

KABI030034652019



**IN THE COURT OF THE Ist ADDL.CIVIL JUDGE & JMFC.,
AT BALLARI.**

**PRESENT: RAGHUNATHA GOWDA. K.T.
B.Com.LLB.,
I ADDL.C.J. & J.M.F.C., BALLARI.**

DATED: THIS THE 23RD DAY OF FEBRUARY 2022

O.S.No.678/2019

PLAINTIFF :-

K.Shankar Babu son of Changam Naidu, aged about 50 years, real estate business and hamali work, residing near Radha Krishna Temple, Ward No.3, Mothi Circle, Ballari.

(By Sri. C.M.Gurubasavaraj, Advocate)

//Vs.//

DEFENDANTS :-

1. Smt.Lalitha wife of late R.R.Srikanth, aged about 32 years, Sinecure,
2. R.Manohar Babu, son of not known to the plaintiff, aged about 60 years, retired person,
3. Smt.R.Annapurna wife of R.Mohan Babu, aged 55 years, Sinecure.

All are resident of 3rd Main Road, Siddarth Colony, near Chaitanya College, Moka Road, Ballari.

(By Sri J.S.Basavaraj, Advocate)

Date of Institution of Suit	27.11.2019						
Nature of Suit	Suit for recovery of money						
Date of commencement of the Recording of the evidence	10.11.2021 (PW.1)						
Date on which the Judgment was pronounced	23.02.2022						
Total Duration	<table><tr><td><u>Year/s</u></td><td><u>Month/s</u></td><td><u>Day/s</u></td></tr><tr><td>02</td><td>02</td><td>26</td></tr></table>	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>	02	02	26
<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>					
02	02	26					

:: J U D G M E N T ::

1. The plaintiff filed this suit against the defendants for the relief of recovery of an amount of Rs.2,44,000/- with future interest at the rate of 24% per annum from the date of suit till its realization.
2. The brief facts of the plaintiff case is as under ;-

The defendant No.1 is wife of late R.Srikanth, defendant No.2 and 3 are father and mother of late R.Srikanth.

It is the specific case of the plaintiff that, during the lifetime of R.Srikanth, he was working as a Mechanic Grade II at GESCOM, Section Office, Sirigeri Cross, Sirigeri village, Siruguppa taluk, Ballari district and he is

well known to the plaintiff last five years. Further plaintiff contended that, the defendants are constitute Hindu Undivided Joint family and during the lifetime of R.Srikanth, he borrowed a sum of Rs.2 Lakhs from the plaintiff on 01.04.2018 for meet out his family expenses and he assured to repay the said amount with interest at the rate of Rs.2% per month. Thereafter the plaintiff requested R.Srikanth for repayment of the said amount, so that reason on 01.01.2019 the said R.Srikanth was issued a postdated cheque bearing No.526034 dated 15.02.2019 drawn on State Bank of India, Ballari Branch and he agreed to repay upto date interest. As per the instructions of the said R.Srikanth, the plaintiff presented the said cheque on 15.02.2019 through his banker i.e., Syndicate Bank, Fort, Ballari and said cheque was returned with an endorsement '**funds insufficient**' on 15.02.2019.

Further plaintiff contended that, on 20.02.2019 he issued a legal notice to the said R.Srikanth calling

upon to repay the said amount and said notice was sent to his residential and also working address. The said notice sent to both addresses were returned with postal authorities endorsement stating that “**party is dead**”.

Further the plaintiff contended that, the defendants having personal knowledge of the above said debt and the plaintiff requested the defendants to repayment of the said amount, but the defendants refused to pay the said amount. Hence the plaintiff constrained to file this suit for aforesaid relief.

3. In response to the summons, the defendants appeared through their counsel. Defendant No.2 filed written statement, same was adopted by defendant No.1 and 3 by filing a Memo.
4. In the written statement the defendants have denied the entire allegations in the plaint except those which are expressly admitted. Further they have admitted that the deceased R.Srikanth was working in GESCOM. Further they have admitted their relationship with deceased

R.Srikanth . Further they have denied the undivided joint family and also denied the transaction with the plaintiff by deceased R.Srikanth. Further they have specifically contended that, they have no personal knowledge about the said debt and they are not liable to pay any amount. Further they have contended that, the deceased R.Srikanth has not left any estate in the hands of the defendants, so that reason the suit is not maintainable against them. Hence they pray to dismiss the suit of the plaintiff with cost.

5. After completion of the pleadings, my predecessor in office has framed the following issues :-

- 1) Whether the plaintiff proves that, R.Srikanth had borrowed Rs. 2,00,000/- at interest of 2% p.m. from the plaintiff on 01.04.2018 to meet his family expenses as stated in para 3 of plaint ?
- 2) Whether the plaintiff proves that to discharge said debt said R.Srikanth issued cheque bearing No.526034 drawn on S.B.I., Ballari dated 15.02.2019 for Rs. 2,00,000/- ?
- 3) Whether the plaintiff proves that said cheque was dishonored vide endorsement dated 15.02.2019 for Funds Insufficient?

4) Whether the plaintiffs proves that the defendants are liable to discharge the said debt ?

5) Whether the plaintiff is entitled for the reliefs as sought in the plaint ?

6) What order?

6. In order to prove the case, the plaintiff examined himself as PW 1 and 10 documents were marked as Ex.P.1 to 10 and closed his side. In order to prove the defence the defendant No.2 examined himself as DW 1 and one document was marked as Ex.D-1.

7. Heard the arguments on plaintiff side. Defendants counsel filed written arguments.

8. On perusal of the records, my answer to the above said issues are as under;-

Issue No.1 to 4 : **In the Affirmative.**

Issue No.5 : **Partly in the Affirmative.**

Issue No.6 : As per final order, for the following:

REASONS

9. **ISSUE No.1 TO 4** :- These issues are taken up together for common discussion in order to avoid repeated facts and evidence also common.

10. The burden lies on the plaintiff to prove the said issue. Because the plaintiff contended that, during the lifetime of husband of defendant No.1 i.e., deceased R.Srikanth borrowed a sum of Rs.2 Lakhs from him on 01.04.2018 and he agreed to repay the said amount with interest at the rate of 2% per month. Thereafter the plaintiff requested the said deceased R.Srikanth to repayment of the said amount, so that reason, on 01.01.2019 the deceased R.Srikanth issued a postdated cheque bearing 526034 dated 15.02.2019 for Rs.2 Lakh in favour of plaintiff. Thereafter the plaintiff presented the said cheque for encashment, the said cheque was returned with endorsement '**Account closed**'. Thereafter the plaintiff issued a legal notice to the deceased R.Srikanth on 20.02.2019. The said notice sent to office and residential addresses were returned with endorsement said "**R.Srikanth was expired.**" So that reason the plaintiff constrained to file this suit against

the legal heirs of deceased R.Srikanth for the above said relief.

11. In order to prove the same, the plaintiff examined himself as PW 1 and he has reiterated the plaint averments in his examination in chief and 10 documents were marked as Ex.P.1 to 10. Ex.P.1 is the cheque bearing No.526034 dated 15.02.2019 for an amount of Rs.2 Lakhs. Ex.P.1(a) is the signature of deceased R.Srikanth. Ex.P.2 is the bank challan. Ex.P.3 is the bank return memo. Ex.P.4 is the office copy of legal notice dated 20.02.2019. Ex.P.5 to 7 are the postal receipts. Ex.P.8 & 9 are the postal acknowledgments. Ex.P.10 is the unserved RPAD cover. Ex.P.10(a) is the legal notice dated 20.02.2019. Learned counsel for defendants cross examined the said witness.

12. On careful perusal of the entire cross examination of PW 1, the learned counsel for defendant specifically contended that, the defendants have no knowledge about the transaction of deceased R.Srikanth with plaintiff.

Further they have denied the entire transaction with the plaintiff by deceased R.Srikanth. Except that, no other specific defence taken in the cross examination of PW 1. As per the documentary evidence adduced by the PW 1 i.e., Ex.P.1 the deceased R.Srikanth issued the cheque to the plaintiff an amount of Rs.2 lakhs for repayment of the borrowed amount. Learned counsel for defendants has not denied the cheque and also signature appears in Ex.P.1(a) belongs to deceased R.Srikanth. Further as per Ex.P.3 the said cheque was returned with endorsement **‘Account closed’**. Further as per Ex.P.4 the plaintiff issued legal notice to the said deceased R.Srikanth on 20.02.2019 calling upon for repayment of the said amount with interest. As per Ex.P. 8 and 9 the notice issued by the plaintiff to the residential and office address of deceased R.Srikanth was served. Further the plaintiff pleaded in the plaint that, he came to knowledge that the said R.Srikanth was died after returning the legal notice issued to him. The documentary evidence

adduced by PW 1 i.e., Ex.P.1 is not disputed by the defendants.

13. Further in order to prove the defence, the defendant No.2 examined himself as DW 1 and he has reiterated the contents of written statement in his examination in chief and one document was marked as Ex.D-1. Ex.D-1 is certified copy of death certificate of deceased R.Srikanth. Learned counsel for plaintiff cross examined the DW 1 and during the course of cross examination, DW 1 admitted the relationship with the deceased R.Srikanth. Further DW 1 admitted in his cross examination that the deceased R.Srikanth gave money for his family expenses. Further in the entire cross examination DW 1, he deposed before this court that he does not know the transaction, but he has not denied the transaction. Further in the cross examination of DW 1 at Para No.2, he admitted that, he received notice issued by the plaintiff on 21.2.2019 and he is well aware of the contents of the legal notice and also he admitted that he

did not gave any reply notice to the plaintiff. Further during the course of cross examination of DW 1 at Para No.3 end the DW 1 admitted that he knows that his son borrowed a sum of Rs.2 Lakhs from the plaintiff when he received the legal notice.

14. On careful perusal of the entire cross examination of DW 1, the DW 1 deposed before this court that, he do not know the transaction of his son with the plaintiff, but he has not stated in his cross examination the claim sought by the plaintiff is false. More over as per cross examination of DW 1, he admitted that his son gave amount to meet out family expenses and also after service of legal notice, the defendants have not gave any reply notice to the plaintiff for denying the transaction with the plaintiff.

15. On careful perusal of the entire oral and documentary evidence adduced by both the parties, it clearly discloses the relationship of the defendants with deceased R.Srikanth is not disputed and also defendants

have not denied the execution of Ex.P.1 by deceased R.Srikanth in favour of the plaintiff. Main defence of the defendants that, they have not constituted joint family and they have not liable to pay any amount to the plaintiff. But as per address mentioned in cause title of the plaint, the defendants are residing in the same address and also suit summons served to all the defendants in the same address and the defendants have appeared before the court. Now they have contended that, they are not residing in joint family. The said contention of the defendants cannot be accepted. Moreover, after demise of the said R.Srikanth, the defendant No.1 was appointed on compassionate grounds and she is working at Shivamogga in MESCOM. More over the defendants have availed the death benefits of deceased R.Srikanth, now they have contended that, they are not liable to pay any amount. However, as per Section 52 of Code of Civil Procedure for enforcement of the decree against the legal heirs if the deceased left

behind his property to the extent of his share the judgment debtor to pay the said amount. Further the oral and documentary evidence and as per contents of written statement the defendants have evasive denial of the contents of the plaint averments and they have not stated specific defence in their written statement.

16. Further at this stage it is just and proper to relay on the presumption which is available in favour of the plaintiff under Negotiable Instrument Act as per Sec.118(g) the said provision reads as under;

Presumptions as to negotiable instruments. – Until the contrary is proved, the following presumptions shall be made;
(g) that holder is a holder in due course – that the holder of a negotiable instrument is a holder in due course.

17. In view of the above said provision of law the court can presume that, the plaintiff is holder of a cheque in due course of the same the deceased R.Srikanth has

executed in order to discharge his liability. Further the Ex.P.1 is a negotiable instrument, which carries with it the presumption under Section 118 of Negotiable Instruments Act, unless the said presumption is rebutted. In this case, the defendants have not rebutted the presumption of consideration and the presumption that the holder of the instrument is a holder in due course and as such the defendants are liable to make the payment to the plaintiff.

18. As per above said section, the deceased R.Srikanth issued Ex.P.1 for discharge of debt and after his demise, the legal heirs of deceased R.Srikanth are liable to pay the said amount. Further the plaintiff claiming interest at the rate of 24% per annum to the said amount and already the plaintiff has calculated the interest from the date of filing of this suit. Hence for the above said reason, the plaintiff proved that the husband of defendant No.1 by name deceased R.Srikanth during his lifetime has borrowed a sum of Rs.2 Lakhs from the plaintiff and

agreed to repay the same with interest at the rate of 24% per annum. Hence for the above said reason, my answer to the above **Issue No.1 to 4 in the Affirmative.**

19. **ISSUE No.5** :- While this court giving finding on Issue No.1 to 4 that the plaintiff proved that on 01.04.2018 deceased R.Srikanth borrowed a sum of Rs.2 Lakhs from the plaintiff and he agreed to repay the said amount with interest at the rate of Rs.2% per month. Further with regard to the future interest is concerned, there is no contract between the parties and more over the amount lent by the plaintiff is a huge amount and in the interest of justice and equity the future interest claimed by the plaintiff at the rate of 24% per annum is exorbitant and this court is of the considered opinion that if the future interest is awarded at the rate of 6% per annum is just and proper. Hence the plaintiff is entitled to the future interest at the rate of 6% per annum from the date of filing this suit to the principal amount.

Hence for the above said reason, my answer to **Issue No.5 partly in the Affirmative.**

20. **ISSUE No.6** :- In view of discussion made supra,
I pass the following:

: O R D E R :

The suit of plaintiff is hereby partly decreed with cost.

Further the defendants are jointly and severally liable to pay an amount of Rs.2,44,000/- with future interest at the rate of 6% per annum to the principal amount from the date of filing this suit, till its realization.

Further directed to the defendants to pay the said amount within 3 months from the date of this order.

Draw decree accordingly.

(Dictated to stenographer, transcribed and computerized by him, corrected, signed and then pronounced by me in the open Court on this the 23rd day of February 2022)

(RAGHUNATHA GOWDA. K.T.),
I ACJ & JMFC, BALLARI.

: A N N E X U R E :

List of witnesses examined for Plaintiff:

P.W.1: K.Shankar Babu

List of exhibits marked for Plaintiff:

Ex.P.1 : Cheque No.526034 dated 15.02.2019

Ex.P.1(a) : Signature of the deceased R.Srikanth

Ex.P.2 : Bank challan

Ex.P.3 : Bank return Memo

Ex.P.4 : Copy of legal notice dated 20.02.2019

Ex.P.5 to 7 : 3 Postal receipts

Ex.P.8 & 9: Postal acknowledgments

Ex.P.10 : Unserved postal cover

Ex.P.10(a) : Legal notices dated 20.02.2019

List of witnesses examined for Defendants: -

D.W.1 : Manohara Babu

List of exhibits marked for Defendants: -

Ex.D-1 : Original death certificate of R.Srikanth

I A.C.J. & JMFC., BALLARI.

(Order pronounced in the open court, vide separate Judgment).

: ORDER :

The suit of plaintiff is hereby partly decreed with cost.

Further the defendants are jointly and severally liable to pay an amount of Rs.2,44,000/- with future interest at the rate of 6% per annum to the principal amount from the date of filing this suit, till its realization.

Further directed to the defendants to pay the said amount within 3 months from the date of this order.

Draw decree accordingly.

I A.C.J. & JMFC, BALLARI.

