

O.S. 15/2021
ORDER ON IA NO.5

The applicant / D-7 has filed an application U/O 3 Rule 2(a) of CPC seeking permission to this applicant to act on behalf of his mother who is the D-7 herein as a power of attorney holder and to proceed with the case by allowing this application in the interest of justice and equity.

1. In support of this application, the applicant has sworn in his affidavit. It is stated that due to the age related ailments which the D-7 is suffering with, she also has got the eye sight problem and regular joint pain, she could not attend

the Court and to conduct suit proceedings, Therefore the applicant by name R. Chandrappa is none other than her own son having knowledge of family affairs of plaintiffs, and also acquainted with the facts of the case, so that he is appointed by her as her attorney holder.

2. Having heard on both the sides. It is found that the plaintiff has filed this suit against the defendants for the relief of partition and separate possession in respect of the suit schedule properties. Now, in the IA, it is prayed to permit the GPA Holder who is none other than his son to act and to continue with the proceedings as his attorney as per the General Power of Attorney to proceed with the case. The D-7 since aged woman, certainly, she is suffering

from ill-health due to old age problems and unable to proceed the case effectually. It is also found from the record, that the applicant is conversant with the facts of the case and to safeguard the interest of his family and his property as such he is appointed as a special power of attorney holder to proceed his case and if the said person is permitted to proceed the case no hardship will be caused to the other side. Hence, prays that allow the application.

3. In view of the application, objection and also observing the arguments advanced by the either side it reveals that according to Order 3 Rule 2(a) of CPC provides, that a recognized agents of parties by whom such appearances, applications and acts may be made or done, persons holding power of attorney authorizing them to make and do such appearances, applications and acts on behalf of such parties. In view of these provision of law it reveals that the party has right to appoint power of attorney authorizing to represent the case on behalf of the party.

That on perusal of the plaint cause title the age of the defendant No.7 is shown as 66 years and also perusal of the special power of attorney holder produced along with this application the age of the plaintiff is shown as 66 years. The applicant has submitted in the affidavit that his General power of attorney holder is having personal knowledge of the facts of the case and he has fully conversant with the facts of the case. Therefore, it is relevant to rely the decision reported in **ILR 2014 KAR (R. Narasimha**

Vs. S.P. Sridhar) wherein their lordship has held that:

(A) CODE OF CIVIL PROCEDURE, 1908 – ORDER III 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. Rules 1 & 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 as 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 Advocate Act, 1961 respectively.

4. In view of the above principles it clearly goes to show that if power of attorney holder is within his personal knowledge about the facts of the case of the plaintiffs and defendants under such circumstances, there is no bar even to permit him to be examined as witness, if he is appointed as a General power of attorney holder no hardship will be caused to other side on perusal of the contents of affidavit and also perusal of the General power of attorney produced before the court, for the above reason I proceed to pass the following:-

ORDER

The IA No.5 filed by the applicant U/O 3 Rule 2(a) of CPC is hereby allowed.

Having regard to the facts and circumstances of the case no costs is awarded.

(Dictated to the Court hall typist directly on the computer, typed by her, corrected by me and then pronounced in the Open Court on this the 05th December 2022)

For P/E. Call on: 02-01-2023

(Saravanan S.)
Senior Civil Judge & JMFC.,
Holalkere.