

**Rangappa Vs. Krishnamurthy**

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**Court :** Karnataka

**Decided On :** Jan-09-1995

**Reported in :** ILR1995KAR968; 1995(2)KarLJ591

**Judge :** M.F. Saldanha, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sectin 4; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 96

**Appeal No. :** R.F.A. No. 263 of 1994

**Appellant :** Rangappa

**Respondent :** Krishnamurthy

**Advocate for Def. :** P. Gopalakrishna, Adv.

**Advocate for Pet/Ap. :** S. Sekhar Shetty, Adv.

**Judgement :**

Saldanha, J

1. This First Appeal is directed against a money decree, The plaintiff had contended that a sum of Rs. 18,400/- had been borrowed by the defendant on 3.12.1981. The basic document on which he relies is a demand promissory note signed by the defendant agreeing to repay the said amount with interest at 2% per month. The interest is abnormally high but the difficulty in the way of the Court was

that the defendant had agreed to this rate of interest at the time when the transaction took place. The defendant has denied that this was a loan transaction. According to him, the amount was in deposit with him and it related to the educational expenses of the two grand children to whom the defendant was liable to pay money from time to time if necessary. The defence has been negated by the trial Court and the suit has been decreed.

2. The principal challenge is with regard to the credibility of the plaintiff who admittedly at the relevant time when he gave evidence was aged 84 years. There is no dispute about the fact that there are some blemishes and infirmities in his oral evidence. Appellant's learned Advocate capitalizes on the fact that the plaintiff was not in a position to identify his own signature on the vakalathnama when confronted with this document. By virtue of this fact learned Advocate contends that the credibility of the plaintiff is seriously in dispute and that his evidence must be discarded. Conversely, he submits that the defendant has established through his own evidence and supportive evidence that the amount in deposit that is with him is in connection with the educational expenses of his grand children. He has produced 3 or 4 letters to support his plea that he has repaid the amount from time to time.

3. The defendant has admitted the execution of the promissory note and the defence that has been pleaded is to my mind clearly an after-thought. If this defence is to be carefully evaluated in relation to the contents of the promissory note, it is impossible to reconcile the two. To my mind, had this been a family transaction, the question of executing a promissory note would not have arisen even though learned Counsel submits that it was given as collateral security. If the amount was a mere deposit to defray educational expenses and if the balance of it or whole of it was in fact repaid, the defendant would not have allowed the promissory note to remain with the plaintiff. On an overall view of the case, to my mind it is not the calibre of the oral evidence but the intrinsic evidence of the promissory note that the Court is required to go by. There is some value and sanctity to a promissory note and to my mind when once such a document is in evidence, it virtually outweighs everything else on record.

4. The appellant's learned Advocate submits that this is a Regular First Appeal and that consequently this Court must admit the same and take a second look at the record. There is no inflexible Rule that in every first appeal case, the Court is obliged to consider the entire case denovo. There are a large number of litigations in which a Court can appraise the entire controversy and if the Judicial conclusion is to the effect that no other view is possible than the one taken by the trial Court in those set of cases, there is no requirement of law that a First Appeal must be admitted and reheard thereafter.

5. On a totality of the matter placed before me, I am of the view that both on facts as also in law, the view of the trial Court is unassailable. Under these circumstances, the Appeal fails and stands disposed of.

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