

ORDER ON I.A.NO.III

The plaintiff has filed application Under Order III Rule 2 of CPC., praying to permit her to proceed with the present suit through her GPA holder.

2. The reasons assigned by the plaintiff in the affidavit accompanying application are that, she is age old person and suffering age old ailments and thereby she is now intend to appoint her husband as GPA holder in order to proceed with the present suit on her behalf. Further stated that, the GPA holder is non other than her husband and who has personal knowledge of the facts of the suit and he is competent to proceed with the suit on her behalf. Hence, prayed to allow the application.

3. On the other hand, the defendants filed objections stating that the application is not maintainable either on law or on facts and denied all the averments made by the plaintiff. It is further contend that, in the instant suit already plaintiff herself examined as PW.1 and got marked Ex.P.1 to 13 on her behalf. When the matter posted for further chief-examination of PW.1, by that time the plaintiff has filed this application with an intention to to drag on the proceedings of this court. It is further contend that,

the application filed by the plaintiff is not maintainable and same is liable to be dismissed with exemplary costs. Hence, prays to dismiss the application.

4. Heard arguments on both sides.

5. After going through the application with affidavit, objection points arise for determination of this Court:-

1. Whether the plaintiff has made out grounds to permit her to proceed with the present suit through her GPA holder?

2. What order ?

6. This Court has 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 suit is one filed for the relief of Specific Performance of Contract in respect of the suit schedule property. Through this application, the plaintiff has seeking permission to represent the suit through her GPA holder and she has also executed GPA in favour of her husband. The said application is mainly resisted by the defendant counsel on the ground that the plaintiff has already given the documents and also got marked, at this stage, the

plaintiff has filed the present application only with an intention to protract the proceedings. More over the GPA holder of plaintiff is non other than the husband of plaintiff.

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. Further 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 assigned by the plaintiff in the affidavit are that, due to the old age and age related ailment he cannot appear before the Court to proceed with the suit. The aforesaid reasons is justifiable and it is in the Sphere and Ambit of Order III Rule 2 r/w Sec. 151 of CPC. It is pertinent to note that GPA holder is none other than the husband of plaintiff. In such circumstance there is no bar to appoint GPA holder.

11. The law permits a party to the suit to appoint or authorize an agent to appear before the Court on her behalf to proceed with the suit. No prejudice will be caused to the defendant, if the GPA holder holder to proceed with the suit.

12. 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 plaintiff to proceed with the suit through her GPA Holder. In the present suit, the plaintiff is aged about 44 years, in that age there may be a chance of suffering from old aged ailments. The GPA holder is non other than the husband of plaintiff and he has having knowledge about the facts of the suit. Hence, this Court has opinion, the plaintiff has made out a ground to allow the application. Hence, this Court has answer Point No.1 in the Affirmative.

13. Point No.2: In view of findings on Point No.1, this Court has proceed to pass the following:-

O R D E R

The application filed by the plaintiff Under Order III Rule 2 R/w. Section 151 of CPC is hereby allowed.

The plaintiff is permitted to proceed with the present this suit through her GPA holder.

No order as to costs.

The evidence of PW.1 is expunged.

Call on for plaintiff evidence

Prl.C.J. & JMFC., Honnali

