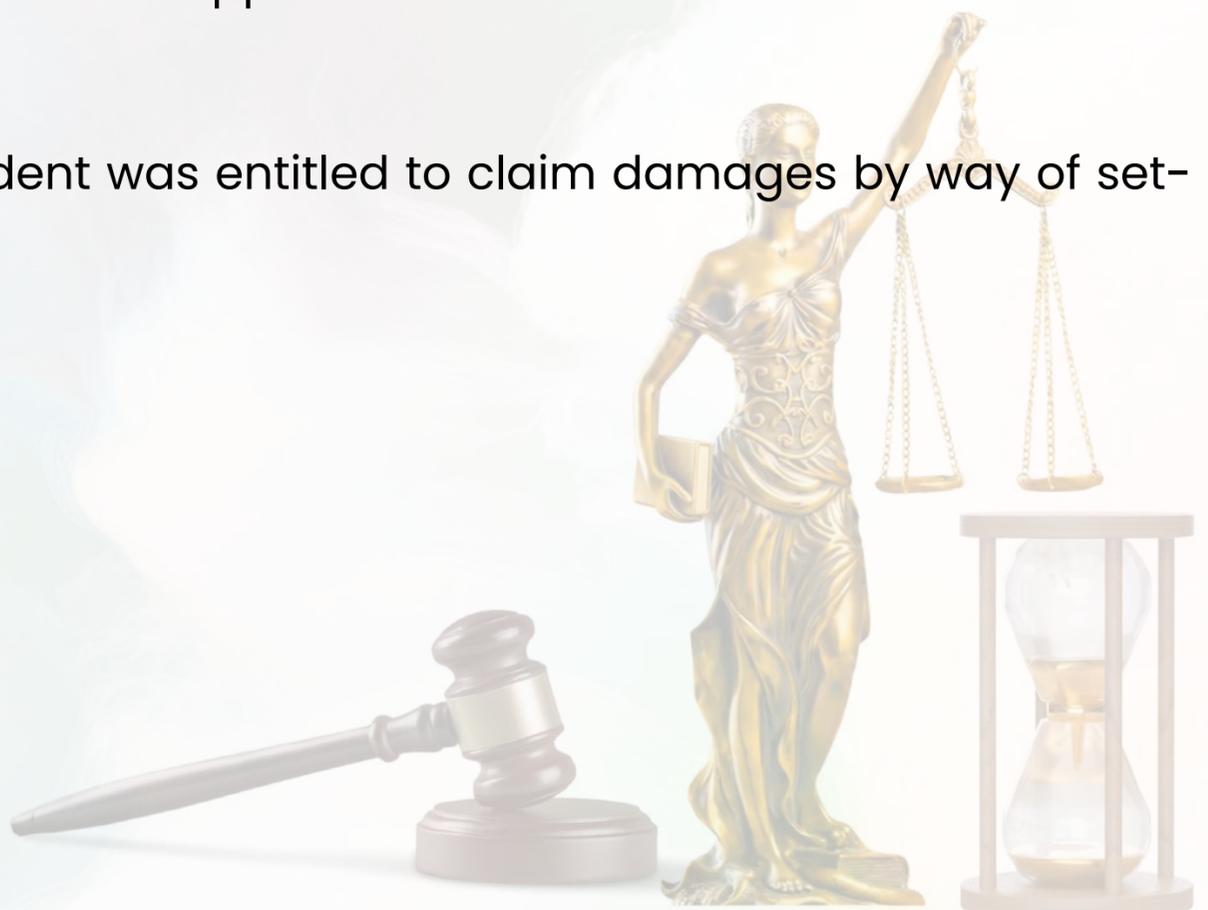
The Respondent's claim of loss due to subsequent sale of the property was not a valid set-off and was barred by limitation. Accordingly, the court decreed, in favour of the Appellant of ₹65,43,750 with 13% interest, along with costs.

The Kerala High Court by its judgment dated March 11, 2022, held as under:

The Kerala High Court reversed the trial court's decree, relying heavily on a solitary admission in cross-examination where the Appellant appeared to suggest prior knowledge of the bank liability. The High Court held the Appellant to be in breach and remanded the matter to determine whether the Respondent had suffered compensable loss eligible for set-off.

Issues Before the Supreme Court:

- Whether the Appellant had prior knowledge of the mortgage at the time of execution of the agreement?
- Whether the Respondent's suppression of encumbrance constituted a breach of contract?
- Whether the Respondent was entitled to claim damages by way of set-off?



Key Findings of Hon'ble Supreme Court:

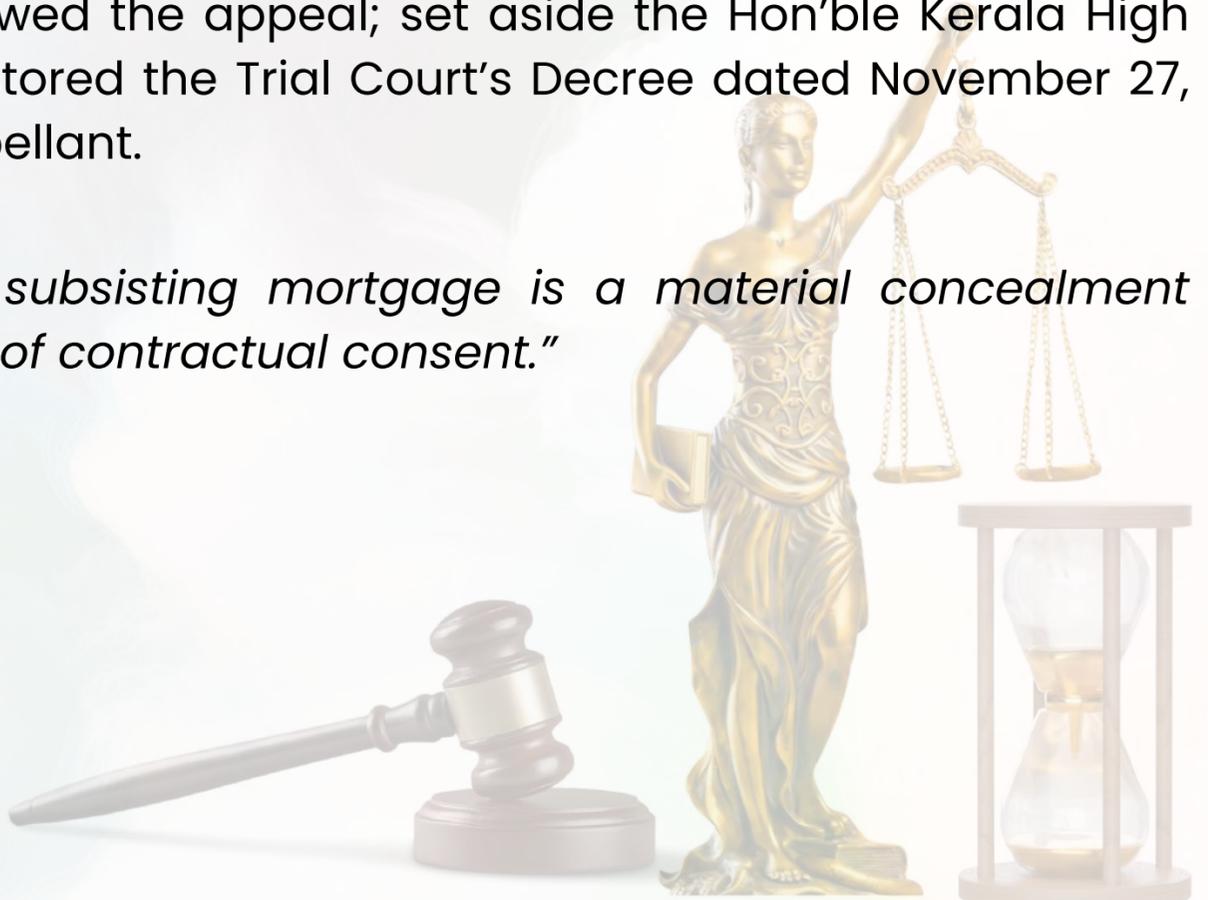
The Hon'ble Supreme Court categorically rejected the High Court's approach, holding that:

- The alleged admission regarding knowledge of mortgage on August 25, 2008, was factually implausible, as the parties had not even met before September, 2008.
- The Respondent never pleaded or proved that such disclosure was made prior to execution of the agreement.
- The Respondent admitted in cross-examination that, the agreement did not mention that the property was mortgaged. Further, the advance money received was not used to clear the bank loan and the Respondent did not reply to the legal notice alleging suppression of mortgage.
- The reduction of ₹35 lac in sale consideration was viewed by the Hon'ble Supreme Court as a strong indicator of the Respondent's culpability after being confronted.
- The Hon'ble Supreme Court also observed that, non-inspection of original title deeds at the agreement stage was not fatal, noting that it is common for documents to be kept in bank custody.

Final Decision:

The Supreme Court allowed the appeal; set aside the Hon'ble Kerala High Court judgment and restored the Trial Court's Decree dated November 27, 2013, in favour of the Appellant.

"The suppression of a subsisting mortgage is a material concealment which strikes at the root of contractual consent."



Overview:

The firm's overview on this judgment is as follows:

- The judgment in *Moideenkutty v. Abraham George* serves as a strong reminder that truthful disclosure of encumbrances is non-negotiable in transactions pertaining to immovable property. Sellers Vendors cannot benefit from their own wrong, and courts will not permit technicalities or isolated statements to defeat substantive justice. The judgement further reinforces the doctrine of good faith and full disclosure in property transactions.
- The judgement further clarifies that, stray or ambiguous admissions cannot override consistent pleadings and surrounding circumstances. The judgement limits misuse of set-off claims to defeat legitimate refund claims by innocent purchasers and protects buyers against deceptive practices in high-value real estate dealings.



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