

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

S.C. No.17/2025

Dated this the 20th day of January, 2026

Plaintiff/s : Shri. Lingaraj Pre-Boarding,
Shri. Jagadguru Gurusiddeshwara
Vidyarathi Nilaya and Shri.
Ulavappa Akki Vidyarthi Nilaya
Moorusavirmath it's sole Trustee
Shri. Gurusiddaraj Yogendra
Mahaswamigalu Guru Gangadhar
Rajyogendra Mahaswamigalu.

.Vs.

Defendant/s : Sri. Umesh S/o Fakirappa
Doddamani and others.

PARTIES TO I.A. No.III

Applicant/s : Shri. Lingaraj Pre-Boarding.

.Vs.

Opponent/s : Sri. Umesh S/o Fakirappa
Doddamani and others.

- i. Provision under : Under Order 3 Rule 2 of
which application is CPC.
filed
- ii. Relief sought for : Seeking permission to GPA
holder of the plaintiff to
represent and to participate
the suit on behalf of
plaintiff.

- iii. *The date on which : 27.10.2025
application is filed*
- iv. *Number of the : III
application*
- v. *The date on which : 11.11.2025
objections are filed
by different
opponents*
- vi. *The date on which : 20.01.2026
orders were passed
on the said
application*

ORDERS ON I.A. NO.III

The counsel for plaintiff has filed an I.A. No.III under Order III Rule 2 of C.P.C., seeking permission to GPA holder of the plaintiff to represent and to participate the suit on behalf of plaintiff.

2. *The defendant has filed objections to the said application.*

3. *I have heard the arguments canvassed by both counsel.*

4. *The following point is arises for disposal off the application.*

“Whether the reliefs sought by the plaintiff in application, can be granted ?”

5. *My finding to the above point in the Affirmative, for forgoing;*

REASONS

6. This is the suit filed by the plaintiff for eviction. The brief facts of the affidavit annexed to application is that, the plaintiff is Mata, and in order to represent the case on behalf of the plaintiff, a General Power of Attorney has been executed in his favour, authorizing him to represent and participate in the above said suit as mentioned in the GPA. It is further submitted that he is having well knowledge with regard to the subject matter of the suit and thus he is competent to represent the plaintiff in above case. Hence, it is just and necessary to accord permission for him to represent the plaintiff in the above case as GPA Holder, as otherwise the plaintiff will be put to much loss and injustice which cannot be compensated in terms of money on the contrary no loss or prejudice will be caused to the defendants. Hence, prayed to allow the application.

7. The objections of the defendant is that the application filed by the plaintiff is false, frivolous and vexations. The same is not tenable in law and deserves to be dismissed with costs. The contents of the affidavit filed in support of the application are not true and correct. The plaintiff claims that the plaintiff is a trust which was registered under the provisions of the Bombay Public Trust Act, 1950 and the suit property belongs to the said trust. The trustee is not entitled to delegate his duty or power of administration of the trust and its property to any person. The trustee of the plaintiff trust cannot file the suit through his power of attorney holder. The trust is created for the welfare of the beneficiaries of the trust and the trustee is in

a fiduciary capacity to administer the trust. Hence the trustee cannot execute power of attorney and delegate his powers to any person. The provisions of law does not permit the trustee to delegate his authority to any person without prior permission. It is further contended that the trustee of the plaintiff has not obtained any permission from the competent authority to delegate his authority by executing power of attorney. The plaintiff has not produced necessary documents to show that the trustee of the plaintiff trust is permitted to execute power of attorney.

It is further contended that the GPA holder is unaware of the facts of the case and is incompetent to depose on behalf of the plaintiff. The GPA holder has not personally handled or dealt or participated in the transactions with the defendant at any point of time. The GPA holder is only a manager of the plaintiff trust. The top noted suit is suit for eviction of the defendant for bonafide requirement of the plaintiff trust. The said necessity and bonafide requirement can only be stated by the plaintiff. The power of attorney is dated:10.04.2009 and the suit is filed in the year 2025. The plaintiff is not exempted from personal appearance under the provisions of Civil Procedure Code. The plaintiff only with an intention to harass the defendant and delay the proceedings has filed this frivolous application.

8. On perusal of the entire materials available on record it is noticed to the Court that the plaintiff has filed the present application seeking permission for his general power of

attorney holder to represent him and to conduct the proceedings in the suit for eviction.

9. The defendants have taken specific contention that the plaintiff is a trust which was registered under the provisions of the Bombay Public Trust Act, 1950 and the suit property belongs to the said trust. The trustee is not entitled to delegate his duty or power of administration of the trust and its property to any person. The trustee of the plaintiff trust cannot file the suit through his power of attorney holder. The trust is created for the welfare of the beneficiaries of the trust and the trustee is in a fiduciary capacity to administer the trust. Hence the trustee cannot execute power of attorney and delegate his powers to any person. The provisions of law does not permit the trustee to delegate his authority to any person without prior permission. It is further contended that the trustee of the plaintiff has not obtained any permission from the competent authority to delegate his authority by executing power of attorney. The plaintiff has not produced necessary documents to show that the trustee of the plaintiff trust is permitted to execute power of attorney.

It is further contended that the GPA holder is unaware of the facts of the case and is incompetent to depose on behalf of the plaintiff. The GPA holder has not personally handled or dealt or participated in the transactions with the defendant at any point of time. The GPA holder is only a manager of the plaintiff trust. The top noted suit is suit for eviction of the defendant for bonafide requirement of the plaintiff trust. The said necessity and bonafide requirement can only be stated by

the plaintiff. The power of attorney is dated:10.04.2009 and the suit is filed in the year 2025. The plaintiff is not exempted from personal appearance under the provisions of Civil Procedure Code. Therefore, the GPA holder cannot effectively prosecute the matter and the application deserves to be rejected.

10. Order 3 Rule 1 and 2 of CPC specifically provide that any party to a proceeding may appear, apply or act through a recognized agent or a duly constituted attorney. Representation through GPA holder for conducting proceedings is permissible, except for acts that are required to be done personally by the party. In this regard the Hon'ble Supreme Court in Janaki Vashdeo Bhojawani Vs. Indusind Bank Ltd., reported in (2005) 2 SCC 217, it is observed that the GPA holder can conduct the case on behalf of the principal, however a GPA holder cannot depose regarding matters within the personal knowledge of the principal, particularly where fraud, execution, limitation or intention are in issue. In such circumstances, the plaintiff must enter the witness box.

Hence, the legal position is clear that appointment of GPA holder for conducting the case is maintainable. The question of who will depose on facts relating to knowledge of the sale deed, limitation or fraud is a matter of evidence, and does not affect the maintainability of the application. The defendants objection that the trustee cannot execute power of attorney and delegate his powers to any person and the trustee of the plaintiff has not obtained any permission from the competent authority to delegate his authority by executing power of

attorney and the GPA holder is unaware of the facts of the case and is incompetent to depose on behalf of the plaintiff and plaintiff must personally speak about limitation and knowledge may be correct at the stage of evidence, but it does not bar the plaintiff from being represented through a GPA holder for the purpose of prosecuting the case, filing applications and attending proceedings. Therefore, the objection of the defendant is not sustainable under law and it goes to evidentiary value at the time of full fledged trial, not to the maintainability of the application. Therefore, this Court is of the opinion that the application filed by the plaintiff deserves to be allowed. Hence, I answer the point No.1 in Affirmative and I proceed to pass the following:

ORDER

I.A. No.III filed by the plaintiff under Order III Rule 2 of C.P.C. is hereby allowed.

The GPA holder of the plaintiff shall be permitted to conduct the case on behalf of the plaintiff.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **20th day of January, 2026**)*

sd/-

(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.