

KACM510002172023



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT N.R.PURA, ITINERATE AT KOPPA**

Present: Smt.B.S.Rayannawar, B.A., L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 8th day of February 2024

OS.No.19/2023

BETWEEN:

Smt.Divya V.U.,

...Plaintiff.

V/s.

AND:

Sri.Udayakumar V.P. and others

...Defendants.

IA.NO.IX

BETWEEN:

Smt.Divya V.U.,

...Plaintiff/Applicant.

V/s.

AND:

Sri.Udayakumar V.P. and others

...Defendants/Opponents.



ORDER ON IA NO.IX

Learned counsel for plaintiff filed IA No.IX under Order 3 Rule 1 and 2 of R/w Section 151 of CPC seeking to permit the plaintiff to appoint general power of attorney holder to lead the conduct the case of plaintiff in the above case.

2. I.A. supported with the affidavit of GPA holder of plaintiff i.e., Soubhagya A. W/o Shivanna T.M. wherein stating that, she is the GPA holder of the plaintiff in the above case, the plaintiff is her daughter-in-law, now she is in abroad and as her husband is residing in abroad, she is studying her higher education in the abroad. The plaintiff is unable to attend the court regularly and also conduct the case properly, hence she has appointed her mother-in-law to conduct the above case and also depose before the court and to do all such other acts on behalf on her. If the



Power of Attorney is not permitted to conduct the case, the plaintiff will be put to great hardship and inconvenience. The mother-in-law of plaintiff is personally known all the facts of the case. Hence she has given the Power of attorney to mother-in-law. If the Power of Attorney is allowed there is no hardship is cause to the other side and he can cross examine the facts with respect the subject matter of the case. Hence this application is filed for the permission to conduct the case through Power of attorney. Hence prays to allow the application.

3. Application opposed by defendants by filling written objection contending that, the application filed by the plaintiff is not maintainable either in law or on facts. The alleged Power of Attorney holder cannot depose in place of the Plaintiff as held by the Hon'ble High Court in the Division Bench ruling reported in 2021(1) KCCR 596. If



the PA holder is allowed to lead evidence in place of the plaintiff, the defendants will be put to hardship as they will be deprived of an opportunity to confront the plaintiff in the cross examination in respect of material points involved in the suit. In such an event the defendants will be put to untold hardship. Hence even if for any reason the Court permits the plaintiff to represent her through PA holder, the Court may be pleased to direct the plaintiff to lead the evidence herself.

4. Further contended that the alleged power of attorney holder is not the family member of the defendants. She is the mother-in-law of the plaintiff. The case is regarding the alleged fraud in execution of the registered partition deed dated 3-4-2017. The alleged power of attorney holder is neither a party nor a witness to the aforesaid deed. At that time the plaintiff was un married.



Hence the alleged power of attorney holder is totally incompetent to depose anything regarding the partition deed dated 3-4-2017. The defendants in their written statement clearly took the contention that the husband of the plaintiff and his parents have set up the plaintiff to make false claim on the defendants. If the power of attorney holder is permitted to lead evidence, it will permit the parents of the plaintiff's husband to exploit the defendants further. If the plaintiff appears before the Court the truth may come. Hence defendants prays to dismiss the application.

5. Heard both respective counsels on I.A.No.IX. Learned counsel for defendants filed memo with citations reported in: 2021 (1) KCCR 596 (DB) (Mary Vs. John Bernard Mascarenhas Business and others), 2017 (5) KCCR 120 (Smt. A.C.Nagaveni and others Vs.



Smt.Akkamma and others), ILR 1996 KAR 2462 (Ninge Gowda Vs. Sahadevan).

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

POINTS

1. Whether the plaintiff made out grounds to permit her to appoint general power of attorney holder to lead and conduct her case?
2. What order ?
7. My findings to the above points are as under.

Point No.1: Partly in the Affirmative.

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

REASONS

8. **Point No.1:** The plaintiff filed present suit against the defendants claiming her 1/3rd share in suit schedule property, and for cancellation of partition deed dated 03.04.2017 and also to declare that the gift deed executed by 2nd defendant in favour of defendant No.3 is



not binding on the plaintiff as null and void and not binding on the plaintiff and for means of profit.

9. Now the present case is posted for plaintiff evidence. At this stage learned counsel for plaintiff filed present application to permit the plaintiff to appoint general power of attorney holder to lead and conduct the case of plaintiff.

10. The application not filed by the plaintiff, but filed by her GPA holder Smt.Soubhagya. The applicant/ GPA holder in her application stated that, the plaintiff is her daughter in law, she is in abroad, she is studying her higher education in the abroad. Plaintiff unable to attend the court regularly hence plaintiff appointed her as to conduct the above case and to depose before the court and to do all such other acts on behalf on her. Hence prays to allow the application.



11. Order III Rule 2 CPC deals with recognized agents, is a procedure provided to the parties to the list to enable them to authorize the power of Attorney. This provision cannot be construed to disentitle the power of attorney holder to depose on behalf of his principal.

12. Order 3 Rule 2 CPC states that recognized agents of parties by whom such appearances, applications and acts may be made or done are, amongst others, persons holding powers-of-attorney authorizing them to make and do such appearances, applications and acts on behalf of such parties.

13. Hence it is permissible for the parties to be represented by their GPA holders. Learned counsel for defendant also not disputing the same, but it his contention that if the PA holder is allowed to lead evidence in place of the plaintiff, the defendants will be put to



hardship as they will be deprived of an opportunity to confront the plaintiff in the cross examination in respect of material points involved in the suit. In such an event the defendants will be put to untold hardship. The alleged power of attorney holder is not the family member of the defendants. She is the mother-in-law of the plaintiff. The case is regarding the alleged fraud in execution of the registered partition deed dated 3-4-2017. The alleged power of attorney holder is neither a party nor a witness to the aforesaid deed. At that time the plaintiff was unmarried. Hence the alleged power of attorney holder is totally incompetent to depose anything regarding the partition deed dated 3-4-2017. The defendants in their written statement clearly took the contention that the husband of the plaintiff and his parents have set up the plaintiff to make false claim on the defendants. If the power



of attorney holder is permitted to lead evidence, it will permit the parents of the plaintiff's husband to exploit the defendants further. If the plaintiff appears before the Court the truth may come. Learned counsel for defendant also submits that even if for any reason the Court permits the plaintiff to represent her through PA holder, the Court may be pleased to direct the plaintiff to lead the evidence herself.

14. Admittedly in this case the GPA holder is none other than the mother in law of the plaintiff. The plaintiff disputing the partition deed dated 03.04.2017 and it is the contention of defendants that, at that time the plaintiff was un married, and the GPA holder of the plaintiff has no personal knowledge. Hence if the GPA holder permits to lead the evidence hardship caused to the defendants.



15. In support of his submission the learned counsel for defendants relied on citation reported in;

2021 (1) KCCR 596 (DB)

(Mary Vs. John Bernard Mascarenhas Business and others)

Held, - “C.CIVIL PROCEDURE CODE, 1908-Order 3 Rule 2-Power of attorney to give evidence-Whether a power of attorney holder appear on behalf of-To give evidence-No-Power of Attorney holder can be a witness in respect of what he knows and not in respect of what others has to say (case law discussed referred Man Kaur Vs. Hartar Singh and Vidyadar Vs. Manik Rao.”

2017 (5) KCCR 120

(Smt. A.C.Nagaveni and others Vs. Smt.Akkamma and others)

Held, - “A.EVIDENCE ACT, 1872-Section 118-Who may testify-Whether a power of attorney holder can tender evidence-Credibility-Discussed.

B. CIVIL PROCEDURE CODE, 1908-Order 3, Rule 1-POWERS OF ATTORNEY ACT, 1882-Section 2-Recognised agent-Relates to act done by P.A.holder in exercise of the power granted-He cannot depose for acts done by the principal regarding the matter to which the principal has the personal knowledge.”



16. Admittedly the GPA holder is mother in law of the plaintiff, and it is the contention of defendants that the husband of the plaintiff and his parents have set up the plaintiff to make false claim on the defendants. In this case the plaintiff is residing in abroad, hence it is the contention of GPA holder that plaintiff is unable to attend the court regularly and conduct the case. But where as it is the contention of defendant that plaintiff may appear through her PA holder, but direct the plaintiff to lead her evidence.

17. The Amendment of the evidence Act in the year 2000 followed by the Amendment of Civil Procedure Code in the year of 2002 have laid the primary foundation for enabling electronic recording of evidence by video conferencing to the produced as evidence in accordance with Section 65 B of the evidence Act.



18. The permissibility of recording evidence through video conferencing had been considered by the Hon'ble Supreme Court in State of Maharashtra V/s Praful B.Desai (2003) 4 SCC 601. Held-The evidence can be both oral and documentary and electronic recording which includes video conferencing. The law must adopt the change in society and should accept the new technology, can be met through video conferencing also.

19. In the present case the PA holder is mother in law of the plaintiff, may not having personal knowledge about the parents property of plaintiff, and defendants wants to confront some documents to the plaintiff, hence if the PA holder permits to deposed for plaintiff hardship caused to the defendants, plaintiff is a material witness. As we know the usage of technology is increasing day by day Hence evidence can be recorded through video



conferencing by virtual presence. The court could always resort to video conferencing though the medium of which plaintiff can appear through video conferencing appear through video conference, or skype, before the court. Hence to avoid multiplicity of proceedings, hence the evidence of witness is necessary to meet the ends of justice. Hence if the PA holder is not permitted to lead evidence no hardship will be caused to the plaintiff, on the other hand if the application is not allowed hardship caused to the defendants. Hence the plaintiff is permitted to appear through her GPA holder, but not permitted to lead the evidence as GPA holder of plaintiff. The plaintiff is direct to lead evidence herself. Hence in view of the above discussion **point No.1 answered partly in the Affirmative.**



20. **Point No.2:** In view of the discussions made above this court proceeds to pass the following:

ORDER

IA No.IX filed by the plaintiff under Order 3 Rule 1 and 2 R/w Section 151 of CPC is partly allowed.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 08th day of February, 2024)

Sd/-

(B.S.Rayannawar)

Senior Civil Judge and JMFC.,
N.R.Pura, Itinerate at Koppa.