

KADG010019992023



Presented on : 14-06-2023

Registered on : 14-06-2023

Decided on : 07-07-2026

Duration : 3 years 0 months 23 days

**IN THE COURT OF
II ADDL DISTRICT AND SESSIONS JUDGE DAVANGERE
AT DAVANGERE, DAVANGERE**

**Presided Over by
KRISHNAMURTHY R. PADASALGI**

B.Sc., LLM HDSE

Regular Appeal No.34/2023

APPELLANTS

Sri. N.H.Ramappa S/o Hanumanthappa,
Age; 63 years, Occ: Businessman,
R/o: Nittuvalli, Davanagere.

V/s

RESPONDENT

Smt. Siddaveeramma W/o Basavanthappa Gouda,
Age: 63 years, Occ: Household and Agriculturist,
R/o: Muktenahalli village, Tq: Honnali.

=====

Sri.H.N.R., Advocate appearing for Appellant
Sri.H.V.R., Advocate appearing for respondent

=====

Date of Institution of Appeal 14.06.2023

Nature of Judgment/Order appealed against which	Against the judgment & decree passed by the 1 st Addl. Senior
--	---

Civil Judge and J.M.F.C.,
Davanagere in O.S.No.35/
2014, dtd:10.04.2023.

Date on which the judgment pronounced 07.07.2026

Total Duration	Year/s	Month/s	Day/s
	3 years	0 months	23 days

:JUDGMENT:

1. This is the regular appeal filed under order 41, Rule 1 of CPC by the appellant/original plaintiff being aggrieved by the judgment and decree passed by the 1st Addl. Senior Civil Judge and J.M.F.C., Davanagere in O.S.No.35/2014, dated:10.04.2023.
2. The parties will be referred as per their rank in the trial court.
3. The case of plaintiffs is that: The plaintiff filed the suit seeking recovery of money contending that he is a businessman engaged in real estate business and that the defendant was known to him through their common relatives. According to the plaintiff, in March 2011, the defendant approached him seeking financial assistance to meet her family necessities and the marriage expenses of her third son. It is his specific case that on 15.03.2011, the defendant borrowed a sum of Rs.4,00,000/- and executed an on-demand promissory note in his favour agreeing

to repay the said amount with interest at the rate of 24% per annum.

4. The plaintiff further pleaded that, despite repeated demands made after expiry of six months from the date of borrowing, the defendant failed to repay the loan amount and kept postponing payment by citing her financial difficulties and pending disputes with her brother-in-law, Durugappa. According to the plaintiff, the defendant had represented that her share in the suit schedule property was under attachment in proceedings initiated by the said Durugappa and that she would clear the plaintiff's dues after resolving those disputes. It is further contended that even after the defendant cleared the liability due to Durugappa, she did not repay the amount borrowed from the plaintiff.

5. The plaintiff asserted that the defendant neglected to repay either the principal amount or the accrued interest and that, apprehending alienation of the defendant's share in the suit schedule property, he sought attachment before judgment and an order restraining alienation of the property. Claiming that a sum of Rs.6,85,000/- was due as on the date of filing of the suit, inclusive of interest, the plaintiff sought recovery of the said amount together with future interest and other consequential reliefs.

6. The defendant appeared before the Trial Court and filed her written statement denying the material averments made in the plaint. While admitting that she was residing at Muktenahalli Village and owned a share in Sy.No.121/2 of Igoor Village, she denied having any acquaintance with the plaintiff and contended that the plaintiff was a complete stranger to her. She specifically denied that she had approached the plaintiff for financial assistance or that she had borrowed a sum of Rs.4,00,000/- from him.

7. The defendant further denied execution of the alleged on demand promissory note dated 15.03.2011 and contended that the signatures found thereon were not hers. According to her, the promissory note relied upon by the plaintiff was a fabricated and created document. She also questioned the genuineness of the revenue stamps affixed on the document and contended that the same created serious doubt regarding the authenticity of the alleged transaction.

8. The defendant further contended that her brother-in-law, Durugappa, had initiated several civil and execution proceedings against her in respect of money claims and the suit property and that the plaintiff, in collusion with the said Durugappa and others, had instituted the present false suit with an intention to harass her and secure wrongful gain. Denying the alleged loan

transaction, liability, and the amount claimed by the plaintiff, she contended that the suit was not maintainable and that no cause of action had arisen for filing the same. On these grounds, she sought dismissal of the suit.

9. On the pleadings on record, the trial court has framed the following issues:

1. Whether the plaintiff is prove that the defendant has availed loan of Rs. 4 lakhs for her family necessity and also for the purpose of marriage of her 3rd son Manjunath agreeing to repay the same with interest at the rate of 24% and executed on demand promissory note on 15.3.2011?
2. Whether the plaintiff is prove that the defendant has failed to repay the loan amount with interest as agreed?
3. Whether the defendant is prove that the suit of the plaintiff is barred U/Sec. 4 of N.I.Act?
4. Whether the defendant is prove that the suit of the plaintiff is barred by limitation ?
5. Whether the plaintiff is entitled the relief as sought?
6. What Order or decree?

10. The plaintiff got examined as P.W.1 by filing his affidavit and two witnesses got examined as P.W.2 & P.W.3 and got marked documents at Ex.P.1 to Ex.P.3. On the other hand, defendant got examined as D.W.1 and got marked documents at Ex.D.1 to Ex.D.5.

11. The trial court after hearing both sides, dismissed the suit.

12. Being aggrieved by the judgment and decree, the original plaintiff/appellant has preferred the present appeal on the following grounds:

13. **Grounds of Appeal:-** Being aggrieved by the impugned judgment and decree, the appellant contends that the Trial Court has failed to properly appreciate the oral and documentary evidence available on record. It is urged that the evidence of PW-1 regarding his financial capacity to lend the amount and his acquaintance with the defendant was not considered in its proper perspective. The appellant further contends that both the pleadings and evidence clearly disclosed the legal necessity for which the defendant had allegedly borrowed the amount, namely the marriage expenses of her son, but the same was overlooked by the Trial Court. It is further contended that the suit promissory note was marked in evidence without objection except with regard to the adhesive revenue

stamps and that PWs.1 to 3 consistently identified the signature of the defendant on the document.

14. According to the appellant, nothing substantial was elicited in their cross-examination to discredit their testimony, yet the Trial Court failed to scrutinize their evidence in a proper manner. The appellant also places reliance on certain suggestions made during the cross-examination of PW-1 to contend that the existence of prior acquaintance between the parties stood established, but the Trial Court failed to draw the necessary inference therefrom.

15. The appellant further submits that the defendant did not specifically deny her signature on the suit promissory note and that her defence was only that some of her signatures had been obtained by her relative Durugappa and subsequently misused. It is contended that the denial of signature was neither specific nor bona fide and that the Trial Court erred in accepting such a defence. It is also urged that undue reliance was placed on the opinion contained in the FSL report though the handwriting expert was not examined before the Court and was not subjected to cross-examination. According to the appellant, expert opinion by itself cannot substitute proof and the Court ought to have independently appreciated the evidence on record. The appellant further contends that the findings

recorded by the Trial Court suffer from inconsistencies, particularly with regard to the issues framed and answered, and that the discussion of all issues together has resulted in lack of clarity in the reasoning process.

16. It is also urged that the observations made by the Trial Court while assessing the probabilities of the case are not supported by any sound reasoning or legal principles. On these and other grounds urged in the memorandum of appeal, the appellant seeks setting aside of the impugned judgment and decree and prays for decreeing the suit as prayed for.

17. Notice to respondent issued he appeared through counsel, LCR called for. Heard counsel for appellant and respondent. The counsel for appellant filed written arguments. Perused the materials on record.

18. Based on the above materials, the following points would arise for consideration:

1. *Whether the judgment and decree of the trial court is capricious, perverse and requires interference?*

2. *What order?*

19. The above points are answered as under:-

Point No.1:- In Negative,

Point No.2:- As per the final order,
for the following:-

:REASONS:

20. **Points No:-** Counsel for the appellants submits that, the marriage of 3rd son of defendant was fixed on 24.03.2011. So, she approached plaintiff and borrowed Rs.4,00,000/- on 15.03.2011. Ex.P.3 is the marriage card. He also submits that the trial court has discussed all the issues together which is not proper procedure. He submits that chief of D.W.1 contends that she admitted the signature and contends that her signature is misused. There is no denial of signature. He further contends that there was no necessity to frame Issue No.2 by the trial court. He also contends the wrongly Issue No.4 is answered.

21. Whereas the counsel for respondent supports the judgment and contends the promissory note itself is not proved and plaintiff himself got the court commissioner appointed, when the expert has given an opinion stating that signature is not that of a defendant, which the plaintiff himself has put last nail on his coffin.

22. Having regard to the above contentions, the oral evidence has to be seen. Since the promissory note is negotiable

instrument, Section 4 of Negotiable Instruments Act says- *“A promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.”*

23. Therefore, as per Section 4, the promissory note should essentially be in writing. It should contain an unconditional undertaking and it should be signed. There should be a promise to make the payment. While the document itself is before the court, the oral evidence can be appreciated as a supplementary to that. The said document i.e. promissory note in this case is at Exhibit P.1.

24. On perusal of Exhibit P.1, it is in a printed format with filling up of blanks. It is allegedly written by one T. Venkata Ramana setty allegedly signed by the defendant. Her signature is marked as Exhibit P.1(a). In this connection, the main oral evidence is to be seen whether there is a voluntary and proper execution of pronote because presumption envisages under Section 118 of NI Act is rebuttable one.

25. Plaintiff who is examined as P.W.1 has reiterated the plaint averments. His definite version is for the marriage of third son Manjunath, the defendant required finance. So she approached through Hanumantappa and Rangappa/P.W.2 and P.W.3, and

took loan and promised that she will repay the amount with interest as early as possible with interest . The interest in pronote is 24% p.a, more than any usual Bank lending rate.

26. The plaintiff further deposed that he knew the defendant through his relatives Hanumanthappa and Rangappa. So he advanced the loan. The said alleged transaction has taken place in the year 2011, when ₹4,00,000/- amount was advanced to the defendant, which was large amount then.

27. The plaintiff having advanced allegedly the said sum, not taken any security except the promissory note alleged. Although Plaintiffs orally says about his immovable properties and assets but none of the documents in support are produced to show his financial capacity .

28. Plaintiff coming with acquaintance of defendant is elicited in the cross-examination. The defendant who happens to be one of the members of Jayaprakash Education Society of Bisleri Village running the same, Durgappa, who happens to be the brother in law of defendant, who allegedly having some wrath against the defendant. The plaintiff came in touch with defendant in pone of the meetings connected to the said society. As per his say, after meeting of defendant in 2010 in Naik hostel for some resolution of dispute, he met defendant on

15.03.2011.

29. P.W.2 Hanumantappa who supported the plaintiff and got his signature marked on Exhibit P.1 promissory note as Ex.P.1(b) has died before cross-examination. His evidentiary value is very feeble as compared to the other person whose testimony is tested by cross-examination. With respect to this, in *RSA No. 28/1962, in ILR (1969) Delhi 1090 Kishan Dayal V/s Chandu Ram*-can be relied the law is well settled. Even the trial Court has properly relied upon the judgment in this regard.

30. P.W.3 is Ramappa, who is said to be a relative of plaintiff and got him introduced with P.W.2 to the defendant. P.W.3 was a government servant. He worked from 1983 to 2012 in various places. After retirement, he is residing in a rented house at Nittuvalli near the house of Hanumanthappa wherein he got acquaintance with Hanumanthappa since 1983. This witness denies he doesn't know the interse relationship between P.W.2 and plaintiff. He also admits that he doesn't know defendant personally and he also admits that she never asked to get financial help for her.

31. As per version of P.W.3 in chief about 10 years back from the date of his deposition when he was in the house of Hanumanthappa, a lady came, she was introduced by

Hanumanthappa as a defendant. She asked for loan,so Hanumanthappa told her that she has to come with promissory note and a revenue stamp to take loan from Ramappa i.e. plaintiff herein. He further deposed that then they all went to the house of Ramappa, one Venkataramana Shetty was in the house of Ramappa. P.W.2, Hanumanthappa allegedly told that defendant came with promissory note with stamp affixed and Ramappa asked the Venkataraman Shetty to write that promissory note brought by defendant. For which defendant told the purpose of loan and accordingly Venkataraman Shetty wrote the promissory note.

32. Both agreed and put the signature. The Ramappa after signature paid ₹4,00,000 to Siddaveeramma. So by this evidence of P.W.3, resupposes that the Hanumanthappa was very sure that plaintiff would lend the amount. So he asked the defendant to come with promissory note itself and the contents of promissory note were dictated by the defendant.

33. The P.W.1 has given admissions fatal to the execution of promissory note. In cross-examination he says that Hanumantappa and Ramappa had come by preparing the promissory note and he has not enquired as to where the said promissory note was got written by them. P.W.1 specifically admits that on 11.01.2015 Ramappa and Hanumantappa got

written the promissory note and came to his house. Therefore by the admission of P.W.1 there is no picture of defendant and one Venkataraman Shetty. As discussed earlier, it seems that the Hanumanthappa was very sure that plaintiff will lend the amount.

34. At the same time, the cross of P.W.1 has to be seen. P.W.1 plaintiff admits that he has not instructed to Hanumanthappa that he is having a cash and he will advance to someone. This evidence itself falsifies the execution of promissory note.

35. Exhibit P.3 is produced to show the necessity of defendant. But whereas as per version of defendant as D.W.1 she doesn't know the plaintiff. She admits about the dispute with respect to the landed properties between herself and Dugappa. She contends that the said Dugappa has taken signature to run the Jayaprakash Narayan Society on various documents and he has misused and created the documents. At this juncture , it is necessary to consider arguments of counsel for appellant who has stated there is no denial of signature. But the defendant can take inconsistent and alternate plea.

36. Defendant intend to convey that certain signatures were taken by the Duggappa under the pretext of running the institution. In one of such documents, it might have been used

as promissory note. So her version if viewed, it can be inferred that she never told that she signed on any blank printed form which could be used as a promissory note.

37. In the evidence she has produced Judgment in OS No. 42 of 2008, EP No. 17 of 2009 and Ex.D.2. Certified copy of order sheet at Exhibit D.3 and joint note at Exhibit D.4. However, these two documents do not in any way remotely show the necessity of the defendant. In the cross-examination she has maintained her stand that she doesn't know the plaintiff.

38. The burden on plaintiff is heavy. In addition to that, two more aspects which create a doubt on the due execution of promissory note. First is; affixing of revenue stamp which was then banned by amendment to Indian Stamp Act by Karnataka Amendment Act No.1 of 2008 wherein Section 11 and 12 of Karnataka stamp act were omitted. The said promissory note is allegedly executed on 15.03.2011.

39. In addition to that expert opinion, wherein the expert has opined that the signature found on promissory note, purporting to be that of defendant is not that of an admitted signature.

40. However, the court commissioner is not called for cross-examination by the plaintiff, his case has gone against him. He has tried his luck in an appeal. Plaintiff failed to prove the

execution of promissory note. The Trial Court has properly appreciated the oral and documentary evidence. No interference is required. Hence, point no.1 is answered in the Negative.

41. Point No.2:- Hence for findings on above point the following order is passed;

ORDER

***The appeal filed by the defendant/appellant
N.H. Ramappa is hereby dismissed with costs.***

***The judgment and decree passed by the 1st
Addl. Senior Civil Judge and J.M.F.C., Court at
Davanagere, in Original Suit O.S.No.35/2014,
dtd:10.04.2023 is confirmed.***

Draw decree accordingly.

***Send the copy of judgment alongwith TCR to
the Trial Court.***

(Dictated to the Stenographer, typed by her, corrected, signed and then pronounced by me in the open court this the 7th day of July, 2026)

Sd/-

(Krishnamurthy R. Padasalagi)
II Addl. District & Sessions Judge
Davanagere