



**DATE OF CONCLUSION OF ARGUMENT : 12-05-2014**  
**DATE OF JUDGMENT : 17-05-2014**

### **J U D G M E N T**

This is a suit for recovery of money of Rs.64,450/- with interest and with cost.

2. Plaintiff's case in short is that the plaintiff and defendant are brothers of whom the plaintiff is younger who is a registered contractor and the defendant is elder, a retired Govt. servant. The defendant was in need of money even while in Govt. service for which the plaintiff used to extend his helping hand to the defendant in several occasions and the defendant also cleared up the hand loan availed from the plaintiff previously. On 01-03-1994, on the request of the defendant the plaintiff had given Rs.60,000/- to him in presence of Dr. Sarbeswar Sahoo for the purpose of marriage of second daughter of the Defendant. Although the defendant had agreed to return the said amount to the plaintiff within a short period but did not repay the same with an evil intention. However, this matter was also included while the dispute relating to the ancestral landed properties of the parties has been decided by Panchayat Faislanama on dtd.25-12-2010. It was decided that the defendant would return the amount of Rs.60,000/- to the plaintiff within 25-03-2011 alongwith other household articles which he had taken from the plaintiff. The defendant did not care to such decision of the Panchayat for which the plaintiff issued demand notice claiming the aforesaid amount from him, but in vain. Hence, the suit.

3. Defendant filed written statement denying the assertions of the plaintiff. He denied to have taken away hand loan of Rs.60,000/- from the plaintiff. He also denied to have received any demand notice. It is averred that there was no Faislanama made in this matter rather the plea taken by the plaintiff regarding

decision in the matter by the local panch is a concocted story. It is alleged that the plaintiff voluntarily took the responsibility to look after the ancestral landed property in the native place but inspite of request he did not give any amount of usufruct to the defendant as a result of which lawyer's notice was issued. It is further averred that the plaintiff in unwholly association with the local Sarpanch and the local people is enjoying the property of the defendant and has also given his scooter to him. With this averment the defendant prays to dismiss the suit with cost.

4. With the aforesaid pleadings of the parties the following issues have been framed:

### **ISSUES**

1. Is the suit maintainable ?
2. Whether there is any cause of action to file the suit ?
  
3. Whether the plaintiff is entitled for the decree for realization of the decretal amount with interest as prayed for from the defendant ?
4. To what other relief(s) the plaintiff is entitled to ?

5. In order to prove this case the plaintiff has examined himself as P.W.1 whereas P.W.2 is the Sarpanch of Malasahi Gram Panchayat and P.W.3 is a member of the panch. On the other hand, defendant has examined himself as the sole witness at his end.

Besides examining these three witnesses the plaintiff has brought some documents into evidence. The documents are : The carbon copy of

the letter of the plaintiff on dtd.27-03-2011 to the defendant marked as Ext.X and the postal receipt is Ext.1 ; The letter of Deputy Manager, Department of Post to the plaintiff revealing delivery of the aforesaid letter is marked as Ext.2 ; Ext.3 is Advocate's notice ; Ext.4 is Panchayat's Faislanama bearing signature of P.Ws.2 and 3 as Ext.4/a and Ext.4/b respectively ; Ext.5 is the letter of the defendant to the Sarpanch whereon Ext.5/a is signature of the defendant ; Ext.6 is Ekrarnama ; Ext.7 is Swikrutinama ; Ext.8 is a letter of the defendant to the Sarpanch which was relied on by the defendant but marked as exhibit from the side of plaintiff while cross examining the defendant, Ext.8/a and Ext.8/b are the postal receipt and postal A/D respectively.

On the other hand the defendant has proved only two documents such as the account statement of G.P.F account of the defendant for the year 1994-95 under Ext.A and one letter of Sarpanch to the defendant under Ext.B.

With the aforesaid evidence both oral and documentary the issues as framed are to be answered.

## **FINDINGS**

### **6. Issue No.3**

This being the principal issue is taken up first. The dispute in the present suit is with regard to non payment of loan of Rs.60,000/- by the defendant to the plaintiff. It is specifically alleged in the plaint and also deposed by the plaintiff that on dtd.01-03-1994 the defendant borrowed Rs.60,000/- from the plaintiff in presence of Dr. Sarbeswar Sahoo in order to meet the expenditure of marriage ceremony of second daughter of the defendant which was performed on 03-03-1994. This matter was also taken up by the village Panchayat while the Panchayat was deciding about the land dispute between the parties. It is claimed by the plaintiff that the defendant agreed in the panch to repay the aforesaid amount of

Rs.60,000/- to the plaintiff and accordingly Panchayat Faislanama has been drawn. On the other hand, the defendant is denying to have taken any loan from the plaintiff, rather he has helped the plaintiff, his younger brother and he met the expenditure incurred towards marriage of his second daughter by withdrawing money from his G.P.F fund. The defendant is not accepting the Faislanama made by the village Panchayat.

7. First it is to be examined whether the defendant has borrowed Rs.60,000/- from the plaintiff ? In this regard there is no document. The plaintiff wants to prove his claim through his oral evidence and through the Panchayat Faislanama Ext.4 claiming it as the evidence of acknowledgement of liability. It is the case of the plaintiff that he had given Rs.60,000/- to the defendant in presence of one Dr. Sarbeswar Sahoo. So, the plaintiff should have examined the said witness Dr. Sahoo to substantiate his claim. Had Dr. Sahoo been examined he could have thrown some light and this Court could have come to a finding.

8. As per the plaintiff, the loan was taken by the defendant on 01-03-1994. There is no material to show about any agreed date for repayment of the loan. Hence, the period of limitation for filing the suit is within three years from 01-03-1994 in absence of any further acknowledgment of liability by the defendant. The suit is filed on 20-07-2011. So, now it is to be seen whether the defendant has acknowledged his liability after expiry of the said limitation period and whether Ext.4 can be considered as acknowledgement of liability.

The plaintiff is mostly relying on Panchayat Faislanama (Ext.4) based on letter of the defendant to the Sarpanch (Ext.5), the Ekrarnama (Ext.6) and on the Swikrutinama (Ext.7). Basing on these documents it is contended that the defendant is a party to the resolution of Faislanama and has acknowledged his liability of Rs.60,000/- and there is binding effect of the Gram Panchayat Faislanama of dtd.25-02-2011 on both the parties. On the other hand, learned

counsel for the defendant advanced argument by contending that the Panchayat Faislanama is not binding on the defendant as the defendant has not put his signature on the said document rather in the said document the Sarpanch and other panch members have put their signature and also the defendant is disputing the decision of this panch from the very beginning. He also invited attention of this Court that the Faislanama is itself a doubtful document because the date of its issue mentioned on it is 25-12-2010 whereas the Sarpanch has signed on it on 25-02-2011 and there is no evidence that as to who prepared the Faislanama Ext.4 on 25-12-2010.

9. On careful perusal of the aforesaid documents, it is seen that Ext.5, the letter of the defendant to the Sarpanch was written to decide the property dispute between him and his brothers. The Ekrnama Ext.6 executed by both the parties and their brothers reveals that they had applied for resolution of their property dispute and agreed to obey the decision of the Panchayat. Similarly the Swikrutinama vide Ext.7 reveals only about the dispute relating to landed property of the parties and their brothers. These documents relate to land dispute between the parties and do not reveal about the present dispute i.e. loan of Rs.60,000/- taken by the defendant from the plaintiff. It is only reflected in para 26 of the Faislanama Ext.4 about the present dispute. The Sarpanch (P.W.2)

admitted in his cross examination that the documents do not reveal about the claim of the plaintiff relating to money nor he has filed any document showing such claim of the plaintiff. He has further admitted that he reflected this amount to be paid by the defendant to the plaintiff basing on the statement of the parties but admitted that no statement has been recorded. It is also found that the date of issue of Faislanama (Ext.4) is 25-12-2010 but the Sarpanch (P.W.2) signed on it on 25-02-2011 and there is also no evidence that as to who prepared this document. There is no reason assigned for the delayed signing by the Sarpanch on the said

document. The Panchayat Faislanama should have been signed by the parties accepting the decision. But neither of the parties have signed on it. Hence, it is held that Ext.4, the Panchayat Faislanama cannot be treated as acknowledgment of the defendant towards his liability. There is no other piece of document available on record to prove that the defendant has acknowledged any such liability. Hence, the plaintiff miserably fails to prove that the defendant has acknowledged liability and therefore the plaintiff is not entitled for realisation of the claim amount. Accordingly, this issue is answered in negative and against the plaintiff.

9. **Issue nos.1 and 2**

In view of findings in the aforesaid issue the suit so filed is not maintainable and there is no cause of action to file the suit.

10. **Issue no.4**

The plaintiff is neither entitled to the relief claimed nor for any other relief.

Hence, it is ordered.

**ORDER**

The suit be and the same is dismissed on contest but under the circumstances without any cost.

*1st. Addl. Senior Civil Judge,  
Bhubaneswar.*

The judgment is typed to my dictation by the Stenographer attached to this Court directly on the computer provided under E-Court Project,

corrected and pronounced by me in the open Court today on the 17th day of May, 2014 under my seal and signature.

*1st. Addl. Senior Civil Judge,  
Bhubaneswar*

**List of Witnesses examined for the Plaintiff:**

P.W.1 : Sri Nikhileswar @ Nandu Sahoo

P.W.2: Sri Sudhir Kumar Behera

P.W.3: Sri Rabindra Kumar Mohapatra

**List of Witnesses examined for the Defendant :**

D.W.1: Kishore Chandra Sahu

**List of Documents marked as Exhibits for the Plaintiff:**

Ext.X: Carbon copy of the letter of the plaintiff on dtd.27-03-2011 to the defendant ;

Ext.1: The postal receipt ;

Ext.2: The letter of Deputy Manager, Department of Post to the plaintiff revealing delivery of the aforesaid letter ;

Ext.3: Advocate's notice ;

Ext.4: Panchayat's Faislanama

Exts.4/a

& 4/b: Signature of P.Ws.2 and 3 ;

Ext.5: Letter of the defendant to the Sarpanch ;

Ext.5/a: Signature of the defendant ;

Ext.6: Ekrarnama ;

Ext.7: Sikrutinama ;

Ext.8: Letter of the defendant to the Sarpanch which was relied on by the defendant but marked as exhibit from the side of plaintiff while cross

examining the defendant ;

Ext.8/a

& Ext.8/b: The postal receipt and postal A/D respectively ;

**List of Documents marked as Exhibits for the Defendant:**

Ext.A: Accounts slip showing withdrawal of G.P.F of D.W.1 ;

Ext.B: Letter of Sarpanch, Mallasahi Gram Panchayat ;

*1st. Addl. Senior Civil Judge,  
Bhubaneswar*