

ORDER ON I.A.NO.II

The defendant No.2 has filed an application U/O.3 Rule 1 and 2 of CPC praying to permit him to proceed with the case through her GPA holder in the ends of justice and equity.

2. The reasons ventilated by the defendant No.2 in the affidavit accompanying application are that, defendant No.2 is suffering from ill-health and other old-aged problems, due to that reason she is not able to attend before the Court. Hence, she has appointed her son as her attorney holder by executing GPA in his favour. Hence, prayed to allow the application.

3. On the other hand, the defendants have not filed objection. Hence, objection taken as Nil.

4. Heard arguments.

5. After going through the application with affidavit, objection points arise for my consideration are ;

1. Whether the defendant No.2 has made out grounds to permit her to conduct this suit through her GPA holder?

2. What order ?

6. My answer to the above points are as under:

Point No.1: In the Affirmative

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

REASONS

7. Point No.1: The plaintiff has filed the instant suit for the relief of partition and separate possession and such other reliefs. Through this application, the defendant No.2 seeking permission to proceed with the suit through her GPA holder and she has also executed GPA in-favour of her son. The plaintiffs have not resisted the application by filing objection.

8. The Hon'ble **High Court of Karnataka** in 2014(4) **KCCR** page **3463** in between **Sajida Banu Vs. Halema Banu**, held that ***'there is no necessity to file the application u/o. 3 R.2 of CPC.'***

9. The proposition of law about the competence of a person to testify as a witness is governed by sec.118 of Evidence Act. Giving evidence before the Court of law is an Act within the meaning of the said provision. However everyone is not entitled or competent to give evidence as witness before the Court unless one should fulfill the requirements of the qualifications envisaged in sec. 118 of the Evidence Act. There is no expressed bar made in the provisions of CPC to debar the power of attorney or to authorized person to examine on behalf of the parties to the proceedings. Order 3 rule 2 (a) provides for

appointment of power of attorney to conduct the case.

10. The reasons ventilated by the defendant No.2 in the affidavit are that, due to her old-aged and ill-health she cannot appear before the Court. The aforesaid reasons is justifiable and it is in the Sphere and Ambit of Order III Rule 2 r/w Sec. 151 of CPC and also Sec.118 of Indian Evidence Act. It is pertinent to note that GPA holder is none other than the son of defendant No.2 and the plaintiffs cannot say that he has no personal knowledge about the facts of the case.

11. The law permits a party to the suit to appoint or authorize an agent to appear before the court on her behalf to prosecute the case. No prejudice will be caused to the plaintiffs, if the GPA holder to represent the suit on behalf of defendant No.2. In order to follow the principles of natural justice and to give fair opportunity to both the parties, it is just and proper to permit the defendant No.2 to prosecute this case through her GPA Holder. In the present case, the defendant No.2 is aged about 55 years, in that age there may be a chance of suffering from ill-health. The GPA holder is non other than the son of defendant No.2 and he has having knowledge about the facts of the case and the veracity of GPA can be testified at the time of judgment, not at this stage. Hence, in my opinion, the defendant No.2 has made out a ground to allow the

application. Hence, I answer **Point No.1 in the Affirmative.**

12. **Point No.2:** In view of my findings on Point No.1, I proceed to pass the following:

ORDER

The application filed by the defendant No.2 U/O.III R.2 read with Section 151 of CPC is hereby allowed.

The defendant No.2 is permitted to prosecute this suit through her GPA holder.

Call on for plaintiff evidence

by: 12-04-2023.

Prl. C. J. & JMFC., Honnali