

**THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO**

**APPEAL SUIT NO.301 OF 2009**

**JUDGMENT:**

1. The Appeal, under Section 96 of the Code of the Civil Procedure, is filed by the appellants/Defendants 3 and 4 challenging the decree and Judgment dated 21.01.2009 in O.S.No.19 of 2005 passed by the learned Senior Civil Judge, Kothapeta, East Godavari District (for short, 'trial court'). Respondents 4 to 6 are the defendants 1, 2 and 5 in the said suit.

2. Respondents 1 to 3 are the plaintiffs, who filed the suit in O.S.No.19 of 2005 seeking recovery of Rs.3,95,065/- from the defendants personally and from their movable and immovable properties and by proceeding against the assets of deceased P.Satyanarayana Raju with subsequent interest @ 12% p.a., from the date of suit till the date of realization.

3. The parties will hereinafter be referred to as arrayed before the trial Court.

4. The facts leading to the present Appeal, in a nutshell, are as under:

(a) The 1<sup>st</sup> defendant is the husband of 5<sup>th</sup> defendant and the 2<sup>nd</sup> defendant is their son. The 3<sup>rd</sup> defendant is the wife of P.Satyanarayana Raju, the son of defendants 1 and 5. The 4<sup>th</sup> defendant is the son of 3<sup>rd</sup> defendant, and the said P.Satyanarayana Raju. The 1<sup>st</sup> defendant is the Manager of the joint family consisting of defendants 1 to 5. For the joint family necessities, they borrowed money from the 1<sup>st</sup> plaintiff through one of their members P.Satyanarayana Raju

(b) On behalf of the joint family, P.Satyanarayana Raju borrowed Rs.50,000/- each on 20.04.2002, 01.05.2002, 09.05.2002, and 23.11.2002, and he executed promissory notes in favor of the 1st plaintiff on those respective dates.

(c) Additionally, P.Satyanarayana Raju borrowed Rs.25,000/- each on 23.11.2002 and 13.12.2002, and Rs. 50,000/- on 10.04.2003 on behalf of the joint family. He also executed promissory notes in favor of the 1<sup>st</sup> plaintiff on those respective dates.

(d) All seven promissory notes were personally written and signed by P.Satyanarayana Raju, agreeing to repay the borrowed amounts along with an interest rate of 24% per annum to the 1st plaintiff.

(e) Subsequently, despite repeated demands made by the 1<sup>st</sup> plaintiff, the said P.Satyanarayana Raju did not repay any amounts towards discharge of the said debts, and he died on 06.01.2005. Vexed with the defendants' attitude, the plaintiff got issued a legal notice dated 04.04.2005 demanding the defendants to discharge the debts due under the said promissory notes. In response, the defendants 3 and 4 issued a reply notice on 12.04.2005 making false, frivolous and baseless allegations. The 2<sup>nd</sup> defendant avoided receiving the notice. Although the other defendants received the notices, but they did not respond. With no payments made by the defendants to clear the debts, the plaintiffs filed the suit seeking recovery of the claim.

(f) Subsequent to the filing of the suit, the sole plaintiff died, and plaintiffs 2 and 3 were added as legal representatives of the deceased 1<sup>st</sup> plaintiff.

5. Defendants 1 and 5 have filed their common written statement admitting the relationship as mentioned in the plaint and contended that the 1<sup>st</sup> defendant, 2<sup>nd</sup> defendant, is a minor represented by his mother, 5<sup>th</sup> defendant and late P. Satyanarayana Raju (husband of D.3 and father of D.4) partitioned their joint family properties and executed a registered partition deed dt.24.03.1970. Satyanarayana Raju was never authorized to borrow amounts for defendants 1 and 2. After the partition, defendants 1 and 2 and the 3<sup>rd</sup> defendant's husband used to deal with their affairs independently and individually. The 1<sup>st</sup> defendant has sufficient movable and immovable properties; he had no necessity to instruct his eldest son to borrow amounts from the 1<sup>st</sup> plaintiff. After the death of P.Satyanarayana Raju, the defendants 3 and 4 pressurized the 5<sup>th</sup> defendant to give up her share in the estate of Satyanarayana Raju, and when she refused, 4<sup>th</sup> defendant threatened and abused her. If the debt of Satyanarayana Raju is in existence, the plaintiffs have to proceed against the estate of Satyanarayana Raju, but they added defendants 1 and 5 in the suit with bad faith, and the suit is not maintainable.

(a) The 2<sup>nd</sup> defendant filed separate written statement, almost taking same pleas that were taken in the written statement of 1<sup>st</sup> defendant.

(b) The defendants 3 and 4 filed their common written statement admitting the relationship as mentioned in the plaint and contended that the alleged borrowal by the 3<sup>rd</sup> defendant's husband, as a member of joint family on the authorization of 3<sup>rd</sup> defendant creates suspicion regarding the suit transactions, as the other family members of the said alleged joint family have not attested or joined as co-executants. There was no necessity

for the deceased P.Satyanarayana Raju to borrow amounts, he possessed valuable movable and immovable properties, he used to realize good income and he could secure loans from the banks either by pledging his properties or creating mortgages. The plaintiffs have to prove the capacity of the 1<sup>st</sup> plaintiff to lend the amounts. The deceased P.Satyanarayana Raju is an educated person, having good writing habit and the signature on the suit pronotes as executants and the writings therein as scribe do not belong to Satyanarayana Raju. Taking advantage of the death of Satyanarayana Raju, the suit promissory notes were fabricated as if he executed those pronotes. The attestors of the suit pronotes are henchmen of the plaintiffs and defendants 1, 2 and 5. All the family members of defendants 3 and 4 are working against the interests of defendants 3 and 4 and trying to grab the valuable properties of the deceased Satyanarayana Raju. The plaintiffs never demanded Satyanarayana Raju to discharge the amounts covered under the suit promissory notes and never disclosed the existence of suit pronotes to anybody and Satyanarayana Raju also never informed his borrowing amounts from the 1<sup>st</sup> plaintiff. The 3<sup>rd</sup> defendant's husband died in the 1<sup>st</sup> week of January 2005 and the 1<sup>st</sup> plaintiff never demanded defendants 3 and 4 and they issued detailed reply to the legal notice dated 04.04.2005 issued by the 1<sup>st</sup> plaintiff. The joint family properties were partitioned through a registered partition deed among Satyanarayana Raju, defendants 1 and 2. The 1<sup>st</sup> plaintiff was a lorry driver, he did not possess any movable or immovable properties and it is very difficult for him to meet both the ends of a day unless he has a duty. There is no cause of action for filing the suit and prays that the suit may be dismissed with costs.

**6.** Based on the above pleadings, the trial Court framed the following issues:

- (1) *Whether the suit promissory notes dt.20.04.2002, 01.05.2002, 09.05.2002, 23.11.2002, 23.12.2002 and 10.04.2003 are true, validly executed by late Pericharla Satyanarayanaraju or not?*
- (2) *Whether the joint family authorized (late) Pericharla Satyanarayanaraju to borrow amounts and the suit promissory notes are executed in that regard or not.*
- (3) *Whether the joint family severed in 1970 or not?*
- (4) *Whether the defendants 1 and 2 are liable for the consequent acts of the other members in the joint family after severance or not?*
- (5) *Whether the defendants 1 and 2 are representing the estate of the deceased executants along with defendants 3, 4 and 5 or not?*
- (6) *Whether the defendants are personally liable for the suit relief or not?*
- (7) *Whether the suit promissory notes are fabricated as contended by defendants 3 and 4 or not?*
- (8) *To what relief?*

**7.** The trial Court also framed the following additional issues:

- (1) *Whether the plaintiffs are not entitled to the suit claim without the production of a succession certificate?*
- (2) *Whether the suit is bad for the misjoinder of parties?*

**8.** During trial, on behalf of the plaintiffs, P.Ws.1 to 5 were examined and Exs.A1 to A.17 were marked. On behalf of the defendants 3 and 4, D.W.1 was examined and Exs.B1 to B.4 were marked and on behalf of the defendants 1, 2 and 5, no oral evidence was adduced. But defendants 3 and 4 have filed an application Vide I.A.No.385 of 2008 for the purpose of summoning defendants 1 and 2 for their cross examination. The said application was allowed and the defendants 1 and 2 were examined as DWs.2 and 3.

**9.** After completion of trial and hearing the arguments of both sides, the trial Court decreed the suit for a sum of Rs.3,95,065/- with subsequent interest on Rs.3,00,000/- @ 12% p.a., from the date of suit till the date of decree and thereafter @ 6% p.a., till realization, recoverable only from the estate of deceased Pericharla Satyanarayana Raju lying in the hands of defendants 3 to 5 and the suit regarding the rest of the claim and as against defendants 1 and 2 is dismissed.

**10.** The learned counsel for the appellants/defendants 3 and 4 contends that the trial Court ought to have framed the issue as whether the 1<sup>st</sup> plaintiff had the capacity to lend substantial amount of Rs.3,00,000/- or not. The trial Court failed to consider the admissions of PW.1 that her husband is a driver and the deceased P.Satyanarayan Raju possessed significant properties rendering it unnecessary for him to borrow amounts from the 1<sup>st</sup> plaintiff. The trial Court overlooked certain crucial aspects including the admissions made by the PW.1, the material alterations found in the suit promissory notes, the lack of any demands or notices from the 1<sup>st</sup> plaintiff to the 3<sup>rd</sup> defendant's husband during his lifetime, and the emergence of the alleged promissory notes only after his death. Additionally, some of the promissory notes do not contain the signature of the 3<sup>rd</sup> defendant's husband in the column of the scribe. The trial Court failed to observe that the collusion between the plaintiffs and the defendants 1 to 5, who are entangled in family disputes with the defendants 3 and 4. PW.1 is the attester in some of the suit promissory notes, which clearly indicates that the concoction of the suit promissory notes through collaboration with the defendants 1, 2 and 5.

11. Per contra, the learned counsel appearing for the respondents would contend that the trial Court correctly appreciated the facts of the case and came to a correct conclusion. The reasons given by the trial Court do not require any interference.

12. Having regard to the pleadings in the suit, the findings recorded by the Trial Court and in light of the rival contentions and submissions made on either side before this Court, the following points would arise for determination:

**1) Whether the Trial Court justified in holding that the execution of Exs.A.1 to A.7-promissory notes on receipt of consideration amount by the deceased Pericharla Satyanarayana Raju in favour of the 1<sup>st</sup> plaintiff?**

**2) Whether the Judgment passed by the trial Court needs any interference?**

**POINT NOS.1 & 2:**

13. The relationship among the defendants as referred in the plaint is not in dispute. The deceased P.Satyanarayana Raju and 2<sup>nd</sup> defendant are the sons of defendants 1 and 5. The 3<sup>rd</sup> defendant is the wife of P.Satyanarayana Raju and 4<sup>th</sup> defendant is their son.

14. As per the plaint averments, 1<sup>st</sup> defendant serves as the Manager of the joint family which includes defendants 1 to 5. To meet the necessities of the joint family, P.Satyanarayana Raju borrowed money from the 1<sup>st</sup> plaintiff and executed the suit promissory notes (Exs.A.1 to A.7) in favour of the 1<sup>st</sup> plaintiff. Subsequently during the course of the suit, the 1<sup>st</sup> plaintiff passed away and the plaintiffs 2 and 3 were brought on record as

legal representatives of the deceased 1<sup>st</sup> plaintiff. The defendants 1 and 5 filed their written statement contending that the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant being minor represented by his mother 5<sup>th</sup> defendant and late P.Satyanarayana Raju partitioned their joint family properties through a partition deed dated 24.03.1970 (vide Ex.B.4, the registration extract of the partition deed). Based on the said averments, the trial court framed the issues 2, 3, 4 and 5.

**15.** The trial Court has answered all these issues against the plaintiffs and accepting the stand of defendants 1, 2 and 5 by observing that the joint family consisted of defendants 1, 2 and the 3<sup>rd</sup> defendant's husband partitioned the joint family properties on 24.03.1970 under registered partition deed and there is no joint family from the said date. The plaintiffs failed to establish the existence of the joint family consisting of defendants 1, 2 and the husband of 3<sup>rd</sup> defendant by the dates of Exs.A.1 to A.7, and the said joint family authorized the P.Satyanarayana Raju to borrow amounts and he executed Exs.A.1 to A.7 promissory notes basing on the said authorization. The trial Court further held that the plaintiffs failed to establish that the defendants 1 and 2 are liable to the consequential acts of other members after severance of the said joint family and the plaintiffs have failed to establish that the defendants 1 and 2 are representing the estate of deceased P.Satyanarayana Raju along with defendants 3 to 5 and defendants 1 and 2 are not liable to pay the suit claim and defendants 3 to 5 are liable to discharge the suit claim. Against the said findings, the plaintiffs have not preferred the appeal. Defendants 3 to 5 did not question the correctness of those findings in this Appeal. The 3<sup>rd</sup> defendant also



supported the case of defendants 1 and 2 regarding the partition of the properties under the original registered partition deed dt. 24.03.1970. The said findings attained finality. As such, the evidence adduced regarding those contentions need not be considered.

**16.** It is the plaintiffs case that after the death of P.Satyanarayana Raju on 06.01.2005, they issued Ex.A.8 legal notice, demanding all the defendants to discharge the debts covered under Ex A1 to Ex A7 ; Exs.A.9 to A.11 postal acknowledgments show that the receipt of legal notice by defendants 1, 3 and 5; Ex.A.12 shows the non service of notice sent to 3<sup>rd</sup> defendant; Ex.A.13 shows reply notice got issued by defendants 3 and 4 denying the contents of Ex.A.8 legal notice. There is no serious dispute between the parties regarding the exchange of notices referred to above.

**17.** In view of the stand taken by defendants 3 and 4, the burden is on the plaintiffs to establish the execution of suit promissory notes and passing of consideration there under to P.Satyanarayana Raju.

**18.** As per the testimony of 2<sup>nd</sup> plaintiff, K.Durga as PW.1, P.Satyanarayana Raju borrowed Rs.50,000/- from the 1<sup>st</sup> plaintiff on 20.04.2002. On that date, he scribed and executed the Ex.A.1 promissory note in her presence and Panthala Venkata Ramana (PW.5) in favour of the 1<sup>st</sup> plaintiff, agreed to the terms and conditions specified in the document. Although PW.5 was examined to establish the authenticity of the other promissory notes, he did not provide any testimony regarding Ex.A.1 transaction during his chief examination.

**19.** It is clear that PW.5's testimony does not support the plaintiffs' claim that he attested Ex.A.1 promissory note. Although PW.5 attested the other promissory notes (Exs.A.4 and A.5), he did not identify his own signature or P.Satyanarayana Raju's signature on the Ex.A.1 promissory note. PW.5 stated in the cross examination that except to the transactions under Exs.A.4 and A.5, P.Satyanarayana Raju did not invite him to act as a witness in the other transactions held by P.Satyanarayana Raju. According to the PW.1's evidence, she cannot say anything about the striking in the Ex.A.1. During PW.1's cross examination, her signature on an affidavit filed by her in I.A.No.695 of 2007 was shown to her and she stated that it is not her signature. It raises doubt about her ability to identify the signatures accurately. Given that PW.5's testimony does not corroborate the plaintiffs' claim regarding his attestation on Ex.A.1 promissory note and PW.1's reliability in identifying the signatures is questionable, the Court cannot accept their evidence as sufficient to establish the P.Satyanarayana Raju's signature on Ex.A.1 promissory note.

**20.** The PW.1's evidence in cross examination creates doubt regarding her presence at the time of Ex.A.1 transaction. For better appreciation, her evidence is extracted here below:

*“After my marriage in the year 1996 and the date of Ex.A.1 i.e., 20.04.2002, the said P.Satyanarayana Raju used to borrow money from my husband, but no promissory note was executed. I was not present on those occasions and I do not know on how many occasions, he borrowed money from my husband”.*

The evidence extracted above also creates doubt about the presence of PW.1 at the time of Ex.A.1 promissory note. The trial Court has failed to record PW.1's evidence clearly to convey actually what she deposed.

**21.** Regarding Ex.A.1 transaction, PW.1 testified that by the date of Ex.A.1 promissory note, P.Satyanarayana Raju was already indebted to her husband for an amount of Rs.3,00,000/-. Ex.A.1 promissory note was said to be held on 20.04.2002. As seen from Exs.A.2 to A.7 promissory notes, the said transactions were held after 20.04.2002. It is not the plaintiffs' case, as per the plaint averments, by the date of Ex.A.1 transaction, the said P.Satyanarayana Raju became due an amount of Rs.3,00,000/-. PW.1 also testified that to lend money under Ex.A.1, her husband brought money from outside and she does not know from where he brought the amount and she does not know how much period prior to the date of Ex.A.1, the said P.Satyanarayana Raju requested her husband to lend money. PW.1 did not ask her husband from where, he brought the money covered under Ex.A.1. PW.1's lack of knowledge and inability to provide specific details about the Ex.A1 suit transaction cast doubt on her presence and involvement in that particular transaction. During the cross examination, PW.4 (Vudimudi Satyanarayana Raju) who was examined to prove Exs.A.4 and A.5 transactions, was asked to identify the signature of the executant on the revenue stamps in Ex.A.1 promissory note. However, PW.4 testified that the signature was not that of P.Satyanarayana Raju, the alleged borrower. This inconsistencies and doubts raise questions about the credibility and reliability of evidence placed by plaintiffs regarding Ex.A.1 transaction.

**22.** It is settled law that the burden initially rests on the plaintiffs to demonstrate the execution of the suit promissory notes by P.Satyanarayana Raju. Only after such proof, the plaintiffs are entitled to a presumption against the defendants as provided under section 118(a) of the Negotiable Instruments Act, 1881. The appellants/defendants denied the execution of the promissory note. This Court finds that the respondents/plaintiffs have not sufficiently proven the execution of Ex.A.1 promissory note in a manner recognized by law. Therefore, the plaintiffs are not entitled to presumption under section 118 of the Negotiable Instrument Act and accordingly, the Judgment and decree passed by the trial Court concerning Ex.A.1 promissory note is liable to be set aside.

**23.** It is also the PW.1's evidence that P.Satyanarayana Raju borrowed Rs.50,000/- from the 1<sup>st</sup> plaintiff on 01.05.2002 in her presence and she and Kotipalli Venkateswara Rao (PW.2) acted as attestors and P.Satyanarayana Raju scribed and executed the Ex.A.2 promissory note, agreeing to the terms and conditions therein. To prove Ex.A2 transaction, the plaintiffs examined K.Venkateswara Rao as PW.2. As seen from Ex.A.2 promissory note, it is attested by PW.1 and PW.2. PW.2 testified that on 01.05.2002 for the joint family necessities, P.Satyanarayana Raju borrowed Rs.50,000/- from the 1<sup>st</sup> plaintiff, agreeing to repay the same with interest @ 24% p.a., and executed Ex.A.2 promissory note with his own handwriting in the presence of PW.1 . In the cross examination, PW.2 stated that the transaction under Ex.A.2 took place between 03.00 pm to 03.30 pm on 01.05.2003 and the P.Satyanarayana Raju signed in English on Ex.A.2. After scribing the Ex.A.2, P.Satyanarayana Raju signed the

column meant for the scribe of the document and PW.2 does not recall which of the attestors signed first on Ex.A.2. The consideration for the transaction was paid in the denomination of Rs.500/- and Rs.100/- bundles. Despite being subjected to lengthy cross examination, PW.2's remains credible and has not been discredited regarding the execution of Ex.A.2 promissory note by P.Satyanarayana Raju.

**24.** According to PW.1's testimony, on 09.05.2003, P.Satyanarayana Raju borrowed Rs.50,000/- from the 1<sup>st</sup> plaintiff. During the transaction, PW.1, PW.2 and P.Venkata Satyanarayana Raju (PW.3) acted as attestors and P.Satyanarayana Raju scribed and executed the Ex.A.3 promissory note in favour of the 1<sup>st</sup> plaintiff, agreeing to the terms and conditions stated therein. To prove Ex.A.3 transaction, the plaintiffs got examined PW.2 and PW.3 as witnesses. PW.2 testified that on 09.05.2003 for the joint family necessities, P.Satyanarayana Raju borrowed Rs.50,000/- from the 1<sup>st</sup> plaintiff, agreeing to repay it with an interest @ 24% p.a., and executed Ex.A.3 promissory note. PW.2 further testified that he and P.Venkata Satyanarayana Raju (PW.3) signed as attestors on the Ex.A.3 promissory note executed by P.Satyanarayana Raju with his own hand writing in favour of the 1<sup>st</sup> plaintiff. At the request of P.Satyanarayana Raju, he filled the name of 1<sup>st</sup> plaintiff and his father's name in the Ex.A.3 promissory note. Relating to Ex.A.3 transaction, PW.2 stated in the cross examination that he filled up some part of Ex.A.3 promissory note, but without perusing the Ex.A.3 promissory note, he cannot say what the columns filled by him. PW.2 explained the reason to fill up the contents of the Ex.A.3 promissory note by stating that after scribing the promissory

note, P.Satyanarayana Raju gave Ex.A.3 promissory note to him and informed that some columns were not filled up and then he was asked to fill in those columns. PW.3's testimony also supported the plaintiffs' case and he confirmed the PW.1's presence during the transaction. However, Ex.A.3 promissory note does not explicitly mention PW.1's presence during the transaction. In the cross examination, PW.3 stated that promissory note was in a printed proforma and P.Satyanarayana Raju wrote the entire content in the body of Ex.A.3 except for the names of 1<sup>st</sup> plaintiff and his father which were written by PW.2.

**25.** PW.1's evidence shows that on 23.11.2002, P.Satyanarayana Raju borrowed Rs.50,000/- and Rs.25,000/- from the 1<sup>st</sup> plaintiff in the presence of herself, PWs.4 and 5 and the said P.Satyanarayana Raju scribed and executed Exs.A.4 and A.5 promissory notes respectively, agreeing to the terms and conditions stated therein. To prove the Exs.A.4 and A.5 promissory note transactions, the plaintiffs got examined PWs.4 and 5. However, it appears that PW.1's claim of being present during the Ex.A.4 transaction is not supported by Ex.A.4 promissory note itself which does not indicate her presence. PW.4 testified that on 23.11.2002, P.Satyanarayana Raju borrowed Rs.25,000/- from the 1<sup>st</sup> plaintiff and executed Ex.A.4 promissory note. On the same day, he borrowed Rs.50,000/- and executed Ex.A.5 promissory note. PW.4 is related to PW.1' as the daughter of his elder sister. During cross examination, PW.4 was unable to provide the specific details about the P.Satyanarayana Raju's father's name, native place and financial capacity. PW.4 testified in cross examination that the transactions under Exs.A.4 and A.5 took place

between 2.00 pm and 3.00 pm with a 15 minutes gap between them. He clarified that he visited the 1<sup>st</sup> plaintiff's house on the date of Exs.A.4 and A.5 transactions for work related purposes. PW.4 asserted that he can identify the P.Satyanarayana Raju's signature even on the other documents if shown to him. The executant signed in Telugu in the column meant for signature of the scribe and he did not know the agreed upon interest rate between the parties and he did not count the currency notes to determine how many bundles of currency notes constituted the consideration for the purpose of transaction.

**26.** PW.5 in support of plaintiffs' case also testified regarding Exs.A.4 and A.5 transactions and claimed that PW.1 was present at the time of transactions. However, upon examining the Exs.A.4 and A.5 promissory notes, PW.5's claim of PW.1's presence is not evident in the document. During PW.5's cross examination, it was revealed that Exs.A.4 and A.5 transactions took place at the house of 1<sup>st</sup> plaintiff between 3.00 pm to 3.30 pm. The 1<sup>st</sup> plaintiff's house is situated at a distance of one furlong from the P.Satyanarayana Raju's shopping complex and it is a rented house.

**27.** PW.1's evidence shows that P.Satyanarayana Raju also borrowed Rs.25,000/- from the 1<sup>st</sup> plaintiff on 13.12.2002 for joint family necessities, in the presence of herself and PW.2 and they attested the promissory note and P.Satyanarayana Raju scribed and executed the Ex.A.6 promissory note in favour of the 1<sup>st</sup> plaintiff, agreeing to repay the borrowed amount with interest at 24% per annum. To establish the Ex.A.6 promissory note, the plaintiffs relied on the evidence of PW.2. He testified

that on 13.12.2002, P.Satyanarayana Raju borrowed Rs.25,000/- from the 1<sup>st</sup> plaintiff and executed Ex.A.6 promissory note, agreeing to the terms and conditions therein. However, it was noticed that in Ex.A.6 promissory note that the matter in its body was scribed using a pen different from the one PW.2 used to sign as attester on Ex.A.6. Additionally, it was found in the Ex.A.6 that the surname of the 1<sup>st</sup> plaintiff was noted as 'Kusumpudi' instead of 'Dusumpudi', despite correctly referring to the father's name, this could be an error or mistake made while preparing the promissory note.

**28.** It is also the PW.1's evidence that P.Satyanarayana Raju borrowed Rs.50,000/- from the 1<sup>st</sup> plaintiff on 10.04.2003 in the presence of PWs.1 to 3 for joint family necessities. He scribed and executed the Ex.A.7 promissory note in favour of the 1<sup>st</sup> plaintiff, agreeing to repay the borrowed amount with interest as per the terms and conditions stated in the promissory note. PW.2 also testified in support of this transaction by deposing that on 10.04.2003, P.Satyanarayana Raju borrowed Rs.50,000/- from the 1<sup>st</sup> plaintiff and executed Ex.A.7 promissory note. PW.2 along with PW.3 attested the Ex.A.7 promissory note. In the cross examination, PW.2 stated that the transaction under Ex.A.7 took place on 10.04.2003. However, he did not recall with which pen P.Satyanarayana Raju scribed Ex.A.7. Nevertheless PW.2 deposed that he witnessed P.Satyanarayana Raju signing on Exs.A.2, A.3, A.6 and A.7. PW.3 also supported the evidence of PWs.1 and 2 regarding Ex.A.7 transaction.

**29.** The learned counsel for the defendants contends that the plaintiffs failed to provide sufficient evidence to establish the 1<sup>st</sup> plaintiff's financial



capacity to lend the amounts covered under the suit promissory notes. In contrast, the evidence shows that P.Satyanarayana Raju had a much better financial position compared to the PW.1's husband. The learned counsel for the appellants further contends that the trial Court did not frame a specific issue relating to the financial capacity of the 1<sup>st</sup> plaintiff. However, the pleadings and submissions during the trial address this aspect and the trial Court was aware of the contentions raised by both parties. Therefore, non framing of separate issue on this particular point does not affect the cases outcome as the relevant aspects were adequately considered. Therefore, on this procedural aspect, this Court finds no merit in the contention raised.

**30.** It is not in dispute that the PW.1's husband was a lorry driver and he used to get monthly income of Rs.7,000/- to Rs.8,000/- p.m. It is the plaintiffs' contention that PW.1's husband sold away some properties. However, no documentary evidence is placed. PW.1's evidence in cross examination shows that her husband borrowed amounts from the third parties and lent amounts to the P.Satyanarayana Raju. PW.1 also stated in cross examination that she has no documentary evidence to say that her husband had money by the time of Exs.A.1 to A.7 transactions. The PW.2's evidence shows that P.Satyanarayana Raju was having shopping complex and he leased out those shops for the last 25 to 30 years during his life time. According to the PW.2's version, the 1<sup>st</sup> plaintiff had lands in Malikipuram village and the 1<sup>st</sup> plaintiff used to work on the lorry belonging to P.Subbaraju. The 1<sup>st</sup> plaintiff informed him that he alienated the land at Malikipuram and he was having money with him. It is

suggested to PW.3 in the cross examination that PW.1 had gone to Gulf countries for employment, but he does not know the details of income and expenditure of the 1<sup>st</sup> plaintiff. The PW.4's evidence shows that the 1<sup>st</sup> plaintiff alienated the lands at Malikipuram about 8 to 10 years back, and he does not know amount got by the 1<sup>st</sup> plaintiff by alienating his lands.

**31.** According to the PW.5's version, P.Satyanarayana Raju was the rich person and had godown and the cinema hall in Gannavaram. At this juncture, it is pertinent to refer to the DW.1's evidence who questioned the 1<sup>st</sup> plaintiff's financial capacity. According to DW.1, she does not know the 1<sup>st</sup> plaintiff's financial capacity. So, it suggests that without knowing his financial capacity, she has disputed it. She has not explained to take such pleas without personal knowledge. Though DW.1 contends about their financial capacity, it is elicited in the DW.1's cross examination that the U.Muneshwarudu's daughter i.e., Nagakumari, filed two suits against her, for recovery of money in the year 2000 or 2001. She clarified that she signed the revenue stamps on both pronotes per her father's instructions. She also admits that three suits filed by her junior paternal uncle's son in the Court of Principal Junior Civil Judge, Kothapeta, were decreed against her about one year back. The said suits were filed basing on the promissory notes said to have been executed by her husband. She also stated that 2<sup>nd</sup> defendant and her husband contacted debts from Banks; she alienated two storied building at P.Gannavaram village on 04.07.2007 and the said building is also under attachment by the Court; the properties belonging to her is under dispute in Court. The DW.1's evidence establishes their financial position is bad. Though the evidence on record

shows that P.Satyanarayana Raju was having properties, but he had considerable debts.

**32.** The father of P.Satyanarayana Raju, i.e., DW.2 had also stated in his evidence that he does not know the 1<sup>st</sup> plaintiff's financial capacity. Though the plaintiffs have not placed documentary evidence to show the financial capacity, the evidence on record does not show that 1<sup>st</sup> plaintiff had no capacity at all to lend the amount. As already observed, when DW.1 does not know the 1<sup>st</sup> plaintiff's financial capacity she is not supposed to question it. Because the 1<sup>st</sup> plaintiff worked as a lorry driver, it cannot be concluded that he should not have capacity to lend the amounts. When it is the plaintiffs' contention that the 1<sup>st</sup> plaintiff had alienated the properties at Malikipuram and more particularly, the 2<sup>nd</sup> plaintiff went to Gulf countries for employment, it is not to be concluded that 1<sup>st</sup> plaintiff could not be in a position to lend the amount. The argument that advanced that P.Satyanarayana Raju had sufficient funds and he did not execute the suit promissory notes is not sustainable. According to the plaintiffs, the suit transactions were held within one year, merely because the interval among the promissory notes is less than one year which may not be sufficient to hold that the documents are not supported by consideration.

**33.** PW.3 stated in cross examination that P.Satyanarayana Raju filed O.S.No.17 of 1982 on the file of Principal Junior Civil Judge, Kothapet against him, his brother, Harinadharaju and Executive Gramapanchayat officer, Gannavaram, seeking removal of encroachment alleged to have

made by them. 2<sup>nd</sup> defendant here also filed O.S.No.16 of 1982 against him and his brother.

**34.** PW.3 was asked to identify the signature of P.Satyanarayana Raju in the certified copy of plaint in O.S.No.72 of 1998, witness expressed his inability to identify by claiming that he is an illiterate and the said signature is in English and he cannot identify the signature. When PW.3 was confronted with the signature of the certified copy of the written statement as 1<sup>st</sup> defendant in O.S.No.72 of 1998, he could not identify it. He denied the suggestion that there were disputes between him and P.Satyanarayana Raju till his death. It is the PW.3's evidence that the said case was settled long back and the suit was also not pending as on the date of suit transaction. The defendants have not placed certified copies of the proceedings to disprove the same. No material is placed to show that suit in O.S.No.72 of 1998 was pending as on the date of suit transactions. As such, the PW.3's presence at the time of the suit transaction as attester cannot be doubted.

**35.** It is the 3<sup>rd</sup> defendant's contention that the evidence of the plaintiffs' witnesses clearly shows that the entire contents of the promissory notes were not scribed by the P.Satyanarayana Raju and it amounts to material alteration.

**36.** It is relevant to note Section 20 of the Negotiable Instruments Act which reads as under:-

*"Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie*

*authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."*

**37.** Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act.

**38.** A perusal of the above section manifest that a paper stamped in accordance with law either wholly blank or written thereon an incomplete negotiable instrument gives prima facie authority to the holder to make or complete for any amounts specified therein not exceeding the amount covered by the stamp. Accordingly, it is open to a person receiving a blank inchoate instrument to complete it in favour of any person besides himself.

**39.** The Division Bench of the Composite High Court of Andhra Pradesh dealt with this aspect in ***Duggineni Seshagiri Rao, vs. Kothapalli Venkateswara Rao***<sup>1</sup>. As per the ratio laid down in the said decision, it is clear that even if the name of the person who advanced the amount is kept blank and filled, it is of no consequence when the execution of note was duly established.

**40.** Section 42 of N. I Act lays down:

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<sup>1</sup> 2001 6 ALT 95

*"42. Acceptance of bill drawn in fictitious name--An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer."*

**41.** Section 4 of the Negotiable Instruments Act a promissory note has been defined as:

*"4. Promissory note--A 'promissory note' is an instrument in writing (not being a bank-note of a currency note) containing unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."*

The following things are necessary for an instrument to be a promissory note:

*(1) It should be in writing, (2) it should have an unconditional undertaking, (3) It should be signed by the maker, and (4) it should be in favour of certain person or to a bearer. Admittedly the promissory note which is subject matter of the suit did not bear the plaintiff's name at the time of execution.*

**42.** When one reads Section 4 in conjunction with Sections 20 and 42 this is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 states that when a person signs and delivers to another person a paper stamped in accordance with law relating to a negotiable instrument, it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills, it also accepts that an acceptor of a bill of exchange even if it were drawn in a fictitious name, would create a genuine claim in favour

of the holder. Therefore, even if a negotiable instrument is incomplete, it would be a legal instrument, provided it satisfies the first three conditions.

**43.** The plaintiffs contend that P.Satyanarayana Raju scribed and executed Exs.A.1 to A.7 promissory notes. A reading of the trial Court's Judgment shows that the 3<sup>rd</sup> defendant has not taken steps to get comparison of the disputed signatures of P.Satyanarayana Raju by a hand writing expert. According to the DW.1's evidence, her husband, 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant partitioned their properties in 1970 and executed Ex.B.4 partition deed. She has no objection to filing the exchange deed executed by her husband and sending the promissory notes to the handwriting expert for comparison. She further stated that there is no specific reason for not taking steps for sending the disputed signatures of her husband to the expert. The evidence on record shows that during his life time, P. Satyanarayana Raju had executed several registered documents. But for the reasons best known to the defendants 3 and 4, they have not placed any admitted signature of P.Satyanarayana Raju, such as bank account opening forms or any registered sale deed or any other transactions made during the relevant period of Exs.A.1 to A.7 to send them to the expert. But the 3<sup>rd</sup> defendant requested the Court to send the disputed signatures of her husband on Exs.A.1 to A.7 to the handwriting expert with the promissory notes which were filed by her and they were not admitted by the plaintiffs and thereby, the request of the defendants 3 and 4 was not considered by the trial Court. It speaks volumes about the conduct of the defendants 3 and 4; when P.Satyanarayana Raju executed several registered documents, they wanted

comparison of the disputed signatures with the promissory notes, which are disputed by the plaintiffs. The conduct of defendants 3 and 4 is explicit that they don't want to compare the disputed signatures with the admitted signatures.

**44.** The defendants did not file any appeal or revision against the trial Court's orders which refused to consider their request for comparison of the signatures on promissory notes. It is incomprehensible why the defendants 3 and 4 did not file any application to compare the signatures of P.Satyanarayana Raju on Exs.A.1 to A.7 promissory notes. They did not file contemporary documents along with the written statement or atleast during the trial. Under section 73 of the Evidence Act, the Court can compare the disputed signature with the admitted signatures. They have not placed registered documents containing the signature of P.Satyanarayana Raju, despite availability. This Court views that there was no reason for the plaintiffs to forge P.Satyanarayana Raju's handwriting to create multiple promissory notes for different amounts, instead they could have easily engaged someone else to scribe the contents of the promissory notes. It is also elicited in the DW.1's cross examination that she does not know whether her husband tried to convey his property towards discharge of alleged debts, payable to the 1<sup>st</sup> plaintiff by him and whether her father-in-law has objected for the same; after the death of the 1<sup>st</sup> plaintiff, she has obtained anticipatory bail from the District Court, Amalapuram even without any report from PW.1, she received message over the phone stating that a news was published in the paper stating that as she did not discharge the debt amounts payable to the 1<sup>st</sup> plaintiff, he committed



suicide and she has obtained anticipatory bail; Police came to her in that regard; her husband died suddenly due to heart attack.

**45.** PW.1 stated that her husband committed suicide as the defendants cheated him, but she has not lodged any complaint with the police against 3<sup>rd</sup> defendant for the death of her husband. The evidence of PW.1 and DW.1 suggest that even without report from PW.1, for the reasons best known to her, DW.1 obtained anticipatory bail concerning the 1<sup>st</sup> plaintiff's death. The evidence on record shows that the 1<sup>st</sup> plaintiff and the deceased, P.Satyanarayana Raju used to maintain cordial relations in the village. The marriage of the 1<sup>st</sup> plaintiff with PW.1 was performed by DW.1 and her husband. According to DW.1's evidence, the 1<sup>st</sup> plaintiff used to come to their house and used to take meals and go away. Her evidence shows that her husband died suddenly due to heart attack. In the said facts of the case, it cannot be said that the plaintiffs failed to demand P.Satyanarayana Raju during his life to pay the amount covered under Exs.A.1 to A.7.

**46.** The other contention is that the suit is filed against the father and brother of deceased P.Satyanarayana Raju alleging that the debts borrowed for joint family needs. The evidence indicates that before the execution of Exs.A.1 to A.7 promissory notes, a partition deed was executed among the deceased P.Satyanarayana Raju, his father and brother. As a result of this partition, the purpose referred to in the promissory notes should be construed as meeting the needs of family i.e., the wife and children of the deceased P.Satyanarayana Raju. If there had been a collusion as alleged by the defendants 3 and 4 between the plaintiffs and the defendants 1 and 2,

the suit might not have been filed against them. However, the fact that the suit is filed against the defendants 1 and 2 supports the contention that there is no such collusion. It appears from the record that as the financial position of the family members of the deceased P.Satyanarayana Raju was not good, the suit is filed against defendants 1 and 2 with the intention to recover the amounts covered under Exs.A.1 to A.7 from them.

**47.** The evidence of PWs.1 to 5 manifestly establishes execution of the suit promissory notes Exs.A.2 to A.7 by the defendants except Ex.A.1. The defendants have not taken steps to show that Exs.A.2 to A.7 do not contain the signatures of P.Satya Narayana Raju. Section 118(a) of N. I Act provides a special rule of evidence in the case of Negotiable Instrument contrary to the case of an ordinary contract. The party denying the consideration has to prove want of consideration. The statutory presumption in favour of their being consideration for every negotiable instrument continues until it is rebutted. The distinction between the language of section 114 of the Evidence Act and that of Section 118(a) of the N. I Act is significant. The words "may presume" in section 114 of Evidence Act leave the matter to the discretion of the Court either to make or refuse to make a presumption. The presumption is optional depending upon the Court's unrestricted discretion under section 114 of Evidence Act. Under section 118(a) Negotiable Instruments Act, the Court is bound to start with the presumption in favour of passing of consideration until the party interested in disproving it, has led evidence supporting its non existence.

**48.** In **Bharat Barrel and Drum Manufacturing Company Vs Amin Chand Payrelal**<sup>2</sup>, the Hon'ble Apex Court was held thus :

*“Once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The Court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the Court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.”*

**49.** In **G. Venkata Rama Subbaiah Vs. D. Rasool Naik**<sup>3</sup>, the composite High Court of Andhra Pradesh held thus :

*“Once the execution of the promissory note is admitted or proved, then it is presumed to be supported by consideration unless contrary is proved. The burden is on the defendant to rebut the same by adducing convincing evidence. Unless the defendant rebuts the presumption by adducing convincing rebuttal evidence, the evidential burden would not shift back to the plaintiff who has legal burden only after adducing such convincing rebuttal evidence, it can be held that thereafter the presumption under Section 118 does not come to the rescue of the plaintiff.”*

**50.** In a decision **Bonalaraju V. S. Sarupula Srinivas**<sup>4</sup>, the composite High Court of Andhra Pradesh held that:

*“once execution is proved the presumption under Section 118 of N.I. Act that it is supported by consideration automatically applies and the*

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<sup>2</sup> (1999) 3 SCC 35

<sup>3</sup> 2003 (4) ALT 414

<sup>4</sup> 2006(2) ALD 202

*contention that the plaintiff is not only to establish the execution but also establish passing on the consideration is rejected”.*

**51.** In a decision ***Abbisetti Krishnamoorthy V. Singasani Raghuramaiah (died) per L.R.s***<sup>5</sup>, the composite High Court of Andhra Pradesh held that:

*“Section 118 of the N.I Act shows that the presumption attached to passage of consideration (as is the subject matter of this Appeal) just like other presumption also is clearly rebuttable and it is for the defendant to satisfy the Court that in a given case, the presumption cannot be drawn”.*

**52.** Having regard to the evidence, which is adverted to supra, this Court views that the defendants did not show satisfactory and reliable evidence or circumstance to disbelieve the evidence of PWs.1 to 5 regarding the execution of the promissory notes Exs.A.2 to A.7 by the defendants and passing of consideration. The evidence of PWs.1 to 5 is consistent regarding the execution of the promissory notes Exs.A.2 to A.7 by the defendants on receipt of the consideration amount. Though PWs.1 to 5 were subjected to lengthy cross-examination, nothing was elicited to discredit their evidence. The plaintiffs and their witness have no reason to fabricate the suit promissory notes. PWs.2 to 5 have no reasons to depose falsehood against the defendants' interest nothing would be gained by them by supporting the plaintiffs' case unless there is a truth in it. However, even the rebuttal could be given by direct evidence or by proving the preponderance of probabilities.

**53.** In the present case, the presumption has not been rebutted by the defendants, even by the preponderance of probabilities. PWs.1 to 5 stated in one voice about the execution of Exs.A.2 to A.7 promissory notes and passing of consideration amounts there under. There is nothing to

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<sup>5</sup> 2011(5) ALT 143

discredit the evidence of PWs.1 to 5 and their evidence can be accepted. Hence, it can be concluded that Exs.A.2 to A.7 promissory notes are true and valid and support the consideration. The appellants did show any reason or circumstance to disbelieve the evidence of PWs.1 to 5. This Court is of the view that the evidence of PWs.1 to 5 establishes the execution of Exs.A.2 to A.7 promissory notes. The defendants failed to prove their contention regarding non passing of consideration under Exs.A.2 to A.7 by leading cogent evidence. Defendants 3 and 4 were not successful in showing the improbability of consideration. Such being the position of law, the burden lies on the defendants to prove the non-existence of consideration by bringing on record such facts and circumstances, which would lead the Court to believe the non-existence of the consideration. If the defendants discharge the onus of proof showing that the existence of consideration was improbable or doubtful and the execution of the promissory note, the onus would be shifted to the plaintiffs. Then they will be obliged to prove the existence of the consideration.

**54.** On studied scrutiny, it is seen that the defendants have not produced any evidence to discharge the onus on them. The defence taken by the defendants is not substantiated. The presumption under section 118 of the Negotiable Instruments Act, 1881, is a statutory one, and unless it is rebutted, it has to be presumed that consideration has passed.

**55.** The upshot of the discussion above is that the plaintiffs established the execution of the suit promissory notes Exs.A.2 to A.7 in favour of the 1<sup>st</sup> plaintiff by the deceased P.Satyanarayana Raju after receipt of the consideration amounts. The plaintiffs failed to establish the execution of

the Ex.A.1 suit promissory by the deceased P.Satyanarayana Raju. Accordingly, the points are answered.

**56.** As a result, the Appeal is ***partly allowed*** without costs by confirming the decree and Judgment dated 21.01.2009 in O.S.No.19 of 2005 to the extent that the plaintiffs are entitled to the principal amounts covered under Exs.A.2 to A.7 promissory notes together with interest @ 12% per annum from the dates of those suit promissory notes transactions till the date of passing of the decree by the trial Court and thereafter @ 6% per annum till the date of realization, recoverable only from the estate of deceased Pericherla Satyanaranayana Raju. The suit claim regarding Ex.A.1 promissory note transaction is dismissed, and the decree and judgment related to Ex A1 is set aside.

**57.** Miscellaneous petitions pending, if any, in this Appeal shall stand closed.

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**JUSTICE T. MALLIKARJUNA RAO**

**Date: 21.07.2023**  
**MS/SAK**

**THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO**

**APPEAL SUIT NO.301 OF 2009**

**Date: 21.07.2023**

**MS/SAK**