

**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE,
HUBBALLI**

PRESENT

Sri. Sanjay P. Gudagudi, M.A., LL.B.
II Addl. Senior Civil Judge,
Hubballi

O.S. No. 96/2014

Dated this day of 11th December, 2020

PLAINTIFF : Miss Supriya D/o Chandrakanth Kathare

(By Sri M.S.B., Advocate)

-Vs-

DEFENDANT : Smt. Sushilabai w/o: Nagosa Jadi

(By Sri P.V.S., Advocate)

Parties to the I.A. No. 13

Applicant : Smt. Sushilabai w/o: Nagosa Jadi

-Vs-

Opponent : Smt Surpiya D/o Chandrakanth Kathare

**ORDER ON THE I.A. No. 13 FILED U/s 151 OF C.P.C. BY THE
DEFENDANT**

The instant interim application has been filed by the defendant seeking discharge of the evidence of her PA holder, who

deposed as DW-1 and to permit her to lead evidence. Objection is filed for rejection of the application.

2. In the annexed affidavit of the application, the defendant has stated that the suit claim is for recovery of money. The defendant is having personal knowledge about the case and therefore, she intends to personally attend the case and to discharge the power of attorney to avoid technical hurdles. Her counsel advised her that in view of a decision of the Hon'ble Apex court it is incumbent on her part to give evidence personally. No hardship would be caused to the plaintiff if she is permitted to depose her evidence. Hence, it is prayed to discharge the evidence given by DW-1 and to permit her to enter into the witness box.

3. In reply, the plaintiff, through the objection, has resisted the plea of the defendant by contending that PA holder of the defendant has already deposed as DW-1 and got marked documents. As such, DW-1 has to face cross-examination. In stead of subjecting DW-1 for cross-examination, the defendant

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has moved the present false application. Since the GPA is not yet terminated, the application is premature one. The defendant and the GPA are colluding with each other. Hence, it is sought to reject the application with costs.

4. Heard on both sides and perused the records.

5. The following points have arisen for consideration.

1. Whether the defendant is entitled to depose her evidence without subjecting her GPA holder, who already deposed as DW-1, for cross-examination?

2. What order?

6. The points have been answered as under;

Point No. 1 : In the Affirmative

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

: REASONS :

7. **Point No. 1** : The present suit has been filed for the relief of recovery of money against the defendant by the plaintiff. The facts remain undisputed that the GPA holder of the defendant has already deposed his examination-in-chief as DW-1 vide

affidavit. When the suit was posted for cross-examination of DW-1, the defendant has made up her mind to lead the suit on her own by not pressing the GPA executed in favour of DW-1. As such, the defendant has sought under the present application for discharge of the examination-in-chief of DW-1 and to permit her to depose the evidence.

8. The defendant intends to lead her evidence by not pressing the evidence of DW-1, which was deferred for cross examination by the plaintiff. Under the circumstances, a question arises here that whether the defendant can appear before the Court on her own to give evidence though her GPA has already deposed evidence in the suit. The plaintiff, through his objection, has categorically contended that the defendant can not depose evidence unless she keeps DW-1 present for cross-examination.

9. Herein, it is pertinent to glance at **Rule 2 of Order 3 of Code of Civil Procedure**, which empowers the parties to the suit to be represented by their recognized agents. The said provision of law reads as under:

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The recognized agents of parties by whom such appearances, applications and acts may be made or done are

(a) persons holding power-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties.

10. Thus, a plain reading of the provision of law would reveal that parties to the suit can be represented by their recognized agents like power of attorney holders. Though any party to the suit is represented by his agent, his or her position as the plaintiff or the defendant remains intact. The GPA holder can only be considered as an agent of the party, but he cannot be considered as party to the suit.

11. The **Rule 3 A of Order 18 of Code of Civil Procedure** permits the party to the suit to appear before the court to give evidence. The said provision of law reads thus;

Where a party himself has chosen to appear as a witness, he shall appear before any other witness on his behalf has been examined, unless the court for the reasons to be recorded permits him to appear as his own witness at a later stage.

12. In a decision passed in **WP No.15890/2016 (P.V Anand Ram V/s Mis Anasuya D/o Dr.H.S.Mohanrao)**, the Hon'ble High Court of Karnataka has held that *agent always acts in the name of principal and any act or thing done by such agent on the strength of power of attorney would be as effective as done in the name of principal. With such observation, the Hon'ble High Court in that case discussed as under:*

In the instant case plaintiff having authorized her mother to tender evidence as her power of attorney as thereafter sought to tender her evidence as a witness. If it were to be so, she cannot be prevented from tendering evidence and if the evidence of PW-1 is to be construed as one without authority it can be definitely brought to the notice of trial court at the time of arguing the matter on merits as already noticed herein above.

13. With regard to the case on hand, though the GPA holder of the defendant has already deposed his examination in chief as DW-1, the defendant wants to give her evidence in the suit. In the referred decision supra, the plaintiff executed power of

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attorney in favour of her mother and her mother had already deposed before the trial court. At that time, when the plaintiff approached the court seeking permission to give evidence on her own, the defendant objected the same. When the matter went up to the Hon'ble High Court, it was held that the plaintiff cannot be prevented from tendering evidence, though the plaintiff authorized her power of attorney to tender evidence. In view of the decision relied supra, the defendant herein cannot be prevented from tendering her evidence, though she authorized her GPA holder to give evidence or to conduct the suit.

14. With regard to the case on hand, the suit claim is for recovery of money. The alleged money transaction is held between the plaintiff and the defendant. As such, the plea of the defendant that she alone has personal knowledge about the alleged transaction is considerable. In a decision reported in **(2010) 10 SCC 512 (Man Kaur (dead) by Lrs V/s Hartar Singh Sangha)**, the Hon'ble Apex Court has held as under:

(C) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealing of the principal, of which principal

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alone has personal knowledge.

15. Herein, it is the specific claim of the defendant that since she has personal knowledge about the case, she intends to depose evidence. Under such circumstances, in view of the decision relied supra, the evidence of the GPA holder of the defendant, who deposed as DW-1, can not be considered as relevant to determine the matter in dispute. Such evidence of DW-1 is worth to discard rather to pursue DW-1 to undergo for cross-examination. Since the defendant does not want to keep DW-1 present for cross-examination, his examination-in-chief would be liable for discard. If the defendant gives evidence, the plaintiff would get an opportunity to cross-examine her. As such, no hardship would be caused to the plaintiff if the plea of the defendant under the application is entertained. Therefore, the point No.1 is answered in **Affirmative.**

16. **Point No. 2 :** That for the reasons discussed supra, the following

: ORDER :

The I.A. No. 13 filed U/s 151 of CPC by the defendant is allowed.

The defendant is permitted to depose her evidence.

The examination-in-chief of DW-1 is expunged.

No order as to costs.

(Typed on laptop by me; corrected and order is pronounced in the open Court on the 11th day of December, 2020).

(SANJAY P. GUDAGUDI)
II Adnl. Senior Civil Judge
Hubballi

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11.12.2020

For Order

(Order pronounced in the open court,
vide separate order)

: O R D E R :

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