

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

RSA.No. 316 of 2015 ()

**AGAINST THE JUDGMENT IN AS. NO.46/2013 OF DISTRICT COURT, KASARAGOD
DATED 18-11-2014.**

**AGAINST THE JUDGMENT IN OS. NO.100/2011 OF SUB COURT, HOSDURG
DATED 31-08-2013.**
.....

APPELLANT/APPELLANT/DEFENDANT:

**CHANDRAN PAIKA, AGED 52 YEARS,
D/O.DAMODHARAN MANIYANI, PROPRIETOR,
HARITHA RUBBER NURSERY, PARAPPA P.O.,
PARAPPA VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT.**

**BY ADVS.SRI.SURESH KUMAR KODOTH,
SRI.K.P.ANTONY BINU.**

RESPONDENT/RESPONDENT/PLAINTIFF:

**E.N. SOMAN, AGED 60 YEARS,
S/O.NARAYANAN, BUILDING CONTRACTOR,
BED'S CONSTRUCTION, PEROLE, NILESHWAR,
RESIDING AT "SANGEETHA", PEROLE, PEROLE VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT-671 314.**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

P.B.SURESH KUMAR, J.

= = = = =

R.S.A.No.316 of 2015.

= = = = =

Dated this the 4th day of November, 2015.

J U D G M E N T

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

2. The case of the plaintiff is that he has constructed a building for the defendant for a sum of Rs.1,94,332.72; that the defendant has paid only a sum of Rs.66,000/- out of the amounts due and hence the suit for realization of the balance amount, namely, Rs.1,28,333.00. The defendant contested the suit. The contention raised by the defendant was that he has paid Rs.1,84,300/- out of the amounts due and therefore the balance due is only Rs.10,032/-. According to the defendant, the said amount is retained by him due to some defect in the construction of the building. The trial court accepted the case of the

plaintiff and passed a decree as prayed for by him. 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 against him has thus come up in this second appeal.

3. Heard the learned counsel for the appellant.

4. The fact that the plaintiff has constructed a building for the defendant for a sum of Rs.1,94,332.72 is not in dispute. The only dispute between the parties is as to the amount paid by the defendant to the plaintiff. According to the plaintiff, the defendant has paid only a sum of Rs.66,000/-. But, according to the defendant, he has paid to the plaintiff a sum of Rs.1,84,300/-. In so far as the liability is admitted, it is for the defendant to establish that he has discharged the liability as claimed by him. The question whether the defendant has established the plea of discharge set up by him is a pure question of fact, the decision on which cannot be attacked in a second appeal filed under Section 100 of the Code of Civil Procedure.

RSA.No.316/2015.

3

There is no question of law, much any substantial question of law, involved in this second appeal. There is no merits in this second appeal and the same is accordingly dismissed. All the interlocutory applications are closed.

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

Kvs/-

// true copy //

PA TO JUDGE.