



A.S.(MD)Nos.12 and 17 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.10.2025	05.11.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**A.S.(MD)Nos.12 and 17 of 2016
and
C.M.P.(MD)Nos.854 of 2016, 4032 and 4276 of 2025**

A.S.(MD)No.12 of 2016:-

Anbu Illam,
Rep. by its Managing Director,
Fr.B.Russel Raj,
Anbu Nagar, Paramarthalingapuram,
Vettoornimadam Post,
Vadasery Village, Agasteeswaram Taluk,
Kanyakumari District.

... Appellant / Defendant

VS.

John Bennet,
Proprietor, M.P. Construction,
M.S.Road, Vettornimadam Post,
Vadasery Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondent / Plaintiff



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PRAYER : Appeal Suit filed under Section 96 Civil Procedure Code against the common judgment and decree dated 22.12.2015 passed in O.S.No.194 of 2009, on the file of the District Court, Kanyakumari Division at Nagercoil.

A.S.(MD)No.17 of 2016:-

Anbu Illam,
Rep. by its Managing Director,
Fr.B.Russel Raj,
Anbu Nagar, Paramarthalingapuram,
Vettoornimadam Post,
Vadasery Village, Agasteeswaram Taluk,
Kanyakumari District.

... Appellant / Plaintiff

VS.

John Bennet,
Proprietor, M.P. Construction,
M.S.Road, Vettornimadam Post,
Vadasery Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondent / Defendant

PRAYER : Appeal Suit filed under Order IV Rules 1 and 2 read with Section 96 Civil Procedure Code against the common judgment and decree dated 22.12.2015 passed in O.S.No.130 of 2012, on the file of the District Court, Kanyakumari Division at Nagercoil.



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For Appellant in both the
Appeal Suits

: Mr.M.Arjun Varman
for Mr.S.Rajasekar

For Respondent in both the
Appeal Suits

: Mr.V.K.Vijayaragavan

COMMON JUDGMENT

C.V.KARTHIKEYAN, J.

A.S.(MD)No.12 of 2016 has been filed by the defendant in O.S.No.194 of 2009, aggrieved by the common judgment rendered in O.S.No.194 of 2009 and O.S.No.130 of 2012, dated 22.12.2015, on the file of the District Court, Kanniyakumari District at Nagercoil, whereby O.S.No.194 of 2009 was decreed with costs.

2. A.S.(MD)No.17 of 2016 has been filed by the plaintiff in O.S.No.130 of 2012, aggrieved by the very same common judgment dated 22.12.2015 passed in O.S.No.130 of 2012 and O.S.No.194 of 2009, on the file of the District Court, Kanniyakumari District at Nagercoil, whereby O.S.No.130 of 2012 was dismissed with costs.

3. O.S.No.194 of 2009 had been filed by the respondent in these appeals, John Bennet, seeking recovery of a sum of Rs.21,06,814/- together with interest and costs.



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4. O.S.No.130 of 2012 had been filed by the appellant in both the appeals, Anbu Illam, represented by its Managing Director, Fr.B.Russel Raj, against the defendant John Bennet, seeking a judgment and decree for recovery of a sum of Rs.7,31,933/- from the defendant, together with interest and costs.

5. Since the issues involved in both the suits were interlinked, joint trial was conducted, and by common judgment dated 22.12.2015, the learned District Judge, Kanniyakumari District at Nagercoil, decreed O.S.No.194 of 2009 with costs and dismissed O.S.No.130 of 2012 with costs.

6. Aggrieved by the same, the present two Appeal Suits have been filed.

O.S.No.194 of 2009 [District Court, Kanniyakumari District at Nagercoil]:-

7. The plaintiff, John Bennet, was the Proprietor of M.P.Construction. It was claimed that the defendant, Fr.B.Russel Raj, Managing Director of Anbu Illam had requested the plaintiff to undertake labour works for the construction of



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a new building called “Anbu Illam” at Paramarthalingapuram in January 2006.

The construction commenced on 10.02.2006. The labour charges were fixed at Rs.90/- per sq. ft. for the main building and at Rs.130/- per sq. ft. for the Chapel building. It was represented that the construction would be completed within a period of one year.

7.1. Since it was only a labour contract, it was contended that no written agreement had been entered into between the parties. It was further stated that the work was completed on 05.05.2007. The total area of the main building was 24,913 sq. ft., and at Rs.90/- per sq. ft., the total cost amounted to Rs.22,42,170/-. The total area of the Chapel was 3,066 sq. ft., and at Rs.130/- per sq. ft., the total cost came to Rs.23,59,760/-. It was also stated that in the said construction undertaken for Anbu Illam, there remained a balance amount of Rs.2,80,990/- to be paid to the plaintiff.

7.2. It was further contended that in June 2008, the defendant requested the plaintiff to construct an old age home in another property at Navalcaud. After negotiation, the rate was fixed at Rs.950/- per sq. ft. An agreement was entered



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into between the parties on 15.08.2008. It was contended that the entire construction of “Nazareth Home” at Jacks Land, Navalcaud, was completed on 03.10.2009, and the plaintiff informed the defendant of its completion on 05.10.2009. The plaintiff thereafter requested payment for the work done. The defendant issued three cheques on 03.11.2009 for a total sum of Rs.5,11,450/-. It was however contended that a total sum of Rs.21,06,814/- remained due and payable to the plaintiff.

7.3. It was further stated that the defendant was also liable to pay more than Rs.24,00,000/- to various suppliers who had supplied cement, steel, wood, sanitary items, fittings, paint, and other materials. The plaintiff thereafter issued a notice on 07.11.2009, demanding payment of the amount due and calling upon the defendant to take delivery of the keys of the building at Nazareth Home, Jacks Land, Navalcaud. The defendant, in the reply notice, however, denied liability.

7.4. In the written statement, it was contended that it was the plaintiff who had approached the defendant in the year 2006, requesting a labour contract for the construction work at Anbu Illam. It was further stated that the defendant



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institution, Anbu Illam, does not run an old age home or refugee home, as alleged in the plaint. The construction work commenced on 15.02.2006, and an advance of Rs.50,000/- was paid by the defendant. The work was stated to have been completed on 24.08.2007.

7.5. It was further contended that the total area of construction was 26,186.69 sq. ft. and that the defendant had paid a sum of Rs.21,57,959/- towards the said work. It was also contended that, even in respect of the construction at Navalcaud, the agreement was only an oral one for labour work. The written agreement projected by the plaintiff was specifically denied and disputed as being a forgery. It was stated that the plaintiff had completed construction of only 12 rooms and had not even commenced the work relating to the septic tank. The construction of Reception Hall, Office, Dining Hall, Kitchen, and fencing around the building were also not commenced by the plaintiff.

7.6. It was further stated that it was highly improbable that the plaintiff would have purchased the construction materials on his own accord, as the defendant, Anbu Illam, is a charitable institution catering to the needs of the



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disabled and disadvantaged. The defendant thus denied the statements made in the plaint regarding the total amount claimed and asserted that the building was only partially completed. It was also stated that the plaintiff had assured that he would immediately commence the remaining works at Navalcaud. The defendant therefore contended that the suit was baseless and liable to be dismissed.

7.7. The defendant also filed an additional written statement contending that he had travelled to the United States of America on 01.07.2008 and returned only on 28.08.2008, as evidenced by the entries in his passport. It was therefore contended that it was highly improbable that the defendant could have executed the alleged agreement dated 15.08.2008, and it was further contended that the suit deserves to be dismissed.

7.8. The following issues, including additional issues, were framed by the trial Court:-

Issues:-

"(i) Whether the plaintiff is entitled to the amount as prayed for?"



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(ii) To what relief is the plaintiff entitled?"

Additional Issues:-

"(i) Whether the plaintiff and the defendant entered into a written agreement on 15.08.2008?

2. Whether the contract between the plaintiff and the defendant was a full contract or merely a labour contract?"

O.S.No.130 of 2012 [District Court, Kanniyakumari District at

Nagercoil):-

8. The defendant in O.S.No.194 of 2009, Anbu Illam, filed O.S.No.130 of 2012 seeking recovery of a sum of Rs.7,31,933/- together with interest and costs. It was contended that the defendant in the suit, John Bennet, had undertaken labour contract work for Anbu Illam and was entrusted with the construction of Anbu Illam and the Nazareth Building at Navalcaud on an oral labour contract. The construction at Anbu Illam commenced on 15.02.2006, and an advance of Rs.50,000/- was paid by the plaintiff. The work was stated to have been completed on 24.08.2007. The total constructed area was 26,186.69 sq. ft., for which a sum of Rs.21,57,959/- had been paid to the defendant. A further sum of Rs.85,063/- was also paid on 04.11.2009.



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8.1. With respect to the work at Navalcaud, construction was completed only for 3,896 sq. ft., though the total proposed work was 7,937.5 sq. ft. No work was done for the remaining 4,041.5 sq. ft. The labour contract was fixed at Rs.130/- per sq. ft. for the building area and Rs.65/- per sq. ft. for the projection area. The total cost of construction was calculated to be Rs.4,28,805/- for a building area of 2,701 sq. ft. and a projection area of 1,195 sq. ft. The total amount paid for the Navalcaud building was Rs.12,73,451/-. After deducting the amounts already paid, it was contended that the excess payment made to the defendant amounted to Rs.7,31,933/-, which formed the basis of the suit claim.

8.2. In the written statement, the defendant denied that he had sought the work from the plaintiff. It was stated that the plaintiff had collected donations from various sources, including from Western countries, and had undertaken improvements to Anbu Illam. The defendant contended that it was the plaintiff who requested him to do labour work for the new building, Anbu Illam, in January 2006. The averments in the plaint in O.S.No.194 of 2009 were reiterated, and it was specifically denied that the plaintiff was entitled to receive a sum of Rs.7,31,933/-. Accordingly, the defendant prayed that the suit be dismissed.

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8.3. On the basis of the pleadings, the following issues were framed by the trial Court:-

"(i) Whether the plaintiff is entitled to recover the suit amount as prayed for?

(ii) To what other relief, the plaintiff is entitled?"

The Trial:-

9. Joint trial was conducted in both suits and the suit in O.S.No.194 of 2009 was taken as the lead suit.

10. The plaintiff, John Bennet, was examined as P.W.1, and he examined nine other witnesses as P.W.2 to P.W.10.

10.1. The defendant, Fr.Russel Raj, examined himself as D.W.1 and examined two further witnesses, D.W.2 and D.W.3.



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10.2. The plaintiff marked Exs.A.1 to A.64. Ex.A.1 was the copy of the Agreement dated 15.08.2008 and Ex.A.2 was the approved plan. The exchange of notices between the parties were marked as Exs.A.3 and A.5. The bills for the purchase of materials were marked as Exs.A.13 to A.19. The other documents related to petitions filed under the Right to Information Act, receipts issued by the plaintiff, and pleadings in O.S.No.130 of 2012.

10.3. The defendant marked documents Exs.B.1 to B.8. Ex.B.1 was a copy of the quotation for labour contract work, and Exs.B.7 [series] comprised various receipts.

10.4. During the trial, additional documents were marked through the Court as Exs.C.1 to C.5. These included the final report of the Commissioner (Ex.C.3) and the report submitted by the Engineer (Ex.C.5). A set of photographs and Compact Discs were marked as Exs.C.2 and C.4, respectively. Further documents were marked through witnesses as Exs.X.1 to X.3, including an Account Book maintained by P.W.3 and a copy of the property working sheet of Nagercoil Municipality (Ex.X.3).

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The Common Judgment:-

11. Based on the evidence adduced, the learned District Judge, Kanniyakumari District at Nagercoil, decreed O.S.No.194 of 2009 and dismissed O.S.No.130 of 2012 by common judgment dated 22.12.2015.

12. The learned Trial Judge held that the plaintiff had produced more than sufficient oral and documentary evidence to prove that he had been engaged in the construction of the two buildings and that he had also purchased the materials required for the same. In this connection, the learned Trial Judge examined Ex.A.1, the copy of the Agreement, and Ex.A.2, the Approved Plan for the construction of Jacks Land at Navalcaud, as well as the notices exchanged between the parties marked as Exs.A.3 and A.5. He also examined the bills for the purchase of raw materials, namely, Exs.A.13 to A.19 series. Further, he placed reliance on Ex.A.20, which contained calculations given by the defendant on the date when he had issued three cheques for an amount of Rs.5,11,451/-.

13. The learned Trial Judge also noted that the defendant had filed I.A. No.152 of 2011 under Section 45 read with Section 73 of the Indian Evidence



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Act, 1872, seeking to send Ex.A.1 for expert examination to verify the defendant's signature. Though this application was allowed on 27.09.2011, the defendant did not take any steps till the date of pronouncement of the judgment to send the document for forensic comparison of the signatures.

14. The learned Trial Judge further examined the evidence of P.W.2 to P.W.7, who testified regarding the bills marked for the supply of raw materials by them. He also considered the evidence of P.W.9, the Engineer, who had assisted the Advocate Commissioner in inspecting the construction and preparing an estimate of the cost of construction.

15. The learned Trial Judge held that the plaintiff had established his case, and that therefore, the onus shifted to the defendant. The learned Trial Judge further found that although the defendant claimed he was not in India on 15.08.2008, when Ex.A.1 was executed, and in this regard produced Ex.B.2, a copy of his Passport, during cross-examination he stated that he did not remember the specific dates on which he had travelled to various countries.



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16. The learned Trial Judge further held that the evidence of D.W.1 was contradictory to his own case. The learned Trial Judge did not find much credibility in the evidence of D.W.2 and D.W.3. He specifically held that the evidence of D.W.1 was not believable. The learned Trial Judge therefore drew an adverse inference against the defendant and proceeded to decree the suit in O.S.No.194 of 2009 with costs, while dismissing the suit in O.S.No.130 of 2012 with costs.

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17. Challenging the decree in O.S.No.194 of 2009, the defendant filed A.S.(MD)No.12 of 2016. Likewise, challenging the decree in O.S.No.130 of 2012, the same appellant filed A.S.(MD)No.17 of 2016. Since arguments were advanced in common in both the Appeal Suits, a common judgment is therefore being passed.

18. The learned counsel for the appellant, while arguing both the appeals, submitted that the respondent had been engaged only as a Labour Contractor for the construction of a building known as "Anbu Illam", which was



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commenced on 15.02.2006, and completed on 24.08.2007, and inaugurated on the same day. The appellant had paid a sum of Rs.50,000/- as advance for the said construction. The learned counsel contended that the actual measurement of the constructed portion was only 26,186.69 sq.ft., and not 28,000 sq.ft., as claimed by the respondent. The total payment made was Rs.21,57,959/- and not Rs.23,59,760/-.

19. The learned counsel pointed out that the respondent was subsequently entrusted with the construction of another building at Navalcaud, in a property known as "Jacks Land", intended as a senior citizens' home. With respect to the construction at Navalcaud, it was contended that the work was purely a labour contract and based on an oral agreement, with no written contract in existence. The learned counsel further alleged that the respondent had completed the construction of only 12 rooms and that the work relating to the septic tank had not even been commenced by the respondent, compelling the appellant to complete the same through casual labourers. It was therefore submitted that the building was only partially completed.



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20. The learned counsel further asserted that construction materials were never purchased on credit basis and that payments were made immediately to all suppliers. Accordingly, the learned counsel questioned the series of bills produced by the respondent during trial, contending that they were fabricated and prepared documents. It was further submitted that by virtue of the work entrusted to construct "Anbu Illam" at Navalcaud, the respondent had been able to secure other construction contracts as well. Hence, the appellant could not be made liable for the cost of materials allegedly purchased by the respondent without authorisation.

21. With respect to the construction area at Navalcaud, it was stated that the total built-up area was 2,701 sq.ft., with an additional projection area of 1,195 sq.ft. The rate was fixed at Rs.130/- per sq.ft. for the building area and Rs.65/- per sq.ft. for the projection area. Based on this calculation, the total cost of construction amounted to Rs.4,28,805/-. There was also an obligation under the arrangement to construct a reception hall, office, dining hall, kitchen, and compound wall with brick fencing; however, these works were never even commenced by the respondent.

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22. The learned counsel further argued that the respondent had already received an advance of Rs.11,60,738/- as on 04.11.2009. A further cheque for Rs.2,28,801/- was issued on 04.11.2009, of which Rs.85,063/- was towards settlement of the 'Anbu Illam' construction, Rs.27,000/- was towards the purchase of cots, and the balance sum of Rs.1,16,738/- was an advance towards the labour contract work for the Navalcaud building. It was also contended that the respondent had previously received an advance amount of Rs.7,31,933/-.

23. The learned counsel emphasised that there were no pillars in the building, no granite or marble flooring and only ordinary wood had been used for doors, and fibre doors were installed in the toilets. It was argued that the learned Trial Judge had failed to consider these aspects, despite sufficient evidence on record. The learned counsel submitted that the Trial Court had viewed the evidence from a narrow perspective and consequently, urged that the judgment and decree in O.S.No.194 of 2009 be set aside, O.S.No.130 of 2012 be decreed, and both the Appeal Suits be allowed to that extent.



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24. The learned counsel for the respondent, however, disputed and denied the above contentions. The learned counsel submitted that the respondent had produced more than sufficient evidence to establish that there was an agreement to construct a new Anbu Illam building, for which the labour charge was fixed at Rs.90/- per sq.ft., and a Chapel building, for which the rate was Rs.130/- per sq.ft. The construction commenced on 10.02.2006 and was completed on 05.05.2007. The total area of the main building was 24,913 sq.ft., and the total area of the Chapel was 3,066 sq.ft. At the agreed rates, the total cost of construction amounted to Rs.26,40,750/-. After adjusting the sum of Rs.23,59,760/- already paid, the balance amount payable was Rs.2,80,990/-.

25. The learned counsel for the respondent, however, contended that the second construction was at Navalcaud, in a property known as "Jacks Land", where the appellant had proposed to construct a senior citizens' home. He submitted that it was the appellant who had insisted on the execution of an Agreement dated 15.08.2008, solely for the purpose of showing it to foreign donors in order to collect funds. The learned counsel stated that even independent of the said agreement, the appellant had admitted that the respondent was



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entrusted with the construction work, and therefore, the existence or otherwise of the written agreement was immaterial for determining the issues in the suit.

26. With respect to the construction work at Navalcaud, it was stated that the construction commenced on 18.08.2008, and the respondent had completed six individual rooms with attached toilets in each of the ground and first floors. He had also carried out electrical wiring, provided separate washbasins, and installed western-style toilets. It was further submitted that the materials used were of higher cost and quality. The building was completed on 03.10.2009, and the appellant was informed of its completion on 05.10.2009, along with a demand for payment. The appellant assured that the amount would be paid within ten days and accordingly, issued three cheques for a total sum of Rs.5,11,451/-. Two of the cheques were dated 03.11.2009 and the third cheque was dated 04.11.2009.

27. The learned counsel further contended that after adjusting the amounts received, the total balance due came to Rs.21,06,814/-. This amount, when added to the earlier sum of Rs.2,80,990/- due for the Anbu Illam



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construction, formed the basis for filing the suit in O.S.No.194 of 2009. The learned counsel then took the Court through the evidence adduced by P.W.2 to P.W.8, the suppliers of materials, who had deposed regarding the bills issued by them for the supply of materials. He therefore contended that the respondent had fully established his claim in O.S.No.194 of 2009, and the onus had shifted to the appellant to prove that he was not liable for the suit amount.

28. It was further submitted that the appellant had given contradictory and unsatisfactory replies when questioned about the specific dates of his travel to abroad, with reference to Ex.B.2, the xerox copy of his passport. The learned counsel also pointed out that D.W.2 and D.W.3 were unreliable witnesses. He further relied on the report of the Advocate Commissioner filed during the trial, which detailed the extent of construction completed, as well as on the evidence of the Engineer, who had estimated the value of the construction.

29. The learned counsel lastly argued that the claim in O.S.No.130 of 2012 was fictitious and baseless. He therefore submitted that the Trial Court had rightly dismissed that suit and, on the basis of the oral and documentary evidence



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adduced, had rightly decreed O.S.No.194 of 2009. Accordingly, the learned counsel prayed that both the Appeal Suits be dismissed.

30. The appellant had earlier filed C.M.P.(MD)No.2916 of 2022 in A.S.(MD)No.17 of 2016, seeking the opinion of the Regional Forensic Science Laboratory, Madurai, to examine the disputed signatures in Ex.A.1 Agreement dated 15.08.2008 in comparison with the admitted signatures of the appellant. It is relevant to note that only the xerox copy of the Agreement had been marked during the course of the trial.

31. It is pertinent to mention that the appellant had filed C.M.P.(MD)No.4032 of 2025 in A.S.(MD)No.17 of 2016 to place on record an additional document, namely, the report dated 09.10.2024 from the Deputy Director, Regional Forensic Science Laboratory, Madurai, and to mark the same as Ex.B.9. The respondent, on the other hand, filed C.M.P.(MD)No.4276 of 2025 in the same appeal, seeking to set aside the said report dated 09.10.2024.



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32. The application in C.M.P.(MD)No.2916 of 2022 came up for consideration before a Coordinate Division Bench of this Court, and by order dated 24.09.2024, it was allowed. The document in Ex.A.1 was directed to be forwarded to the Regional Forensic Science Laboratory, Madurai, through an Advocate Commissioner, along with the admitted signatures of the appellant in contemporaneous documents.

33. Pursuant to this direction, the document was forwarded, and the opinion of the Expert was received, taken on record, and marked as Ex.C.6. A further direction was issued for the presence of Thiru.R.Velusamy, Assistant Director and Document Expert, Regional Forensic Science Laboratory, Madurai, to appear in Court and be examined as a witness. The witness was examined as C.W.1.

34. In the report marked Ex.C.6, C.W.1 stated that the signature found in Ex.A.1, when compared with the admitted signatures of the appellant in the contemporaneous documents, showed variances and was materially different. In effect, he opined that there was a high probability that the signature in Ex.A.1 could not be concluded to be that of the appellant.

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35. Placing reliance on the evidence, the appellant filed C.M.P. (MD)No.4032 of 2025 in A.S.(MD)No.17 of 2016 seeking consideration of the report marked by C.W.1. On the other hand, the respondent filed C.M.P.(MD)No. 4276 of 2025 in A.S.(MD)No.17 of 2016, seeking to scrap the said report.

The points for determination:-

36. The following points arise for determination:-

(i) Whether the learned Trial Judge had correctly appreciated the evidence adduced by the plaintiff relating to the claim in O.S.No.194 of 2009?

(ii) Whether the learned Trial Judge had properly examined the evidence adduced relating to the claim in O.S.No.130 of 2012?

(iii) The evidentiary value of Ex.C.1 and the oral evidence of C.W.1?

The Points answered:-

37. We have carefully considered the arguments advanced on either side and perused the material records.

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38. Since the points framed above are closely interlinked, they are taken up together for consideration and determination.

39. The appellant, Fr.B.Russel Raj, was running a charitable organisation known as "Anbu Illam". According to him, the respondent, who is carrying on business under the name and style of "M.P.Construction", had approached him seeking construction work. In this connection, the respondent was entrusted with the construction of a new Anbu Illam building, comprising a main building to be constructed at Rs.130/- per sq.ft. and a Chapel at Rs.90/- per sq.ft. This arrangement was made in the year 2006. It is the case of the appellant that the construction was completed and the buildings were inaugurated in August 2007.

40. However, with respect to the said construction, it is the case of the respondent that a sum of about Rs.2,80,990/- still remained due and payable towards the expenses incurred in connection with the construction.



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41. It is contended that the said amount was never paid by the appellant. Thereafter, the appellant again proposed to undertake construction in a larger tract of land known as "Jacks Land" at Navalcaud, where he intended to establish a senior citizens' home. This work was also entrusted to the respondent. It is the case of the appellant that this was only a labour contract. The respondent, however, marked Ex.A.1, a xerox copy of an Agreement dated 15.08.2008. The appellant seriously disputed the genuineness of this Agreement, contending that he was not in India on the said date when the Agreement was alleged to have been executed.

42. In this connection, the appellant produced Ex.B.2, his Passport, and asserted that the endorsements therein clearly showed that he was not in the country on 15.08.2008. It was therefore contended that the Agreement had been fabricated by the respondent.

43. On the other hand, it was the case of the respondent that the date 15.08.2008 was chosen only because the appellant considered it to be a holy day as per the Roman Catholic Church calendar, and that the appellant had desired to



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use the said Agreement for the purpose of approaching foreign donors to solicit financial assistance for his charitable organisation.

44. On the premise that the said Agreement had been fabricated by the respondent, the appellant had filed I.A.No.152 of 2011 before the Trial Court, seeking to forward the document for forensic examination to compare the signatures therein with his admitted signatures. The said application was allowed. However, until the date of pronouncement of the judgment, the appellant did not take any steps to forward the document for forensic examination. The learned Trial Judge had strongly commented upon this conduct and, in view thereof, drew a presumption under Section 114 of the Indian Evidence Act, 1872, that the reason why the appellant had refrained from forwarding the document was that he had, as a fact, signed the Agreement.

45. Subsequently, even before this Court, the appellant reiterated the same contention and, in this connection, filed an application in C.M.P.(MD)No. 2916 of 2022 in A.S.(MD)No.17 of 2016, seeking to forward Ex.A.1 to the Regional Forensic Science Laboratory, Madurai, for comparison of the signature therein with his admitted signatures.

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46. A Coordinate Division Bench of this Court allowed the said application. Thereafter, the document was forwarded to the Regional Forensic Science Laboratory, Madurai, and was examined by the Assistant Director, Thiru.R.Velusamy, who submitted a report. The report was taken on record as Ex.C.6 by the order of the Coordinate Division Bench. The Expert was also summoned to tender evidence and was examined as C.W.1.

47. Subsequently, as noted above, two applications were filed, namely, C.M.P.(MD)No.4032 of 2025 in A.S.(MD)No.17 of 2016, seeking to take on record the report Ex.C.6 as additional evidence, and C.M.P.(MD)No.4276 of 2025 in the same appeal, seeking to scrap the said document.

48. Before proceeding further to discuss the rival arguments advanced in the Appeal Suits and to determine the points framed, we deem it necessary to address these two Civil Miscellaneous Petitions.

49. The order in C.M.P.(MD)No.2916 of 2022 in A.S.(MD)No.17 of 2016, filed for the examination of the signature in Ex.A.1 and its comparison with



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the admitted signatures of the appellant, was challenged before the Hon'ble Supreme Court by the respondent in Special Leave to Appeal (C) No.29984 of 2024. That appeal was dismissed by order dated 06.01.2025.

50. Subsequently, the Expert who gave the opinion in Ex.C.6 was examined as a Court witness. He elaborated the nature of the tests conducted and affirmed that the signature in Ex.A.1 materially differed from the admitted signatures of the appellant.

51. However, one crucial fact must be highlighted. Ex.A.1 was not an original document but a Xerox copy. Under normal circumstances, it is not prudent to subject a Xerox signature to forensic comparison with other admitted signatures. There always exists a possibility that the signature in a Xerox document may have been tampered with or altered. Courts have therefore consistently exercised extreme caution in placing reliance on opinions formed by comparing signatures in a Xerox copy with admitted signatures.



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52. An expert opinion based on a photocopy or Xerox copy of a document must be treated with extreme caution. A Xerox copy can easily be tampered with, and any opinion on the comparison of signatures on such a Xerox copy of a document cannot be regarded as conclusive evidence.

53. Courts across the Country have consistently deprecated the practice of forwarding a Xerox copy of a document for comparison of the signatures found therein with admitted signatures.

(i) The High Court of Andra Pradesh in the judgment reported in **AIR 2006 AP 314 [Bheri Nageswara Rao vs. Mavuri Veerabhadra Rao and others]**

(ii) Calcutta High Court in the judgment reported in **AIR 2017 Cal 254 [Paramesh Chandra Sen (Deceased) and another vs. Sanjukta Mukherjee]**

(iii) High Court of Madhya Pradesh in the judgment reported in **2018 SCC OnLine MP 1839 [Abhay Jain and others vs. State of Madhya Pradesh and another]**

(iv) Delhi High Court in the judgment reported in **2023 (0) Supreme (Del) 1844 [Narender Kumar vs. The Mgmt. of M/s.Maman Chand Ramji Das]**

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(v) Delhi High Court in the judgment reported in **2024 SCC OnLine Del 6841 [Sunayna Sabharwal and another vs. State NCT of Delhi and others]**

(vi) Calcutta High Court in the judgment reported in **2025 SCC OnLine Cal 3314 [Deeplok Financial Services Limited vs. Tata Iron & Steel Company and others]**

(vii) Punjab and Haryana High Court in the judgment reported in **AIR 2019 P&H 66 [Gurdial Singh vs. Dalveer Kaur]**

53.1. In Bheri Nageswara Rao [referred supra] reported in AIR 2006 AP 314, it had been held as follows:-

"5. The opinion of a hand writing expert involves the analysis of the slant, which a person uses in the matter of putting his signature, and in some cases, the point of time, at which it may have been subscribed. These analyses would become possible only vis-a-vis an original signature; and the signature mark on a xerox copy of a document can never constitute the basis."



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54. In the present case, Ex.A.1 is not the original Agreement, but only a Xerox copy. The Expert Report, Ex.C.6, although placed on record, cannot be relied upon as conclusive proof. The very basis of the Expert opinion is therefore inherently weak. Taking this report as decisive evidence would be contrary to established principles of law and could lead to miscarriage of justice.

55. We are therefore of the opinion that no reliance can be placed on Ex.C.6 or on the evidence of C.W.1.

56. The 3rd point framed for consideration is answered as aforesaid.

57. Therefore, C.M.P.(MD)No.4032 of 2025 in A.S.(MD)No.17 of 2016 is liable to be closed and the report in Ex.C.6 cannot be looked into for any purposes.

58. As a corollary, C.M.P.(MD)No.4276 of 2025 in A.S.(MD)No.17 of 2016 is also liable to be closed.



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59. It is the case of the appellant that the respondent had not properly constructed the building. According to him, the undertaking was not limited to constructing the rooms with attached toilets but also included construction of the dining hall, kitchen, office room, frontage, and other additional rooms. The appellant contended that the respondent had failed to complete any of these works. Furthermore, it was alleged that the respondent did not construct the septic tank, and the appellant had to engage casual labourers to complete this work. On this basis, the appellant filed O.S.No.130 of 2012, claiming a sum of Rs.7,31,933/- as amounts paid in excess to the respondent.

60. However, a careful examination of the expenses incurred indicates that there was a broad agreement regarding the cost per square feet for the area that had been constructed. In this connection, reliance can also be placed on the evidence of P.W.9, the Engineer who accompanied the Advocate Commissioner appointed during the course of trial. The Engineer submitted his report, marked Ex.C.5, dated 10.03.2011, which assessed the total cost of construction at Rs. 29,39,666.97, with a detailed breakup provided in Ex.C.5.



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61. It is also to be noted that the respondent produced the relevant exhibits showing purchases of materials from suppliers, which were used in the construction. These documents were marked as Exs.A.13 to A.19, and the proprietors who issued these bills were examined as P.W.2 to P.W.8. Each of these documents was thus substantiated through direct evidence. The appellant contended that he always settled bills immediately and did not engage in credit purchases. However, in this instance, credit purchases were made, the bills were produced, and the witnesses testified regarding these transactions. Therefore, we hold that these expenses have been properly proved and established by the respondent.

62. The primary argument advanced by the appellant was that Ex.A.1 had been fraudulently produced. However, there is no sufficient evidence to substantiate this claim. As noted earlier, comparing signatures found in a Xerox copy with other admitted signatures is legally impermissible, as there is always a possibility of tampering. Moreover, the fine details of a signature, such as, ridges, curves, and natural hand tremors, cannot be clearly discerned in a Xerox copy. The practice of comparing a signature on a Xerox document with other signatures



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is neither recognized in law nor in practice. Consequently, this argument by the appellant's counsel does not advance his case.

63. The appellant ought to have produced the original of Ex.A.1 for comparison, but the original is not available. Even if Ex.A.1 were to be rejected as inadmissible, it is an undisputed fact that the respondent had carried out construction work. The appellant's grievance is not that the respondent was a stranger who had undertaken no work at all, but rather that the respondent had allegedly not completed the construction at Jacks Land in Navalcaud as expected.

64. It had further been contended by the appellant that the Trial Court failed to consider Ex.B.7, which comprises a series of nearly 83 bills relating to the purchase of construction materials and payment of labour charges.

65. It is not in dispute that both the appellant and the respondent had incurred expenses towards the construction of the building. However, the Court can consider only such documents that have been duly established through oral evidence.



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66. The appellant's further claim is based on Ex.B.3, an acknowledgment issued by the Income Tax Department. It is claimed that this document proves that he had spent a sum of Rs.25,62,400/- towards the construction of the building at Navalcaud.

67. There can be no dispute that the appellant had in fact made payments to the respondent. However, the issue that arises is one of reconciliation, namely, the determination of the amount due and payable, the amount actually paid, and whether any balance remains outstanding after accounting for payments already made.

68. Unfortunately for the appellant, with respect to the respondent's claim in O.S.No.194 of 2009 and his own claim in O.S.No.130 of 2012, there is no evidence apart from bare assertions to establish that any amount had been overpaid to the respondent, or that all dues had been settled in full. The learned Trial Judge had therefore, rightly concluded that the appellant had failed to substantiate his case in both the suits.



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69. A perusal of the grounds of appeals shows that the appellant had primarily concentrated on the contention that Ex.A.1, the Agreement, cannot be looked into. It is only a xerox copy of the document and therefore cannot be relied upon. However, the pleadings of the appellant and his stand during the course of the trial clearly reflect that there was, in fact, an agreement between the appellant and the respondent for the construction of the buildings on the appellant's land by the respondent. Even if Ex.A.1 is to be excluded from consideration, this fundamental fact cannot be denied or disputed.

70. In view of the abundant oral and documentary evidence adduced by the respondent herein and the plaintiff in O.S.No.194 of 2009, and in the absence of any material to substantiate the claim in O.S.No.130 of 2012, we are of the firm opinion that the learned Trial Judge has correctly adjudicated the issues raised and that the judgment does not warrant any interference.

71. Consequently, the points for determination are answered to the effect that O.S.No.194 of 2009 has been rightly decreed, and O.S.No.130 of 2012 has been rightly dismissed. Further, C.M.P.(MD)No.4032 of 2025 in A.S.



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(MD)No.17 of 2016 has become redundant, since the report of the Expert has already been marked as Ex.C.6. However, in view of the observations and findings made above, it is necessary to hold that the said document has no evidentiary value and cannot be taken into consideration, as it is based on an opinion formed by comparing signatures found in a xerox copy.

72. With respect to C.M.P.(MD)No.4276 of 2025 in A.S.(MD)No.17 of 2016, which seeks to scrap the said report, it is to be noted that the document has already been marked as Ex.C.6 and evidence has also been adduced in relation thereto. Therefore, there can be no question of scrapping the said document. We hold that this application appears to have been filed more out of caution than with any substantive intent.

73. In view of the foregoing reasoning, both C.M.P.(MD)No.4032 of 2025 and C.M.P.(MD)No.4276 of 2025 in A.S.(MD)No.17 of 2016 are closed as having become redundant. The opinion of the Expert has already been marked as Ex.C.6, and the Expert, Thiru R.Velusamy, has been examined as C.W.1.



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74. In the result,

(i) A.S.(MD)No.12 of 2016 stands dismissed with costs.

(ii) A.S.(MD)No.17 of 2016 stands dismissed with costs.

(iii) C.M.P.(MD)No.4032 of 2025 in A.S.(MD)No.17 of 2016 stands closed.

(iv) C.M.P.(MD)No.4276 of 2025 in A.S.(MD)No.17 of 2016 stands closed.

(v) C.M.P.(MD)No.854 of 2016 in A.S.(MD)No.12 of 2016 stands closed.

Index : Yes
NCC : Yes
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[C.V.K., J.] & [R.V., J.]
05.11.2025

List of witnesses marked in the Appeal Suits:-

1. **C.W.1** – Thiru.R.Velusamy, Assistant Director & Document Expert,
Regional Forensic Science Laboratory,
Madurai.



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List of Documents marked in the Appeal Suits:-

1. **Ex.C.6** – Forensic Examination Report

[C.V.K., J.] & [R.V., J.]
05.11.2025

To

- 1.The Principal District and Sessions Judge,
Kanniyakumari District at Nagercoil.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

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