

ORDER ON IA NO. IV

Plaintiff/Applicant has filed I.A.No. III U/Order III Rule II R/w Sec.151 of CPC seeking permission of this Hon'ble Court to contest the suit through his GPA holder.

2. It is contended in the affidavit annexed with the application that the plaintiff has filed this instant suit against the defendants before this court for the relief of permanent injunction against the defendant. He further stated that, he is suffering from ill health due to old age and also due to ill health the doctors suggested him to take rest and not to travel from one place to another place. Hence, it is very difficult for him to attend before the Court on all dates of hearing and to represent the case and to lead his evidence and to attend for cross examination. Because of this reason he has given GPA to his wife by Name Rathnamma W/o Prabhakaraswamy. Hence on these set of grounds plaintiff

prays to allow the application and appoint his wife as her Power of Attorney holder to proceed with the case..

3. The counsel for defendants submitted no objection.

4. Heard the counsels appearing for the plaintiff and defendant.

5. The following points arise for my consideration.

Point No.1:- Whether the Plaintiff/Applicant can be permitted to represent her case through her recognized agent by allowing I.A. No.IV filed U/Or III Rule II r/w Sec. 151 of C.P.C

Point No.2:- What Order?

6. My findings to the above points are as under

Point No.1: In the Affirmative

Point No.2: As per the final order for following reasons:-

:REASONS:

7. **Point No.2:** The Plaintiff/Applicant has filed this instant suit against the defendant for the relief of Permanent Injunction praying to

restraining the defendants from obstructing, interfering, disturbing with the peaceful possession and enjoyment of the suit schedule property.

8. The Plaintiff/ Applicant has filed this application when the case is set down for his evidence. The Plaintiff/ Applicant in his affidavit has contended that, he cannot attend the court due to his ill health and personal inconvenience. he also stated that, he is not in a position to conduct the case due to his old age. He further stated that he has executed General Power of Attorney in favour of his wife Rathnamma W/o Prabhakaraswamy. who is well acquainted with the facts of the case and accordingly he prays to allow the application.

9. The Provisions of Order XVIII of CPC regulates the procedure and manner of order of examination of the witnesses, as a rule firstly the party to the proceedings has to examine himself, if for any reason it is not possible for the party to examine himself, with the permission

of the Court on behalf of such party a witness could be examined and out of turn the party can examine himself. Further, it is also not necessary in law that, always party to the proceedings should examine himself. The requirements of law insist only that, the party put forth his case to prove his material facts set up. The party without examining himself can establish his case if possible by examining the witness who are competent to testify, however in case where there is an onus placed on the party to discharge and if the facts required to be deposed are necessarily to be testified by the party in person in such situation, such a party runs the risk of facing adverse inference for non examination.

10. It is also open for the party to give evidence through Power of Attorney and such evidence would be a valid substituted evidence of the plaintiff. Ultimately, appreciation of the probative

value of the evidence and competence of the person testified is a matter that is to be tested in the course of the cross examination. Hence, I accordingly answer the point under reference in the Affirmative.

11. Point No.2: In view of my findings on the point No.1 I proceed to pass the following:

:ORDER:

Application filed by the Plaintiff/Applicant under Order III Rule II r/w Sec. 151 of CPC here by allowed on cost of Rs.100/-.

Consequently Plaintiff is permitted to represent and prosecute the instant case through his GPA holder.

For plaintiff evidence call on: 16.02.2024.

Sd/-

1st Addl. Civil Judge and JMFC,
Kadur.