

KAMS310007712023



IN THE COURT OF ADDL. CIVIL JUDGE & JMFC, HUNSUR

Dated this the 6th day of March, 2024

-:Present:-

**Smt. Pooja Belakeri, B.A., LL.M.,
Addl. Civil Judge & JMFC,
Hunsur.**

O.S./181/2023

PLAINTIFF/S :

T. Hombegowda,
S/o late Thammegowda,
Aged about 60 years,
R/at Doddabyalalu Village and Post,
Ravandooru Hobli,
Periyapatna Taluk,
Mysuru District.

(By Sri MRL, Advocate)

// Versus //

DEFENDANT/S :

1. Sannaputtamma,
W/o late Rajanayaka,
Aged about 60 years,
2. Kumara,
S/o late Rajanayaka,
Aged about 40 years,

3. Ekalavya,
S/o late Rajanayaka,
Aged about 38 years,

All are R/at Kundanahalli Village,
Nandinathapura Post,
Kasaba Hobli,
Periyapatna Taluk,
Mysuru District.

(By Sri P.R.R., Adv.)

Date of institution of the suit : 15.06.2023

Nature of the suit : Money Suit

Date of recording evidence : 19.12.2023

Date of Judgment
pronounced : 06.03.2024

Total Duration : **00** years **08** months **21** days

(Pooja Belakeri)
Addl.Civil Judge & JMFC.,
Hunsur.

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

This suit is filed by the plaintiff against the defendants for the recovery of money of Rs.3,20,500/- together with cost and future interest at the rate of 2% per month from the date of filing of the suit till its realization.

2. The averments of the plaint in brief are as follows:

It is the case of the plaintiff that one late Rajanayaka is the husband of defendant-1 and father of defendants-2 & 3. It is stated that during the life time of late Rajanayaka in order to repay the old loan and for the purpose of agriculture, education of children and for house hold expenses had borrowed a sum of Rs.3,00,000/- as hand loan from the plaintiff and towards repayment of the said loan he had issued a post dated cheque bearing No.686496 dated 30.12.2020 drawn on Indian Overseas Bank, Kundanahalli Branch, Periyapatna Taluk in favour of the plaintiff. Further, it is stated that on presentation of the said cheque through his banker Karnataka Grameena Bank, Hunsur Branch, same is returned dishonoured with a shara "Payment stopped by drawer". Hence, the plaintiff filed a PCR on the file of Prl. Senior Civil Judge & JMFC., Hunsur which was registered as CC.No.473/2021. During the course of time said Rajanayaka died and hence approached the

defendants herein who are the only legal heirs of late Rajanayaka and on the assurance of defendants to repay the loan amount, plaintiff withdrew the case on 25.06.2022. Thereafter, the defendants gave evasive reply and dragged the matter and not paid the loan amount and interest. Hence, the plaintiff got issued a legal notice dated 22.02.2023 calling upon all the defendants who are the custodian of the properties of late Rajanayaka. On 27.02.2023 said notice was served on the defendants but the defendants failed to comply. Hence, the plaintiff is before the court seeking the relief for the following particulars.

Sl.No.	Particulars	Total in Rs.
1	Principal amount	3,00,000-00
2	Interest at the rate of 2% per month from 27.02.2023 to 27.05.2023	18,000-00
3	Notice expenses	2,500-00
	Grand Total	3,20,500-00

3. Though the defendants appeared before this court, they have not filed their written statement. Hence, this court after completion of statutory period has taken written statement of defendants as not filed and proceeded further in this case.

4. Hence, this court has recorded the evidence of the plaintiff. The plaintiff is examined as PW-1 and got marked Ex.P-1 to 9.

5. On the basis of plaint pleadings, the following points would arise for my consideration.

POINTS:

- 1. Whether the plaintiff proves that late Rajanayaka, husband of defendant-1 and father of defendants-2 & 3 has obtained a sum of Rs.3,00,000/- and executed postdated cheque in favour of plaintiff?**
- 2. Whether the plaintiff is entitled for the relief as sought for?**
- 3. What order or decree?**

6. Heard and perused the oral and documentary evidence adduced by the plaintiff. My findings on the above points are as under:

Point No.1	:	In the Affirmative
Point No.2	:	In the Negative
Point No.3	:	As per final order for the following;

:: R E A S O N S ::

7. Point No.1:- It is the case of the plaintiff that one Rajanayaka, husband of defendant-1 and father of defendants-2 & 3 has obtained a loan of Rs.3,00,000/- in order to repay the old loan and for the purpose of agriculture, education of children and for house hold expenses from the plaintiff and towards repayment of

the said loan he had issued a post dated cheque bearing No.686496 dated 30.12.2020 drawn on Indian Overseas Bank, Kundanahalli Branch, Periyapatna Taluk in favour of the plaintiff. On presentation of the said cheque through his banker Karnataka Grameena Bank, Hunsur Branch, same is returned dishonoured with a shara "Payment stopped by drawer". Hence, the plaintiff filed a PCR on the file of Prl. Senior Civil Judge & JMFC., Hunsur which was registered as CC.No.473/2021. During the course of time said Rajanayaka died and hence approached the defendants herein who are the only legal heirs of late Rajanayaka and on the assurance of defendants to repay the loan amount, plaintiff withdrew the case on 25.06.2022. It is stated that the defendants knowing the contents of the legal notice have not claimed the notice and failed to comply. Hence, the plaintiff has filed the present suit for recovery of money against the defendants who are the legal heirs of late Rajanayaka.

8. As per Sec.101 & 103 of the Indian Evidence Act, the burden of proof lies on the plaintiff to establish the said facts. The plaintiff himself examined before the court as PW-1 and filed affidavit evidence in lieu of his examination-in-chief, wherein he has deposed in consonance with the plaint averments. PW-1 in support of his oral evidence has got marked Ex.P-1 to 9. Ex.P-1 is the cheque drawn in favour of plaintiff dated 30.12.2020 bearing No.686496, which discloses that Rajanayaka has issued a

cheque for a sum of Rs.3,00,000/- (Three lakhs only) in favour of plaintiff. Ex.P-2 is the return of memo by Kaveri Grameena Bank which states that "Payment stopped by drawer" in the account with regard to cheque No.686496. Ex.P-3 is the copy of legal notice dated 21.01.2021 wherein the plaintiff has issued legal notice to late Rajanayaka. Ex.P-4 & 5 - Postal receipt and postal acknowledgment. Ex.P-6 is the certified copy of order sheet in CC.No.473/2021 wherein the plaintiff herein withdrew the case against late Rajanayaka on account of death of Rajanayaka and intended to file civil suit. Ex.P-7 Petition of PCR.4732021. Ex.P-8 legal notice to the defendants herein stating that late Rajanayaka has obtained a loan of Rs.3,00,000/- and issued a postdated cheque bearing No.686496 drawn on Indian Overseas Bank, same has been returned with a memo as Payment stopped by drawer and given a notice therein that if the same amount is not repaid the plaintiff will take legal action. Ex.P-9 - three postal receipts and three postal acknowledgments marked together.

9. On perusal of Ex.P-9 - postal receipts which discloses that notice were issued to defendants. On careful perusal of the above documents, the court can draw an inference beyond all preponderance of probabilities that Rajanayaka has issued a postdated cheque for a sum of Rs.3,00,000/- in favour of plaintiff. Ex.P-8 legal notice was issued to the defendants herein and Ex.P-9 discloses that said notice was served on the defendants. But they have not complied the notice but appeared before the court.

Though they have not filed their written statement. Under such circumstances, the present suit knowledge is within the defendants. Under such circumstances, the affidavit filed by the plaintiff stands unchallenged. The legal heirs of late Rajanayaka who issued post dated cheque as per Ex.P-1 in favour of plaintiff did not come before the court and taken their stand nor filed any written statement. Under such circumstances, there is no reason to disbelieve the case of the plaintiff. Moreover, the documentary evidence filed by the plaintiff clears that late Rajanayaka has issued cheque as per Ex.P-1 in favour of plaintiff which definitely liables the defendants to repayment. For all these reasons, I answer **Point No.1** in the **Affirmative**.

10. **Point No.2:-** Further, the plaintiff has prayed for future interest at the rate of 24% p.a. for Rs.3,00,000/-. But it is an admitted fact that one who has issued cheque i.e., Rajanayaka is no more and present defendants are the legal heirs of late Rajanayaka. On perusal of the plaint averments, it discloses that the loan has been advanced in favour of late Rajanayaka for the purpose of agriculture, education of children and house hold expenses and there is no record to prove that there was contract between plaintiff and late Rajanayaka that loan has to be repaid with interest at the rate of 24% p.a. Without such evidence this court cannot award the interest as sought for. For all these reasons I answer **Point No.2** in the **Negative**.

11. Point No.3:- In view of the discussion made and conclusion arrived at point Nos.1 & 2, suit of the plaintiff deserves to be decreed in part. Hence, I proceed to pass the following;

ORDER

Suit of the plaintiff is hereby partly decreed with cost.

The defendants are liable to pay Rs.3,00,000/- (Rupees Three lakhs only) to the plaintiff.

Draw decree accordingly.

(Dictated to the Stenographer then typed by him, transcript revised, corrected, signed and then pronounced by me in the open court on this the **6th day of March, 2024**)

(POOJA BELAKERI)
Addk. Civil Judge & JMFC.,
Hunsur.

ANNEXURE

LIST OF WITNESSES EXAMINED FOR PLAINTIFF:

PW-1 : T. Hombegowda

LIST OF DOCUMENTS MARKED FOR PLAINTIFF:

Ex.P-1	:	Cheque dated 30.12.2020
Ex.P-2	:	Return memo
Ex.P-3	:	Copy of Legal Notice dated 21.01.2021
Ex.P-4	:	Postal receipt
Ex.P-5	:	Postal acknowledgment
Ex.P-6	:	C/c of order sheet in CC.No.473/2021
Ex.P-7	:	Petition under Sec.200 of Cr.P.C.
Ex.P-8	:	Copy of Legal Notice dated 22.02.2023

Ex.P-9 : 3 postal receipts and 3 postal
acknowledgments

LIST OF WITNESS EXAMINED FOR DEFENDANTS:

Nil

LIST OF DOCUMENTS MARKED FOR DEFENDANTS:

Nil

(POOJA BELAKERI)

Addl.Civil Judge & JMFC.,
Hunsur.