

KABC010019102013



**IN THE COURT OF I ADDITIONAL CITY CIVIL &
SESSIONS JUDGE AT BENGALURU (CCH.No.2)**

PRESENT :- **Sri. SREENIVASA, B.A., LL.B.**
 I Addl. City Civil & Sessions Judge,
 Bengaluru.

Dated this the 30th day of October 2023

O.S. No.7701 / 2013

PLAINTIFFS :- **Sri.Narayanappa**
 Dead by his LRs.
 - VS -

DEFENDANTS :- **Sri.K.C.Venugopal and others.**

ORDER ON I.A. Nos.16 and 17

I.A.No.16 is filed by the plaintiff under Sec.151 of CPC praying to discard the evidence of plaintiff and permit him to appoint the GPA holder to prosecute the case on behalf of the original plaintiff.

2. I.A.No.17 is filed by the plaintiff under Order 3 Rule 2A r/w Sec.151 of CPC praying for permission to the Plaintiff to appoint the GPA holder to represent on his behalf and to depose before this Court.

3. a) Along with I.A.No.16, the plaintiff has filed affidavit stating that, his father has filed the above suit for the relief of declaration and such other consequential reliefs in respect of the suit

schedule properties against the defendants. He is the son of Narayanappa. After the death of his father, he came on record as legal representative. Thereafter, the matter has been posted for his evidence. He has produced the documents and thereafter, the matter has been posted for his cross-examination. Further, he has stated that, on 2 or 3 occasions, he entered into the witness box. Due to his health problem, he lost his memory. Therefore, while cross-examining him, he could not answer properly due to his ill-health and the Court itself has not taken his cross-examination because of his irrelevant answers. Further, he has stated that, he suffered severe health problems since last six months. Due to ill-health problem, he lost his memory and he could not attend the case. Hence, it is necessary to discarded his evidence and permit him to appoint the GPA holder on his behalf. Hence, he prays to allow the application.

4. a) To this application, the defendant Nos.2 to 4 have filed their objection contending that, PW.1 has already given evidence and also on 09.03.2021, 13.07.2022 he was cross-examined by the defendants. Now, get over the admission, he has obtained some medical certificate dated 24.09.2021 contending that, he has lost his memory power as per the medical certificate issued by Dr.Shankar certifying that, due to the health reasons mentioned herein, he is unable to travel or attend crucial purpose from 15.01.2021, till date and advised follow up treatment for next two years. If that is so in the first place, he could not have brought the medical certificate before the Court on the date of cross-examination and he ought to have sought for discarding the same. On the other hand, he has appeared before the Court voluntarily and entered the witness box in the presence of his lawyer and answer all the questions. After understanding the same and then this Court

recorded the same. When that is the situation, the question of discarding his evidence does not arise at all. There is no medical certificate that as on the date of cross-examination, he was not competent to give evidence, if there were to be the case, he could not have come to the Court and answered all the questions. In addition to that, the reasons given in the application clearly goes to show that, he wanted to overcome his admission, which is not permissible under law. In addition to that, he application is liable to be rejected for suppression of material facts for non-production above medical certificate as on the date of the cross-examination if he were to be in possession of the same.

4b) It is further submitted that, looking from any angle except permit him to examine any other witness, this Court may not be able to discard the evidence which has been already recorded. If such an application is allowed, then they would achieve their object and these defendants' entire cross examination could be defeated and consequently, their right over the property would be affected since, the plaintiff would tutor the witness to suit his convenience on the questions, which have been put in and answered. Looking from any angle, such an application is not maintainable and liable to be rejected. Now, the Plaintiff is using the medical certificate as one of the instruments to suit his convenience and not for the reason, he could not able to attend. In addition to that, even today, he has only filed and sworn to an affidavit giving instructions to his lawyer which clearly establishes that, he is very well medically and mentally fit to give evidence. Hence, he prayed to reject the application.

5. Along with I.A.No.17, the Plaintiff has filed affidavit and stated that, his father as filed this suit for the relief of declaration and such other consequential reliefs in respect of the Suit Schedule

property against the defendants. The suit is pending before this court and now he is not in a position to come and give evidence due to health problems and his memory power is not good and also he is not in a position to come and depose before this Court due to severe health problems and his memory power is not good and he is not in a position to give answer before the Court due to the above said health problems. Hence, he could not personally appear before this Court, therefore, permit him to appoint his daughter Smt.Krupa D as a power of attorney holder on his behalf to represent and to depose before this Court. His attorney is aware of the facts and circumstances of the case. Hence, the plaintiff prays to allow the I.A.No.17.

6. The defendant No.1 has filed common objections to these IAs contending that, the application is not maintainable. Further, it is contended that, the medical certificate produced by the plaintiff is concocted to mislead this Court. It is the modes operandi of the plaintiff to escape from the truth elicited in his cross-examination. He has sensed that, the said evidence is against him and he may lose the case, by this apprehension, he has filed the application to delete his evidence. It is well settled law that, once the witness deposed before the Court and subjected for cross-examination, such evidence shall not be deleted at any point of time. As such, the Plaintiff abusing the Court by wasting the precious time of this Court. Hence, the defendant No.1 prays to reject the application.

7. The defendant No.2 to 4 have filed their separate objection to I.A.No.17 contending that, this application is filed to overcome the admissions part of the evidence given by the PW.1 and to redone the whole evidence to suit his convenience, which is not permissible under law. Since, PW.1 stated to be the LR of the

deceased Plaintiff and he can't further delegate power to his daughter to give evidence, that too after discarding his evidence. Since his daughter is not aware any of the facts of this case, she cannot be permitted to give evidence touching the merits of the matter. Hence, the defendant Nos.2 to 4 pray to reject the application.

8. Heard the arguments from both the sides. Perused the entire materials on record.

9. Now the points that arise for my consideration are as follows :-

1. Whether I.A.No.16 filed by the plaintiff under Section 151 of CPC, deserves to be allowed?
2. What I.A No.17 filed by the Plaintiff under Order 3 Rule 2A r/w Sec.151 of CPC, deserves to be allowed?
- 3 What order?

10. My answer to the above points are as under:

Point Nos.1 & 2 :- In the negative,

**Point No.3 :- As per the final order
for the following:**

REASONS

11. **POINT Nos.1 and 2:-** This is a suit filed by the plaintiffs against the defendants for Judgment and decree to declare that the Plaintiff is the absolute owner of the suit 'A' schedule property and also for direction to the 1st defendant to deliver the possession of suit B schedule property and further; to declare that the sale deed

22.02.2002 executed as if by the Plaintiff in favour of the 1st defendant in respect of suit B schedule property is not binding on him and also for declaration to declare that the sale deed 07.02.2003 executed by the 2nd defendant in favour of the 3rd defendant in respect of portion of suit A schedule property and the sale deed executed by Venkatamma in favour of the defendant No.4 in respect of portion of suit A schedule property and also the rectification deed dated 11.06.2004 are not binding on the plaintiff and also for permanent injunction restraining the defendants from causing interference to the plaintiff's peaceful possession and enjoyment over the suit schedule property.

12. In the instant case, original plaintiff Sri.Narayanappa has brought this suit against the defendants. During his life, he appointed his son Sri.Devaraj, as his SPA holder. The SPA holder has been examined as PW.1 during the lifetime of his father and also he has been partly cross-examined. After the death of his father, he is impleaded as LR of the original plaintiff Sri.Narayanappa. At this stage, the PW.1 has come up with these IAs to discard his evidence and for permission to appoint the GPA holder on his behalf on the ground that, due to his ill-health, he lost his memory power. To support his case, he has produced the medical certificate dated 24.09.2022, wherein, it shows that, due to ill-health, he is unable to attend the case from 15.01.2022.

13. The evidence of PW.1 discloses that, on 13.07.2022 he has appeared and offered for cross-examination and made certain admissions. Thereafter, PW.1 has come up with these IAs on the ground that, he has lost his memory. If really, he was suffering from mental disease and lost his memory from 15-1-2022 as per the medical certificate, he could not have appeared before this Court

and offer himself for cross-examination. Moreover, the medical certificate does not disclose when he has admitted to the hospital and when he was discharged from the hospital and no documents like ECG and examination reports are placed before this Court to know about the mental condition of the PW.1. After the part cross-examination, now PW.1 has contended that, he lost his memory, hence, he would not be able to appear before this Court and answer to the questions put by the defendants. This type of contention cannot be accepted. This shows that, to overcome his admissions and to fill up the lacuna through the G.P.A, PW.1 has filed these applications. If the applications are allowed, it will help the plaintiff to fill up his lacuna.

14. During the course of argument, the learned counsel for the plaintiff has relied upon the ruling reported in **2017 (4) KCCR page 3642** in the case of **Smt.Nagi Yane Devaki Kom Vs Harichandra Thaku Tandel and others**. I have gone through the ruling. The principle is not in dispute. This principle is not helpful to the case of the plaintiff since in that case, the plaintiff has not adduced evidence. Before her evidence, she given the GPA. Under the said circumstances, the Hon'ble High Court considering the health condition of the party, given permission to the plaintiff to give evidence through her son as a GPA, who is a member of the joint family.

15. Further, the learned counsel for the plaintiff has relied upon unreported ruling in **Civil Revision petition No.6642/2018 in Narasinga Rao Vs Gomathy B Kumar**. I have gone through the ruling. With due respect, this ruling is noway helpful to the case of the plaintiff since in that ruling, initially, the original plaintiff executed the General Power of Attorney in favour of one P.R.Mohan. Later,

the GPA filed his affidavit. After that, the defendant has challenged the said order and also sought to discard the chief-examination filed by the said GPA holder of the plaintiff. Under the said circumstance, the Hon'ble Telangana High Court has allowed the application and set aside the order passed by the trial Court. But in the instant case, situation is different since in this case, the SPA holder of the plaintiff has been examined as PW.1 and he has also been partly cross-examined and given admissions. After the admissions given by him, the SPA holder has come up with these IAs alleging that, PW.1 has lost his memory and incapable to give evidence. Under the said circumstances, the application filed by the plaintiff to discard the evidence of PW.1 is not maintainable. Accordingly, I answer **point Nos.1 and 2 is in the Negative.**

16. POINT No.2 :- In view of the above findings on point No.1, I proceed to pass the following :-

ORDER

I.A.No.16 filed by the plaintiff under Sec.151 of CPC, is hereby dismissed.

I.A.No.17 filed by the plaintiff under Order 3 Rule 2A r/w Sec.151 of CPC, is hereby dismissed.

(Dictated to the Stenographer directly on computer, ycorrected and then pronounced by me in the open court on this the **30th day of October, 2023**)

(SREENIVASA)

I Addl. City Civil & Sessions Judge,
Bengaluru.