

IN THE COURT OF THE VI ADDL. DISTRICT JUDGE (FTC) :: BAPATLA

**Present: Sri K.SYAM BABU,
VI Addl. District Judge (FTC), Bapatla.**

Thursday, this the 29th day of January, 2026

A.S.No.47 of 2024

Between:

Bolisetty Venkata Subbarao, s/o Late Koteswararao, aged about 74 years, Retired Andhra Bank Employee, R/o H.No.7-1-302/46/1&2, dolphin II Apartments, Opp. to BK Guda Park, S.R.Nagar, Hyderabad.

... Appellant/Defendant

And

Bolisetty Ramesh Babu, s/o Koteswararao, aged about 65 years, Cultivation, R/o Returu village, Kakumanu mandal, Bapatla, Guntur District, now presently residing at Patel Nagar, 1st lane, Opp.Post Office, Bapatla.

... Respondent/plaintiff

Appeal filed against the Judgment and Decree in O.S.168/2010
dt.3-1-2024 on the file of Additional Senior Civil Judge's Court(FTC), Bapatla

Between :

Bolisetty Ramesh Babu

...Plaintiff

And

Bolisetty Venkata Subbarao

...Defendant

This appeal is coming on 21-1-2026 for final hearing before me in the presence of Sri P.Raghuvaran, Advocate for the Appellant/defendant; Sri N.Subbarao, Advocate for Respondent/plaintiff, and after hearing the arguments of both counsel and having stood over for consideration till this day, this court delivered the following:-

J U D G M E N T

The unsuccessful defendant/Appellant filed this appeal aggrieved by the Judgment and Decree in O.S.168/2010 dt.3-1-2024 on the file of Additional Senior Civil Judge's Court(FTC), Bapatla.

02. This is a suit filed by the plaintiff against the defendant for recovery of money of Rs.9,97,600/-(Rupees nine lakhs ninety seven thousands hundred only) being the principle and interest amount due under promissory note dated 07-10-2007 executed by the defendant infavour of the plaintiff together with subsequent interest thereon.

The brief averments of the plaint are as follows:

03. The plaintiff submits that the defendant borrowed an amount of Rs.5,80,000/- on 07.10.2007 and executed a promissory note in favour of the plaintiff on the even date for the said amount at Returu Village, Kakumanu Mandal, promising to repay the said amount together with interest 24% pa. yearly compoundable either to the plaintiff or his endorsee on demand The plaintiff further submits that inspite of repeated demands made by the plaintiff personally and through mediators, the defendant failed to discharge the debt amount due under promissory note and postponing the matter on some pretext or other. Hence the plaintiff is constrained to file the present suit. Hence the suit.

04. The defendant filed the written statement denying the averments of the plaint in total. The sum and substance of the written statement goes to show that, the defendant neither approached nor borrowed an amount of Rs.5,80,000/- from the plaintiff so also never executed any promissory note dt.7.10.2007 in favour of the plaintiff The contention of the defendant is that the plaintiff is none other than his awn brother and there are some differences with regarding to the

joint family properties in between them. The further contention is that the defendant is a senior bank Manager by profession whereas the plaintiff who does not have any job bore grudge against the defendant and on that he used to file a false civil and criminal cases against the defendant in order to cause a mental agony and further contended that the plaintiff with the help of this henchmen forged the signature of the defendant and created the said promissory note for an amount of Rs 5.60.000 dt.7.10.2007 and that for the purpose of wrongful gain, the plaintiff created a false sum against him. The further contention is that in fact the plaintiff has no such capacity to lend the alleged amount under the promissory note to the defendant. As the plaintiff came with a evil idea by creating the false suit, the defendant prays for the dismissal of the suit with costs in the interest of justice.

05. Basing on the pleadings of both parties, trial court framed the following issues for trial:

1. Whether the suit promissory note is true, valid supported by consideration and the same is binding on the defendant
2. Whether the plaintiff is entitled to decree for the suit amount ?
3. To what relief?

06. During the course of trial, the plaintiff himself examined as P.W.1 and through him Ex.A1 was elicited. Plaintiff examined PW2 on his behalf. On behalf of defendant, DW2 was examined.

07. Grounds of Appeal:

The decree and judgment of the lower court is contrary to law, weight of evidence and probabilities of the case.

The lower court judgment is based on figment of imagination without considering the documentary and oral evidence.

The respondent/plaintiff failed to get the witness of Ex.A1 and examine.

The lower court did not consider the evidence of DW.1 in respect of his employment though the Andhra Bank [Union Bank of India) officials got the certain documents of DW.1 who signed and wrote for sending the Ex.A1 to FSL for comparing the same with bank documents to get know the genuinity of Ex. A1.

The lower court itself came to a conclusion about the signature of the appellant even though there is established law and provisions prescribe the procedure for admitting, handwriting, signature etc.

It is further submitted that the lower court had sent the Ex.A1 to the hand writing expert with the admitted and disputed signatures of the appellant to ascertain the truth that Ex.A1 is the genuine one. In the judgment also the Hon'ble court very clearly mentioned that the expert had opined that it is not possible to compare the differently executed signatures has they lack common characters among them and therefore a conclusive opinion regarding the authorship of the questioned signature cannot be established". This itself shows that the appellant/defendant had not executed the Ex.A1 in favour of the plaintiff i.e., PW.1. when the expert opined that the questioned signature cannot be

compared with different pattern signature, though the suit is 2010 matter the trial court might have given one more chance to send the questioned document Ex.A1 to the FSL for comparing the stress and strokes of the Ex. A1 questioned signature with the bank documents. But the lower court itself came to conclusion and decreed the suit which is against the principles of law, justice, equity and good conscience.

It is further submitted that as the appellant contention as that PW.1 and PW.2 as they are relatives colluded each other and created Ex.A1 and PW.2 is the scribe of Ex A1. The trial court might have sent the questioned document Ex.A1, alleged signature of appellant, to compare the stress and strokes of the signature with the PW.2 writing of Ex.A1. But the trial court showing and considering the matter belongs to 2010 erroneously came to conclusion that the Ex.A1 is very genuine and signed by the DW.1.

It is submitted that though the appellant and the respondent are own brothers having property disputes among family members is very common. The appellant though one side that the PW.1 did not file any civil suit against him in the year 2009 vide O.S.No.25/2009 and immediately in the second instance the DW.1 had changed his version and added that he do not remember whether the PW.1 filed the suit in O.S.No.25/2009 for declaration against him and the said suit is still pending" But there is nothing wrong in the depositions of the appellant regarding the civil suit and it is not at all related with the present case.

It is further submitted that the appellant deposed the respondent/plaintiff do not have that much of capacity to lend money of Rs.5,80,000/- The appellant after decree courts app got know that the respondent/plaintiff filed an and judgment through his council by verifying the e insolvency petition on the next day of date of Ex. Al ie..

On 08.10.2007 vide I.P.No.13/2007 before the Hon'ble I Prl. Senior Civil Judge Bapatla the same was dismissed with costs on 20.01.2022. The e-courts case status of 1.P.No.13/2007 is filed herewith for kind perusal of the Hon'ble court.

It is further submitted that the lower court have to dismiss the suit but on their own conclusion and on the basis of PW.1 decreed the suit it is against the principles of law.

It is further submitted that any other grounds specifically mentioned here will be submitted at the time of hearing.

08. By considering the submissions made by both sides, the following points are framed for determination.

1. Whether the suit promissory note is true, valid supported by consideration and the same in binding on the defendant?
2. Whether the plaintiff is entitled for suit claim ?
3. Whether the judgment of trial court requires any interference ?

Point Nos.1 and 2:

09. The parties herein after will be referred to as they are arrayed before the learned trial court for convenience reference.

10. Prior to evaluating the evidence of both parties, it is appropriate to note that in a suit based on promissory note, the initial burden is on the plaintiff to establish that the defendant executed suit promissory note and received consideration thereunder. If the plaintiff is able to establish that the defendant executed Ex.A1 promissory note, the presumption u/s.118 of N.I.Act will be available to him.

11. In the present case, the contention of the plaintiff is that the defendant borrowed an amount under Ex.A1 and on that the plaintiff filed the suit as the defendant failed to repay the debt covered under Ex.A1.

The very defence of defendant is that he never borrowed any amount under Ex.A1 and the plaintiff is not having such capacity to lend such amount of Rs.5,80,000/- and in order to harass the defendant, the present suit is filed by forging his signature on Ex.A1 promissory note. The evidence of both parties is according to their pleadings.

12. According to Sec.101 of Indian Evidence Act, the burden is on the plaintiff because he desires the court to give judgment basing on Ex.A1 promissory note. The plaintiff asserts that the defendant borrowed amount of Rs.5,80,000/- under Ex.A1 and seeking the relief basing on specific liability of defendant under Ex.A1 promissory note. Hence, according to Sec.101 of Indian Evidence Act, the initial burden is on the plaintiff to establish that Ex.A1 promissory note is executed by the defendant.

In order to prove the same, the plaintiff examined himself as PW1 and produced Ex.A1 promissory note. In support of his contention, plaintiff also examined the scribe of Ex.A1 as PW2. Prior to evaluating the evidence of these witnesses with regard to proof of execution of Ex.A1, it is appropriate to refer the admitted facts between the parties. The plaintiff and defendant are brothers and there are disputes in between them with regard to properties and in relating to the same, a suit in O.S.25/2009 is also pending. As the contention of defendant is that he never executed Ex.A1 promissory note and there is no necessity for him to borrow amount from the plaintiff and further contention of defendant is that the plaintiff is not having such capacity to lend amount under Ex.A1. With these contentions, the initial burden is on the plaintiff to establish that by borrowing amount under Ex.A1, the defendant affixed his signature on Ex.A1. If the plaintiff is able to establish that the defendant executed Ex.A1, then the presumption u/s.118 of N.I.Act will be available to the plaintiff.

On scrutinizing the evidence of P.Ws.1 and 2, their chief examination shows that the defendant executed Ex.A1 promissory note in favour of the plaintiff on receipt of consideration thereunder. But, in view of the rivalry in between the parties with regard to properties, this court is of opinion that the evidence of P.Ws.1 , 2 and DW1 is to be scrutinized carefully because there is a chance of speaking falsehood by both the parties.

13. The version of PW1 is that Ex.A1 promissory note was executed at the house of PW1 in Returu village and the PW2 is not the resident of Returu

village. As per the version of P.Ws.1 and 2, except the parties to the present proceedings and PW2, none were present at the time of execution of Ex.A1 promissory note by the defendant.

The contention raised by the defendant is that the plaintiff is not having capacity to lend such huge amount of Rs.5,80,000/-. During the cross examination of PW1, it was stated by PW1 that an amount of Rs.4,70,000/- was withdrawn from the bank by PW1 to fund the loan under Ex.A1 promissory note. It is also stated by PW1 that he filed other suits against the several persons, but he did not remember how many suits were filed by him. As the defendant is contending that the plaintiff is not having capacity to lend an amount of Rs.5,80,000/- under Ex.A1 promissory note and the cross examination of PW1 clearly shows that the PW1 closed his business about 7 or 8 years back from the date of his cross examination and the cross examination was done on 3-2-2015. Hence, it clearly shows that the rice mill business of PW1 was closed about 7 or 8 years back. The present suit promissory note is dt.7-10-2007. Hence, it clearly shows that by the date of execution of Ex.A1, the plaintiff/PW1 closed his business.

14. The chief examination of DW1 is the denial of execution of Ex.A1 and denial of receipt of consideration thereunder. During the cross examination of DW1, a question was posed to him about getting of profits in rice mill business by PW1 and DW1 stated that he do not know about the receipt of profits if any. But, the cross examination of PW1 clearly shows that 7 or 8 years back of his

cross examination, the rice mill business was closed. Hence, it clearly probablising that the version of defendant about the incapacity of plaintiff to lend such huge amount of Rs.5,80,000/- under Ex.A1.

In a civil suit, a fact can be established or proved by preponderance of probabilities and a strict proof of incapacity need not be proved. During the cross examination of PW2 who is said to be the scribe of Ex.A1, he stated that he do not remember in which language he scribed Ex.A1 promissory note. It was also elicited during the cross examination of PW2 that he scribed Ex.A1 promissory note and also two other promissory notes to the plaintiff and previously the PW2 gave evidence on behalf of the plaintiff in a suit as a scribe. Admittedly, the PW2 is not resident of Returu village where the plaintiff is residing and where the Ex.A1 is said to be executed by the defendant.

Under these circumstances, the evidence of PW2 that he do not remember in which language he scribed Ex.A1, is weakening the case of the plaintiff. It is also stated by PW2 during the cross examination that he do not remember where he put his signature on chief affidavit and also stated that he do not remember whether he gone through the contents of his chief examination at the time of affixing his signature on the chief affidavit. The version of PW2 clearly shows that he will act as per the tune of PW1 and conveniently he is saying that he do not remember in which language the Ex.A1 was scribed and where he affixed his signature on chief affidavit.

15. The trial court framed the first issue as :-

Whether the suit promissory note is true, valid, supported by consideration and the same is binding on the defendant ?

Wherein, the burden is placed on the plaintiff to prove the execution of Ex.A1 and passing of consideration under Ex.A1. The first issue clearly shows that the burden is on the plaintiff to establish that Ex.A1 is executed by DW1 and consideration was passed under Ex.A1. Mere examination of P.Ws.1 and 2 and production of Ex.A1 will not prove the passing of consideration under Ex.A1 because the trial court fixed the burden on plaintiff to establish that there is also passing of consideration under Ex.A1. If the plaintiff is able to establish the signature on Ex.A1 belongs to the defendant, then the presumption u/s.118 of N.I.Act will be available to the plaintiff. But, in view of the pleadings and evidence of defendant, he clearly denied the execution of Ex.A1 and not admitted the signature on Ex.A1. In view of the rivalry in between the plaintiff and defendant, mere oral testimony of PW1and DW1 may not be sufficient to prove or disprove the version of plaintiff with regard to signature on Ex.A1.

The defendant has taken steps to get examine the signature on Ex.A1 with the admitted signatures. In that process, the defendant got summoned the documents relating to the contemporaneous period of Ex.A1 and even prior to the Ex.A1. But, when these disputed and admitted signatures were sent to the expert, the expert opined that they cannot be compared as those signatures were in different pattern.

16. On perusal of Ex.A1, it was relating to the year 2007 and the bank vouchers which were summoned to get examine the Ex.A1 are also relating to the year 2007. As the defendant has taken necessary steps to get examine the

Ex.A1 by an expert and clearly denying the signature on Ex.A1, the burden is on the plaintiff to establish that the signature on Ex.A1 is belongs to the defendant. Mere examination of P.Ws.1 and 2 and production of Ex.A1 will not prove the execution of Ex.A1 by the defendant. When the initial burden is on the plaintiff to establish that the signature on Ex.A1 is belongs to the defendant and consideration was passed under Ex.A1 and PW1 stated during cross examination that he has withdrawn amount of Rs.4,70,000/- and by adding Rs.1,10,000/-, the consideration was given to the defendant under Ex.A1, the plaintiff has to produce such documentary proof to establish that he has such capacity to lend amount under Ex.A1. The non-filing of passbook or statements to shows that an amount of Rs.4,70,000/- was withdrawn from the bank account to fund the loan under Ex.A1, this court is of opinion that withholding of best evidence is weakening the case of the plaintiff about passing of consideration under Ex.A1.

When the defendant is clearly denying the capacity of plaintiff under Ex.A1 and it is also admitted by both parties that there are property disputes in between plaintiff and defendant, the burden is heavily on the plaintiff to establish that consideration was passed under Ex.A1. A the PW1 clearly stated that he has withdrawn an amount of Rs.4,70,000/-, the documentary proof will be available with him, but he failed to produce the same and hence this court is of opinion that the failure of PW1/plaintiff to produce the best evidence is leading to draw an adverse inference against the plaintiff regarding his financial capacity to lend amount under Ex.A1.

17. Even if it is considered that by considering the chief examination of P.Ws.1 and 2 and Ex.A1, the initial burden of proof of execution of Ex.A1 is discharged, then also that presumption which was available to the plaintiff u/s.118 of N.I.Act can be rebutted by the defendant through the cross examination of plaintiff side witnesses. If it is considered that the initial burden is discharged by the plaintiff, then the steps taken by the defendant to get examine the Ex.A1 by an expert clearly showing that pattern of signature on Ex.A1 (disputed signature/questioned) and the signature on bank vouchers (admitted) was relating to the contemporaneous period are in different pattern. When the defendant is clearly saying that the signature on Ex.A1 is not belongs to him and the signature of defendant is in a different pattern, the burden is on the plaintiff to establish that the signature on Ex.A1 is belongs to the plaintiff. Admittedly, the defendant is an employee and the vouchers which were sent to the expert along with the Ex.A1 were the signatures of defendant during the regular course of his employment or business and as such, this court is of opinion that the burden is on the plaintiff to establish that the pattern of signature on Ex.A1 is also relating to the defendant. But, the plaintiff failed to produce any documentary proof to show that the defendant is also having the habit of affixing signature as like the pattern in Ex.A1, this court is of opinion that the initial burden of plaintiff is not discharged by a cogent evidence.

18. If by considering the quality of evidence, the efforts made by the defendant to get examine the Ex.A1 by an expert clearly shows that the

defendant rebutted the presumption if any available to the plaintiff. The court has to see the quality of evidence, but not quantity of evidence. The record clearly shows that the expert opined that the authorship of questioned and disputed signatures cannot be established because of the different pattern in the signatures. If the plaintiff is able to produce any documentary proof to show that the defendant is also affixing his signature as like the pattern available in Ex.A1, then the oral testimony of PW2 will also be useful to the plaintiff in establishing the execution of Ex.A1 by DW1. As the PW2 clearly stated that he cannot say in which language the Ex.A1 was scribed and the different pattern of signature clearly showing the probability of defence raised by the defendant.

19. It is also to be observed that there are disputes in between the PW1 and DW1 relating to property and a suit in O.S.25/2009 is pending, this court is of opinion that non-production of documentary proof to show the financial capacity of plaintiff, the non-taking of steps by the plaintiff to get examine the Ex.A1 with the other signature of defendant are probablising the defence of defendant. As the PW2 clearly stated that he is a frequent witness to the plaintiff in other litigation and he is also not resident of the place where Ex.A1 is said to be executed, this court is of opinion that the evidence of PW2 cannot be unshakable evidence in favour of the plaintiff. The inconclusive expert's report does not benefit the plaintiff. Moreover, the plaintiff failed to prove the signature of defendant on Ex.A1 and as such this court is of opinion that the initial burden on the plaintiff is not discharged by cogent evidence and the burden cannot be

placed on the defendant to prove that the signature on Ex.A1 not belongs to the defendant. In view of the rivalry in between the plaintiff and defendant even prior to the filing of suit, the evidence of witnesses is to be scrutinized carefully. As the defendant clearly denying the execution of Ex.A1 promissory note and denying his signature on Ex.A1 promissory note, the burden is on the plaintiff to establish that the signature on Ex.A1 is belongs to the defendant. If the PW2 did not state that he cannot say in which language the Ex.A1 was scribed, this court is of opinion that the evidence of PW2 is not with certainty of proper execution of Ex.A1.

20. As both the plaintiff and defendant are brothers and Ex.A1 is not with any attestors and in view of the disputes in between parties with regard to property, these discrepancies in the versions of P.Ws.1 and 2 with regard to non-production of documentary proof to show the financial capacity of the plaintiff, the un-certainty of PW2 about the language in which Ex.A1 scribed are supporting the version of defendant. If there is no enmity between the parties, the production of Ex.A1 and the evidence of PW2 might be sufficient to say that initial burden of plaintiff was discharged. But, in view of the rivalry in between the plaintiff and defendant the discrepancies in between the versions of P.Ws.1 and 2 and as stated supra the non-production of material evidence of documentary proof of financial capacity of plaintiff and the proof of signature of defendant on Ex.A1 is not proving the case of the plaintiff. Hence the points 1 and 2 are decided in favour of the defendant and the plaintiff.

Point No.3:

21. In view of the facts and circumstances of the case and the reasons mentioned in the aforesaid paragraphs, the judgment of trial court requires interference and the appeal is to be allowed. Accordingly the point No.3 is answered.

22. In the result, the Appeal is allowed without costs by setting aside the Judgment and Decree in O.S.168/2010 dt.3-1-2024 on the file of Additional Senior Civil Judge's Court(FTC), Bapatla.

Typed to my dictation by the Stenographer, corrected and pronounced by me in open court on this the 29th day of January, 2026.

Sd/-K.SYAM BABU
VI Addl. Dist. Judge (FTC),
Bapatla.

Appendix of Evidence
Witnesses examined

-Nil-

Sd/-K.SYAM BABU
VI Addl. Dist. Judge (FTC),
Bapatla.