

ORDER ON I.A. NO.3 U/o 3 RULE 2(A) OF C.P.C.

This application is filed by the applicant seeking permission to give evidence and to conduct the case on behalf of plaintiff as G.P.A. Holder. This application is supported by an affidavit sworn by applicant.

2. On the other hand objection filed by the defendants.

3. Heard both sides. Perused the materials on record.

4. It is submitted by the applicant is that, plaintiff is his father in law and plaintiff is the permanent resident at Mettupalyam, Coimabatore District, Tamilnadu Stage. The plaintiff was age old person and unable to move and conduct the case and it is difficult to travel to Channarayapatna. Hence, the plaintiff executed the GPA dated 15-12-2015 in his favour to give evidence and to conduct the case. Hence, prays to allow the application. Applicant also produced GPA executed by the plaintiff in his favour.

5. On the other hand, the defendants filed objection stating that, the application is not tenable. On 07-01-2016 he was present in the Court. The defendants also seen the plaintiff is physically and mentally fit and he is capable to appear and to give evidence. Further it submitted that, the allegation made by the plaintiff in the present suit necessitate his personal presence as witnesses, since personal knowledge of facts need to be traversed by the defendants during the plaintiff's cross examination. Any verification provided by the constituted GPA holder-agent/applicant as a witness, would fall under the ambit of hearsay evidence and cannot be read in evidence in a Court of law, as pronounced by the Supreme Court of India. Further it is submitted that, the defendants in his suit need necessarily to cross examine the plaintiff who alone has personal knowledge of the matter raised in the present suit, and therefore the applicant/GPA holder can either depose on his personal knowledge not can he be cross-examined on those facts which are to the personal knowledge of the plaintiff-Principal. Hence, they prays to reject the application.

6. The defendants also relied upon the citation reads as follows;

- 1. AIR 2014 SC 630 (A.C Narayanan Vs., State of Maharashtra & Ant.,)**
- 2. AIR 2005 SC 439 (Janke Vashdeo Bhojwani & Anr., Vs. InduInd Bank Ltd & Ors.,)**
- 3. (2010) 10 SCC 512 (Man Kaur (dead) by LRs. Vs., Hartar Singh Sangha)**
- 4. AIR 2015 SC 882 (Vinit S. Rao Vs., M/s Essen Corporate Services Pvt. Ltd.,)**
- 5. Bar Council Rules concerning “Rules on an advocate’s duty towards the Court” – Rule 10. Not appear in matters of pecuniary interest.**

7. The application filed by the applicant seeking permission to conduct the case and to give evidence on behalf of plaintiff. Since, he is age old and he cannot come to the Court regularly from Mettupalyam. On the other hand defendant strongly objected to allow the application on the ground that the averments made in the plaint is with in the personal knowledge of plaintiff. Hence, on behalf of principle GPA holder cannot be deposed.

8. On perusal of the plaint the suit is filed for bare injunction. In a suit for bare injunction lawful possession and alleged interference has to be proved by plaintiff. Whether the applicant has the knowledge of case or not, at this stage Court cannot be decided because it is premature stage. Hence, the contention of the defendant is not sustainable.

9. The defendants also submits that, applicant is in advocate and he cannot give evidence which is against to the professional ethics. It is true that, applicant is an advocate. Further it is pertinent to note that, application is the son in law of plaintiff. Hence, the contention of defendant cannot be accepted. Further on perusal of the citation produced by the defendant is not applicable at this stage. Because the facts and circumstances discussed in those citations are not applicable to the case on hand at this stage.

10. On perusal of record it is to be noted that, the plaintiff was age old of 84 years, he is residing at Mettupalyam, due to his old age he cannot travel long way to the Channarayapatna to attend the Court regularly. Taking into the said facts and circumstances I am of the opinion that, even application is allowed no prejudice will be caused to the defendants. Hence, in the interest of justice and equity it is just and necessary to allow the application. Hence, I proceed to pass the following;

:- ORDER :-

I.A No.3 filed by the applicant Under Order 3 Rule 2(A) of CPC is here by allowed.

Sri. R. Murali Babu is permitted to conduct the case and give an evidence on behalf of plaintiff.

For plaintiff evidence 04-06-2016.

(M.S. Shashikala)
Prl. Civil Judge & J.M.F.C.,
Channarayapatna.

