

IN THE COURT OF THE MUNSIFF CHENGANNUR
Present : Smt. Amala Lawrence, Munsiff,
Friday 25th day of July 2025 /3rd Sravanum 1947

OS 113/2022
 (Filed on 17.06.2022)

Plaintiff : James, aged 70 years,
 S/o Avira,
 Ilamathayil,
 Mannar Muri,
 Kadapra Village, Thiruvalla Taluk.
(By Adv. R.Vijaya Kumar)

Defendants : 1. Dhanush Mohan, aged about 40 years,
 S/o Mohanan,
 Kurichi Muriyil,
 Kurichi Village, Changanassery.

2. Chandrakanth J, aged about 50 years,
 Managing Director ,
 Oneway Financial Services(P) Ltd,
 Ayarkkunnam,
 Kottayam.
(Exparte)

This Suit having been finally heard on 15.07.2025 and the court on 25.07.2025 delivered the following

JUDGMENT

This suit is filed for realisation of money.

2. **The averments in the plaint, in brief, are as follows:-** The plaint schedule item No.1 property, having an extent of 7.08 ares in Re-Survey No. 319/2/1, is in the absolute ownership and possession of the plaintiff. The first defendant is a building contractor, who agreed to construct a single-storied building

having a plinth area of 968 square feet in plaint schedule item No.1 property. An agreement to this effect was executed on 09.09.2019. The contract was entered with the first defendant at the request of the second defendant. As per the terms of the said agreement, the construction was to be completed within seven months. However, the construction was not completed by the first defendant in accordance with the agreement. The incomplete structure is described in the plaint as plaint schedule item No.2 building. The plaintiff had paid an amount of ₹16,18,000/- to the first defendant towards the construction of the said building, as per the written agreement. Subsequently, the plaintiff and the first defendant entered into an oral agreement for the construction of another building on the northern side of the plaint schedule item No.2 building. This building is referred to in the plaint as plaint schedule item No.3 building. However, the construction of both plaint schedule item Nos.2 and 3 buildings remains incomplete.

3. The plaintiff issued a legal notice to the defendants, calling upon them either to complete the construction or to cancel the agreement dated 09.09.2019 and refund the excess amount received by the first defendant. Upon receiving the notice on 03.12.2021, the first defendant visited the plaint schedule item No.1 property and stated that he would not proceed further with the construction. The plaintiff accepted the same. Thereafter, one

Suresh Kumar, a licensed supervisor, measured the construction work completed on plaint schedule item Nos.2 and 3 buildings and assessed the cost of the work done. As per the measurements and valuation, the cost of construction for plaint schedule item No.2 building was ₹6,41,750/-, and for plaint schedule item No.3 building, it was ₹1,89,743/-, totalling ₹8,31,493/-. The first defendant admitted that he had received an excess amount of ₹7,86,507/- from the plaintiff and undertook to repay the same on or before 31.03.2022. However, the first defendant failed to repay the said amount. Hence, the plaintiff is entitled to recover the amount with interest. Therefore, this suit has been instituted.

4. Even though the defendants appeared before the court, no written statement was filed; hence, the suit was heard ex parte against the defendants.

5. In order to prove the case of the plaintiff, the plaintiff filed proof affidavit in lieu of examination in chief and was examined as PW1. and Ext.A1 to A4 and A5 series documents were marked.

6. Heard the learned counsel for the plaintiff.

7. In order to prove the case of the plaintiff, the plaintiff filed an affidavit in lieu of examination-in-chief and was examined as PW1, who deposed in alignment with the averments in the plaint. Exts. A1 to A4 and Ext. A5 series were marked as evidence.

Ext. A1 is the agreement dated 09/09/2019. Ext. A2 is the copy of the legal notice dated 24/11/2021. Ext. A3 is the postal receipt dated 24/11/2021. Ext. A4 is an estimate dated 15/12/2021. Ext. A5 is the plan and estimate prepared by the Expert Commissioner. From the oral testimony of PW1 and Exts. A1 to A4, it stands proved that there was an agreement between the plaintiff and the first defendant. As per Ext. A1, the construction work agreed upon was not completed by the first defendant, despite the plaintiff having paid a total amount of Rs. 16,18,000/- to the first defendant.

8. On perusal of the Commissioner's report (Ext. A5), it is found that the actual cost incurred for the construction of plaintiff schedule item No.1 building is Rs. 7,97,281/-, and plaintiff schedule item No.2 building is Rs. 1,70,045/-, making the total construction cost Rs. 9,67,326/-. Since the total amount paid by the plaintiff is Rs. 16,18,000/-, the balance amount refundable by the first defendant to the plaintiff, as per Ext. A5, is Rs. 6,50,674/-. According to the plaintiff, he is also entitled to interest at the rate of 12% per annum for the period from 01/01/2022 to 31/05/2022, which amounts to Rs. 23,400/-. Therefore, the total amount due to the plaintiff is Rs. 6,74,074/-. The averments in the plaint have been duly proved through the deposition of PW1, the affidavit, and the documents produced. As the defendant has not contested the

claim, the case of the plaintiff remains unchallenged and stands proved on record. Therefore, the plaintiff is entitled to a decree of realization of money.

In the result, suit decreed exparte as follows:-

1. The plaintiff is entitled to recover a sum of ₹6,74,074/- (Rupees Six Lakh Seventy Four Thousand Seventy Four only) from the first defendant and his assets, with interest at the rate of 9% per annum from the date of the suit till the date of decree, and thereafter at the rate of 6% per annum from the date of decree till realisation.
2. The plaintiff is entitled to realise the cost from the first defendant and his assets.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 25th day of July 2025.)

**Sd/-
AMALA LAWRENCE
MUNSIFF**

APPENDIX :

Witness for the Plaintiff

PW1 15.07.2025 James

Exhibits for the Plaintiff:

A1	09.09.2019	Agreement
A2	24.11.2021	Notice
A3	24.11.2021	Postal Receipt
A4	15.12.2021	Estimate
A5	07.11.2023	Report filed by Expert Commissioner
A5(a)		Plan
A5(b)		Detailed Estimate

Exhibit for the Defendants : Nil**Id/-
MUNSIFF**

