

## **ORDER ON I.A. NO.VI**

The Petitioner has filed this Petition under Section 276 of the Indian Succession Act 1925 seeking Probate in respect of the 'Will' Dated: 30.10.2004 executed in his favour by Late Munishamaiah @ Munishamappa with respect to the petition schedule properties.

2. In the course of enquiry, the petitioner Sri.Basanna filed I.A.No.VI U/o III Rule 2-A of CPC., seeking permission to appoint Special Power of Attorney Holder to contest the petition. In the annexed affidavit, the petitioner has stated on oath that in this petition filed against the respondents seeking Probate he is not able to appear before the Court in person due to old age and lack of legal knowledge and therefore intends to conduct the proceedings through his Attorney Holder/Son. No harm or prejudice would be caused to the respondents if the application is allowed.

3. Objections are not filed by the Respondents No.1 and 2. However, their counsel had orally opposed the application.

4. By virtue of the above facts and circumstances, the following points arise for my consideration: -

1. Whether leave should be granted to the petitioner to conduct the Probate Proceedings through his Attorney Holder as prayed in I.A. No.VI U/o III Rule 2-A of CPC?

## 2. What Order?

5. I have heard the Learned Counsel for the Applicant and the Petitioner and perused the material on record.

6. My finding to the Points are as follows:

**Point No.1 : In the Affirmative.**

**Point No.2 : As per order.**

### **REASONS**

#### **Point No.1:**

7. Admittedly, the petitioner Sri.Basanna, aged 65 years as filed this petition against the respondents seeking Probate in respect of Will dated 30.10.2004 executed by his own father Late Munishamaiah @ Munishamappa. Due to lack of proper knowledge and due to his old age he is not able to personally appear before the Court and give evidence and conduct the proceedings. Therefore, he has given Special Power of Attorney nominating his son Manjunath.B., to conduct the proceedings in this case.

8. Order III Rule 2-A of CPC, permits a person to conduct the proceedings or give evidence through his Attorney Holder. Hon'ble Supreme Court in the case of ***Janki Vashdeo Bhojwani and another V/s Indusind Bank Ltd., and others, (2005) 2 SCC 217***, has held that Power to depose on behalf of the Principal in respect of acts done

by him in excersize of power granted by the instrument. It is also observed the said case that Attorney Holder cannot depose for principal in respect of matters of which only the principal can have personal knowledge and in respect of which only principal is liable to be cross examined.

9. This is a case were the petitioner is seeking probate in respect of Will executed by his father. Admittedly, the petitioner has no personal knowledge about the execution of the said Will and only his father, attesting witnesses and the Scribe will have personal knowledge thereof. Therefore, the Attorney Holder/Son of the petitioner can be permitted to conduct the proceedings and speak about the contents of the petition and other documents on behalf of his father/Principal by virtue of the Special Power of Attorney. *However, it should be borne in mind that he cannot depose for principal in respect of matters of which only his father /petitioner has personal knowledge and in respect of which only he is liable to be cross examined.*

10. As observed above, the respondents have not filed written objections to the application. No prejudice would be caused to them if the petitioner is permitted to contest the petition through his son/Attorney Holder. Consequently, I answer Point for consideration in the **Affirmative**.

**Point No.2:**

11. By virtue of the above discussion, reasons stated and finding given to Point No.1, the following is made;

**O R D E R**

I.A.No.VI filed by the petitioner U/o III Rule 2-A of CPC., is allowed.

*However, it should be borne in mind that the Attorney Holder cannot depose for principal in respect of matters of which only his father /petitioner has personal knowledge and in respect of which only he is liable to be cross examined.*

There is no order as to cost.

Sd/-

**(C. CHANDRASEKHAR)**

IV Addl. Dist., & Session Judge,  
Doddaballapura.