

COMMON ORDER ON IA NO. 2 TO 4

The power of attorney holder of defendant No.8 has filed IA No.2 U/O 9 Rule 7 R/W 151 of CPC seeking order of this court to set aside ex parte order.

2. The Power of attorney holder of defendant No.8 has filed IA No.3 U/O 3 rule 2(a) R/W 151 of CPC seeking permission of this court to appear and participate in the court proceedings on behalf of defendant No.8.

3. The power of attorney holder of defendant No.8 has filed IA No.4 u/s 151 of CPC seeking order to set aside the order dated 06-03-2024 placing the matter for arguments.

4. These three applications are inter linked with each other based on same material facts, hence these applications are taken together for common discussion.

5. To support the applications the power of Attorney holder of defendant No.8 by name Shivakumar S/o Veerabhadrayya Kundagol has sworn to the affidavit and stated that, the defendant No.8 is aged about 83 years, hence, he could not appeared in the present matter. Therefore, his absence has been recorded by the court and placed ex parte. There is no deliberate intention of defendant No.8 in remaining absent before this court, hence it is require to set aside

the ex parte order. It is also stated by the GPA holder of defendant No.8 that, the defendant No.8 suffering from extreme old age and he cannot appear before this court due to his old age disease like blindness and also suffers from weakness of his body. Therefore, the defendant No.8 has executed Power of Attorney in favour of him and same may be accepted. The power of attorney holder of defendant No.8 has also stated that, this being a suit for partition and separate possession and valuable rights are involved in the matter, hence he may be permitted to participate in the proceedings by setting aside order dated 06-03-2024 the matter placing arguments.

6. Along with all these applications the Power of Attorney Holder of defendant No.8 has produced original power of attorney dated 27-05-2024, the vakaklat nama on behalf of defendant No.8. and the written statement on behalf of defendant No.8.

7. Learned Advocate appearing for plaintiff has submitted that, these applications may be considered by imposing heavy costs on defendant No.8. The learned Advocate for plaintiff has also submitted that, the defendant No.8 has willfully neglected and refused to take summons of this court which constrained the plaintiff to take substitute service by publishing summons in the news paper. Therefore, in order

to compensate it heavy costs may be imposed as to protect right of the plaintiff.

8. Heard learned Advocate for Power of Attorney Holder of defendant No.8.

9. Perused the materials of this case.

10. The points that arose for my considerations are as hereunder:-

POINTS

1. Whether the Power of Attorney Holder of defendant No.8 has made grounds to allow the applications?
2. What order?

11. My answer to the above said Point No.1 is in the Affirmative and for Point No.2 as per final order for the following:-

REASONS

12. Point No.1:- To the applications there is no counter filed by the plaintiff but his submission is that, the applications may be considered by imposing heavy costs on defendant No.8. No doubt that, Order 9 Rule 7 of CPC provides for setting aside ex parte order at any time of proceedings having its own facts and circumstances of the matter. It appears on perusal of the materials of this case the plaintiff has taken substitute service to the un-served defendant No.8. It is the contention of the

plaintiff that, the said defendant No.8 willfully neglected to take summons of this court. In this regard the order sheet of this case reveals that, the summons to the defendant No.8 un-served as addressee absent and meanwhile the plaintiff has taken substitute service. Therefore, there is no any part of act of defendant No.8 to avoid the summons of this court.

13. The Power of Attorney holder is seeking permission of this court seeking appointment of Power of Attorney holder to defendant No.8. In this regard it is sworn to the affidavit that, the defendant No.8 is aged about 83 years, and he is unable to attend every hearing of this matter. In this regard one can easily expect that, a person having 83 years of age is unable to attend every date of hearing. In this regard Order 3 Rule 2(a) of Civil Procedure Code provides for the recognized agents of parties by whom such appearance, applications and acts may be done or made are persons holding Power of Attorney authorizing him to make and do such appearance, application and acts on behalf of such parties. Under the circumstances there is no bar to appear the Power of Attorney Holder on behalf of defendant No.8 who is aged about 83 years and the Power of Attorney Holder is none other then the son of defendant No.8. Therefore, being son of defendant No.8 the Power of Attorney Holder

having conversant with all the material facts of the case. Therefore, in the considered opinion of this court there is no impediment to appoint the Power of Attorney Holder in the present matter.

14. Since the defendant No.8 wanted to place his written statement and in order to decide all the real dispute in between the parties and in order to reach logical end of the litigations it is just and necessary to recall the order dated 06-03-2024 placing the matter for final arguments. The law of provides for recall of order before passing judgment in the matter and as such this matter is now posted for arguments.

15. As to compensate the right of the plaintiff in the matter it is just and necessary to impose costs of Rs. 2,000/- on defendant No.8 which suffice justice to the both parties.

Therefore considering all these aspects, I answer **Point No.1 in the Affirmative.**

16. Point No.2:- In view of my above said reasonings on Point No.1, I proceed to pass the following,

ORDER

The Applications IA No.2 to 4 filed by the Power of Attorney Holder are hereby allowed on costs of Rs.2,000/-.

The Order placing defendant No.8 ex parte is here by recalled.

The Power of Attorney Holder of defendant No.8 is hereby permitted to participate in the proceedings on behalf of defendant No.8.

The Order placing the matter for arguments is hereby recalled.

Resultantly, the written statement of defendant No.8 is taken on record.

Issues by 12-06-2024.

Prl. Civil Judge and JMFC, Gadag