

ORDER ON I.A. No.III

The applicant/ plaintiff has filed this I.A. Under Order 3 Rule 2(a) of C.P.C seeking to permit him to appoint her son by name Sri. Muniraju as her GPA on behalf of her to contest the above case.

2. In the affidavit filed along with this application plaintiff has sworn affidavit where in she is stated that, she is aged person and suffering from number of old aged ailments. Hence, she is not in a position to appear before this Hon'ble Court on all dates of hearing and hence permit him her son as his lawful attorney holder to contest the above case. Hence prayed for allow the application.

3. On the other hand defendant has filed objection to above I.A' and stated that, application filed by plaintiff is not maintainable either in law or on facts. Hence prays to reject the application.

4. Heard the arguments for both sides.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

1. Whether the application filed by plaintiff U/o. 3 rule 2(a) of C.P.C is deserves to the allowed?

2. What order?

6. My findings to the above points are as under:

Point No. 1 :In the Affirmative

Point No. 2 :As per order for the following:

REASONS

7. **POINT No. 1:** At the out set plaintiff has filed this suit for permanent injunction. On the other hand the defendants have filed objection to said I.A

8. It is settled principal law that plaintiff has to seek the permission to the Court to give the evidence on his behalf. No doubt Order 3 Rule 2 of C.P.C., not prohibited a party to appoint power of attorney on their behalf. However, the decision reported in **ILR 2015 Karnataka 635 between**

(Sajida Banu V/s. Halema Banu and Others) which reads as under.

CODE OF CIVIL PROCEDURE, 1908 - ORDER 3 Sub Rule (2) -
Appearances by recognized agent or by Pleader - A party could prosecute or defend the legal proceedings through a Power of Attorney Holder or even a Pleader.

HELD: (a) It is not obligatory on the part of the party to a litigation to appear in person, unless the law so requires. The party could prosecute or defend a legal proceedings through a Power of Attorney Holder or even a Pleader. Therefore, when the statute confers such a power on a party, it has to be honoured. The question of court granting permission to a party to prosecute the matter through a Power of Attorney Holder or a Pleader would not arise. However, the court cannot prevent a party from prosecuting the litigation or defending it through a Power of Attorney Holder or a Pleader. Only in some exceptional cases, such as the case arising under the Family Courts Act, where an Advocate cannot appear as a matter of right and can appear only on the permission granted by the Court, the party has a right to be represented by a Power of Attorney Holder or a Pleader.

ILR 2014 Karnataka between (R.Narasimha V/s. S.P.Sridhar)
which reads as under.

CODE OF CIVIL PROCEDURE, 1908 - ORDER 3 Rule 2 -
Permission sought by the plaintiff to represent in the court through his Power of Attorney Holder - Rejection of - Leave to prosecute the suit was refused by the Trial Court on the ground that the Power of Attorney Holder cannot depose to the facts of the case as they are not within his personal knowledge - Challenge to -

HELD: (a) The Trial Court has examined the matter as if the prayer in the application was to examine the Power of Attorney Holder as a plaintiff's witness. The approach is erroneous. It ought to have permitted the petitioner to prosecute the suit through his Power of Attorney Holder as it is permitted in law.

(b) There is no impediment in law for a party to prosecute his case through his Power of Attorney Holder. Rule 1 and 2 of Order III of the Code of Civil Procedure permit a Power of Attorney Holder of a party to appear, apply and act on his behalf in Court. This does not

ipso facto mean that an attorney- holder could be examined a witness in the case to give evidence or that he could address the court. Both these matters are regulated by the Indian Evidence Act, 1872 and the Advocates Act, 1961 respectively.

09. Hon'ble High Court not restricted power of attorney holder to deposed the evidence on behalf plaintiff. This case filed by the plaintiff for relief of permanent injunction, burden of proving the case is lies on plaintiff. If this application is allowed no harm will cause to the defendants he has opportunity to cross-examination of GPA holder. Hence, the application is allowed in interest of justice and equity. **Hence, I answer the point No.1 in Affirmative.**

10. POINT No. 2: In view of the reasons assigned above, I proceed to pass the following order.

ORDER

I.A. No.III filed by plaintiff U/o 3 Rule 2(a) of C.P.C. is hereby allowed.

Accordingly the GPA Holder is permitted to persecute the case on behalf of the plaintiff.

For plaintiff evidence by

**Prl. Civil Judge and JMFC.,
Devanahalli.**