



Presented on : 10-11-2022
Registered on : 10-11-2022
Decided on : 04-10-2023
Duration : 0 years, 10 months, 24 days

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
JMFC,AT: HAVERI.**

:: Present ::

Sri Balmukund R. MutalikDesai, B.A. LL.B. (Spl)
Addl. Senior Civil Judge & JMFC, Haveri.

Dated this 04th day of October - 2023.
R.A.No.21/2022

Appellant: Hemappa
(Ori.Deft) S/o Guddappa Somannanavar,
Age: 58 Years, Occ: Coolie,
R/o: Guttal, Tq: & Dist: Haveri.

(By Sri N.B.K., Advocate)

Respondents:

(Ori.Plff No.1a-1g)

1. Ningappa S/o Adiveppa Totad,
R/o: Guttal, Tq: & Dist: Haveri,
(Since deceased his LR's).
- 1(a). Malatesh S/o Ningappa Totda,
Age: 23 Years, Occ: Agriculture,
R/o: Maltesh Nagar, Guttal,
Tq : & Dist: Haveri.
- 1(b). Renuka W/o Ningappa Totad,
Age: 56 Years, Occ: Household,
R/o: Maltesh Nagar, Guttal,
Tq : & Dist: Haveri.
- 1(c) Hanumantappa S/o Ningappa Totad,
Age:37 years, Occ:Agril,
R/o: Maltesh Nagar, Guttal,
Tq : & Dist: Haveri.



- 1(d) Smt. Jayalaxmi
W/o Ningappa Tukkammanavar,
Age:35 years, Occ:Household,
R/o:Yalagachcha, Tq:& Dist:Haveri.
- 1(e) Smt.Laxmavva W/o Nagaraj Honnatti,
Age:33 years, Occ:Household,
R/o:Choudayyadanapur,
Tq:Ranebennur, Dist:Haveri.
- 1(f) Smt.Laxmi W/o Vijay Bambareppanavar,
Age:27 years, Occ:Household,
R/o:Kakol, Tq:Ranebennur, Dist:Haveri.
- 1(g) Savitravva D/o Ningappa Totad,
Age:25 years, Occ:Household,
R/o:Maltesh Nagar, Guttal,
Tq: & Dist:Haveri.

(R-1 (a) to R1(g) by Sri. C.H.K., Adv.)

Date of institution of appeal	10.11.2022						
Nature of appeal	For setting aside the Judgment and decree passed in O.S.No.214/2018 dt: 05.07.2022 by the Prl.Civil Judge & JMFC, Haveri and to allow this appeal.						
Date of Judgment.	04.10.2023.						
Total Duration.	<table><tr><td><u>Years</u></td><td><u>Months</u></td><td><u>Days</u></td></tr><tr><td>00</td><td>10</td><td>24</td></tr></table>	<u>Years</u>	<u>Months</u>	<u>Days</u>	00	10	24
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00	10	24					

J U D G M E N T

1. This is a Appeal filed by the appellant/defendant aggrieved by the judgment and decree passed by the Prl. Civil Judge & JMFC Haveri, in O.S.No.214/2018 dated:05.07.2022.



2. For the sake of convenience, the parties have been referred as per their original rank before the learned Trial court.

3. The appeal was filed with delay of 84 days and same was condoned after appearance of respondents and matter posted for arguments.

4. **The brief facts of the appellant's case are as under;**

The original suit was filed by plaintiff and during pendency of suit plaintiff died and his Lrs., plaintiff No.1(a) to 1(g) continued the suit.

5. The plaintiff and defendant are residents of Guttal town. Plaintiff was growing chilly and maize and also having chilly powder machine. The defendant was purchasing chilly powder from the plaintiff every year. Hence plaintiff and defendant are known to each other since 25-30 years. There was financial transaction between plaintiff and defendant. On 10.03.2016 defendant approached the plaintiff and requested to advance Rs.3,00,000/- as hand loan for his family necessities and development of business. He was also ready to give VPC No.446 as security. Hence plaintiff advanced Rs.3,00,000/- on 17.03.2016 in presence of PW-2 and 3. The defendant agreed to repay the said amount within one year and executed agreement. The defendant failed to repay the said amount within agreed period. In spite of repeated demands defendant failed to repay the amount to plaintiff. Hence plaintiff issued legal notice to



defendant on 27.07.2018, inspite of that defendant not repaid loan amount. Hence plaintiff filed the suit.

6. After appearance of defendant he filed written statement contending that he had received Rs.10,000/- from plaintiff and without writing anything plaintiff has obtained his signatures on non judicial stamp. The witnesses to the agreement are also relatives of plaintiff and plaintiff created the said document. Hence on all these grounds defendant prayed to dismiss the suit.

7. Based on pleadings learned trial court framed following issues.

ISSUES

1. Whether the plaintiff prove that the defendant has borrowed a sum of Rs.3,00,000/- on 17.03.2016 and executed hand loan agreement in favour of plaintiff and agreed to repay the said loan within one year?
2. Whether the plaintiff is entitled for the relief as sought for?
3. What order or decree ?



8. During evidence plaintiff got examined PW-1 to 3 on his behalf and got marked Ex.P-1 to 3. Defendant examined himself as DW-1 and not marked any documents.

9. The learned trial court after full pledged trial by holding issue No.1 in the affirmative and issue No.2 partly in the affirmative decreed the suit.

10. Aggrieved by the said judgment and decree passed by the trial court appellant/defendant filed the present appeal.

11. The trial court records were secured.

12. The appellant in his appeal memo opposed the judgment and decree passed by trial court on following grounds.

1. The judgment is illegal one.
2. The documents produced by respondents were not properly appreciated by the trial court.
3. The reasons given by the trial court are not convincing.

Hence, on all these grounds counsel for appellant prayed to allow the appeal.

13. Heard arguments.



14. Now points that would arise for my consideration are:

Point No.1: Whether the judgment and decree passed by Prl. Civil Judge and JMFC Haveri, in OS No.214/2018 dtd:05.07.2022 requires interference by this court/?

Point No.2: What Order?

15. On perusal of materials placed on record in the light of arguments canvassed by both the counsel my findings to above points are:

Point No.1:- In the Negative,

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

REASONS

16. **Point No.1:-** The present appeal is filed by appellant/defendant aggrieved by the judgment and decree passed by trial court.

17. The appellant in his appeal memo urged that the trial court has not given proper reasons to answer issue No.1 in the affirmative and prayed to allow the appeal.



18. It is the defense of defendant that he has only received Rs.10,000/- from the plaintiff. But to substantiate the same the defendant has not produced any oral and documentary evidence.

19. Moreover learned trial court in its judgment at para No.13 rightly observed that in his entire pleadings and evidence the defendant not denied the fact that he has not signed on Ex.P.1 agreement. Hence I am of the view that the trial court rightly concluded that plaintiff was successful to prove that defendant borrowed Rs.3,00,000/- on 17.03.2016 and executed hand loan agreement in favour of plaintiff and agreed to repay the said amount within one year.

20. Moreover trial court keeping in view of the law laid down in the citations referred by the parties appreciated oral and documentary evidence in the right prospective. The learned trial court by applying sound principles of law rightly came to the conclusion that plaintiff was successful to prove that defendant borrowed Rs.3,00,000/- by executing hand loan agreement. The trial court rightly decreed the suit filed by the plaintiff. Therefore this court has no reasons to interfere with the findings and decision of learned trial court. Hence I answer **Point No.1 In the Negative.**

21. Point No.2:- In view of my findings to the point No.1, I proceed to pass the following:



ORDER

The appeal filed by the appellant/defendant U/Sec.96 R/w. Order 41 Rule 1 of CPC is **hereby dismissed.**

Consequently the judgment and decree passed by Prl. Civil Judge and JMFC in OS No.214/2018 dtd:05.07.2022 is hereby confirmed.

Considering the facts of the case. No order as to costs.

Draw decree accordingly.

Send the TCR along with the copy of this judgment and decree to the learned trial court.

(Dictated to the Stenographer, transcribed and typed by her, script corrected, signed and then pronounced in the open court by me on this **04th day of October 2023**).

(Sri. B.R.MutalikDesai)
Addl Senior Civil Judge & JMFC.,
Haveri.