

Form No.(J)2
HEADING OF JUDGMENT IN ORIGINAL SUIT

District-----Nalbari

IN THE COURT OF CIVIL JUDGE :::::::::::::::NALBARI

Present : Himakshi Thakuria Buragohain
Civil Judge
Nalbari.

Thursday, the 10th day of January, 2019

MONEY SUIT 09/16

SRI RAMESH BAISHYA

-----Plaintiff

- VS -

MD. MESHER ALI

----Defendant

The suit is coming on for final hearing on 10/01/2019 in presence of:-

Advocates for the Plaintiff :-

- i) Sri Girish Kalita,
- ii) Sri Jonali Das and
- iii) Sri Dipika Deka.

Advocate for the Defendant : Sri Ramesh Kr. Sarma.

And having stood for consideration to this day, the court delivered the following Judgment:-

J U D G M E N T

1. This is a suit for recovery and realisation of Rs.2,50,000/-(Rupees Two Lakhs Fifty Thousand) only from the defendant.

2. The fact of the plaintiff's case in brief is that the defendant borrowed an amount of Rs.2,50,000/- (Rupees Two lakhs Fifty Thousand) only from the plaintiff on 17/11/2013 for recovery of his old loan and executed a hand note in favour of the plaintiff on the same day in presence of Sri Lohit Baishya and Sri Uday Baishya. The hand note was written by Sri Lohit Baishya in the plaintiff's house. As the said whole amount was not available with the plaintiff, he collected an amount of Rs.90,000/- from his married daughter namely Smti. Labhita Das, an amount of Rs.40,000/- from Sri Uday Baishya and an amount of Rs.30,000/- from his younger brother Sri Lohit Baishya. The defendant agreed to pay 12.5% as interest for the said amount and also promised to repay the entire amount with interest when the plaintiff would have needed. After one year the plaintiff demanded the defendant to return the said amount with interest. But the defendant requested the plaintiff to wait for a period of three months for repayment of the loan with interest. After waiting the period of three months the plaintiff again met the defendant on 22/02/2015 and requested him to return said amount with interest and on that day also the defendant was unable to return him the loan and again requested the plaintiff to wait for another period of two months for repayment. On 25/04/2015 the plaintiff again approached the defendant and on that day also the defendant was unable to repay him the said amount. After that the plaintiff requested the defendant for several times and all the times the defendant assured the plaintiff that he would repay the whole amount and also requested him to wait for some times. Finally on 30/05/2016 the plaintiff once again approached the defendant requesting to repay his loan amount with interest and on that day the defendant replied that he could not return the money to the plaintiff. Thereafter the plaintiff served a legal notice upon the defendant on 10/05/2016 through his advocate Mr. Arjun Barman

demanding to repay the said amount with interest. The defendant sent a reply to the said legal notice through advocate Mr. Ramesh Ch. Sarma, Nalbari on 25/05/2016 denying the borrowal of money as claimed by the plaintiff.

3. On receiving the summons the defendant appeared and contested the suit by filing written statement. In his written statement the defendant denied the averments made by the plaintiff in the plaint. The defendant stated in his written statement that he had a good relation with Ajit Das, the son-in-law of the plaintiff who is a constable of police and in that pretext once in the month of September 2012, the defendant took Rs.60,000/- (Rupees Sixty Thousand) only from him in a blank paper and handed over one Bank ATM and passbook of the defendant as assurance. The money was taken by the defendant for one Rahmat Ali. This fact was also known to Ajit Das as Rahmat Ali was present at the time of approaching Ajit Das for Rs.60,000/- (Rupees sixty thousand only). The defendant paid Rs.60,000/- only in full to said Ajit Das in several installments and when the defendant paid the final outstanding installment amount of Rs,30,000/- at Thanuram LP School, Anil Barman and Ghanashyam Swargiary were also present. At the time of paying the other installments Rahmat Ali was present and on the day of payment of final installment Ajit Das handed over to him the ATM card and Bank passbook. The defendant stated that he also asked Ajit Das to return back the signed papers but the latter told him that as he is in busy with his duty and as he has forgot where he has kept this paper, it shall take time to return back the same. Having good faith the defendant did not give much importance to that paper. When the defendant received the pleader notice served upon him by the plaintiff ; the defendant became surprised and came to know about the conspiracy. According to the defendant, the plaintiff with the aid and advice of his son-in-law Ajit Das converted the blank signed paper into a hand note. Hence, the defendant prayed to dismiss this suit with cost.

4. On perusal of the pleadings following issues were framed-

(i) Whether there is cause of action for the suit ?

(ii) Whether the defendant borrowed an amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) only from the plaintiff on 17-11-13 and executed a hand note on the same day ?

(iii) Whether the plaintiff is entitled to the decree as prayed for ?

(iv) To what other relief/reliefs the parties are entitled to?

(DISCUSSION, DECISION AND REASONS THEREOF)

5. In support of the case the plaintiff has adduced the evidence of 4 (four) witnesses and has exhibited 3 (three) documents). Defendant neither exhibited any documents and nor has examined any witness.

6. I have heard the argument of learned counsel of the plaintiff and the defendant and have discussed the issues as follows-

ISSUE NO. (i) :

“Whether there is cause of action for the suit ?”

The cause of action means every fact which, if traversed it would be necessary for the plaintiff to prove in order to support of his right to a judgment of the court. In his pleadings the plaintiff has pleaded that he has lent a sum of Rs.2,50,000/- to the plaintiff on 17-11-13 for recovery of old loan and in lieu of that the defendant executed a hand note in favor of the plaintiff. The defendant on the other hand stated that he had borrowed on Rs.60,000/- from Ajit Das the son-in-law of the plaintiff and has also returned back the entire sum in several installments. As there is assertion of right by the plaintiff and denial of right by defendant there is cause of action for the suit.

Accordingly this issue is decided in favor of the plaintiff.

ISSUE NO. (ii) :

“Whether the defendant borrowed an amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) only from the plaintiff on 17-11-13 and executed a hand note on the same day ?”

In his pleadings the plaintiff has pleaded that he had lent a sum of Rs.2,50,000/- to the defendant on 17-11-13 in presence of Sri Lohit Baishya and Sri Uday Baishya after collecting an amount of Rs.90,000/- from after his married

daughter, namely, Smti. Labhita Das, an amount of Rs.40,000/- from Sri Uday Baishya and Rs.30,000/- from Lohit Baishya.

Now if we go through the cross-examination of PW-1 we find him clearly stating that on 17-11-13 the defendant went to his house between 9 AM – 10 AM and on that day he had lent him Rs.2,50,000/- PW-1 has specifically stated in his cross-examination that he had collected Rs.30,000/- from his younger brother. Sri Lohit Baishya, Rs.40,000/- from Uday Baishya and Rs.90,000/- from his daughter Labhita.

Coming to the cross of PW-2 we find him stating that the plaintiff had lent money to the defendant on 17-11-13 and on the same day the plaintiff had also taken money from him, Labhita and Uday Baishya.

PW-3 Uday Baishya stated in his cross-examination that he it is in his knowledge that the plaintiff has lent money to the defendant. PW-3 also stated that he knows about the fact that the plaintiff had gone to the defendant to demand back the money lent and that the defendant refused to return back the borrowed sum. PW-3 has categorically stated that the plaintiff had lent money to the defendant on 17-11-13 and that was a Sunday and that at the time of lending money he, Labhita and Uday Baishya had come. According to PW-3 the time was between 10 AM – 10:30 AM. It is also revealed from the cross of PW-3 that Labhita had given money to her father i.e. the plaintiff in his presence.

Finally, coming to the cross-examination of PW-4, we find her stating that she came to know from her father that the defendant has asked him for money. PW- 4 also stated that she gave Rs.90,000/- to her father on 17-11-13.

From the evidence of the PWs it appears the PWs has supported the plea taken by the plaintiff. The handnote exhibited as Exhibit-1 reveals that the defendant had borrowed a sum Rs.2,50,000/- from the plaintiff on 17-11-13 with a promise to return back the same with an interest of 12.5% per annum. Exhibit-2 makes it clear that the defendant failed to repay back the money to the defendant for which the plaintiff had to demand the money from him.

Accordingly this issue is decided in the affirmative and in favor of the plaintiff.

ISSUE NO.(iii) & (iv) :**“Whether the plaintiff is entitled to the decree as prayed for ?”**

AND

“To what other relief/reliefs the parties are entitled to?”

On perusal of the case record it reveals that the defendant after submission of the evidence on affidavit did not appear to face cross-examination and accordingly vide order dated 13-12-18 the evidence of the defendant were expunged.

There is nothing in the case record to disbelief the evidence adduced by the plaintiff. The conduct of the defendant apparently shows that he has neglected to repay the remaining balance amount to the plaintiff within the specified time. Hence, in view of the discussions made in the previous issues it appears that the plaintiff is entitled to receive all the relief as claimed for.

O R D E R

7. In the result, the suit is decreed on contest with cost.

The Plaintiff is entitled to receive a sum of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand) only from the defendant.

The defendant is directed to pay the decreed amount to the plaintiff within six months from the date of this order.

Let a decree be drawn up accordingly.

Given under my hand and seal of this court on this the 10th day of January/2019.

Dictated & Corrected by me

Civil Judge
Nalbari

Civil Judge
Nalbari

A P P E N D I X

1. **Plaintiff witnesses :**
PW-1 : Ramesh Baishya,
PW-2 : Lohit Ch. Baishya,
PW-3 : Uday Baishya,
PW-4 : Lavita Baishya.

2. **Defendant witnesses : NIL**

3. **Plaintiff's exhibits :**
 - a) Exhibit-1 : Handnote executed by the defendant,
 - b) Exhibit-2 : Photo copy of Legal Notice,
 - c) Exhibit-3 : Reply of Legal Notice,

4. **Defendant's exhibit : NIL.**

Civil Judge,
Nalbari