

**IN THE COURT OF CIVIL JUDGE AND JMFC,, JEWARGI
AT JEWARGI.**

**Present:- Sri.D.Ramesh, B.AL., LL.,B.
Civil Judge and JMFC, Jewargi.**

Dated : This the 30th day of July, 2021

O.S.No.96/2016

Nabisab : Plaintiff

(By Sri.P.K., Adv.,)

And

**Syed Hussain and Others : Defendants
(D1 to D7 By Sri.B.B., Adv)
(D8 Exparte)**

I.A No.5

Shahabera : Applicant/GPA of plaintiff
D/o Nabisab,
Aged about : 32 years,
Occupation: Household and Coolie,
R/o Mudban K, Post Mudbal,
Jewargi, Dist: Kalaburagi.

V/s.

Syed Hussain and Others : Opponents/Defendants

ORDERS ON IA-5

The Power of Attorney Holder of plaintiff by name Shahabera D/o Nabisab has filed the application U/o 3 rule 1 R/w 151 of CPC.

2. The brief averments of the affidavit filed in support of the application are as follows:-

That, Shahabera is the General Power of Attorney Holder and daughter of plaintiff. Her father is suffering from hard hearing impairment, as result he is not in possession to attend before the Court and thus he empowered to prosecute the case on his behalf by executing registered Power of Attorney. Therefore, it is just and proper to allow the application by according permission to prosecute the case on his behalf. If the application is allowed no prejudice or harm would cause to other side and if not allowed the rights so far involved in the immovable property would be deprived and it leads to multiplicity of litigations. Hence prays to allow the application.

3. On the other hand the defendant No.1 to 7 have filed objection to the application and contended that the application filed by the plaintiff is not maintainable in the eye of law and liable to be rejected. The present application is filed by attorney holder to give evidence on behalf of plaintiff, that too after chief-examination and partly cross-examination of plaintiff which is not permissible in the eye of law. The attorney holder is not competent witness to give evidence on behalf of plaintiff, as plaintiff alone has personal knowledge as to earlier proceedings of suit property which took place among the plaintiff, 8th defendant and father of defendant no. 1 to 7. If really plaintiff is suffering from ill health his partly cross examination may be

recorded by appointing court commissioner. The allowing of application amounts to discarding the evidence of plaintiff which is not permissible in the eye of law. The medical records are created one to get the mercy of the Hon'ble court. Hence prays to reject the application.

4. Heard the arguments. Perused the records.

5. The points that arise for my consideration are as follows:-

Point No. 1:- Whether the applicant proves that the application filed by her deserves to be allowed?

Point No.2 :- What order?

6. I answer the above points as follows:-

Point No.1 :- In the Negative,

Point No.2 :- As per final order, for the following,

REASONS

7. **Point No.1:-** The plaintiff has filed the suit for partition, separate possession and declaration against the defendants in respect of suit property. After framing the issues the plaintiff himself examined as PW1 and got marked the documents at Ex.P.1 to 128. Thereafter he tendered himself for cross-examination. Accordingly on 27-08-2019 he has been cross-examined partly, and on the request of counsel for defendant deferred further cross-examination of PW1. At that stage the P.A holder of plaintiff by name Sahabera D/o Nabisabi

filed the present application and sought permission to prosecute the matter and give the evidence on behalf of the plaintiff.

8. In the application the Power of Attorney Holder of plaintiff stated that her father plaintiff is suffering from hard hearing impairment as result he is not in a possession to attend before the court hence he has empowered her to prosecute the case on his behalf. The defendants are objecting the said application by contending that Power of Attorney Holder cannot be permitted to give evidence on behalf of plaintiff because already plaintiff has been examined and cross-examined partly. If she is permitted to give evidence on behalf of plaintiff it amounts to discarding the evidence of plaintiff. Further the Power of Attorney Holder is not competent witness to give evidence on behalf of the plaintiff, as plaintiff alone has personal knowledge as to earlier proceedings of the suit property which took place among the plaintiff, 8th defendant and father of defendant No.1 to 7. Further contending that if really plaintiff is suffering from ill health his partly cross-examination is recorded by appointing court commissioner .

9. Before going to discuss on the application it is pertinent to refer the judgment reported in ILR 2015 Kar. 635 between Sajida Banu Vs. Halema Banu and Others. Wherein Hon'ble High Court of Karnataka held that, Power of Attorney Holder can give evidence as the matter of right. Therefore the objection of the defendant that the P.A holder cannot depose for

the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be examined is not sustainable. It is well settled principles of law that the P.A Holder of principal can depose only in respect of those acts which were done by him or in respect of which he has personal knowledge. Therefore it is left to the wisdom of party who intended to examine through Power of Attorney Holder. But the other objection of defendants are to be looked into. Because as rightly contended by the defendants already the plaintiff has examined himself as PW1 and got marked documents and even he has been cross-examined partly. Such being the case the Power of Attorney Holder of plaintiff cannot give evidence on behalf of the plaintiff. Up course she can give evidence independently as PW2. But she cannot stepped into the shoes of PW1. Further the say of the Power of Attorney Holder that her father i.e., plaintiff is suffering from hard hearing impairment and hence he is enable to attend before the court does not considerable. As discussed above he has been cross-examined partly. If at all he has been suffering from hearing problem why he has given evidence and tendered for cross-examination partly is best known to him. Further as defendants rightly contended that if he unable to attend the court he can cross-examine further by appointing a court commissioner. There is no bar to examine the witness by appointing a court commissioner. Under such circumstances the Power of Attorney

Holder at the stage cannot be permitted to stepped into the shoes of PW1. Hence, I answer the Point No.1 in the Negative.

10. Point No.2 :- For the above reasons I proceed to the pass the following :-

ORDER

I.A.5 filed by the plaintiff U/O 3 Rule 1 of C.P.C. is hereby dismissed.

In the facts and circumstances of the case no order as to cost.

(Dictated to the stenographer, transcribed by him and corrected by me, then pronounced in the open court dated this the 30th day of July, 2021)

(D.RAMESH)
Civil Judge & JMFC,
Jewargi.