:: IN THE COURT OF THE PRINCIPAL CIVIL JUDGE (SENIOR DIVISION) :: KAKINADA

Present : Sri N. Ramesh Naidu
Principal Civil Judge (Senior Division), Kakinada

Tuesday, this the 30th day of December, 2025

APPEAL SUIT No.91/2024.

Between:

1. Komarthi Prabhavathi, W/o.late K.Kameswara Rao @ Kailash, aged 57 years, Housewife, Resident of Sarpavaram, Kakinada.

2. Komarthi Naresh, S/o.late K.Kameswara Rao @ Kailash, aged 39 years, resident of Sarpavaram, Kakinada.

3. Komarthi Narayana Rao, S/o.late K.Kameswara Rao @ Kailash, aged 37 years, resident of Sarpavaram, Kakinada.

4. Komarthi Mamatha, D/o.late K.Kameswara Rao @ Kailash, aged 41 years, resident of Sarpavaram, Kakinada.

...Appellants/Defendants

Vs.,

Pulla Sathiraju, S/o.P.Ramulu, aged 63 years, Business,
Resident of Sarpavaram, Kakinada Rural Mandal.

…Respondent/Plaintiff

On appeal filed against the decree and Judgment dated 25.03.2024 passed in O.S.No.348/2021, on the file of V Addl. Civil Judge (Junior Division), Kakinada.

Between:-

Pulla Sathiraju …Plaintiff

Vs.,

1. Komarthi Prabhavathi
2. Komarthi Naresh
3. Komarthi Narayana Rao
4. Komarthi Mamatha ...Defendants

This appeal coming on 12.11.2025 for final hearing before me in the presence of Sri.Vasudha Srinivas, Advocate for the Appellants/Defendants and of Sri.G.Ramesh Chandra, Advocate for the Respondent/Plaintiff and having heard the matter and stood over for consideration till this day, the Court delivered the following:

JUDGMENT

1. The unsuccessful defendants in the suit in O.S.No.348/2021 on the file of learned V Addl. Junior Civil Judge, Kakinada preferred the appeal challenging the decree and judgment dated 25.03.2024, whereby and whereunder the plaintiff's suit for recovery of an amount of Rs.2,59,200/- from the estate of deceased lying in the hands of defendants 1 to 4 has been decreed.

2. Whereas, the respondent cum plaintiff has contested the appeal.

3. The appellants and respondent hereinafter would be referred to as the parties arrayed in the suit for the sake of convenience and clarity.

4. The factual matrix projected in the plaint is that the husband of 1st defendant cum father of defendants 2 to 4 by name Kailash alias Kameswara Rao, had borrowed from the plaintiff an amount of Rs.1,60,000/- on 10.09.2018 for the purpose of business investment and family expenses while executing in favour of the plaintiff a promissory note on the even date at Sarpavaram, promising to repay the debt thereof, together with quarterly rests interest @ 24% p.a. either to the plaintiff, or on his order on demand, to the holder in due course of instrument, but in spite of repeated demands of plaintiff, the original borrower during his life time has failed to repay either the debt or interest thereof, however the original borrower died on 23.11.2018, leaving behind him the 1st defendant as his widow; and the defendants 2 to 4 as his children; whom have succeeded the estate of original borrower. The plaintiff therefore demanded the defendants 1 to 4 to discharge the debt due under promissory note dt.10.09.2018. The quartet defendants although admitted the debt, postponing repayment of debt on the one pretext or the other, constraining the plaintiff to issue legal notice dt.04.02.2021 demanding the quartet defendants to repay the debt. Instead of discharging the debt, the quartet defendants got issued reply notice dt.05.03.2021 with a pack of lies. Therefore, the plaintiff has instituted the suit for recovery of adjudged debt covered by promissory note dt.10.09.2018.

5. In contrast the contest of quartet defendants, inter alia is that the deceased/K.Kailash closed his sweets business in the year 2015 itself. He was suffering from Brain Tumor. During the month of March, 2018 he was admitted in Kusuma Hospital and in several other hospitals for obtaining treatment. He lost mental stability due to his ailment. During the month of August, 2018 he underwent brain surgery in the National Institute of Mental Health and Neuro Science, Bangalore. Even then, he could not recover from his ailment. Eventually, he fell in Coma and continued to remain in Coma until his death occurred on 23.11.2018. So, there was no possibility for him to execute promissory note dt.10.09.2018 in favour of the plaintiff. The plaintiff might have fabricated the suit promissory note for wrongful gain. The suit promissory note was not supported by consideration. The suit is therefore, liable to be dismissed.

6. Upon the failure of plaintiff and defendant to resolve the disputes, across the negotiating table by utilizing the benevolent provisions covered under Section 89 of C.P.C, the issues hereunder are framed by the trial court:

1. Whether the suit promissory note is true, valid and binding on the defendants?
2. Whether the suit promissory note is a fabricated one?
3. Whether the plaintiff is entitled for the suit amount as prayed for?
4. To what relief?

7. During the course of trial, the plaintiff has examined P.Ws.1 & 2 and got marked on his behalf Exs.A1 to A3. The defendants have examined D.Ws.1 & 2 and got marked on their behalf Ex.B1.

8. The trial court having appreciated the evidence has decreed the suit.

9. Feeling aggrieved by the judgment and decree of trial court, defendants have preferred the appeal with the following grounds.

> **i.** The decree and judgment of the trial court is contrary to law, weight of evidence and probabilities of case.
>
> **ii.** The trial court ought to have dismissed the suit basing on the available evidence instead of it's dismissal.
>
> **iii.** The trial court has erroneously believed the version of plaintiff.
>
> **iv.** The trial court has rendered the judgment without verifying documents and evidence.
>
> **v.** The trial court has failed to take note of admissions of P.Ws.1 and 2 elicited during the course of cross examination with regard to the suit promissory note.
>
> **vi.** The trial court has failed to consider the evidence of D.W.2, a Doctor regarding Health condition of the deceased borrower.

10. Heard the learned counsel for the appellant/plaintiff.

11. Now the points that arise for determination in the appeal are:

> **1.** Whether the plaintiff has discharged his initial onus of execution of promissory note? If so, whether the onus of proof is shifted on to the side of defendants?

2. Whether the defendants have discharged their onus of proof of non existence of consideration covered by suit promissory note so probable that an ordinary prudent man believes it's nonexistence?

3. Whether the plaintiff is entitled to recover the suit amount?

4. Whether the circumstances of appeal warrant interference with the judgment and decree of the trial court?

12. **<u>Point Nos.1 to 5</u>**:

The quartet points are interrelated and interdependent, separation of which leads to repetition of facts and in order to avoid repetition of facts, all the points are taken up together for simultaneous discussion.

13. The specific case of plaintiff is that the husband of 1st defendant cum father of defendants 2 to 4 by name Kailash alias Kameswara Rao, had borrowed from the plaintiff an amount of Rs.1,60,000/- on 10.09.2018 for the purpose of business investment and family expenses while executing in his favour promissory note on the even date at Sarpavaram, promising to repay the debt thereof, together with interest @ 24% p.a. payable in quarterly rests either to him, or on his order on demand, to the holder in due course of instrument. Whereas the specific contest of defendant is that the deceased/K.Kailash was suffering from Brain Tumor and in the month of March, 2018 he was admitted in Kusuma Hospital and in several other hospitals for obtaining treatment and eventually he lost mental stability due to his ailment and in the month of August, 2018 he underwent brain surgery in the National Institute of Mental Health and Neuro Science, Bangalore and in spite of that he could not recover from his ailment and finally he fell in Coma and continued to remain in Coma until his death occurred on 23.11.2018, as such there was no possibility for him to execute promissory note dt.10.09.2018 in favour of the plaintiff and the plaintiff might have fabricated the suit promissory note for wrongful gain. Now let me evaluate the evidence as to which of the two rival versions is a true narrative.

14. Normally, the burden of proof always lies on the shoulders of a creditor to first of all establish that the negotiable instrument under which he lays claim is validly executed, and only after discharge of such initial onus of execution of an instrument, the onus shifts on to the shoulders of a debtor to prove nonexistence of consideration so probable that an ordinary prudent person believes it’s nonexistence.

15. The plaintiff, so as to discharge his initial onus of execution of promissory note dt.10.09.2018, has been examined as P.W.1. During the course of evidence, the plaintiff as P.W.1 once again reasserted and reaffirmed that the husband of 1st defendant cum father of defendants 2 to 4 by name Kailash alias Kameswara Rao, had borrowed from the plaintiff an amount of Rs.1,60,000/- on 10.09.2018 for the purpose of business investment and family expenses while executing in his favour promissory note on the even date at Sarpavaram, promising to repay the debt thereof, together with interest @ 24% p.a., payable in quarterly rests either to him, or on his order on demand, to the holder in due course of instrument.

16. The plaintiff as P.W.1 has produced the suit promissory note dt.10.09.2018 under the cover of Ex.A1. On examination of recitals of Ex.A1, the husband of 1st defendant cum father of defendants 2 to 4 by name Kailash alias Kameswara Rao, had borrowed from the plaintiff an amount of Rs.1,60,000/- on 10.09.2018 for the purpose of business investment and family expenses while executing in his favour promissory note on the even date at Sarpavaram, promising to repay the debt thereof, together with interest @ 24% p.a., payable in quarterly rests either to him, or on his order on demand, to the holder in due course of instrument. The credibility or otherwise of plaintiff as P.W.1 has been tested on the anvil of cross examination. Even during the course of cross examination, the plaintiff as P.W.1 affirmed to have lent amount to the deceased /K.Kailash @ Kameswara Rao. The plaintiff as P.W.1 reported that the deceased/K.Kailash @ Kameswara Rao was his childhood friend. The plaintiff as P.W.1 disclosed the business of deceased, disclosed the purpose of borrowing, disclosed time of lending, approximate year of lending, place of lending, presence of persons while lending besides denomination of consideration. In spite of cross examination, the defendants have failed to destabilize the stand of plaintiff as P.W.1. Nothing has been elicited from P.W.1 that supports the defence of defendants.

17. The defendants have not specifically denied that the suit promissory note covered by Ex.A1 does not contain the thumb impression of the deceased/K.Kailash alias Kameswara Rao; nor the defendants have opted for expert's opinion to prove that the thumb impression of borrower covered by Ex.A1 does not belong to the deceased/K.Kailash @ Kameswara Rao. Moreover, the 2nd defendant as D.W.1 on being questioned whether his father/ K.Kailash @ Kameswara Rao borrowed money from the plaintiff during his life time, he deposed that he did not know whether his father borrowed money from the plaintiff during his life time. Similarly, the 2nd defendant as D.W.1 on being questioned to ascertain whether his father has executed promissory note covered by Ex.A1, he deposed that he did not know till today whether his father has executed the suit promissory note covered by Ex.A1. The 2nd defendant as D.W.1 neither denied borrowal and execution of Ex.A1 by his father nor admitted borrowal and execution of Ex.A1 by his father. The 2nd defendant as D.W.1 has simply given evasive answers stating to have not known whether his father borrowed money from the plaintiff and executed the suit promissory note covered by Ex.A1 in his favour. The defendants have not uncovered in their pleadings as to how a promissory note, containing the signature of deceased/K.Kailash @ Kameswara Rao has been landed in the hands of plaintiff. Mere plea of fabrication is not enough. The defendants should have explained in their pleadings and evidence the circumstances under which the suit promissory note, containing the signatures of deceased/ K.Kailash @ Kameswara Rao has reached to the hands of plaintiff, without which narration is highly unacceptable and unbelievable that the plaintiff has fabricated suit promissory note covered by Ex.A1. The plaintiff is no other than a childhood friend of deceased/K.Kailash @ Kameswara Rao. There is no evidence to indicate that there is any rivalry or feud between the plaintiff and deceased or among the plaintiff and legal representatives of deceased, without which rivalry or feud, there could not have any necessity for the plaintiff, a small business man to fabricate the suit instrument covered by Ex.A1.

18. The defendants claim that the deceased/K.Kailash was suffering from Brain Tumor and in the month of March, 2018 he was admitted in Kusuma Hospital and in several other hospitals for obtaining treatment and eventually he lost mental stability due to his ailment and in the month of August, 2018 he underwent brain surgery in the National Institute of Mental Health and Neuro Science, Bangalore and in spite of that he could not recover from his ailment and finally he fell in Coma and continued to remain in Coma until his death occurred on 23.11.2018, as such there was no possibility for him to execute promissory note dt.10.09.2018 in favour of the plaintiff.

19. The defendants have examined Dr.T.V.Balakrishna as D.W.2, who testified to have treated the deceased/ K.Kailash @ Kameswara Rao for brain injury. D.W.2 has produced attested copy of case sheet under the cover of Ex.B1. According to D.W.2, he treated the deceased/ Komarthi Kameswara Rao on 10.03.2018 while he was in semi coma and he was discharged on 16.03.2018 and the patient was partially recovered while discharge. But the patient was not fully alert on mental side. According to the case sheet covered by Ex.B1, the deceased / Komarthi Kameswara Rao has been provided treatment in Kusuma Hospital, Kakinada for the period from 10.03.2018 to 16.03.2018. According to cash sheet (I.P.No.48118), the patient suddenly fell unconscious. As per progress sheet dt.13.03.2018, the patient was fair, conscious, coherent and oriented. Nowhere under Ex.B1, it is mentioned that the patient/Komarthi Kameswara Rao was in semi coma. During the course of cross examination, D.W.2 has made it manifest that partial coma is when the patient is unable to identify any one, including his family. But the case sheet covered by Ex.B1 does not disclose that the patient/ Komarthi Kameswara Rao is unable to identify, any one including his family. Moreover, D.W.2, during the course of his cross examination has confirmed that he was not specialized in cases relating to partial coma and that one Dr.K.S.R.Swamy is the specialist who attended the patient/ Komarthi Kameswara Rao. The defendants did not attempt to examine Dr.K.S.R.Swamy, Specialist to establish that the patient/ Komarthi Kameswara Rao was in partial coma. So, the evidence of D.W.2 is not sufficient to hold that the deceased/K.Kailash @ Kameswara Rao was in partial coma.

20. The defendants have not made any attempt to produce before the court the medical record of deceased/ Komarthi Kailash @ Kameswara Rao so as to establish that he has undergone brain surgery in the National Institute of Mental Health and Neuro Sciences, Bangalore during the month of August, 2018. The defendants have produced nothing to hold that the deceased / K.Kailash @ Kameswara Rao fell in coma and remained in coma until his death occurred on 23.11.2018. Therefore, the contention of defendants that there is no possibility for the deceased / K.Kailash @ Kameswara Rao to execute suit promissory note covered by Ex.A1 in favour of the plaintiff is improbable. It may be a fact that the plaintiff as P.W.1 has conceded that the deceased/Komarthi Kailash @ Kameswara Rao fell in coma after undergoing surgery for brain tumor during 2018, which evidence does not mean that the deceased was in coma as on the date of execution of suit promissory note covered by Ex.A1.

21. The plaintiff has examined one Manepalli Sattibabu, a third party as P.W.2, whose evidence interalia is that the husband of 1st defendant cum father of defendants 2 to 4 by name Kailash alias Kameswara Rao, had borrowed from the plaintiff an amount of Rs.1,60,000/- on 10.09.2018 for the purpose of business investment and family expenses while executing in his favour promissory note on the even date at Sarpavaram, promising to repay the debt thereof, together with interest @ 24% p.a., payable in quarterly rests either to him, or on his order on demand, to the holder in due course of instrument and while executing the promissory note himself (P.W.2), plaintiff and K.Kailash (deceased) were present and the promissory note was prepared by one scribe.

22. During the course of cross examination P.W.2 affirmed that the suit transaction covered by Ex.A1 took place at the house of plaintiff, as against the evidence of plaintiff as P.W.1 that the suit transaction covered by Ex.A1 took place at the shop of deceased. The plaintiff and defendant are illiterates. Similarly there is nothing on record to show that P.W.2 is literate. Being illiterate, P.W.2 must not have remembered about the place of suit transaction. P.W.2 could not even remembered the date and time of suit transaction. Due to paucity of time, the memory of P.W.2 might have been faded away. But the other evidence of P.W.2 that he has subscribed his signature on the suit promissory note covered by Ex.A1 remained unchallenged. A promissory note is not a compulsorily attestable document. Even if the evidence of P.W.2 is ignored, the evidence of P.W.1 together with the suit instrument is enough to hold that the deceased/ Komarthi Kailash @ Kameswara Rao has executed the suit promissory note covered by Ex.A1.

23. Thus, regard being had to the circumstances of case, the plaintiff having been examined as P.W.1 and by producing the suit promissory note covered by Ex.A1, has successfully established that the deceased/K.Kailash @ Kameswara Rao, having borrowed debt of Rs.1,60,000/- from the plaintiff has executed in his favour the suit promissory note covered by Ex.A1. According to section 118 (a) of Negotiable Instruments Act, until the contrary is proved, that every negotiable instrument was made or drawn for consideration, and that every instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. Therefore, until the contrary is proved, the suit instrument covered by Ex.A1 is presumed to be drawn for consideration. Now, the plaintiff has successfully turned the tables onto the side of defendants. So, the onus of proof shifted onto the shoulders of defendants to prove nonexistence of consideration so probable that an ordinary prudent person believes nonexistence of consideration covered by Ex.A1. The defendants by examining D.Ws.1 and 2 cannot said to have discharged their onus of proof. The plaintiff has issued legal notice covered by Ex.A2 demanding the defendants to discharge the debt due under Ex.A1. The 2nd defendant as D.W.1 admitted to have succeeded the properties of his father/ deceased and he was having responsibility to discharge his debts. In spite of issuance of notice, the defendants have not come forward to discharge the debt due under Ex.A1, rather issued a contentious reply disputing liability of the deceased original borrower under Ex.A1, constraining the plaintiff to institute the suit. The plaintiff is therefore, perfectly entitled to recover the suit amount.

24. The trial court has appreciated the plaintiff's evidence in a proper perspective. The trial court has rightly recognized that the plaintiff has discharged his onus of proof of execution of suit instrument covered by Ex.A1 and passage of consideration thereof. Viewed from any angle, the trial court has not erred in holding that the plaintiff has discharged his initial onus of proof. The plaintiff has successfully discharged his onus of proof of execution of suit instrument and passage of consideration. But it is the defendants, who have failed to discharge of their onus of proof. Therefore, the judgment and decree of the trial court does not suffer from any irregularity. The points under discussion are answered accordingly.

25. In the result, the appeal is dismissed, confirming the judgment and decree of trial court dated 25.03.2024 rendered in the suit in O.S.348/2021 on the file of V Additional Civil Judge (Junior Division), Kakinada. Each party shall bear it's own costs.

Typed to my dictation to the Stenographer Gr-III, corrected and pronounced by me in the open Court, this the 30th day of December, 2025.

Sd/- N.Ramesh Naidu
Prl. Civil Judge (Senior Division)
Kakinada

APPENDIX OF EVIDENCE

No oral or documentary evidence is adduced on either side.

Sd/- N.Ramesh Naidu
Prl. Civil Judge (Senior Division)
Kakinada

Copy to the V Additional Civil Judge (Junior Division), Kakinada.