

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT: HOLALKERE.**

PRESENT: Smt. Prema Vasantrya Pawar
B.Com. LL.B.(Spl.)
Senior Civil Judge and JMFC,
Holalkere.

O.S. No.29/2018

Dated: 16th December 2020

Plaintiffs:

Smt. Bhagyamma.P. &
Another

Defendants:

Smt. Susheelamma &
Another

**(By Sri. B.R.R., Advocate) V/s. (D.1 and D.2 by Sri. K.S.V.,
Advocate)**

PARTIES TO IA NO.XI

Applicant:

P.G. Lingaraju
(Defendant No.1)

V/s.

Opponents:

Smt. Bhagyamma.P. &
Another
(Plaintiffs)

ORDER ON IA NO.XI

The learned counsel for defendant No.1 has filed an application U/O 3 Rule 2 R/w Sec.151 of CPC prays that permit to proceed the case through Special Power of Attorney Holder of defendant No.1 to do all necessary acts on behalf of her by allowing this application in the interest of justice and equity.

2. In support of this application the Special Power of Attorney Holder P.G. Lingaraju S/o Late Gusushanthappa has swearing his affidavit.

3. Per contra the learned counsel for plaintiffs have filed objection.

4. Having heard on both the sides. The following points will arise for my consideration:-

1) Whether the application filed by the defendant No.1 U/O 3 Rule 2 R/w Sec.151 of CPC is deserve to be allowed?

2) What order?

5. My answer to the above points is as under:-

Point No.1 : In the Negative
Point No.2 : As per final order
for the following:

REASONS

6. **Point No.1:-** The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession over the suit schedule property. After framing of issues the evidence on side of plaintiffs has been closed and now the case is posted for defendants evidence. Meanwhile the defendant No.1 filed the present application submitted that permit the Special Power of Attorney Holder to proceed the case on behalf of defendant No.1. The Special Power of Attorney Holder has swearing his affidavit submitted that defendant No.1 is his mother and he know the facts of the case. Further submitted that his mother is old age women and suffering from old age ailments like blood pressure, headache, knee pain etc., as such she is unable to appear

before the court to proceed the case and unable to walk, sit and stand properly as such his mother defendant No.1 executed a special power of attorney in his favour to proceed and conduct the above case. Hence, prays that allow the application.

7. Per contra the learned counsel for plaintiffs objected this application and contended that the application is not maintainable in law and the contents of affidavit are false and baseless. Further the plaintiffs have contended that this suit is filed against the defendants for the relief of partition and separate possession in respect of the suit schedule properties and the defendants have filed their written statement and the defendant No.1 is the proper person to lead her evidence. The defendant No.1 is escaping from her liability in order to give her evidence and the defendant No.1 has not produced any documents in support of her affidavit for appointing a Special Power of Attorney Holder to lead his evidence. Further contended that the Special Power of Attorney Holder has no sufficient knowledge about the case and the application filed by the defendant No.1 is liable to be dismissed in limine and further contended that the defendant No.1 filed the present application in order to give trouble to these plaintiffs. Hence, prays that to dismiss the application with exemplary cost.

8. 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 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 authorising them to make and do such appearances, applications and acts on behalf of such parties. In

view of these provisions of law it reveals that the party has right to appoint power of attorney authorising to represent the case on behalf of the party, if shown sufficient cause by producing cogent and probable documents with regard to the physical presence of the parties before the court to lead the evidence. In the instant case in hand the defendant No.1 has not swearing her affidavit annexed with the application. The court still not granted in a leave to proceed the case through Special Power of Attorney Holder and the affidavits sworn by the Special Power of Attorney Holder annexed with the application is not tenable. The defendant No.1 ought to have swear her affidavit and to show the sufficient cause regarding her absence and she has appointed a Special Power of Attorney Holder. The defendant No.1 has not at all shown any sufficient reasons for appointment of Special Power of Attorney Holder. On perusal of the contents of affidavit it is sworn by the Special Power of Attorney Holder as this court still not given permission to proceed the case but swearing the affidavit and stated that the defendant No.1 is her mother and due to suffering from old age ailments like blood pressure, headache, knee pain and could not appear before the court to proceed the case. In view of these contention of the affidavit not produced any single iota of document to show that the defendant No.1 suffering from old age ailments. Therefore without supporting documents mere stated in the affidavit is not satisfied to give permission to Special Power of Attorney Holder to proceed the case on behalf of defendant No.1. The present suit is for partition and separate possession as such if the defendant No.1 appear before the court and lead her evidence then it will help to the court, to determine the case on merit. Therefore there is no sufficient grounds in the

affidavit and not produced any supporting documents to show that defendant No.1 suffering from old age ailments. Therefore the application filed by the Special Power of Attorney Holder is not tenable in the eye of law. Hence, for the above reason point No.1 is answered in the Negative.

9. **Point No.2:-** For the above reasons, I proceed to pass the following:-

ORDER

The IA No.XI filed by the counsel for defendant No.1 U/O 3 Rule 2 R/w Sec.151 of CPC is hereby dismissed.

For the facts and circumstances of the case
no costs is awarded.

(Dictated to the Stenographer directly on the computer, typed by him, corrected by me and then pronounced in the Open Court on this the 16th day of December, 2020)

(Smt. Prema Vasantrao Pawar)
Senior Civil Judge & JMFC.,
Holalkere.