

ORDER

Vide this order, I shall dispose off an application filed by the plaintiff praying to permit him to appoint General Power of Attorney holder to prosecute the case on his behalf.

2. In the application is averred that the plaintiff has filed the suit against defendants for the relief of partition and separate possession. The case is posted for plaintiff's evidence. The plaintiff is suffering from various ailments and as such unable to appear before the court to adduce evidence. Thus, he had executed special power of attorney in favour of her relative to represent this case and adduce evidence on his behalf. It is further averred that if the said application allowed no hardship and in justice will be caused to be defendants and she has right to cross examine the applicant. On these grounds to allow the application.

3. On the other hand the defendants have filed reply to the application.

4. I have heard the learned counsel for the plaintiff and the learned counsel for the defendants and perused the records.

5. The Hon'ble High Court of Karnataka has an occasion to consider the similar situation where the court below had rejected the application seeking permission to prosecute the case by the GPA or SPA holder. In W P No.26773/2013 (GM-CPC) DD 30.8.2013 this Court has held as follows after referring the decision of the Supreme Court in Man Kaur v. Hartar Singh Sangha (2010) 10 SCC 512 and the decision in Suraj Lamp & Industries (P) Ltd., (2012) 1 SCC 656, as follows

"9. In view of the above, the order of the trial court is liable to be set aside as it is contrary to Rules 1 & 2 of Order III of the Code of Civil

Procedure and it is accordingly set aside. The application of the petitioner filed before the trial court to prosecute his suit through his power of attorney holder is allowed. No order as to costs".

6. Further in W P No.3466/2014 (GM-CPC) DD 2.7.2014, Hon'ble High Court of Karnataka referred the decision in R Narasimha vs., S P Sridhar, reported in ILR 2014 Kar. 84 and AIR 2005 SC 439 (Janki Vashdeo Bhojwani & another vs., Indusind Bank Ltd., & others) and held as follows:

"4. In view of the law laid down by the Supreme Court and reiterated by this Court in the aforesaid judgment, in my opinion, the Court below ought to have granted permission to the special power of attorney of petitioner-defendant to conduct the case on his behalf. In other words, it is open to the special power of attorney to appear, apply and act on behalf of the petitioner-defendant in O S No.620/2009. In so far as adducing oral evidence is concerned, the petitioner cannot examine his son as special power of attorney, though it is open to examine him as a witness like any other witness. It is also open to the petitioner-defendant to examine any other witness in support of his case."

7. So far as the evidentiary value of the depositions of the attorney holders, it is relevant to refer the decision of the Hon'ble Supreme Court in Janki Vashdeo Bhojwani v. Indusind Bank Ltd., reported in (2005) 2 SCC 217. In Para-13 of the said judgment, it is stated as follows:

"13. Order 3 Rule 1 and 2 Code of Civil Procedure empower the holder of power of attorney to 'act' on behalf of the principal. In our view the word 'acts' employed in Order 3 Rules 1 and 2 Code of Civil Procedure confines only in respect of 'acts' done by the power of attorney holder in exercise of the power granted by the instrument. The term 'acts' would

not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some `acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined".

8. In *Man Kaur (dead) by LRs. Vs., Hartar Singh Sangha*, reported in (2010) 10 SCC 512, it is stated as follows in Para-18:

"18. ...It was held that the word `acts' used in Rule 2 of Order 3 Code of Civil Procedure does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the Court, a commission for recording his evidence may be issued under the relevant provisions of Code of Civil Procedure."

9. Therefore, it is clear so far as prosecution of the case by the G P A or S P A Holder on behalf of the principal, there is no difficulty, the GPA or SPA holder is entitled to prosecute the case on behalf of the principal. But so far as giving evidence on behalf of the principal, it is subject to evidentiary value as is made clear in the decision of *Janki Vashdeo Bhojwani's* case referred to supra. It is also made clear that mere non production of medical documents on record to show the ill health of the plaintiff is not a ground to reject the present application. In

the circumstances, this application succeeds. Accordingly I proceed to pass the following

ORDER

I.A. No.VIII filed by the applicant under order III Rule 2 of CPC is allowed and no order as to the cost.

In the result, the applicant is permitted to appoint his GPA holder and prosecute the matter through his GPA holder.

For P/E

Put up 3.00 PM,

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the 28th day of July 2021)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

Plaintiff GPA holder present and examined herself as PW1. She filed affidavit in lieu of her chief examination and got marked Ex.P1 to Ex.P29.

Sh. BLT prays time for further chief examination of PW1, deferred at his request.

Call on 02.08.2021.

Senior Civil Judge & J.M.F.C
H.D.Kote