

07.07.2022

Pltfs.	- K.N.S.
D1(a)	- S.K.
D2	- S.N.S.
D3	- N.K.S.
D4, 6	- Exparte
D5	- H.V.S.

■ For Orders

ORDERS ON I.A.No.16

The defendant No.5 has filed the above I.A.No.16 under Order 3 Rule 2(a) of C.P.C and seeks permission for appointment of his S.P.A. Holder to represent him in the above suit.

2. In support of I.A.No.16, the defendant No.5 has filed his affidavit by deposing on oath that, he has executed S.P.A. dated 02.12.2021 in favour of his attorney due to his - 5th defendant's personal inability to appear in the suit and also due to his cardiac and professional problems. He is having a good case on merits and therefore, under the said circumstances, he seeks appointment of his S.P.A. Holder.

3. The plaintiffs have filed objections to the I.A.No.16 of the defendant No.5. The main objections of the plaintiffs is that, the S.P.A. Holder of 5th defendant is not capable of answering the questions regarding fraud and therefore, the application is liable to be dismissed.

4. In support of I.A.No.16, a Xerox Copy of Notarized Medical Certificate dated 26.11.2021 is produced by the defendant No.5.

5. Heard both sides on I.A.No.16.
6. The following Points are arisen for consideration:

POINTS

1. Whether the defendant No.5 shows that, for the reasons stated in his application, he is entitled to give evidence through his S.P.A. Holder?

2. What Order?

7. The Court answer the above points as follows;

Point No.1 : In the Negative

***Point No.2 : As per the final order
for the following;***

REASONS

8. **Point No.1:-** The above suit is filed in the year 2006 by the plaintiffs for the relief of Declaration to declare the Sale Deed dated 05.11.2004 is not binding on their share and also for partition and separate possession of 2/5th share in the suit schedule property. The plaintiffs have pleaded in their plaint that, the defendant No.4 by impersonating as the defendant No.2 and by colluding with the defendant No.1 both of them have executed sale deed in favour of defendant No.5. Now, the above case is finally posted for evidence of defendant No.5 on 30.11.2021 and thereafter, the defendant No.5 has filed I.A.No.15 for the same relief as that of I.A.No.16 and he once again got dismissed his I.A.No.15 and in its stead, he filed the above

I.A.No.16 at the time of his evidence. The defendant No.5 has cleverly not stated anything in his I.A.No.16 that, he is seeking appointment of his S.P.A. Holder to give his evidence on his behalf. But, he has only stated that, he is seeking appointment of his S.P.A. Holder to represent him in the above case. Since the stage of the case is already posted for evidence of defendant No.5 and therefore, the I.A.No.16 is filed by him only for delegating his power of giving evidence through his S.P.A. Holder.

9. The Hon'ble Apex Court has held in a number of reported Judgments that, ***It is a settled legal proposition that the power of attorney holder cannot depose in place of the principal. Provisions of Order III, Rules 1 and 2 CPC empower the holder of the power of attorney to act on behalf of the principal. The word acts employed therein is confined only to acts done by the power-of-attorney holder, in exercise of the power granted to him by virtue of the instrument. The term acts, would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has performed any acts in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined. (See: Vidhyadhar v. Manikrao & Anr., AIR 1999***

SC 1441; Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217; M/S Shankar Finance and Investment v. State of A.P & Ors., AIR 2009 SC 422; and Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512).

10. Therefore, as held by the Hon'ble Apex Court, ***the General Power of Attorney Holder/Special Power of Attorney Holder cannot depose for the Principal in respect of a matter of which only the Principal can have personal knowledge.*** Admittedly, in the S.P.A. the defendant No.5 has not stated his relationship with the S.P.A. Holder and his attorney is shown as aged only 35 years. The plaintiffs are seriously alleging that, fraud was committed by defendants No.1 and 4 along with defendant No.5 in executing the registered Sale Deed dated 05.11.2004 in favour of defendant No.5. Therefore, as on the date of execution of registered sale deed in favour of defendant No.5 in the year 2004, the S.P.A. Holder was aged only 17 years and he is not supposed to know the transactions that took place at the time of said sale deed. It is also not possible for the Court to believe that, the S.P.A. Holder (aged only 17 years during 2004) has acted on behalf of defendant No.5 in respect of the said sale deed. The Issue No.6 is specifically framed by placing burden on the defendant No.5 to prove that, he is a bonafide purchaser of the Sy.No.36. Since, the plaintiffs are alleging fraud and misrepresentation against the defendant No.5 in colluding with other defendants, the I.A.No.16 appears to be filed by the defendant No.5 to evade his personal appearance in the witness box by fearing to face the cross-examination.

11. Therefore, by following the above cited judgments of the Hon'ble Apex Court, this Court holds that, the defendant No.5 did not show any valid reasons to permit him to examine his S.P.A. Holder on his behalf in adduction of evidence. Accordingly, the **Point No.1 is answered in the Negative.**

12. **Point No.2:-** For the above discussion,the Court proceed to pass the following:

ORDER

The I.A.No.16 filed by the defendant No.5 under Order 3 Rule 2 of C.P.C is hereby dismissed by imposing costs of Rs.2,000/- payable to the plaintiffs.

Case is posted finally for evidence of defendant No.5 and if the defendant No.5 did not appear and give his evidence on the next date of hearing, the suit will be posted for arguments.

Call on finally for evidence of defendant No.5 by:

**(MADHUSUDHANA D.K.)
Prl. Senior Civil Judge & JMFC.,
Devanahalli.**