

KAHV300016802021



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C AT HANGAL**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Senior Civil Judge & JMFC.,
Hangal.

Dated this the 04th day of June, 2022.

OS No.63/2021

Plaintiffs:

1. Sri.Narasingappa Chavan,
S/o Sahadevappa Chavan,
Aged 63 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri District.
2. Smt.Sundrawwa Hanumanahalli,
W/o Ramappa Hanumanahali,
Urf-Sundrawwa Chavan,
D/o Sahadevappa Chavan,
Aged 66 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri District.
3. Smt.Nagawwa Jadhav,
W/o Shanmukhappa Jadhav,
Urf- Nagawwa Chavan,
D/o Sahadevappa Chavan,
Aged 57 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri District.

-Vs-

- Defendants:
1. Sri.Shankarappa Chavan,
S/o Mahadevappa Chavan,
Aged 66 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district.
 2. Sri.Ishwarappa Chavan,
S/o Mahadevappa Chavan,
Aged 64 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district.
 3. Sri.Maruti Chavan,
S/o Mahadevappa Chavan,
Aged 55 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district.
 4. Sri.Ramachandrappa Chavan,
S/o Mahadevappa Chavan,
Aged 50 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district.
 5. Smt.Neelawwa Shilke (Arera),
W/o Hanumantappa Shilke (Arera),
Urf.Neelawwa Chavan,
D/o Mahadevappa Chavan,
Aged 61 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district, Now R/at Devi-Hosur,
Haveri Taluk and District.
 6. Smt.Renuka Khandenavar,
W/o Parasappa Khandenavar,
Urf.Renuka Chavan,
D/o Mahadevappa Chavan,
Aged 58 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,

Haveri district, Now R/at Hirebana,
Near Shanu-Bhogra Flour Mill,
Lakshmeshwar, Shirahatti Taluk.

7. Smt.Rukminibai Bandi,
W/o Rajappa Bandi,
Urf.Rukmini Chavan,
D/o Mahadevappa Chavan,
Aged 56 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district, Now R/at Bommanahalli,
Hangal Taluk, Haveri District.
8. Smt.Devakka Allalli, W/o Hanumantappa
Allalli, Urf.Devakka Chavan,
D/o Mahadevappa Chavan,
Aged 53 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district, Now R/at S.M.Krishna
Nagar, House No.686, Davanagere,
Davanagere District.
9. Sri.Basavantappa Chavan,
S/o Ishwarappa Chavan,
Aged 85 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri District.

(Died on 21.05.2021, Legal heirs brought
on record as per Order IA No.I, dated
11.11.2021.)
- 9(a). Smt.Heerabai Jadhav, W/o Prabhudev Jadhav,
Urf- Heerabai Chavan, D/o Basavantappa
Chavan, Aged 55 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district, Now R/at Boodyala Village,
Kundagola Taluk, Dharwad District.

- 9(b). Smt.Yallawwa Manjappanavar,
W/o Kallappa Manjappanavar,
Urf- Yallawwa Chavan, D/o Basavantappa
Chavan, Aged 52 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri district, Now R/at Adavisomapura
village, Shiggaon Taluk, Haveri District.
- 9(c). Sri.Manjunath Chavan,
S/o Basavantappa Chavan, Aged 48 years,
Agriculturist, R/at Haranagiri,
Hangal Taluk, Haveri District.
- 9(d). Smt.Lalitha Marathe, W/o Suresh Marathe,
Urf- Lalitha Chavan, D/o Basavantappa
Chavan, Aged 45 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri District, Now R/at Shivajinagar,
Haveri, Haveri Taluk and District.
10. Sri.Pandappa Chavan, S/o Hanumantappa
Chavan, Aged 55 years,
Agriculturist, R/at Haranagiri,
Hangal Taluk, Haveri District.
11. Sri.Vasappa Chavan, S/o Hanumantappa
Chavan, Aged 52 years,
Agriculturist, R/at Haranagiri,
Hangal Taluk, Haveri District.
12. Sri.Shivappa Chavan, S/o Hanumantappa
Chavan, Aged 50 years,
Agriculturist, R/at Haranagiri,
Hangal Taluk, Haveri District.
13. Sri.Parasappa Chavan, S/o Hanumantappa
Chavan, Aged 49 years,
Agriculturist, R/at Haranagiri,
Hangal Taluk, Haveri District.

14. Sri.Lakshmappa Chavan,
S/o Hanumantappa Chavan,
Aged 47 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri District.
15. Sri.Ramachandrappa Chavan,
S/o Hanumantappa Chavan,
Aged 45 years, Agriculturist,
R/at Haranagiri, Hangal Taluk,
Haveri District.

ORDERS PASSED ON IA NO.IV AND V

The learned counsel for the plaintiffs filed IA No.IV and V under Order 3 Rule 2(a) R/w Section 151 of CPC on behalf of the plaintiffs to permit them to proceed with the case through their special power of attorney holder.

2. Both the applications are supported with the affidavits of the plaintiffs and in the affidavits it is stated that, all the three plaintiffs are aged persons and they are suffering from aged ailments. It is difficult for them to regularly appear before the court. Hence, they thought it fit to appoint their attorneys to conduct their case in the court. Hence, prayed to allow the applications. Along with the applications the plaintiffs have produced the original Special Power of Attorneys.

3. After filing of the applications there was no objection raised by the defendants. Perused the entire case papers. Perused the entire case papers. The plaintiffs have

filed the suit against the defendants seeking the relief of partition and separate possession of their legitimate share in the suit schedule properties. The defendants appeared but not chosen to file the written-statement and the case was posted for plaintiffs evidence and at that stage the plaintiffs approached this court with the above said applications under Order 3 Rule 2(a) R/w Section 151 of CPC stating that, they may be permitted to proceed with the case through their SPA holders. Plaintiffs No.1 and 3 have appointed jointly the son of the 1st plaintiff as their attorney and the 2nd plaintiff has appointed her elder son as her attorney. As per the cause title plaintiff No.1 is aged 63 years, plaintiff No.2 is aged 66 years and plaintiff No.3 is aged 57 years. The reasons assigned by the plaintiffs cannot be ruled out.

In this regard this court would like to rely upon the decision of Hon'ble High Court of Karnataka reported in:

ILR 2015 KAR 635

**Between Sajida Banu V/s Halema Banu and others
Wherein Hon'ble High Court of Karnataka has held
that:**

"It is not obligatory on the part of the party to a litigation to appear in person, unless the law so requires. The party could prosecute or defend a legal proceedings through a Power of Attorney Holder or even a pleader. Therefore,

when the statute confers such a power on a party, it has to be honored. The question of court granting permission to a party to prosecute the matter through a Power of Attorney Holder or a pleader would not arise. However the court cannot prevent a party from prosecuting the litigation or defending it through a Power of Attorney Holder a pleader. Only in some exceptional cases, such as the case arising under the family courts act, where an advocate cannot appear as matter of right and can appear only on the permission granted by the court, the party has a right to be represented by a Power of Attorney Holder or a Pleader.

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 as to be acted upon whether it is direct evidence or hearsay evidence, is to be decided by the trial court at the time

appreciation of the evidence. On the grounds that, the power of attorney holder has not personal knowledge of the case, he cannot be prevent from entering witness box and from deposing. Provision of orders 3 unables a party to appear, file application or act in a court personally without engaging a counsel and all such acts can also be performed by a recognized agent if the party executes a Power of Attorney in favour of such agent, this can also be done by the pleader who is duly authorized. The only exception is if under any law, the party has to to appear in persons then neither the pleader nor the Power of Attorney can appear”.

4. In this case also all the three plaintiffs have appointed their special power of attorney holders in order to conduct the suit. The plaintiffs have produced original Power of Attorney. As per the contents of the same there is specific power given to them to conduct this case. Therefore, this court comes to the conclusion that, the applications needs to be allowed. Accordingly, this court proceeds to pass the following:

ORDER

IA No.IV and V filed by the plaintiffs under Order 3 Rule 2(a) R/w Section 151 of CPC are hereby allowed.

Accordingly, the plaintiffs are permitted to represent and proceed with the suit through their respective special Power of Attorney Holders.

Sd/-
(Anitha)
Senior Civil Judge and JMFC,
Hangal.