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APHC010327392005

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3603]**
(Special Original Jurisdiction)

FRIDAY, THE 13th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE D RAMESH

AND

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

APPEAL SUIT NO: 643/2005

Between:

1. GANGINENI VENKATESWARA RAO, S/o. VENKAIAH, 45 YEARS, R/o. VIDYA NAGAR, 4TH LINE, GUNTUR, GUNTUR JC.J.C
2. G.V.R. & S. EDUCATIONAL SOCIETY, REP. BY GANGINENI VENKATESWARA RAO, S/o. VENKAIAH, AGED 45 YEARS, R/o. VIDYA NAGAR, 4TH LINE, GUNTUR.
3. G.V.R. & S. EDUCATIONAL INSTITUTIONS PVT. LTD, REP. AND OWNER BY GANGINENI VENKATESWARA RAO, S/o. VENKAIAH, AGED 45 YEARS, R/o. VIDYA NAGAR, 4TH LINE, GUNTUR.

4. GANGINENI SAILAJA, W/o. LATE GANGINENI VENKATESWARA RAO, AGED 60 YEARS, R/o. DOOR No.4-5-29/78, 4/3 LINE, VIDYA NAGAR, CHANDRAMOULINAGAR, GUNTUR.

5. PRATHYUSHA, D/o. GANGINENI VENKATESWARA RAO, AGED 35 YEARS, R/o.Door No.4-5-29/78, 4/3 LINE, VIDYA NAGAR, CHANDRAMOULINAGAR, GUNTUR.

6. GANGINENI SINDHURA, D/o. GANGINENI VENKATESWARA RAO, AGED 32 YEARS, R/o.Door No.4-5-29/78, 4/3 LINE, VIDYA NAGAR, CHANDRAMOULINAGAR, GUNTUR.

(APPELLANT Nos.4 TO 6 ARE ADDED AS L.Rs OF APPELLANT No.1, AS PER THE ORDER DATED 30.08.2018.)

...APPELLANTS

AND

1. BODEPUDI VENKAIAH, S/o. VENKATAPPAIAH, AGED 45 YEARS, R/o.103, SAI DURGA TOWERS, SANJEEVA REDDY NAGAR, HYDERABAD.
2. BODEPUDI LALITHA KUMARI, W/o. VENKAIAH, AGED 4 YEARS, HOUSE WIFE R/o. 103, SAI DURGA TOWERS, SANJEEVA REDDY NAGAR, HYDERABAD.
3. BODEPUDI SIREESHA, D/o. B. VENKAIAH, AGED 24 YEARS, REPRESENTED BY HER FATHER AND SPL. POWER OF ATTORNEY AGENT, BODEPUDI VENKAIAH, S/o. VENKATAPPAIAH, AGED 45 YEARS, R/o. 103, SAI DURGA TOWERS, SANJEEVA REDDY NAGAR, HYDERABAD.

...RESPONDENTS

Counsel for the Appellant(S):

1. ALAPATI ROHINI SRINIVAS MURTHY

Counsel for the Respondent(S):

1. DEVI PRASAD MANGALAPURI
2. P RAJA SRIPATHI RAO

THE HON'BLE SRI JUSTICE D. RAMESH

AND

THE HON'BLE SRI JUSTICE ALAPATI GIRIDHAR

APPEAL SUIT No.643 OF 2005

The Court made the following JUDGMENT:

1. Heard Sri A. Lalith Nikhil representing for Appellants and N. Subba Rao, Senior Counsel representing for Sri Devi Prasad Mangalapuri for the Respondents.

2. The Appeal is filed by the Defendants challenging the decree and judgment of the II Additional District Judge, Guntur, dated 21.03.2005 in O.S. No. 17 of 2001, whereby the suit filed by the Plaintiffs for recovery of money was decreed against the Defendants.

3. For convenience, the Appellants will be referred to as the Defendants and the Respondents will be referred to as the Plaintiffs, as arrayed in the Trial Court.

4. The record reveals that the 1st Plaintiff is the husband and father of the 2nd and 3rd Plaintiffs respectively. Initially, the suit was filed against the 1st to 3rd Defendants, the 2nd Defendant is a Society and the 3rd Defendant is a Private Ltd Company, both are represented by the 1st Defendant. During the Appeal, the 1st Defendant died, his wife and two daughters were impleaded as 4th to 6th Appellants.

I.BRIEF CONTENTIONS:

5. The brief contentions of the Defendants are that the suit is not maintainable, as the 3rd Plaintiff did not properly authorise the 1st Plaintiff, who is her father, as per law to file the suit on her behalf. It is further contended that, even according to the Plaintiffs' own case, the promissory notes, marked as Exhibits A1 to A5, were signed only by the 1st Defendant and that 2nd and 3rd Defendants were neither signatories to the promissory notes nor received amounts to make them liable thereunder, and they are also juristic persons. Therefore, the suit is liable to be dismissed on this ground alone. But the learned Trial Judge mechanically decreed the suit against all the Defendants.

6. It is further contended that the alleged Power of Attorney was not filed in compliance with the relevant provisions of the CPC and Civil Rule of Practice and that the alleged email relied upon by the Plaintiffs also did not confer any authority upon the 1st Plaintiff to represent the 3rd Plaintiff to file the suit and pursue the same. The Defendants also pleaded and disputed the capacity of the 1st Plaintiff to institute and prosecute the suit on behalf of the 3rd Plaintiff, but the Trial Court did not properly consider this point as per law.

7. Further contended that the learned Trial Judge erred in raising the presumption under Section 118 of the Negotiable Instruments Act, as the evidence on record is contrary to such presumption. The learned Judge also failed to appreciate that there was no satisfactory proof of passing of consideration. Even PW2 also admitted in his evidence that no consideration was

passed. The evidence of the Plaintiffs is also contrary to the recitals contained in the promissory notes/Ex.A1 to A5, as per these documents they paid the amounts on the dates of the execution of the promissory notes.

8. The learned Trial Judge further erred in placing reliance upon the diary marked as Exhibit A13, which does not bear the signature of the 1st defendant. The learned Judge also failed to properly consider Exhibit A13, the alleged notice, and the statements before the Income Tax Authorities, which, according to the Defendants, are contrary to the Plaintiffs' case. Exhibits A10 and A11 also have no connection with the promissory notes.

9. The Defendants also contended that the promissory notes were nominally executed by the 1st Defendant for security in anticipation of future borrowings and that no consideration was actually paid under them. The learned trial Judge also erred in relying upon the alleged admissions made by the 1st Defendant before the Income Tax Authorities.

10. Further contended that the 1st Plaintiff stated that he came to India in January 2000. However, there is no proper explanation for the execution of Exhibits A1 to A5 on different dates before his arrival to India. The learned Judge also failed to consider the alleged payments said to have been made by the 1st Plaintiff and the 2 sale deeds marked as Exhibits B1 and B2, dated 23-12-1999 and 02.03.2000, executed by the 1st Defendant in favour of the 3rd Plaintiff and that PW.1 also admitted that no consideration was passed under the sale deeds and sought to allow the Appeal and placed reliance upon the Judgments

of i) ***G. Vasu v. Syed Yaseen Sifuddin Quadri***/(1986) SCC Online AP 147, (ii) ***Kundan Lal Rallaram v. Custodian Evaecue Property, Bombay*** / AIR 1961 SUPREME COURT 1316(1) (iii) ***Bachhaj Nahar v. Nilima Mandal and another***/(2018) 17 SCC 491 (iv) ***Kota Sreevali and others v. Chinni Seetharamaiah& others***. (2005) SCC Online AP 632, (v) ***P. Venkatamma v. Dontham Sulochana***/(2005) SCC Online AP 688. (vi) ***Kanakapudi Bharathi and another v. Authority under Section 50 of A.P. Shops and Establishments Act.*** (1999) SCC Online AP 1070.

11. *Per contra*, the learned counsel for the Plaintiffs submitted that the 1st Defendant himself admitted in the written statement regarding the execution of the promissory notes. It was further submitted that the 1st Plaintiff was duly authorized by the 3rd Plaintiff to institute and prosecute the suit in a representative capacity and that the learned Trial Court had also recorded the same in its judgment.

12. The Plaintiffs categorically stated the manner in which the amounts were advanced over a period of time and that the 1st Defendant borrowed the amounts for the benefit and requirements of 2nd and 3rd Defendants. It was further submitted that, during the Income Tax raid, the 1st Defendant admitted before the Income Tax Authorities regarding the borrowings by him and the utilization of the amounts for 2nd and 3rd Defendants. Therefore, the contention that the 1st Defendant alone was the signatory to the promissory notes would not,

by itself, absolve 2nd and 3rd Defendants of their liability in the circumstances of the case.

13. The learned counsel for the Plaintiffs further submitted that the 1st Defendant had specifically admitted in his written statement that he had executed the agreements. Therefore, the Trial Court rightly raised presumption and decreed the suit against all the Defendants. It was also submitted that the Defendants had been protracting the proceedings for all these years and that there were no grounds to interfere with the judgment and decree of the Trial Court and prayed to dismiss the Appeal with costs.

II. PLEADINGS

a) Plaint

14. The Plaint reveals that the 1st to 3rd Plaintiffs instituted the suit, and the 3rd Plaintiff was represented by the 1st Plaintiff, who is her father, acting under a special power of attorney. The Plaintiffs pleaded that the 1st Plaintiff is a Chemical Engineer and worked in Malaysia from June 1987 to January 2000. The 1st Defendant was a resident of a nearby village of the 1st Plaintiff and befriended him. Whenever the 1st Plaintiff came to India, he stayed with the 1st Defendant.

15. As there were several incentives for NRIs to invest, including interest exemption from income tax, the 1st Plaintiff was contemplating investing his savings. The 1st Defendant prevailed upon him to invest with him, so he could purchase properties in the name of the 2nd and 3rd Defendants or for him, promising high returns. The 1st Plaintiff was persuaded by him, guaranteed a

safe return and offered interest @ 24% per annum. Accordingly, the 1st Plaintiff periodically remitted his earnings in the Banks at Guntur and Vijayawada, and he gave a self-signed cheque book to the 1st Defendant to withdraw the amounts periodically and he purchased properties, either in his name or in the name of the 2nd and 3rd Defendants, which are owned, possessed and administered by him for his benefit. Sometimes he also gave money personally, and also through a common friend, NG Prakash. In all the 1st Defendant received Rs.56,00,000/- out of friendship and confidence, who admittedly purchased properties with these monies.

16. The 1st Plaintiff came over to India for fixing the marriage of his daughter, he needed huge money. On calculation, the amount due was Rs.1,02,00,000/- with interest. The 1st Defendant began postponing the repayment. When he pressed, the 1st Defendant voluntarily executed five promissory notes in his handwriting. Three in his favour, one each in the name of his wife/2nd Plaintiff and daughter/3rd Plaintiff with respective amounts and dates, only for 90 lakhs, he disputed the same, 1st Defendant replied that he would pay the balance amount by December 1999 or January 2000.

17. The 1st Defendant executed A to C promissory notes for 20 lakhs each on 15.11.1999, 01.12.1999 and 16.12.1999 respectively, repayable with interest at 18% p.a. He also executed D marketed promissory note dated 15.11.1999 for Rs.15 lakhs favour of the 2nd Plaintiff and E marked promissory note dated 15.12.1999 in favour of the 3rd Plaintiff for Rs.15 lakhs respectively, repayable

with interest at 18%. All the promissory notes are fully supported by consideration. The 2nd and 3rd Defendants are owned and run by the 1st Defendant only and others have no interest whatsoever. The entire money borrowed from him was utilised for purchasing properties in the name of the 2nd and 3rd Defendants or for him, hence, the 2nd and 3rd Defendants are also liable to discharge the debt. There are sundry debts payable by the 1st Defendant to him, which are not included in this suit, as they are on a different cause of action as mentioned in the 2nd Legal Notice, he is reserving his right to file a separate suit.

18. The 1st Defendant sold some of his properties standing in the name of the 2nd and 3rd Defendants to him for valuable consideration. The 1st Defendant received the sale deed from the Registrar's Office, but he did not deliver to him. The title deed of the 2nd Plaintiff's house was also with the 1st Defendant for safe custody. When he demanded it from the 1st Defendant, he replied that they were misplaced and he would deliver it soon upon tracing it. The Plaintiffs got issued legal notices on the basis of the five promissory notes based on their recitals, but the 1st Defendant replied with false allegations and stated that the sale deed was kept with him as security. He is bound to return the two title deeds. The suit is filed for recovery of money based on the five promissory notes and also sought mandatory injunction to return the two title deeds. The Plaint reveals that later, the relief for return of sale deeds was not pressed.

b) The common Written Statement by the 1st to 3rd Defendants

19. The common written statement reveals that they denied borrowing amounts from the Plaintiffs and that they never executed any of the suit promissory notes, and that they were manipulated by the Plaintiffs for illegal gain. Also denied that the 1st Defendant had lured the 1st Plaintiff to invest money for purchasing properties or assuring high returns and promising to pay 24% interest per annum, the 1st Defendant withdrew the amounts over the years deposited by the 1st Plaintiff in their Banks at Guntur and Vijayawada by self signed cheques of the 1st Plaintiff, also sometimes paying amounts personally and through N.G. Prakash. Denied that in all the 1st Defendant received Rs.56,00,000/- and promised interest at the rate of 24% per annum, the 1st Defendant purchased properties in the name of the 2nd and 3rd Defendants with the money taken from the 1st Plaintiff.

20. Also denied that the 1st Plaintiff came over to India and demanded the 1st Defendant to return the money with interest, the amount was arrived at Rs.1,02,00,000/-, which the 1st Defendant also found it correct, but was postponing the repayment. That as the 1st Plaintiff pressed, the 1st Defendant voluntarily executed five promissory notes with interest 18% p.a., three in the name of the 1st Plaintiff for 20 Lakhs each and one each for Rs.15,00,000/- in the names of the 2nd and 3rd Plaintiff, in all for Rs.90,00,000/- with different dates. That the 1st Plaintiff disputed for executing promissory notes for lesser amounts, then the 1st Defendant replied that he would pay the balance in December 1999

or January 2000. That the alleged promissory notes are fully supported by consideration.

21. Also denied that the 1st Defendant has owned and managed the 2nd and 3rd Defendants, no others have an interest in the 2nd and 3rd Defendants. That they are separate and registered entities and they are not liable under the promissory notes. Also denied that there are sundry debts payable by the 1st Defendant and that they arose in a different context. Also denied that the 1st Defendant kept the sale deed with him. They plead that the Promissory Notes were executed by the 1st Plaintiff to arrange funds, but he failed to arrange the finance and filed this suit with those promissory notes and false averments. But only the sale deed dated 2-3-2000 of the 3rd Plaintiff is kept with the 2nd Defendant Society as security for returning the said alleged promissory notes, which were taken as security to arrange funds for the Institutions.

22. That a suit and also on behalf of the 3rd Plaintiff with different and distinct averments is not maintainable. There is no power of attorney or any other valid or tenable authorization given by the 3rd Plaintiff in favour of the 1st Plaintiff. The suit is barred by limitation. There is no cause of action and sought to dismiss the suit with costs.

III. ISSUES FRAMED BY THE TRIAL COURT:

23. The material reveals that, as the matter was not settled, the Trial Court framed the following issues, which are extracted hereunder:

1. *Whether the suit promotes A to E executed by the 1st Defendant on 15.11.1999, 01.12.1999, 16.12.1999, 15.11.1999 and 15.12.1999 respectively are true, valid and binding on him?*
2. *Whether the 2nd and 3rd Defendants are necessary and proper parties to the suit since they contended that they have nothing to do with the suit transaction and they are separate, distinct and legal entity?*
3. *Whether the suit claim is barred by limitation?*
4. *Whether the plaintiffs are entitled to recover the suit amount from the defendants?*
5. *To what relief?*

The Trial Court framed an additional issue on 18.11.2002:

1. *Whether the 1st Plaintiff can maintain the suit on behalf of the 3rd Plaintiff on the basis of the letter of authorization?*

IV. EVIDENCE OF PARTIES

24. The 1st Plaintiff was examined as PW.1/Bodepudi Venkaiah and also examined PW.2/N. Anjaneyulu. On behalf of the plaintiffs, Exs. A-1 to A-5, namely Ex.A1/15.11.99- Pronote for Rs.20,00,000/- executed by D1 in favour of PW.1, Ex.A2/01-12-99- Pronote for Rs.20,00,000/- executed by D1 in favour of PW.1, Ex.A3/16-12-99- Pronote for Rs.20,00,000/- executed by D1 in favour of PW.1, Ex.A4/15-11-99- Pronote for Rs.15,00,000/- executed by D1 in favour of 2nd Plaintiff, Ex.A5/15-12-99- Pronote for Rs.15,00,000/- executed by D1 in favour of 3rd Plaintiff were marked. Exs. A-6 /05-10-00- O/o. of regd. Notice issued by plaintiff advocate to defendants and A-7/Ex.A7/06-11-00- O/c. of Regd. Notice issued by plaintiff advocate to defendants are the legal notices Ex.A6/05-10-00- O/o. of regd. Notice issued by plaintiff advocate to defendants, and Exs. A-8 /13-10-00-Reply notice and Ex.A9/23-11-00- Reply notice are the

reply notices. Ex. A-10 is the Account copy of Canara Bank, Guntur along with C.C. of cheques (near Hindu College, Guntur), Canara Bank account statement, Ex. A-11 is the True copy of the account in Bank of Baroda, Guntur in the name of 2nd plaintiff, Ex. A-12 is the Statement recorded by Income Tax Department statement recorded by the authorities from the 1st defendant, Ex. A-13 is the Diary maintained by 1st plaintiff, , Ex. A-14 is the Note Book contains pages 1 to 46, and Ex. A-15 consists of the Figures noted in the blank white paper by DW1.

25. The 1st defendant was examined as DW-1 and also examined DW-2. On behalf of the defendants, Ex. B-1, C.C. of Regd. Sale deed for Rs.4,84,000/- executed by G.V. Rao in favour of Bodepudi Sireesha was exhibited. Exs. B-2 to B-6, Ex.B2/02-03-2000: C.C. of Regd. Sale deed for Rs.4,84,000/- executed by G.V. Rao in favour of Bodepudi Sireesha, Ex.B3/15-11-2000: Reg. legal notice, Ex.B4 :Two postal receipts, Ex.B5/22-11-2000: Written legal notice, Ex.B6/06-11-2000: Regd. Notice issued to 1st plaintiff. Income Tax Asst. for the year 1998-99 are the legal notices and postal receipts. Exs. B-7 to B-11 areEx.B7. 30-05-2003: G.V.R. & S. Educational Institution(P) Limited, Ex.B8/30-05-2003: Income Tax Asst. for the year 1999-00 of G.V.R. & S. Educational Institutions (P) Limited, Ex.B9/14-07-2003: Income Tax Asst. for the year 2000-01 of G.V.R. & S. Educational Institutions (P) Limited, Ex.B10/25-11-2002: Income Tax Asst. for the year 1997-98 of G.V.R. & S. Educational

Institutions (P) Limited, Ex.B11/28-08-2000: Income Tax Asst. for the year 1998-99 of G.V.R. & S. Educational Institutions (P) Limited the income-tax returns for the years 1997–1998 to 2000–2001. Exs. X-1 and X-2 were marked through DW-2. Ex.X1 :C.C. of complaint in C.C.3/04, Ex.X2/17-12-03 : Regd. Reply notice. Copies of four registered reply notices were also marked.

V. FINDINGS OF THE TRIAL COURT

26. The Trial court recorded findings that the authorization of the 3rd plaintiff is valid. The suit claim is not barred by limitation. The Plaintiffs could prove the suit promissory notes/Ex.A1 to A5 transactions by placing reliance on the evidence of 1st Plaintiff and 1st Defendant and also on promissory notes/Ex.A1 to A5 and statements/Ex.A12 before Income Tax Authorities and on /Ex.A15 of the 1st Defendant and held that the Defendants are liable to pay the suit debt. All the issues are answered in favour of the Plaintiffs.

VI. POINTS FRAMED BY THIS COURT:

27. Thus, this Court, in view of the submissions, inclined to frame the following points for consideration;

i) *Whether the 3rd Plaintiff's/Daughter authorisation in favour of her father/ 1stPlaintiff to institute the suit and prosecute the same is valid or not ?*

ii) Whether the 1st to 3rd Plaintiffs could prove the promissory notes/Ex.A1 to A5 transactions ?

iii) If so, whether the liability under the promissory notes can be fastened on the 2nd and 3rd Defendants?

VII. ANALYSIS

a) undisputed facts:

28. This Court is confined to the claim on suit promissory notes/Ex.A1 to A5 as the Plaintiffs in the suit are finally confined to recovery of money under the Promissory Notes/Ex.A1 to A5. The material on record reveals that there is no dispute that the 1st Plaintiff and the 1st Defendant were close friends and that the 3rd Plaintiff/daughter of the 1st Plaintiff also resided in the house of the 1st Defendant for her education. The Plaintiff's specific case is that all these promissory notes/Ex.A1 to A5 were written by the 1st Defendant in his handwriting, and he handed over these promissory notes to the 1st Plaintiff. The disputed aspect is that, as per the 1st Plaintiff, the 1st Defendant executed the promissory notes/Ex.A1 to A5 to clear the debt, but as per the Defendants, they were executed towards security to arrange funds by the 1st Plaintiff, this disputed aspect will be answered a bit later.

29. The material on record also reveals that there is no dispute that there was an Income Tax raid in the premises of the 1st Defendant, they seized the documents, wherein a document said to pertain to the monetary transaction between the 1st Plaintiff and 1st Defendant was also seized. The 1st Defendant and the 1st Plaintiff gave statements/Ex.A12 before the

Income Tax Authorities deposing on their personal monetary transactions, those amounts will be referred to a bit later in the judgment.

Point i) Whether the 3rd Plaintiff's/Daughter authorisation in favour of her father/ 1st Plaintiff to institute the suit and prosecute the same is valid or not ?

30. The 1st Plaintiff is father of the 3rd Plaintiff, as per the Plaint, she has given the Authority to her father to file the suit and prosecute the suit. The record also shows that authorisation was filed to show the attorney, which is not in dispute, the dispute is that the authorisation is not a valid authorization, this point will be answered a bit later. The trial Court also accepted the authorization and registered the suit.

31. IA.No.6 of 2026 is allowed by this Court by a separate order, wherein the 3rd Plaintiff filed an affidavit along with a Power of Attorney, which is not objected to by the Defendants, stating that she authorised her father to engage an advocate, to file the suit and purchase the same. Also submits that, in continuation of her earlier authorisation, she executed the present GPA in favour of her father to pursue the appeal and rectify all the acts of her father since the beginning of this case.

32. The learned counsel for the appellants objects to the latter part, which seeks to ratify the acts of her father since the beginning. But in this case, the 3rd Plaintiff is the daughter of the 1st Plaintiff; the initial authorisation and subsequent ratification make it clear that she authorised her father to engage counsel, to file the suit and pursue the same.

33. The Defendants relied on Kanakpudi Bharathi case supra, wherein this Court, held that a Power of Attorney Holder can appear only as a witness in his personal capacity to speak about the facts which are within his personal capacity about the case. In this case, the Plaintiffs' case is that the 1st Plaintiff lent the amount, and the 1st Defendant executed the promissory notes in his name and also in the names of his wife and daughter. That the 1st Plaintiff has clear personal knowledge, so the Defendants cannot avail the judgment in these circumstances. The Defendants could not demonstrate that Rule 32 of Civil Rules of Practice, to file affidavit is mandatory in these circumstances.

34. Thus, this point is answered against the Defendants/Appellants.

Points ii) Whether the 1st to 3rd Plaintiffs could prove the promissory notes/Ex.A1 to A5 transactions?

And

iii) If so, whether the liability under the promissory notes can be fastened on the 2nd and 3rd Defendants?

35. These two points are interrelated and to avoid repetition of evidence, they are answered together.

36. The Plaintiffs initially issued legal notice/Ex.A6 to the 1st Defendant demanding to clear the promissory notes debt. After the reply notice/Ex.A8 by the 1st Defendant. The Plaintiffs again issued a legal notice/Ex.A7 to the 1st Defendant with improved version on the previous borrowings of Rs.55,00,000/- by 1997 from the 1st Plaintiff and with interest

the due is Rs.1,02,00,000/- but the 1st Defendant issuing of the promissory notes/Ex.A1 to A5 in his name and his wife and daughter/1st to 3rd Plaintiffs in the hand writing of the 1st Defendant and demanded the 1st and 2nd Defendants to repay the debt.

37. The suit is filed against the 1st to 3rd Defendants seeking decree against them, claiming that the 1st Defendant borrowed these amounts for himself and also invested in the 2nd and 3rd Defendants.

38. As per the Plaint, the principal amount of Rs.55,00,000/- was paid by 1997 on different days and with interest, the amount due was Rs.1,02,00,000/-, which is disputed by the Defendants, contending that they did not borrow any amount but executed them only towards security. The 1st Defendant/DW.1, in his cross-examination, admitted execution of the promissory notes/Ex.A1 to A5 in his handwriting. Further, the 1st Defendant also admitted that after execution of these promissory notes, there was Income Tax raid in his premises and they seized records including the handwritten letter/Ex.A15 containing these money transactions of Rs.1,02,13,616/-, this seizure is not disputed by the Defendants, he also gave statement/Ex.A12 before the Income Tax Authorities, the 1st Plaintiff also gave statement/Ex.A12 before the Income Tax Authorities and the 1st Defendant was liable to pay him Rs.1,02,13,616/- on 30.11.1999, this version of the 1st Plaintiff was also admitted by the 1st Defendant in his cross examination. The execution of

promissory notes/Ex.A1 to A5, the version of the Plaintiffs in the Plaint that the 1st Defendant was due Rs.1,02,00,000/- is also corroborated by the seizure of the letter in the Income Tax raids, and also the statements before the Tax Authorities as stated supra. The Plaintiffs also filed Account statements/Ex.A10 and A11 to show the part of the payments. PW.2 also supported the Plaintiffs' case on the monetary transactions. The evidence of DW.2 is not helpful to the case of the Defendants. Thus, the Plaintiffs, by this evidence, could prove that the promissory notes/Ex.A1 to A5 were executed by the 1st Defendant to repay the debt as transpired supra, though the 1st Defendant actually did not borrow the amount mentioned in the promissory notes on the dates of their execution. The oral evidence can be admitted in these circumstances to prove the previous borrowings, the existing debt and execution of the Promissory Notes in these circumstances. The Defendants relied on ***Kundan Lal Rallaram, G Vasu and P Venkatamma*** cases supra, but the Defendants cannot avail these judgments in view of these facts that the 1st Defendant consistently admitted the debt as stated supra.

39. The Defendants relied on ***Bachhaj Nahar*** **case supra,** contending that there must be pleadings, the Trial Court cannot make out a case, which is not pleaded. But in this case, the plaint contents, as extracted supra, show clear pleadings on the borrowings, existing debt and

promissory note transactions. Thus, the Defendants cannot avail the judgment in these circumstances.

40. On the other grounds of court fee and limitation, the Court perused the promissory notes, a separate court fees were paid for 5 promissory notes. The promissory notes are dated 15.11.1999, 01.12.1999, 16.12.1999, 15.11.1999 and 15.12.1999, the suit is filed on 01.12.2000. Thus, the same is within limitation.

41. The 1st Plaintiff, in his evidence and cross-examination, also stated that he came to India on 1st November 1999, the Defendants could not elicit contra material on this point.

42. This suit may be decreed based on the writings/Ex.A15 seized during raids and subsequently the said two statements before the Income Tax Authorities as stated supra.

43. Thus, in these circumstances, the presumption may also be raised under Section 118 of the Negotiable Instruments Act, which the 1st Defendant could rebut as rightly observed by the Trial Court. Further, even without presumption, the Plaintiffs could prove the debt and the promissory notes as stated supra.

44. Further, the Defendants could not prove that the promissory notes were nominally executed in connection with future borrowings; they could not adduce evidence to show what the future borrowings were,

whereas the evidence as discussed supra proves the transactions. Thus, this contention of the Defendants is without merit.

45. Thus, the Court, inclined to hold that the Trial Court considered the evidence on the correct prospective that the Plaintiffs could prove the suit promissory notes/Ex.A1 to A5, which requires no interference for the reasons stated supra.

46. As stated supra, the 1st Defendant/1st Appellant died pending the Appeal, hence, the Decree is against the estate of the 1st Defendant/1st Appellant, lying in the hands of his legal representatives/4th to 6th Defendants/4th to 6th Appellants.

47. On the other point on the liability of the 2nd and 3rd Defendants. As per the Plaintiffs, the 1st Defendant has utilized the amounts for himself and 2nd and 3rd Defendants for investment in properties, agreeing to pay interest at 24% per annum. As per the Defendants, the 2nd and 3rd Defendants were not signatories to the promissory notes and could not prove that the 1st Defendant invested these amounts in the 2nd and 3rd Defendants.

48. The 1st Defendant also admitted in his cross examination that he sold the properties to the 3rd Plaintiff, standing in the names of the 2nd and 3rd Defendants for valuable consideration and executed sale deeds/Ex.B1 and B2. Thus, this version of the 1st Defendant also supports the case of the Plaintiff on separate transactions. But by this ground alone, the 2nd

and 3rd Defendants cannot be made liable, which are different legal entities, on the ground that the 1st Defendant sold the properties and he is managing the properties.

49. Though the 1st Defendant admitted in his cross-examination that he purchased agricultural land in the name of 2nd Defendant-Society with his own money. The said land was subsequently divided and sold as plots. Based on this, the Society cannot be made liable under the promissory notes.

50. The Trial Court erred in fastening the liability on the 2nd and 3rd Defendants without evidence of investing the amounts and their extent in the 2nd and 3rd Defendants, which are separate entities, as rightly contended by the Defendants, the suit is liable to be dismissed against the 2nd and 3rd Defendants in these circumstances.

51. Thus, Point No.ii is answered in favour of the Plaintiffs. Whereas Point No.iii is answered against the Plaintiffs for the reasons stated supra.

VIII.RESULT:

52. This Court, on re-appreciating the evidence on record and for the foregoing discussion, inclined to hold that the Plaintiffs could prove the case on the promissory notes and liability of the 1st Defendant/1st Appellant. The Defendants/Appellants could not demonstrate any infirmity in the decree and judgment of the Trial Court warranting interference in the

judgment of the Trial Court on Point No.i and ii. Whereas Point No.iii is answered against the Plaintiffs as stated supra.

53. Thus, in view of the evidence and for foregoing discussion, the Appeal is partly allowed, setting aside the impugned decree and judgment of the Trial Court dated 21.03.2005 in O.S.No.17/2001 against the 2nd and 3rd Defendants/2nd and 3rd Appellants, while confirming the decree and judgment against the 1st Defendant/1st Appellant. As the 1st Defendant/1st Appellant died pending the Appeal, hence, the Decree is against the estate of the 1st Defendant/1st Appellant, lying in the hands of his legal representatives/4th to 6th Defendants/4th to 6th Appellants. There is no order as to costs in view of the answering of the points as stated supra.

54. I.A.No. 6/2018 is allowed. The other pending Miscellaneous Petitions, if any, shall stand closed.

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JUSTICE D. RAMESH

_____

JUSTICE ALAPATI GIRIDHAR

Dated: 13.11.2026
CHD

THE HONOURABLE SRI JUSTICE D. RAMESH
AND
THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

APPEAL SUIT No.643 OF 2005

Dated :13.11.2026

CHD