

KAMS710010522015



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C.,**  
**AT: T.NARASIPURA.**

**Present** : **Sri. Venkatesha.K.N.,** <sup>B.A. LL.B.</sup>  
Addl. Civil Judge & J.M.F.C.,  
T.Narasipura.

**Dated** : This the 03<sup>rd</sup> day of August, 2022.

**O.S./198/2015**

**PLAINTIFF** : Sri.B.Siddaraju,  
S/o. Basavegowda,  
Aged about 39 years,  
R/at Manne Hundi Village,  
Kasaba Hobli, T.Narasipura  
Taluk.

(Represented by : Sri.A.L.S, Advocate.)

-V/s-

**DEFENDANTS** : 1). Smt.Chikkathayamma,  
W/o. Late Chikkaiah,  
Aged about 60 Years,  
  
2). Sri.Chikkaraju,  
S/o. Late Chikkaiah,  
Aged about 40 Years,  
  
3). Sri.Shivashankara,  
S/o. Late Chikkaiah,  
Aged about 38 Years,

- 4). Sri.Nagesha,  
S/o. Late Chikkaiah,  
Aged about 35 Years,
- 5). Sri.Mahesha,  
S/o. Late Chikkaiah,  
Aged about 32 Years,
- 6). Smt.Chikka Mahadevamma,  
D/o. Late Chikkaiah,  
Aged about 32 Years,
- 7). Smt.Lakshmi,  
D/o. Late Chikkaiah,  
Aged about 28 Years,

All are R/at Suthooru Village,  
Santhe Marali Hobli,  
Chamaraja Nagara Taluk and  
District.

(Represented by : Sri.P.S, Advocate.)

\* \* \* \* \*

1. Date of institution of the suit : 07.07.2015.
2. Nature of the suit : Recovery of money.
3. Date of the commencement of  
recording evidence : 12.04.2019.
4. Judgment pronounced on : 03.08.2022.
5. Total duration : Years Month Days  
07 00 26

**(Venkatesha.K.N.),  
Addl. Civil Judge & J.M.F.C.,  
T.Narasipura.**

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

This suit is filed for the relief of recovery of money of Rs.3,00,000/- with interest at the rate of 1.5% per month from the date of suit till its realization.

**2. Brief facts of the plaintiff's case are as under:-**

The deceased Chikkaiah is the husband of the defendant No.1 and father of the defendant No.2 to 7. On 09.10.2012 the deceased Chikkaiah had borrowed a loan sum of Rs.2,00,000/- (Two Lakhs only) from plaintiff for the purpose of his family necessity and to discharge of hand loans and agreed to repay the same with interest at the rate of 1.5% per month and he had executed an on demand promissory note and consideration receipt. Further averred that, inspite of repeated demands and request the deceased Chikkaiah had not repaid the loan amount. On 13.12.2012 Chikkaiah was died living behind him the defendants as his legal representatives and defendants have neither paid the said principal amount nor paid the interest. Hence, the plaintiff has issued a legal notice on 15.06.2015 calling upon the defendants to make payment of the loan amount with interest, same was duly served on them. The defendants have sent untenable reply dated:23.06.2015 and they have failed to repay the loan amount. Hence, the plaintiff has filed the present suit.

3. In response to the summons issued by this Court, defendants have appeared before the Court through their counsel and defendant No.1 to 5 have filed their written statement on their behalf.

a). The defendant No.1 to 5 in their written statement have denied the entire plaint averments and they have taken up a contention that, they are the legal heirs of the Chikkaiah, after the death of the said Chikkaiah the plaintiff has concocted the suit documents in his whims and fancy has filed the false suit on the basis of concocted documents. The said Chikkaiah was doing the duty at K.E.B, Yalandur, he was the habitual drunkard. The said facts has ascertained by the person who known to the plaintiff and then concocted the documents and filed the false suit by inventing the false ground and the same is not tenable in the eye of law.

b). Further contended that, the plaintiff is the professional money lender, he is doing the money lending business, contravention of Section 7 of Karnataka Money Lenders Act. Since the plaintiff has filed the many cases before this court. As the matter of fact the Chikkaiah was doing the duty at K.E.B and getting the handsome salary, out of the salary income he had married his sons and daughters and doing the happy life. At no point of time plaintiff is not known neither Chikkaiah nor defendants, only for the purpose of

harass the defendants the plaintiff has filed this false suit. Hence, prays to dismiss the above suit with costs.

4. Upon considering the material proposition of law and facts averred by both the parties, my learned predecessor in office has framed the following issues:-

**ISSUES**

1. Whether the Plaintiff proves that, the husband of the defendant No.1 and father of the defendant No.2 to 7 has borrowed a sum of Rs.2,00,000/-on 09.10.2012 with interest at the rate of 1.5% per month by executing D.P Note and consideration receipt in his favour as contended in the plaint ?
2. Whether the plaintiff further proves that, the defendants are liable to pay a sum of Rs.3,00,000/- with interest at the rate of 1.5% per month from the date of suit till realization as contended in the plaint ?
3. Whether the plaintiff is entitled for the relief as sought in the plaint ?
4. What order or decree?

5. In order to prove the case of the plaintiff, he has appeared before the Court and filed his affidavit in lieu of his examination-in-chief by reiterating the plaint averments and examined himself as P.W-1 and also examined two witnesses as P.W-2 & 3 and got marked 17 documents as Ex.P-1 to 17.

On the other hand, the defendant No.2 has examined himself as D.W-1 and he has not produced any documents.

6. Heard the arguments of learned counsels for the plaintiff and defendants. Perused the documents available on record.

7. My answers to the above issues are as follows :-

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

Issue No.2 : **Party In the Affirmative**.

Issue No.3 : **Party In the Affirmative**.

Issue No.4 : As per final order,  
for the following

**-: REASONS :-**

**8. Issue No.1:-**

It is the case of the plaintiff that, the deceased Chikkaiah is the husband of the defendants No.1 and father of the defendants No.2 to 7. On 09.10.2012 the deceased Chikkaiah had borrowed a loan sum of Rs.2,00,000/- (Two Lakhs only) from plaintiff for the purpose of his family necessity and to discharge of hand loans and agreed to repay the same with interest at the rate of 1.5% per month and he had executed an on demand promissory note and consideration receipt.

9. In order to prove his case the plaintiff has examined himself as P.W-1 and filed his affidavit in lieu of his examination-in-chief, wherein he has reiterated the entire averments in the plaint and he has got marked 17 documents as Ex.P-1 to 17. The plaintiff has examined the another two witnesses as P.W-2 & 3 and filed their affidavit in lieu of their examination-in-chief, wherein they have reiterated the plaint averments. Ex.P-1 is the On Demand Pronote, Ex.P-1(a) to (c) are the Signatures, Ex.P-2 is the Consideration Receipt and Ex.P-2(a) to (c) are the Signatures. Ex.P-3 is the Death certificate of Chikkaiah, Ex.P-4 is the Genealogical tree, Ex.P-5 is the Legal notice dated:15.06.2015, Ex.P-6 to 12 are the Postal receipts, Ex.P-13 to 16 are the Postal acknowledgments and Ex.P-17 is the Reply notice dated:23.06.2015.

10. In order to disprove the case, defendant No.2 has examined himself as D.W-1 and filed his affidavit in lieu of his examination-in-chief, wherein he has reiterated the entire averments in the written statement and contended that, they are the legal heirs of Chikkaiah, after the death of the said Chikkaiah the plaintiff has concocted the suit documents in his whims and fancy has filed the false suit on the basis of concocted documents. The said Chikkaiah was doing the duty at K.E.B, Yalandur, he was the habitual drunkard. The said facts has ascertained by the person who known to the plaintiff

and then concocted the documents and filed the false suit by inventing the false ground. In order to prove the said contention, he has not produced any documents.

11. On perusal of Ex.P-1 it reveals that, on 09.10.2012 the Chikkaiah had borrowed the loan of Rs.2,00,000/- from plaintiff in order to perform his children marriage and meet his urgent family necessities. Further reveals that, the Chikkaiah had executed on demand pronote and agreed to repay the loan amount with interest at the rate of 1.5% p.m. Further reveals that, the Chikkaiah had signed to the Ex.P-1 and also witnesses signed to the said document. On perusal of Ex.P-2 it reveals that, the Chikkaiah had received the loan amount of Rs.2,00,000/- from the plaintiff on 09.10.2012 and executed the consideration receipt. Further reveals that, the Chikkaiah and witnesses have also signed to the said consideration receipt. On perusal of Ex.P-3 it reveals that, the Chikkaiah was died on 13.12.2012. On perusal of Ex.P-4 it reveals that, the defendants are the legal heirs of the deceased Chikkaih. On perusal of Ex.P-5 it reveals that, the plaintiff has issued legal notice on 15.06.2015 through his advocate and calling the defendants to repay the loan amount. On perusal of the Ex.P-13 to 16 which reveals that, the legal notice issued by the plaintiff has duly served on the defendants and they have received the legal notice. On perusal of Ex.P-17 it reveals that,

the defendants have issued reply notice to plaintiff on 23.06.2015 through their advocate.

12. On perusal of the documents produced by the P.W-1, it is crystal clear that the Chikkaiah had borrowed the loan of Rs.2,00,000/- from the plaintiff and he had executed the on demand pronote and consideration receipt in favour of plaintiff and acknowledged the loan.

13. Further, the plaintiff also examined the two witnesses by name S.Siddegowda and M.Mahesha as PW-2 & 3 respectively, who are the witnesses to the Ex.P-1 and 2. They have deposed that, Chikkaiah had borrowed the loan of Rs.2,00,000/- from the plaintiff in their presence and agreed to repay the loan amount with the interest at the rate of 1.5% p.m. Further deposed that, Chikkaiah had executed on demand pronote and consideration receipt. The Chikkaiah had affixed his thumb impression on pronote and consideration receipt. They have signed to the documents as witness. They have identified their signature in Ex.P-1 and 2.

14. The learned counsel for defendants has cross-examined the P.W-1 to 3, but nothing worth has been elicited from them in order to disprove the case of the plaintiff.

15. The oral and documentary evidence led by the plaintiff is consonance with the case of the plaintiff. It is the

case of the plaintiff that, deceased Chikkaiah had borrowed of Rs.2,00,000/- (Two Lakhs only) on 09.10.2012 from plaintiff for the purpose of performing his children marriage and his urgent family necessity and agreed to repay the same with interest at the rate of 1.5% per month and he had executed an on demand promote and consideration receipt. To prove the said issue he has relied on Ex.P-1 to 17. On perusal of the said documents it is crystal clear that, the deceased Chikkaiah had borrowed the loan of Rs.2,00,000/- from the plaintiff and he had executed the on demand promote and consideration receipt in favour of the plaintiff and acknowledged the loan. Moreover, the plaintiff has examined the witnesses to the Ex.P-1 and 2 as PW-2 & 3. The said evidence of the PW-2 and 3 are not denied by the defendants by giving suggestion. Therefore, in view of the evidence of PW-1 to 3 this court has come to the conclusion without any hesitation that execution of Ex.P-1 and 2 by the deceased Chikkaiah is proved by the plaintiff, to draw the presumption under Section 118 of N.I Act that consideration was passed under Ex.P-1 and 2 until contrary is proved by the defendants.

16. Now the onus is shifted to the defendants to rebut the said presumption. It is specific contention of the defendants that, Ex.P-1 and 2 are forged and fabricated one. Further contended that, deceased Chikkaiah was the habitual drunkard said facts as ascertained by the person who known

to the plaintiff and then concocted the documents and filed false suit. To prove the said contention the defendants have not examined any witnesses, who were working at K.E.B along with deceased Chikkaiah. Further, the defendants have not produced any documents with respect to the said allegations. Though it is the case of the defendants that, Ex.P-1 and 2 are the forged documents. No effort was taken by the defendants to send the Ex.P-1 and 2 to the expert for comparison of the signatures and thumb impression therein with the admitted signatures of the deceased Chikkaiah.

17. Further, the learned Advocate for defendants has argued that, the legal heirs of deceased Chikkaiah are not liable to pay the debts which are taken by the deceased Chikkaiah. Further argued that, sub Section (4) of Section 6 of the Hindu Succession Act 1956, no court shall recognize any right to proceed against a son, grand son or great grand son for the recovery of any debt due from his father, grand father or great grand father only on the ground of the pious obligation. In support of his arguments he has produced the following decisions:

1. Venkatesh V/s Ravi [(C.R.P No.212/2016)  
(SC)] dated:21.10.2020.

2. Venkatesh V/s Mahesh [(C.R.P No.211/2016) (SC)] dated:21.10.2020.

3. Shankarappa V/s Shanthavva & others [(C.R.P No.100033/2020] dated:28.01.2022.

18. On perusal of the sub Section (4) of Section 6 of Hindu Succession Act 1956 and on perusal of above decisions it is crystal clear that, the liability of the son, grand and great grand son to pay the debts of their ancestors is not a personal one, but it is to say the fathers creditor is not entitled to proceed against their personal or their separate property. Further it is crystal clear that, the said liability is limited to their interest in the joint family property, unless there is acceptance of personal liability in the course of judicial proceedings. But in the present case, the deceased Chikkaiah was the government employee in K.E.B. after the death of said Chikkaiah the legal heirs of said Chikkaiah have been receiving the pension from the government under old pension scheme. Hence, the contention taken by the defendants have not been sustainable under law. Moreover, the contention taken by the defendants are not come to the purview of pious obligation. Hence, the decisions relied by the learned Advocate for defendants are not applicable to the facts of the present case.

19. Moreover, the defendants have denied all the averments of the plaint in their written statement. They have not taken any specific contention against the case of the plaintiff. Therefore, it clearly appears from the two difference versions taken by the defendants that, for the purpose of avoiding the repayment of debt under Ex.P-1 and 2. Further, the contentions were taken by the defendants without any foundation in the pleadings. Therefore, viewed from any angle the said contentions raised by the defendants are taken only to served as defence in the suit. Thus it clearly appears that, defendants have failed to rebut the presumption under Section 118 of N.I Act in the present case. Hence, it is crystal clear that, the deceased Chikkaiah had borrowed the sum of Rs.2,00,000/- from the plaintiff and executed the on demand pronote and consideration receipt. Accordingly, **Issue No.1** is answered in the **Affirmative**.

20. **Issue No.2 and 3:-**

It is the specific case of the plaintiff is that, the defendants are liable to repay the loan amount of Rs.3,00,000/- with interest at the rate of 1.5% p.m.. To prove the said aspect he has relied on Ex.P-1 and 2. On the other hand, to disprove the case of the plaintiff, the defendants have not placed any documents. This Court has already hold affirmative the Issue No.1, came to conclusion that the

deceased Chikkaiah had borrowed the loan amount of Rs.2,00,000/- from the plaintiff and executed the on demand pronote and consideration receipt. Hence, the plaintiff is entitle for recovery of the said amount. Further, the plaintiff has already calculated the interest at the rate of 1.5% p.m from the date of execution of on demand pronote and consideration receipt till the filing of the above case. But the plaintiff has claimed the exorbitant interest at the rate of 2% p.m., from the court. But the said interest is not sustainable in law.

21. Further with respect to the quantum of the interest, I have relied on the decision of the Hon'ble High Court of Karnataka reported in **ILR-2003-Karnataka-Page 2236** between **Union Bank of India, DHARVAD V/s PARASURAM**, wherein the Hon'ble High Court of Karnataka has held as follows:

CIVIL PROCEDURE CODE, 1908  
(CENTRAL ACT No.5 OF 1908)- SECTION 34,  
SECTION 100- Plaintiffs suit for recovery of a  
sum of Rs.30,203.65/- with interest at  
Rs.21% P.A. – Dismissed on an appeal before  
the Appellate Court –Court granted a sum of  
Rs.16,244/- with interest @ Rs.18% per  
annum from the date of suit to till its  
realization – Second Appeal by the  
defendants challenging the rate of interest  
awarded by the Appellate Court – Held on  
facts – That the first Appellate Court had no  
discretion to award interest @ exceeding 6%  
PA from the date of decree in view of Section

34 of CPC – Hence, that part of the order is modified.

22. Keeping in view of the law declared in the aforementioned decision, this Court has no discretion to award interest exceeding 6% per annum from the date of decree. Thus, this Court, while granting future interest, has to restrict the rate of interest at 6% per annum only. Hence, it is proper to award the interest in accordance with law and guidelines of the Reserve Bank of India. Hence, it is proper to award the interest at the rate of 6% p.a., from the date of suit till the date of realization on the principal amount of Rs.2,00,000/-. Hence, the defendants are liable to pay the amount of Rs.3,00,000/- to the plaintiff together with future interest at the rate of 6% per annum on the principal amount of Rs.2,00,000/- from the date of suit till the date of realization. Accordingly, **Issue No.2 and 3** are answered **partly in the affirmative.**

23. **Issue No.4:-**

In view of the findings on Issue No.1 to 3 this Court proceeds to pass the following:-

**ORDER**

Suit of the plaintiff is hereby **partly decreed with costs.**

The defendants are liable to pay the suit claim amount of Rs.3,00,000/- (Rupees Three Lakhs only) to the plaintiff together with interest at the rate of 6% per annum on the principal amount of Rs.2,00,000/- from the date of the suit till the date of realization.

Draw decree accordingly.

**(Directly generated through the computer by the Stenographer to my dictation with my verification and then signed and pronounced by me in the Open Court dated this the 3<sup>rd</sup> day of August 2022.)**

**(Venkatesha.K.N.)  
Addl. Civil Judge & J.M.F.C.,  
T.Narasipura.**

**-: A N N E X U R E S :-**

**Number of witnesses examined for plaintiffs:-**

P.W-1 : Sri.B.Siddaraju.  
P.W-2 : Sri.S.Siddaraju.  
P.W-3 : Sri.M.Mahesha.

**List of documents marked for plaintiffs:-**

Ex.P-1 : On Demand Pronote,  
Ex.P-1(a) to (c) : Signatures,  
Ex.P-2 : Consideration Receipt

- Ex.P-2(a) to (c) : Signatures.  
Ex.P-3 : Death certificate of Chikkaiah,  
Ex.P-4 : Genealogical tree,  
Ex.P-5 : Legal notice dated:15.06.2015,  
Ex.P-6 to 12 : Postal receipts,  
Ex.P-13 to 16 : Postal acknowledgments  
Ex.P-17 : Reply notice dated:23.06.2015.

**Number of witnesses examined for defendants:-**

- D.W-1 : Sri.Chikkaraju.

**List of documents marked for defendants:-**

- Nil -

**Addl. Civil Judge & J.M.F.C.,  
T.Narasipura. \*\***

**(Judgment pronounced in open court vise separate order)**

**ORDER**

Suit of the plaintiff is hereby **partly decreed with costs.**

The defendants are liable to pay the suit claim amount of Rs.3,00,000/- (Rupees Three Lakhs only) to the plaintiff together with interest at the rate of 6% per annum on the principal amount of Rs.2,00,000/- from the date of the suit till the date of realization.

Draw decree accordingly.

**Addl. Civil Judge & J.M.F.C.,  
T.Narasipura.**