

IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., DHARWAD.

PRESENT: SRI.ANAND S KARIYAMMANAVAR

B.A., LL.B(Hon's)

IV Addl. Senior Civil Judge
& J.M.F.C., Dharwad.

OS No.52/2021

Dated : 12th day of June 2025

Plaintiff/s : Savakka W/o Sankappa Danappanavar
(Since deceased by her LRs) & Another.

V/s.

Defendant/s: Kamalavva W/o Kallappa Hirasananvar.
And others.

PARTIES TO IA NO.XX

Applicant/s : Savakka W/o Sankappa Danappanavar
(Ori.Plff) (Since deceased by her LRs) & Another.

V/s.

Opponent/s: Kamalavva W/o Kallappa Hirasananvar.
(Ori.Defs) And others.

ORDER ON IA No.XX

The counsel for the plaintiff/applicant No.1(a) filed this application under Order III Rule 2 of CPC and sought to permit her to proceed with the case through her GPA holder.

2. The plaintiff/applicant No.1(a) filed her affidavit in support of this application and submitted that, she has filed this suit against the defendants for the relief of partition and separate possession and because of her age related ailments she is unable to attend the court proceedings, therefore she has executed GPA in favour of her son, thereby sought to allow the application.

3. On the contrary, the counsel for the defendants No.9 to 12 filed objection to the application and contended that, the application filed by the plaintiff/applicant No.1(a) is untenable in the eyes of law and when matter was posted for plaintiff evidence, the present application is filed only to protract the proceedings and plaintiff/applicant No.1(a) has not produced any document to show her illness, thereby sought to dismiss the application.

4. Heard both side on I.A No.XX and perused the material available on record.

5. Now the following points arise for my consideration.

1.	Whether the application filed by the plaintiff/applicant No.1(a) deserves to
----	---

	be allowed ?
2.	What order ?

6. My answers to the above points are as under.

Point No.1 : In Affirmative.

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

REASONS

7. **Point No.1:-** The plaintiff/applicant No.1(a) instituted this suit against the defendants for the relief of partition and separate possession of her legitimate share in the suit properties and it is the case of the plaintiffs that, the suit schedule properties are joint family properties of plaintiffs and defendant No.1 to 7 and when plaintiff/applicant No.1(a) demanded her share in the suit properties, but defendants refused to allot her share, therefore present suit came to be filed. However, defendants after their appearance filed written statement by denying the claims of the plaintiff and when matter was posted for plaintiff evidence, present application is came to be filed. On perusal of the material on record, the age of the plaintiff is 74 years and GPA holder is none other than the son of the plaintiff and as this suit is one for

partition and separate possession, obviously GPA holder of the plaintiff will be having knowledge of family and properties.

8. The counsel for the plaintiff has relied upon following decision:

1. 2025(1) KCCR 71 in between Smt.Sujata Vs.The Panchayat Development Officer, Gram Panchayat Shiggalli, Gadag District, wherein it held that, **Civil Procedure Code, 1908, Order 3, Rule 2 – The recognized agent of parties by whom such appearance, applications and acts may be made or done are – Power of attorney executed – Power of attorney holder filing an application seeking permission to lead evidence on behalf of the principal – The interim application seeking permission rejected without making any reference to the terms of power of attorney – order of rejection of the application challenged as bad non exercise of power vested with the Court has resulted in miscarriage of justice and the Power of Attorney Holder.**

2. Writ Petition No.22105/2012 (GM-CPC) in between Sajida Banu Vs.Halema Banu and others, wherein it held that, **“A party should be permitted to be represented by a Power of Attorney Holder or a Counsel as a matter of right. But a party should not, as a matter of right drag prosecution of the matter through a Power of Attorney Holder. Once a Power of Attorney Holder enters the witness box and gives**

evidence, whether that evidence has to be acted upon, whether it is a direct evidence or hearsay evidence, is to be decided by the Trial Court at the time of appreciation of the evidence. On the ground that the power of attorney holder has no personal knowledge of the case, he cannot be prevented from entering the witness box and from deposing”.

9. On perusal of the decision of **Hon’ble High Court of Karnataka in Bhimappa and others Vs. Allisab and others** reported in **AIR 2006 Karnataka 231** held that,

“There is no express bar made in the provisions of CPC to debar the Power of Attorney to be examined as a witness on behalf of the parties to the proceedings. Power of Attorney is a competent witness and is entitled to appear as such. His evidence cannot be refused to be taken into consideration on the ground that the parties to the suit i.e., plaintiff or defendant do not choose to appear as witness in the witness box. The question whether the General Power of Attorney Holder of a party can be competent witness on behalf of a party has to be answered in the light of Section 118 of the Evidence Act. The Power of Attorney Holder of a party, only on the ground that he holds the power of attorney, cannot be said to be in the category of persons who are incapable of being witness as provided by Section 118 of the Evidence Act. Whether such Power of Attorney Holder has personal knowledge about the matters in

controversy, may be a question which can be thrashed out by cross-examining him and if it is found that the Power of Attorney Holder has no personal knowledge about the facts in controversy, the evidentiary value of his deposition may be determined, but that has nothing to do with the competence of such a Power of Attorney Holder to depose before a Court or a Judicial Tribunal as a competent witness”.

Therefore, above citation aptly applicable to the present case on hand. Therefore, if the application is allowed no hardship will be caused to other side. Hence, for the above stated reasons, I have answered **point No.1 “in Affirmative”**.

10. **Point No.2:-** For the reasons stated while discussing **point No.1**, I proceed to pass the following:-

ORDER

IA No.XX filed by the plaintiff/applicant No.1(a) is hereby allowed.

The plaintiff/applicant No.1(a) is permitted to prosecute the case through her SPA holder.

(Dictated to stenographer, typed by her, corrected and then pronounced by me in the open court on **12th day of June 2025**)

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

For order
12-06-2025

(Order pronounced in the open Court vide separate order)

ORDER

***IA No.XX filed by the plaintiff/applicant
No.1(a) is hereby allowed.***

***The plaintiff/applicant No.1(a) is
permitted to prosecute the case through
her SPA holder.***

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

For plaintiff evidence, call on 03.07.2025.