KACD220014912022

Presented on : 08-04-2022
Registered on : 08-04-2022
Decided on : 27-07-2026
Duration : 19D-03M-04Y

IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C., AT: CHALLAKERE

Present: **Smt. HEMA H.R.**
B.A.L., L.L.B.,
Prl. Civil Judge and JMFC., Challakere.

Dated on the 27th day of July 2026

O.S. No.84/2022

PLAINTIFF:

H.Shivamurthy s/o Honnappa,
48 years, Agriculturist, R/o Purlehalli village,
Challakere Taluk, Chitradurga District.

(By Sri Thippeswamy T., Advocate)

-V/s-

DEFENDANT:

Ravi s/o Sannappa,
R/o Sooranahalli village,
Challakere Taluk, Chitradurga District.

(By Sri B.Thippeswamy, Advocate)

Date of Institution of suit	:	08.04.2022
Nature of suit	:	Recovery of money

Date of commencement of recording of Evidence	:	14.11.2022		
Date of pronouncement of Judgment	:	27.07.2026		
TOTAL DURATION	:	Days	Months	Years
		19	03	04

: J U D G M E N T :

The plaintiff has filed this suit against the defendant for recovery of money of Rs.4,60,000/- with interest at the rate of 2% per month from the date of suit till the date of realization.

2. The brief facts of the plaintiff's case are as follows:

The plaintiff and defendant are known to each other and are neighbouring villagers. They have been jointly cultivating and sharing earnings from the land of defendant. On that acquaintance, defendant approached the plaintiff for financial assistance for his family necessities and borrowed a sum of Rs.4,60,000/- from the plaintiff on 14.07.2019. Defendant had agreed to repay the said sum with interest at the rate of 2% per month on demand and in that respect, he has executed promissory note in presence of witnesses. After that, plaintiff approached the defendant several times demanding repayment of the loan amount with interest, but the defendant dragged on it on one or other reasons and has not repaid the loan amount. Plaintiff got advised through elders and witnesses, but the defendant has not heeded to them. Hence, plaintiff issued legal notice on 10.03.2022 calling upon the defendant for repayment of the loan with interest and the notice was served on him. But, the defendant has not repaid the loan. Hence, the present suit is filed. On these grounds, plaintiff prays to decree the suit.

3. After registering the suit, summons was issued to the defendant. The defendant has appeared before the Court and filed his written statement.

4. The defendant in his written statement has taken contention that his family has got sufficient irrigated land and income and hence, question of taking loan from plaintiff does not arise. There are no financial transactions between plaintiff and defendant. Defendant has not taken any loan from the plaintiff. The signature on the alleged promissory note is not that of defendant. Plaintiff has forged the signature only to make unlawful gain. Defendant has owned land measuring 20 acres 25 guntas in re.sy.no.56/2. Out of the said land, 10 acres was given to plaintiff on lease. They were sharing yield from the said land equally among them after deduction of the expenditure. It lasts for three years. After that, since the plaintiff failed to give lease amount properly, defendant informed the plaintiff that he would not let it on lease further and he will cultivate it on his own. On that matter, differences arose between plaintiff and defendant. After that, plaintiff created the alleged promissory note by colluding with the witnesses. The signature on it is forged one. The averments of notice issued by plaintiff are all false. Defendant has given suitable reply to it. Plaintiff has not got license for money lending business.

5. Based on the pleadings of both the parties, the following issues have been framed:

1) Whether the plaintiff proves that on 14.07.2019 the defendant has borrowed loan of Rs.4,60,000/- from the plaintiff for his domestic purpose and agreed to repay the same within 3 years with interest at the rate of 2% per month?

2) Whether the plaintiff further proves that the defendant has executed a promissory note as a security towards loan amount?

3) Whether the defendant proves that the plaintiff has created the promissory note and signature in the alleged promissory note not belongs to him as contended by him page No.4 at para 2 of his written statement?

4) Whether the plaintiff is entitle for the relief as sought in the prayer?

5) What order or decree?

6. In order to prove the case of plaintiff, plaintiff got examined himself as P.W.1 and got examined attesting witness to the promissory note by name G.L.Prasanna as P.W.2 and the scribe of promissory note by name P.H.Thippeswamy as P.W.3 and got marked 04 documents as Ex.P.1 to Ex.P.4. On the other hand, defendant in order to prove his defence got examined himself as D.W.1 and got marked 11 documents as Ex.D.1 to 11.

7. Heard arguments by learned counsel for plaintiff and defendant and perused the materials placed on record.

8. My findings to the above points are as follows:

Issue No.1 : In negative

Issue No.2 : In negative

Issue No.3 : In affirmative

Issue No.4 : In negative

Issue No.5 : As per final order for the following;

: REASONS :

9. I**ssue No.1 to 4**: Since these issues are interlinked with each other and they form part of same transaction, they are taken up together for common discussion to avoid the repetition of facts.

10. The plaintiff has knocked the doors of justice with a prayer for recovery of sum of Rs.4,60,000/- with interest at the rate of 2% per month.

11. It is the specific case of the plaintiff that on 14/07/2019, the defendant borrowed a sum of Rs.4,60,000/- for his family's necessity and executed an on demand promissory note in his favour and agreed to repay the said sum with interest at the rate of 2% per month. The entire claim of the plaintiff rests upon the alleged execution of the said promissory note. Therefore, the foremost burden lies upon the plaintiff to prove that the defendant voluntarily executed the said promissory note after receiving the consideration amount.

12. The subject matter covered under the present suit is availment of loan by executing the alleged promissory note in favour of plaintiff. In order to substantiate the contentions of the plaintiff, the plaintiff himself stepped into the witness box and filed affidavit in lieu of oral examination in chief and examined himself as P.W.1 by reiterating plaint averments and got marked Ex.P.1 to 4 documents. Ex.P.1 is promissory note which was executed in

favour of plaintiff by defendant on 14.07.2019. Ex.P.2 is the legal notice which was issued through the counsel of plaintiff to defendant. Ex.P.3 is postal receipt. Ex.P.4 is the postal acknowledgment. In support of the plaintiff's case, one attesting witness and deed writer are examined as PW.2 and PW.3.

13. Per contra, defendant has denied the execution of promissory note and its signature on the promissory note and averments of plaint in toto. Further contented that he owned agricultural land measuring 20 acres 25 quntas in Survey No. 56/2, out of which 10 acres had been leased to the plaintiff. According to him, the plaintiff failed to properly account for the agricultural income and when the defendant decided not to continue the lease arrangement, the plaintiff in collusion with the witnesses fabricated the suit promissory note.

14. In order to substantiate the contentions of the defendant, the defendant himself stepped into the witness box and filed affidavit in lieu of oral examination in chief and examined himself as D.W.1 by reiterating written statement averments and got marked Ex.D.1 to 11 documents.

15. The plaintiff, being the dominus litus to his case, is bestowed with the burden to prove his case independently with satisfactory oral and documentary evidence. As per Legal Maxim Actori Incumbent Onus Probandi, it is the burden on the plaintiff to prove his case. With this prelude in the background, let me analyse the rival contentions in the light of oral and documentary evidence and also in the beacon of light of principles enshrined by the constitutional courts.

16. In the instant case involving a promissory note where

the defendant denies his signature, the burden of proof rests initially on the plaintiff to establish the signature's authenticity and the document's execution. If the plaintiff successfully discharges this burden, the presumption of consideration under Section 118(a) of the Negotiable Instruments Act works in favour of the plaintiff.

17. In this case, defendant has denied his signature on promissory note. When the defendant denies the signature found in the documents, the plaintiff who has averred a fact and claims it to be a genuine document should have endeavored to prove the same. In the case on hand, the plaintiff has strongly relied on the oral evidence of P.W.2 and 3 who are the attesting witness and deed writer of alleged promissory note.

18. It is not in dispute that the plaintiff and defendant were well acquainted with each other. The admissions elicited during the cross-examination of PW1 clearly established that the plaintiff was cultivating 10 acres of agricultural land belonging to the defendant under a lease arrangement. It is also admitted that both were sharing the agricultural yield after deducting the cultivation expenses. Thus, the existence of lease arrangement and the agricultural relationship between the parties is not in dispute.

19. The specific defence of the defendant is that he is the owner and possessor of the substantial agricultural land measuring about 20 acres 25 guntas and that he was financially sound. According to the defendant there was no necessity for him to borrow a sum of Rs.4,60,000/- from the plaintiff who himself was cultivating the defendant's land as a lease. The defendant has further contended that the plaintiff had no financial capacity to

advance such substantial amount. Though mere ownership of extensive agricultural land cannot by itself lead to the conclusion that a person would never require financial assistance, the financial status of the defendant is nevertheless a relevant circumstance, while appreciating the probabilities of the case.

20. In the present case, no convincing documentary evidence has been produced to establish the source of Rs.4,60,000/- allegedly advanced to the defendant. The plaintiff has not produced any bank statement, account books, sale proceeds of agricultural produce, or any other available material to demonstrate that he possesses sufficient funds to lend such a substantial amount. In view of the specific challenge raised by the defendant regarding the plaintiff's financial capacity and the failure to produce such evidence assumes significance.

21. Further, PW1 has deposed that the defendant approached him seeking financial assistance for his family's necessity and borrowed Rs.4,60,000/- on 14.07.2019 after executing the suit promissory note. However, during cross examination, PW1 admitted that he doesn't know the exact period between the defendant's request for the loan and the actual payment of the amount. Though this omission by itself may not be sufficient to disbelieve the entire case of the plaintiff, it assumes significance when considered along with the other inconsistency brought on record. The relevant portion of deposition of PW.1 is that "ಪ್ರತಿವಾದಿಯು ಸಾಲವನ್ನು ಕೇಳಿದ ಎಷ್ಟು ದಿನದ ನಂತರ ನಾನು ಸಾಲವನ್ನು ನೀಡಿರುತ್ತೇನೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ".

22. The PW1 further deposed that a panchayathi was convened in the presence of PW3 regarding the defendant's

failure to repay the loan amount. However, PW3 has categorically denied that any such panchayathi was held. Thus, PW3 has not corroborated the version of PW1 on this material aspect. This contradiction creates serious doubt regarding the plaintiff's version.

23. The relevant portion of depositions of PW.1 and PW.3 are that “ದಿ:೧೩.೦೨.೨೦೨೨ ರಂದು ನನ್ನ ಮತ್ತು ಪ್ರತಿವಾದಿಯ ನಡುವೆ ಆದ ರಾಜಿ ಪಂಚಾಯಿತಿಯಲ್ಲಿ ತಿಪ್ಪೇಸ್ವಾಮಿಯವರು ಹಾಜರಿದ್ದರು. ಸದರಿ ತಿಪ್ಪೇಸ್ವಾಮಿಯವರು ನನ್ನ ಸಂಬಂಧಿಕರಲ್ಲ. ಸದರಿ ತಿಪ್ಪೇಸ್ವಾಮಿಯವರ ಮನೆಗೆ ನನ್ನನ್ನು ಬರುವಂತೆ ಪ್ರತಿವಾದಿಯರೇ ತಿಳಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಪಂಚಾಯಿತಿಗೆ ನಾನು ಬರಲು ತಿಳಿಸಿದ್ದೆ. ಸದರಿ ಪಂಚಾಯಿತಿಯಲ್ಲಿ ನಾನು, ತಿಪ್ಪೇಸ್ವಾಮಿ ಮತ್ತು ಪ್ರತಿವಾದಿ ಇದ್ದೆವು” "ಪ್ರತಿವಾದಿ ರವಿ ಹಣ ಕೊಡದೇ ಇರುವ ಕಾರಣಕ್ಕೆ ಪಂಚಾಯಿತಿ ನಡೆದಿರುತ್ತದೆ ಎಂದು ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ".

24. Further, during the course of the cross-examination, the PW1 and PW2 admitted that they had affixed only one signature on the document. The plaintiff has also contended that the receipt acknowledging payment of the consideration formed part of the promissory note itself. If that is so, the evidence of PW1 and PW2 that they have affixed only one signature creates serious doubt regarding the execution of the receipt portion. Normally, where a promissory note and receipt form part of the same instrument, the evidence must satisfactorily establish the execution of both portions. The admission of PW1 and PW2 do not inspire confidence regarding the execution of the receipt acknowledging the payment of Rs.4,60,000/-. Furthermore, the plaintiff has not satisfactorily explained the non-production of the complete document including the receipt portion. Though non-production of such portion alone may not be fatal in every case, in the present

case where the execution itself is disputed, the omission assumes considerable importance. It constitutes another circumstance, creating doubt about the genuineness of the plaintiff's version. The statutory presumption regarding consideration becomes available only when the execution of the negotiable instrument is first established. Where the defendant specifically denies the execution and the plaintiff fails to prove that signature on the instrument is that of the defendant, no presumption can be drawn merely on the production of document.

25. Further, PW1 deposed that the attesting witnesses have affixed their signatures first, followed by the scribe and lastly the defendant had put his signature on the alleged promissory note. Though the sequence of the signatures alone may not invalidate the document, it is a circumstance which requires cautious scrutiny, particularly when the execution itself is specifically denied by the defendant.

26. The defendant has taken a specific plea from the inception of the proceedings that the signature found on the suit promissory note is not his signature. To substantiate the said defence, the defendant got the disputed signature examined by a handwriting expert. The expert, after scientifically comparing the disputed signature with the admitted signatures of the defendant, submitted his report, opining that the disputed signature on the promissory note was not written by the defendant and the disputed and admitted signatures were not written by the same person.

27. It is true that the opinion of the handwriting expert under Section 45 of The Indian Evidence Act is only an expert opinion

and is not conclusively proof. Nevertheless, such opinion is a relevant piece of evidence and is entitled to due weight, particularly when it is based on scientific examination and is corroborated by the surrounding circumstances.

28. In the present case, the plaintiff has neither filed any objection to expert report nor sought to exclude the same from consideration. Further, the plaintiff has not examined the handwriting expert. Moreover, the plaintiff submits his no objection to commissioner report through his counsel. Hence, the expert opinion has remained substantially unchallenged and stands unrebutted on record. Though this Court is conscious that expert opinion cannot by itself be sole basis for deciding the genuineness of a signature, in the present case the expert's opinion is not an isolated piece of evidence. It is supported by several surrounding circumstances, namely the consistent denial of execution by the defendant, the material contradiction in the evidence of PW1 and PW3, the admission of PW1 and PW2 regarding the execution of the document and the absence of satisfactory proof regarding passing of consideration. These circumstances lend assurance to the expert's opinion. Therefore, this Court finds no reason to discard the opinion of the handwriting expert. On the contrary, the report inspired confidence and probabilised the defence set up by the defendant that the disputed signature appearing on the suit promissory note is not his signature. Consequently, the plaintiff has failed to establish the due execution of the suit promissory note, which is the very foundation of the present suit.

29. As discussed above, it is held that the plaintiff neither proved the execution of promissory note by the defendant nor

proved the passing of consideration. Hence, the plaintiff cannot claim advantage of presumption under Section 118 of N.I. Act without proving the foundational fact of execution of promissory note. Liability to pay under a promissory note flows from proof of the instrument's execution and thereafter from proof of its terms which establish the liability. Therefore, when the plaintiff miserably failed to prove the due execution of the promissory note for consideration, the plaint has to be dismissed for want of proof. The plaintiff has not discharged the necessary foundational burden to hold the defendant liable on the instrument. Therefore, plaintiff is not entitled to recover the suit claim. Accordingly, this Court answers the **issue No.1, 2 & 4 in negative and issue No.3 in affirmative.**

30. **Issue No.5**:- In view of aforesaid discussion and reasons on issue No.1 to 4, court proceeds to pass the following:-

O R D E R

The suit of plaintiff is dismissed with cost.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by him and corrected by me, then pronounced in the open Court on this the 27th day of July 2026)

HEMA H R Digitally signed by HEMA H R Date: 2026.07.27 18:25:46 +0530

(Hema .H.R.)
Prl. Civil Judge & JMFC.,
Challakere.

A N N E X U R E

I. **Witnesses examined on behalf of plaintiff/s**:-

PW-1 : H.Shivamurthy

PW-2 : G.L.Prasanna

PW-3 : P.H.Thippeswamy

II. **Witness examined on behalf of defendant/s:-**

DW-1 : Chinnapalaiah
DW-2 : Chinnaiah
DW-3 : Papaiah

III. **Documents marked on behalf of plaintiff/s**:-

Ex.P1	: Promissory note
Ex.P1(a to d)	: Signatures of witnesses
Ex.P2	: Legal notice
Ex.P3	: Postal receipt
Ex.P4	: Postal acknowledgment

IV. **Documents marked on behalf of defendant/s**:-

Ex.D1 & 2	: Sale proceeds receipts
Ex.D3	: Reply notice
Ex.D4	: Postal receipt
Ex.D5	: Deed of cancellation of mortgage
Ex.D6	: NOC issued by R.T.O.
Ex.D7 to 10	: Notices of termination of agreement
Ex.D11	: RTC

HEMA H R

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Date: 2026.07.27 18:25:38 +0530

Prl. Civil Judge & JMFC.,
Challakere.