Govt. of Karnataka **TITLE SHEET FOR JUDGMENT IN SUITS**

Form No.9 (Civil)
Title Sheet for
Judgment
in Suits

IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE
AT: HUBBALLI

Present: **Sri. Palled Raveendra Jadiyappa**
B.Com., LL.B (SPL.), LL.M.
II ADDL. SENIOR CIVIL JUDGE &JMFC,
HUBBALLI.

Date of Judgment : 31st DAY OF OCTOBER – 2018
ORIGINAL SUIT No.95/2014

Plaintiff **:** Smt. Rajeshri W/o Chandrakanth Kathare,
Age: about 48 years, Occ: Household,
R/o. No.50, 5th Cross, 4th Main Road,
Malleshwaram, Bangalore-560003.

[By Sri. M.S. Banad, Advocate]

.Vs.

Defendant : Smt. Sushila W/o. Nagosa Jadi,
Age: 68 years, Occ: Household,
R/o. No.13, Bailappanavar Nagar,
Hubli-580029.

[By Sri. P.V. Sankanagoudar, Advocate]

Date of institution of suit	**:**	12-03-2014.
Nature of suit	**:**	Recovery of money.
Date of recording of evidence	**:**	27.08.2015.

Date on which Judgment was pronounced :	:	31-10-2018
Duration of suit	:	Year/s 04 Month/s 07 Day/s 19

JUDGMENT

This is a suit filed by the plaintiff against the defendant for recovery of money of ₹24,25,000/- with interest at the rate of 12% per annum and with costs.

2. **The summation and summarization of the relevant facts which are absolutely necessary and germane for the disposal of this OS, would run thus**:

The plaintiff is daughter of the defendant, she married Chandrakanth S. Kathare of Bangalore and Supriya is their daughter. The Gruh Finance Ltd., Hubballi Branch had advanced housing loan pertaining to residential building comprised in CTS No.2927/A8, situated at Bailappanavar Nagar, Hubballi owned by the defendant. Since defendant became defaulter, under the terms of SARFAESI Act, the property was attached. It was challenged by the defendant before Debts Recovery Tribunal, Bangalore where the matter was settled. But the defendant was to pay money to said Gruh Finance Ltd., to save her property from being auctioned.

3. It is further pleaded that the defendant approached the plaintiff and her husband as regards financial difficulties and requested her to help her to save the house from being

auctioned. Accordingly, the plaintiff arranged ₹9,80,000/- received from her husband and handed over to the defendant. The daughter of plaintiff Supriya time to time had received by way of gift money from her relatives, so she had ₹3 lakhs with her. It was also paid by the plaintiff to the defendant. Apart from that the plaintiff arranged ₹4 lakhs saved by her after marriage, received from her father-in-law and husband and handed over the same to the defendant. Again the plaintiff arranged sum of ₹2,60,000/- collected from her relatives and friends and handed it over to the defendant for repayment of loan. Thus, the plaintiff has totally paid sum of ₹19,40,000/- to the defendant.

4. It is further pleaded that as security for repayment of said loan, the defendant executed on demand promissory note on 04.02.2012 in favour of plaintiff agreed to pay said loan on demand, promissory note was also witnessed by sons of the defendant.

5. It is further pleaded that the defendant having utilized the money paid by the plaintiff, to save her property, in spite of request and demand by the plaintiff, she failed to repay the loan amount to the plaintiff, who is liable to repay the same with interest at the rate of 12%. So, cause of action arose when plaintiff demanded the defendant to repay her loan amount, which was not at all responded by the defendant. Hence, she was constrained to file this suit for recovery of principal amount

of ₹19,40,000/- + interest of ₹4,85,000/- from 04.02.2012 to 04.03.2014, total ₹24,25,000/-.

6. The defendant has appeared before this court through her learned counsel and has filed written statement contending that the suit of the plaintiff is false, frivolous, vexatious and not maintainable either in law or on facts. It is specifically contended by her that the plaintiff is her only daughter, she was given gold and silver ornaments during her marriage with Chandrakanth, who is plaintiff in OS No.94/2014. The son of the defendant has filed OS No.100/2011 for partition and separate possession against her, which was pending on the file of I Addl. Senior Civil Judge, Hubballi, in which the present defendant filed her written statement and contested the suit on the ground that suit property of that suit is her self-acquired property. Neither plaintiff nor her son have any share in it. In order to protract the litigation, the son of defendant instigated wife of plaintiff to file an application to implead in the said matter. It was objected by her.

7. It is further contended that the plaintiff has fabricated and created the alleged promissory note colluding with her husband and eldest son to engulf her valuable property and there was no occasion for her to demand loan from the plaintiff and her husband, which is quite strange in SSK community, as she respects her son-in-law a lot.

8. It is further specifically contended that since plaintiff is only daughter of the defendant, as her sons could not take care of her properly in her old age, when the bank authority demanded repayment of loan, then she approached the plaintiff and her husband, to make payment in order to avoid legal problems with her property. So, her account was closed and thereafter, the personal savings of defendant was in the bank, it was used by the plaintiff and her husband for making payment of bank dues. So, whatever amount paid by the plaintiff was her personal savings. She did not receive any loan from her.

9. It is further contended that the plaintiff, her husband and her daughter committed breach of trust, the plaintiff has no capacity to pay that much of amount. The defendant has separate sources to clear the bank debt, there was no occasion to raise loan from the plaintiff. So, the instant suit is filed at the instigation of her eldest son. So, she has prayed for dismissal of the suit with costs.

10. On the basis of rival pleadings, my predecessor in office has framed the following issues:

ISSUES

1. Whether plaintiff proves that on 04.02.2012 the defendant borrowed a sum of ₹19,40,000/- as a loan from her by executing on demand promissory note in that behalf in her favour?

2. Whether plaintiff is entitled for interest at 12% p.a.?

3. Whether plaintiff proves that the defendant is in due of a sum of ₹24,25,000/- as on the date of filing of suit?

4. Whether the plaintiff is entitle for suit claim?

5. What decree or order?

11. The plaintiff is represented by her husband, who is GPA holder, he has filed his affidavit, examined as PW.1 and 39 documents came to be marked as Ex.P.1 to P.39. The GPA holder and son of the defendant has filed his affidavit, examined as DW.1, one document came to be marked as Ex.D.1.

12. The defendant and her counsel in spite of sufficient opportunities, failed to appear before this court. Therefore, considering absence of DW.1, for examination-in-chief and cross-examination, entire evidence of the defendant came to be expunged.

13. I have heard the arguments of learned counsel for the plaintiff and in spite of opportunities given, the learned counsel for defendant has failed to address argument.

14. After having heard and on perusal of material on record, my answers to the above Issues are as under:

Issue No.1	:	In the Affirmative.
Issue No.2	:	In the Affirmative.
Issue No.3	:	In the Affirmative.

Issue No.4	:	In the Affirmative.
Issue No.5	:	As per final order and for the following:

REASONS

15. **Issue No.1**: The plaintiff in order to prove her claim, her husband has filed his affidavit, examined as PW.1 and he has relied upon the documentary evidence Ex.P.1 to P.39. Ex.P.1 is a GPA executed by plaintiff in favour of PW.1. Ex.P.2 is promissory note, Ex.P.2(a) is signature of defendant. As per Ex.P.2, on 04.02.2012 the defendant executed promissory note in favour of plaintiff, promise to pay on demand ₹19,40,000/- to the plaintiff, it was executed in presence of her sons. Ex.P.3 is extract of property in the name of defendant. Ex.P.4 is copy of sketch issued by City Survey Office, Hubballi.

16. In order to prove that the property of the defendant was attached under SARFAESI Act and matter reached Debts Recovery Tribunal, the plaintiff has produced Ex.P.5, which is certified copy of the ordersheet in SA No.530/2011. The matter was settled on 05.07.2012 between defendant and her two sons as applicants and respondent was Gruh Finance Ltd. Ex.P.6 is certified copy of the application filed in ASA No.530/2011. Ex.P.7 is certified copy of the statement of objections filed by Gruh Finance Ltd., in that proceedings. Ex.P.8 to P.11 are certified copies of interim applications filed before Debts Recovery Tribunal Bangalore. Ex.P.12 to P.21 are certified

copies of the memos filed before Debt Recovery Tribunal, Bangalore.

17. The further evidence on record reveals that as per Ex.P.22 which is certified copy of Insolvency Case No.2/2008, petitioners Anand Jadi and Ramesh Jadi being sons of defendant filed that petition. Ex.P.23 is certified copy of the order passed by this court in Insolvency Case No.2/2008 in which the petitioners by names Anand and Ramesh declared as insolvents. Ex.P.24 and 25 are certified copies of vakalats filed in Insolvency Case No.2/2008. Ex.P.26 is certified copy of the plaint filed in OS No.308/2011 by present defendant against her sons and Gruh Finance Ltd., Ex.P.27 is certified copy of the written statement filed in that suit by Gruh Finance Ltd. Ex.P.28 is certified copy of the judgment on preliminary issued passed in OS No.308/2011, plaint came to be rejected U/o.7 Rule 11 (d) of CPC. Ex.P.29 is certified copy of decree passed in OS No.308/2011. Ex.P.30 is certified copy of the order passed in OS No.100/2011. Ex.P.31 and P.32 are the certified copies of vakalats in OS No.100/2011. Ex.P.33 is certified copy of the plaint in OS No.131/1990. Ex.P.34 is certified copy of the judgment in that suit. Ex.P.35 is certified copy of the petition filed in Ex. Petition No.470/2007.

18. The PW.1 has further relied upon the documentary evidence viz., Ex.P.36 is certified copy of the award passed by Registrar of Co-operative Societies against 5 respondents.

Ex.P.37 is certified copy of the judgment passed in appeal No.333/2007 by Karnataka Appellate Tribunal.

19. In order to prove her source of income and capacity to pay money to the defendant, the plaintiff has relied upon Ex.P.38, which is income tax returns, tax computation and accounts statements pertaining to her husband. Ex.P.39 is copy of balance sheet. It discloses that the plaintiff had raised loan from her husband of ₹13,71,000/-. It further reveals that ₹16,50,000/- was advanced by PW.1 to the defendant.

20. During the course of cross-examination of PW1, the relationship is admitted. It is suggested by the learned counsel for defendant that wife of PW.1 had no source to advance loan to the defendant, but PW.1 has denied the same and explained how he helped his wife and how plaintiff collected money from the relatives and friends. An important suggestion of the learned counsel for defendant that defendant had given her savings to the PW.1 and his wife, they remitted said amount to the Gruh Finance and falsely claiming that they have advanced loan to defendant, but the suggestion is denied by PW.1. The PW.1 is not cross-examined as regards Ex.P.33 to P.39 by the defendant.

21. As the evidence of defendant is expunged, the attention of this court is drawn towards the promissory note marked as Ex.P.2. As per Sec.4 of the Negotiable Instruments Act, 1881, promissory note is a negotiable instrument. Since

Ex.P.2 is a negotiable instrument, it is necessary to mention here the presumption available U/s.118 of the said Act:

> **"Presumptions as to negotiable instruments – Until the contrary is proved, the following presumption shall be made :**
>
> **a. Of consideration – that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiable or transfered, was accepted, endorsed, negotiated or transferred, for consideration :**
>
> **b. as to date :- that every negotiable instrument bearing a date was made or drawn on such date :**
>
> **c. as to time of acceptance : that every accepted bill or exchange was accepted within a reasonable time after its date and before its maturity :**
>
> **d. as to time of transfer : that every transfer of a negotiable instrument was made before its maturity.**
>
> **e. as to order of endorsement : that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon :**

f. as to stamps : that a lost promissory note, bill of exchange or cheque was duly stamped :

g. that holder is a holder in due course : that the holder of a negotiable instrument is a holder in due course : provided that, where the instrument has been obtained from its lawful owner,or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him".

22. In the absence of rebuttal material from the defendant, even though the presumption raised in favour of the plaintiff is a rebuttal presumption, the defendant has not adduced any evidence and failed to rebut the presumption.

23. The raising of loan by the defendant from Gruh Finance and attachment of her property under SARFAESI Act and matter reached the Debts Recovery Tribunal, wherein it was settled are not at all disputed. The plaintiff returned the money to the defendant, but it was not his money, but it was money given by the defendant to him and his wife. So, at this juncture it is necessary to invoke provisions of Sec.18 of the Indian Evidence Act:

> **“18. Admission by party to proceeding or his agent – Statements made by a party to the proceedings, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.”**

24. Since the plaintiff has proved how she advanced money to the defendant towards discharge of legally recoverable debt to sell the suit property from auction, then the burden was shifted upon the defendant to prove that under what circumstances she was made to execute Ex.P.2. She has failed to prove that she had given money to plaintiff and her husband. So, at this juncture it is necessary to press into the service of provisions of law as contemplated u/s.20 of the N.I. Act 1881 which is as under:

> **“20. Inchoate stamped instruments. - Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in (India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instruments, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in**

> **excess of the amount intended by him to be paid thereunder."**

25. So, on perusal of presumption available in favour of the plaintiff and provisions of law as mentioned above, considering failure of the defendant to discharge the burden to rebut the presumption, so this court can very well apply the provisions available U/s.118 of N.I. Act in favour of plaintiff, which are considered as special rules of evidence. The plaintiff has successfully discharged the burden under this issue. Hence, I answer issue No.1 in the **Affirmative**.

26. **Issues No.2 to 4**: I have proposed to discuss these issues together as they are inter-connected to each other and to avoid repetition of facts and appreciation of evidence.

27. In view of my findings on above issue, I am of the view that plaintiff has proved advancement of loan to the defendant for which the defendant executed promissory note. The defendant has failed to repay loan received from plaintiff. She is certainly entitled for recovery of ₹24,25,000/- with future interest at 12% per annum. Hence, I answer issues No.2 to 4 in the **Affirmative**.

28. **Issue No.5**: In view of my foregoing discussion and answers to the above issues, I proceed to pass the following.

O R D E R

The suit of the plaintiff is hereby decreed with costs as under:

The defendant is hereby directed to pay a sum of ₹24,25,000/- to the plaintiff with simple future interest at the rate of 12% per annum from the date of the suit till actual realization.

Draw up a decree accordingly.

(Dictated to the Stenographer directly on computer, corrected then pronounced by me in the Open Court on this the 31st day of October - 2018)

(Palled Raveendra Jadiyappa)
II Addl. Senior Civil Judge,
Hubballi.

ANNEXURE

1.List of witnesses examined on behalf of Plaintiff:

P.W.1	:	Chandrakanth Kathare.

2.List of documents exhibited on behalf of Plaintiff:

Ex.P.1	:	GPA
Ex.P.2	:	Promissory note.
Ex.P.2(a)	:	Signature.
Ex.P.3	:	Property register card.
Ex.P.4	:	Copy of Sketch.
Ex.P.5	:	Copy of order sheet of S.A.No.530/2011.
Ex.P.6 & 7	:	C.C. of application and objections.
Ex.P.8 to 11	:	C.C. of I.As. And affidavits.
Ex.P.12 to 21	:	C.C. of memos.
Ex.P.22	:	C.C. of petition in I.C.No.2/08.
Ex.P.23	:	C.C. of order.
Ex.P.24 & 25	:	C.C. of Vakalathnama.

Ex.P.26 to 29	:	C.C. of deposition, order and award.
Ex.P.30	:	C.C. of order.
Ex.P.31 & 32	:	C.C. of Vakalathnama.
Ex.P.33	:	Notarized copy of plaint in O.S.No.131/90.
Ex.P.34	:	Notarized copy of judgment.
Ex.P.35	:	Notarized copy of execution petition.
Ex.P.36	:	Notarized copy of order.
Ex.P.37	:	Notarized copy of appeal memo.
Ex.P.38	:	Notarized copy of I.T. returns.
Ex.P.39	:	Notarized copy of balance sheet.
Ex.P.39(a)	:	Relevant entry.

3. List of witnesses examined on behalf of Defendant:

-Nil-

4. List of documents exhibited on behalf of Defendant:

-Nil-

(Palled Raveendra Jadiyappa)
II Addl. Senior Civil Judge,
Hubballi.