

IN THE COURT OF JUNIOR CIVIL JUDGE-CUM-JUDICIAL MAGISTRATE OF
FIRST CLASS, PAKALA

PRESENT:- **B.DEVENDRA REDDY**
JUNIOR CIVIL JUDGE, PAKALA.

Thursday, the 20th (Twentieth) day of February, 2020
(20-02-2020)

ORIGINAL SUIT No.1 of 2019

Busipallil Govardhan Reddy

... Plaintiff

-Versus-

Balajipeta Rahamadh Basha

...Defendant

This suit is coming before me for final hearing on 14-02-2020 in the presence of Sri G.Guruswamy Naidu, Advocate for Plaintiff, Sri J.M.Gowri Sankara Raju, Advocate for defendant, having heard the arguments of both sides counsel, upon perusing the material papers on record and having stood over for consideration till this day, this Court delivered the following:-

JUDGMENT

This is a suit filed by plaintiff for recovery of Rs.2,57,800/- being the principal and interest due on a promissory note dated 29-12-2015 executed by defendant for Rs.1,50,000/- in favour of plaintiff agreeing to repay the same with interest at 24% per annum and for costs of the suit.

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

The defendant for himself borrowed a sum of Rs.1,50,000/- from plaintiff on 29-12-2015 for his legal necessity and in evidence thereof executed a promissory note in favour of plaintiff agreeing to repay the same with interest at 24% per annum. In spite of repeated demands, defendant did not pay any amount, hence, the

plaintiff issued a legal notice on 19-11-2018 and issued reply notice dated 05-12-2018 with false allegation with a view to evade the promissory note amount. The defendant is not an agriculturist and so, interest is not scaled down under the provisions of Act IV of 1938. Hence the suit.

3. The defendant filed a written statement denying the averments mentioned in the plaint and further contended that he never borrowed an amount of Rs.1,500,000/- on 29-12-2015 and never executed promissory note in favour of plaintiff. The defendant received only Rs.87,000/- from the plaintiff and executed promissory note by mentioning the said amount and putting his signatures on the said promissory note. Now the defendant, suspect the plaintiff bonafide nature as the plaintiff issued legal notice for Rs.1,50,000/- and filed the present suit. Attestors and scribe of promissory note dated 29-12-2015 are henchmen to the plaintiff. The signatures of the defendant on promissory note dated 29-12-2015 are forged and created promissory note. The defendant requested the plaintiff to sent copy of promissory note to him or his counsels through reply notice dated 5-12-2018, but neither plaintiff nor his counsel did not send copy of promissory note to him, it is sufficient to prove that the suit promissory note is a created and forged documents and as on the date of receiving reply notice by the plaintiff, he has no promissory note in his hands. The defendant has no necessity to borrow the amount from the plaintiff, suit promissory note is a forged document. Hence, prays to dismiss the suit with costs.

4. Basing on the above pleadings this court settled the following issues for trial:

- (1) Whether the suit promissory note is true, valid and binding on the defendant?*
- (2) Whether the signature of defendant is forged and fabricated the suit promissory note?*
- (3) Whether the plaintiff claimed excess interest?*
- (4) To what relief?*

5. On behalf of the plaintiff, plaintiff himself is examined as PW1, attesor is examined as PW2 and marked Exs.A1 to A3. The defendant examined himself as DW1 and the neighbour of DW1 is examined as DW2, but no documents are marked on his behalf.

6. Heard the arguments of both sides counsel and perused the record.

7. **Issue No:1:**
Whether the suit promissory note is true, valid and binding on the defendant?

To prove the suit claim the plaintiff himself is examined as PW1. He deposed that, on 29-12-2015, the defendant borrowed a sum of Rs.1,50,000/- from him and he executed Ex.A1/promissory note in his favour agreeing to repay the same with interest at 24% per annum, in spite of repeated demands the defendant did not pay Ex.A1/promissory note amount, hence he issued Ex.A2/legal notice to the defendant, the defendant issued Ex.A3/replay notice with false allegations. He further deposed that, one Kesavulu of Kommireddygaripalli village is the scribe, G.Alla Bakash of Damalcheruvu and Naresh Kumar are the attestors of Ex.A1/promissory note, in the presence of above said persons the

defendant received amount from the plaintiff and signed on Ex.A1/promissory note. He denied a suggestion that, the defendant did not borrow Rs.1,50,000/- from him and he did not executed Ex.A1/promissory note in his favour on 29-12-2015 and it is a created one. He further denied a suggestion that, the attestor Naresh Kumar and Kesavulu/scribe are his relatives. He further denied suggestion that, the amount, place date columns are written on one day and the remaining body of Ex.A1/promissory note was written on another day.

8. From the above evidence of PW1 it can be said that, the defendant borrowed Rs.1,50,000/- from the plaintiff and he executed Ex.A1/promissory note in favour of the plaintiff agreeing to repay the same with interest at 24% per annum, one Kesavulu is scribe and Ali Basha and Naresh Kumar are the attestors of Ex.A1/promissory note. Even though the learned counsel for the defendant cross examined PW1, nothing is elicited in favour of the defendant and to discard the testimony of PW1.

9. In support of the evidence of PW1, one of the attestors is examined as PW2. He deposed that on 29-12-2015, the defendant borrowed a sum of Rs.1,50,000/- from the plaintiff and he executed Ex.A1/promissory note in favour of the plaintiff agreeing to repay the same with interest at 24% per annum, in spite of repeated demands the defendant did not pay the Ex.A1/promissory note amount. He further deposed that, one Kesavulu is the scribe, he and G.Ali Basha are the attestors of Ex.A1/promissory note, in their presence the defendant

received Rs.1,50,000/- from the plaintiff and signed on Ex.A1/promissory note.

10. In the cross examination he denied a suggestion that, the defendant did not borrow Rs.1,50,000/- from the plaintiff and he did not executed Ex.A1/promissory note in favour of plaintiff on 29-12-2015 in his presence. He further stated that entire Ex.A1/promissory note was filled by Kesavulu. So from the above evidence of PW2, it can be said that the defendant borrowed Rs.1,50,000/- from the plaintiff and he executed Ex.A1/promissory note in favour of the plaintiff.

11. In the cross examination the learned counsel for the defendant suggested to PW2 that whether the name of the father of the defendant is mentioned in Ex.A1/promissory note or not. PW2 stated that he did not know, hence the learned counsel for the defendant argued that, if really PW2 was present at the time of alleged execution of Ex.A1/promissory note by the defendant, definitely he would have stated whether the name of the father of defendant is mentioned in Ex.A1/promissory note or not, as PW2 did not state the said fact, so Pw2 was not present at the time of execution of Ex.A1/promissory note and prayed to discard the evidence of Pw2.

12. PW2 voluntarily stated that he went to the place of execution of Ex.A1/promissory note in the middle of the execution of Ex.A1/promissory note. As PW2 went to the place of execution of Ex.A1/promissory note in the middle of its execution, he does not know whether the name of the father of the defendant is mentioned in Ex.A1/promissory note or not. PW2 satisfactorily explained for not

giving answer by him about mentioning the name of the father of the defendant in Ex.A1/promissory note. So the presence of PW2 at the time of execution of Ex.A1/promissory note is not doubtful, he was very much present and in his presence the defendant borrowed Rs.1,50,000/- from the plaintiff and he executed Ex.A1/promissory note in favour of the plaintiff. In support of the oral evidence of Pws 1 and 2 the plaintiff filed Ex.A1/promissory note. A perusal of Ex.A1/promissory note it discloses that the defendant borrowed Rs.1,50,000/- on 29-12-2015 and he executed it in favour of the plaintiff in the presence of attestors and scribe.

13. To disprove the evidence of Pws 1 and 2 and Ex.A1/promissory note the defendant himself is examined as DW1. He deposed that, earlier he was borrowed Rs.87,000/- from the plaintiff and the same was written in the promissory note and put his signature on it. He further deposed that, he did not borrow Rs.1,50,000/- from the plaintiff on 29-12-2015 in the presence of attestors and scribe who are henchmen of plaintiff, his signature is forged and Ex.A1/promissory note is a fabricated one. He further deposed that, after receipt of Ex.A2/legal notice he issued Ex.A3/reply notice denying the borrowing amount from the plaintiff under Ex.A1/promissory note and requested the plaintiff to supply photocopy of Ex.A1/promissory note but the plaintiff did not supply Ex.A1/promissory note to him, so that, he felt that Ex.A1/promissory note might be a forged and fabricated one.

14. DW1 denied a suggestion that he never borrowed Rs.87,000/- from the plaintiff, but he borrowed Rs.1,50,000/- under

Ex.A1/promissory note. Even though the defendant denied about borrowing Rs.1,50,000/- from the plaintiff under Ex.A1/promissory note, as the plaintiff who is examined as PW1 and also one of the attestors who is examined as PW2 categorically deposed that, the defendant borrowed Rs.1,50,000/- from the plaintiff and he executed Ex.A1/promissory note in favour of the plaintiff and also filed Ex.A1/promissory note which supports the evidence of Pws 1 and 2, it can be said that, the defendant denied about borrowing amount from plaintiff under Ex.A1/promissory note is only to evade the payment due by him under Ex.A1/promissory note to the plaintiff. DW1 stated that he never asked the plaintiff to furnish photocopy of Ex.A1/promissory note. Even though, the defendant requested the plaintiff through Ex.A3/legal notice to supply suit promissory note to him, as the defendant himself admitted in the cross examination that he never asked the plaintiff to furnish photocopy of Ex.A1/promissory note, it can be said that, the defendant did not request the plaintiff to supply Ex.A1/promissory note to him through Ex.A3/reply notice and it can be said that the counsel himself mentioned in Ex.A3/reply notice that the defendant, requested plaintiff to supply Ex.A1/promissory note to him without the consent of defendant. So non supplying of photocopy of Ex.A1/promissory note is not fatal to the case of plaintiff. In view of the above discussion, this court holds that Ex.A1/ promissory note is true, valid and binding on the defendant, hence the issue is answered in favour of the plaintiff and against to the defendant.

15. **Issue No.2:-**

Whether the signature of defendant is forged and fabricated the suit promissory note?

The defendant has taken a plea that his signature is a forged and Ex.A1/promissory note is a fabricated one. Hence the burden lies on the defendant to prove the same. In order to prove the said plea the defendant himself is examined as DW1. He deposed that, he did not borrow Rs.1,50,000/- from the plaintiff on 29.12.2015 and not executed Ex.A1/promissory note in favour of the plaintiff in the presence of scribe and attestors.

16. In the cross examination he admitted that he has no enmity with the plaintiff. When the defendant has not enmity with the plaintiff, what is the necessity to forge the signature of defendant. Defendant denied his signature on Ex.A1/promissory note, but he admitted the signatures on vakalath, written statement and served summons are that of him. When this court compared the admitted signatures of defendant on Vakalath, written statement and served summons, with the signature on Ex.A1/promissory note, those admitted signatures are tallied with the signature on Ex.A1/promissory note. Hence it can be said that, the defendant borrowed Rs.1,50,000/- from the plaintiff on 29.12.2015 and he executed Ex.A1/promissory note in favour of the plaintiff. To prove that the suit promissory note is executed by the defendant by borrowing Rs.1,50,000/- from the plaintiff, the plaintiff himself is examined as PW1 and also one of the attestors is examined as PW2. Both categorically deposed that the defendant borrowed Rs.1,50,000/- and he executed Ex.A1/promissory

note in favour of the plaintiff and the defendant signed on it. Even though the learned counsel cross examined Pws 1 and 2, he did not shaken their testimony. The contents of Ex.A1/promissory note also clearly establishes that it was executed by the defendant in favour of plaintiff and also it contains the signatures of defendant. To prove the contention of the defendant, the defendant ought to have taken steps to sent Ex.A1/promissory note to the hand writing expert for comparison of the signatures on Ex.A1/promissory note with that of admitted signatures but he did not do so. In view of the above discussion, this court holds that, the signature of defendant on Ex.A1/promissory note is not a forged one and Ex.A1/promissory note is not a fabricated document.

17. **Issue No.3:**
Whether the plaintiff claimed excess interest?

The defendant has taken a plea that, the interest claimed by the defendant is excessive. To prove the said fact the defendant has not stated anything in his evidence and also did not suggest anything to Pws 1 and 2 with regard to the interest aspect. A perusal of Ex.A1/promissory note it discloses that the defendant borrowed Rs.1,50,000 from the plaintiff on 29.12.2015 agreeing to repay the same with interest at 24% per annum. In the plaint the plaintiff calculated the interest at 24% per annum on principal sum of Rs.1,50,000/- and he had shown correct amount of interest. So it can be said that the plaintiff has not claimed excess interest. Hence the issue is answered in favour of the plaintiff and against the defendant.

18. **Issue No.4:** *To what relief?*

In the result the suit is decreed for Rs.2,57,800/- (Rupees two lakh fifty seven thousand eight hundred) with costs and with subsequent interest at 12% per annum on Rs.1,50,000/- (Rupees one lakh fifty thousand) from the date of suit till the date of decree and thereafter at 6% per annum till realization.

Typed to my dictation, corrected and pronounced by me in open Court, on this the 20th day of February, 2020.

*Sd/- B.Devendra Reddy,
**Junior Civil Judge,
Pakala.***

APPENDIX OF EVIDENCE
WITNESSES EXAMINED FOR

PLAINTIFF

DEFENDANT

PW-1: B.Govardhan Reddy

DW1 B.Rahamadh Basha

PW-2: M.Naresh Kumar

EXHIBITS MARKED FOR PLAINTIFF:-

Ex.A-1 Promissory note dated 29-12-2015 for Rs.1,50,000/- executed by defendant in favour of plaintiff

Ex.A-2 Office copy of legal notice dated 19-11-2018 issued by plaintiff to defendant.

Ex.A-3 Served copy of reply notice dated 05-12-2018.

EXHIBITS MARKED FOR DEFENDANT: Nil.

*Sd/- B.Devendra Reddy,
**Junior Civil Judge,
Pakala.***

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*Sd/- B.Devendra Reddy,
**Junior Civil Judge,
Pakala.***

OS 1/2019

11

JCJ Court, Pakala.

Fair Judgment in OS No.1/2019
dated 20-02-2020 JCJC, Pakala