

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

RSA.No. 966 of 2011 ()

AGAINST THE JUDGMENT IN AS. NO.287/2008 OF ADDL. DISTRICT COURT,
KOTTAYAM DATED 19-01-2011.
AGAINST THE JUDGMENT IN OS. NO.151/2006 OF MUNSIF COURT, ETTUMANOOR
DATED 26/08/2008.

APPELLANT/APPELLANT/DEFENDANT:

K.V. JOSEPH, AGED 80, S/O.VARKEY,
KEERANKERIPARAMBIL, ETTUMANOOR POSTAL LIMIT,
KOTHANALLOOR KARA, KOTHANALLOOR VILLAGE,
KOTTAYAM TALUK.

BY ADVS.SRI.ABRAHAM P.GEORGE,
SMT.M.SANTHY.

RESPONDENT/RESPONDENT/PLAINTIFF:

SAJU STEPHEN, AGED 40, S/O.ESTHAPPAN,
NJARALAKKATTU, THURUTHIYIL HOUSE,
KOTHANALLOOR KARA, KOTHANALLOR VILLAGE,
KOTTAYAM TALUK, PIN-686 632.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

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R.S.A.No.966 of 2011.

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Dated this the 6th day of October, 2015.

J U D G M E N T

The defendant in a suit for realization of money is the appellant.

2. The case of the plaintiff is that he has filled the paddy field of the defendant making use of 350 loads of soil removed from another property owned by the defendant, as per the terms of Ext.A1 agreement. It is also his case that as per the terms of the said agreement, he purchased 180 loads of soil from the defendant and sold to third parties. According to the plaintiff, the defendant has agreed to pay a sum of Rs.350/- per load of soil for filling the paddy field and he has purchased soil from the defendant at the rate of Rs.125/- per load. Thus, the case of the plaintiff is that a total sum of Rs.1,22,500/- was due to him from the defendant towards filling charges and after

adjusting the amounts payable by him to the defendant towards the price of the soil purchased viz., Rs.22,500/- and the amounts received by him from the defendant towards advance viz., Rs.8,000/-, a sum of Rs.92,582/- is due to him from the defendant. The suit is, therefore, filed for realization of the same. The defendant contested the suit. He denied the agreement. According to him, the plaintiff has removed 1165 loads of soil from his property, out of which only 234 loads were utilized for filling the paddy field and the remaining soil were sold by him to third parties. Thus, the case of the defendant is that no money is due to the plaintiff from him as claimed in the plaint and on the other hand, a sum of Rs.1,00,850/- is due to him from the plaintiff. A counter claim has also been raised by the defendant in the written statement for recovery of the said amount of Rs.1,00,850/-. The trial court found that Ext.A1 agreement is a genuine document. The trial court also found that the case of the plaintiff as regards the work executed by him for the defendant as also the purchase of soil from

the defendant is correct. Consequently, the suit was decreed and the counter claim was dismissed. The defendant challenged the decision of the trial court in appeal. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The defendant who is aggrieved by the concurrent decisions of courts below against him has come up in this Second Appeal.

3. Heard the learned counsel for the appellant.

4. It is seen that at the instance of the defendant, Ext.A1 agreement was referred to an expert for opinion as to the signature of the defendant contained therein. The expert to which the document was referred opined that Ext.A1 is a document executed by the defendant. The expert who gave the opinion was examined before the court below as DW3. The courts below concurrently found that the expert has arrived at the opinion referred to above after an exhaustive scientific evaluation and analysis and therefore, the same can be accepted. On facts, the courts

below found that the defendant who was keeping the records of the soil removed by the plaintiff from his property has not produced the same before court. The courts below also found that the defendant who contends that a large quantity of soil viz. 1165 loads was removed by the plaintiff from his property, did not take out a commission to establish the said fact. It is in the said circumstances, the courts below came to the conclusion that it is reasonable to accept the case set up by the plaintiff and it is on that basis, the impugned decisions have been rendered. There is no question of law, much less any substantial question of law, involved in the Second Appeal and the same is, accordingly dismissed. All the interlocutory applications in the appeal are dismissed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.