

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

RFA.No. 108 of 2005 (E)

AGAINST THE JUDGMENT IN OS 7/2000 of SUB COURT, KASARAGOD DATED 30-08-2003

APPELLANT/PLAINTIFF:

YAHIA.A.H., AGED 34 YEARS,
S/O.USMAN KOYA, MUSLIM, CONTRACTOR
RESIDING AT A.M.HOUSE, FRANCIS ROAD, KOZHIKODE P.O.
KOZHIKODE.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT/DEFENDANT:

K.J.JOHN SINGH, AGED 37 YEARS,
S/O.U.JOHN, CONTRACTOR, CHRISTIAN
RESIDING AT UPPAYAKKAD HOUSE, CHIPPALAKKODE
ENKAKKAD VILLAGE, THALAPPILLY TALUK, P.O.ENKAKKAD
THRISSUR DISTRICT.

R1 BY ADV.SRI.A.K.SRINIVASAN

R1 BY ADV.SRI.A.S.BENOY

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

R.F.A. No.108 of 2005

Dated this the 19th day of February, 2015

J U D G M E N T

P.N.Ravindran, J.

The appellant is the plaintiff in O.S.No.7 of 2000 on the file of the Court of the Subordinate Judge of Kasaragod. The sole respondent is the defendant therein. The suit instituted by the appellant for realisation of the sum of Rs.3,00,000/- by way of damages for breach of contract together with interest and costs from the defendant was decreed in part and he was held entitled to realise the sum of Rs.90,000/- towards the cost of materials, labour charges, transportation charges and miscellaneous items on account of part performance of the contract in terms of Ext.A1 agreement. O.S.No.7 of 2000 was tried and disposed of along with O.S.No.93 of 1999, a suit instituted by the respondent against the appellant for realisation of the sum of Rs.1,44,303.67 from the appellant with interest and costs. The said claim was also based on Ext.A1 agreement. By the very same judgment, O.S.No.93 of 1999 was decreed in part and the respondent, the plaintiff therein, was held entitled to realise from the appellant herein the sum of Rs.56,057/-. He was also permitted to adjust the said sum towards the decree debt in O.S.No.7 of 2000.

2. Challenging the decree and judgment in O.S.No.93 of 1999, the appellant had filed A.S.No.283 of 2003 on the file of the Court of

the District Judge of Kasaragod. After A.S.No.283 of 2003 and this appeal were filed, the appellant passed away and thereupon his legal heirs were impleaded as additional appellants in A.S.No.283 of 2003. However, steps were not taken by the legal heirs to get themselves impleaded as additional appellants in the instant appeal. It is not in dispute that A.S.No.283 of 2003, which was pending on the file of the Court of the District Judge, Kasaragod, was dismissed for default on 5.8.2009. The said order has attained finality. In such circumstances, as the sole appellant is no more and the legal heirs have not taken steps to come on record and also for the reason that A.S.No.283 of 2003 arising from the common judgment in O.S.No.93 of 1999 O.S.No.7 of 2000 stands dismissed for default on 5.8.2009 and the impugned judgment has attained finality, we have no other alternative but to dismiss the appeal. [Vide **Janardhanan Pillai v. Kochunarayani Amma** 1976 KLT 279 (F.B.) and **Premier Tyres Ltd. v. Kerala State Road Transport Corporation** 1993 (2) KLT 130]. The appeal fails and it is accordingly dismissed. No costs.

**P.N.RAVINDRAN,
(JUDGE)**

**ANIL K.NARENDRA,
(JUDGE)**