

IN THE COURT OF Prl. CIVIL JUDGE AND JMFC.,
SOMWARPET.

Present:

Sri, K.GOPALA KRISHNA,

B.A.L., L.L.B.,

Prl. Civil Judge & JMFC., Somwarpet.

Dated: 25th Day of March, 2024.

O.S.NO. 22/2022.

Plaintiff : Sri H.M.Girish,

V/s

Defendants : Smt. Thungabhadra
and Others.

ORDERS ON IA. NO.VII.

The Applicant/G,PA holder filed IA No. VII U/o. III Rule 2(a) R/w section 151 of C.P.C., seeking permission of this court for appointment to him, as a power of attorney holder to continue the suit on behalf of the plaintiff.

2. The applicant submitted that he is the son of plaintiff and also power of attorney holder. The applications are supported by the affidavits of the GPA holder stating that the plaintiff always suffering from illness and not to move about due to old age infirmities. And he take rest and not able to attend the court regularly. Further he stated that he is producing the original power of attorney dated:26.02.2024 with list executed by plaintiff in favour. Therefore, he has executed power of attorney in favour

of applicant to continue the suit and representative him in the present suit. In the facts and circumstances of the case and grounds urged by the Applicant in support of affidavits, it is just and proper to permit to appoint applicant to continue the suit. In this case the application may allowed very necessary if the application may dismissed will be caused to the heavy loss injury to the plaintiff. in case the application may allowed no hardship caused by the defendant and prays to allow this application.

3. On the other hand the defendants filed detail objection in this application and contended that the present application not maintainable either law or facts and the present application averments all are false and created by the plaintiff. It is submitted that the plaintiff himself has already be examined-in-chief long back from entering the witness box to face the cross-examination. Even on the day when the personally present within the court when the case was called for hearing, but even on that date also, he refrained from entering the witness box without any reasons. solely with a view to avoid facing the cross-examination, the plaintiff is avoiding to enter the witness box and sending some one else as his proxy. and filed this application and the GPA holder no aware the fact of the case. Hence the plaintiff is necessary to appear before the court to conduct the case. The plaintiff given false contents taken in the application. Hence the

present application is not maintainable. Hence he prays to dismiss the IA application on heavy cost.

4. On basis of the application, plaint and documents and objection filed by the defendants the following points that would arise for my determination;

1. Whether the plaintiff has made out grounds for allowing the applications?

2. What order?

5. My findings to the above points are as under:

Point No.1:: In the ***Affirmative***

Point No.2:: As per my final order for the following;

::REASONS::

6. **Point No.1::** This suit is filed by the plaintiff against the defendants for the relief of Permanent Injunction in respect of the suit properties .

7. The applicant submitted that he is the son of plaintiff and also power of attorney holder, the applications are supported by the affidavits of the GPA holder stating that the plaintiff always suffering from illness and not to move about due to old age infirmities. And he take rest and not able to attend the court regularly. Further he stated that he is producing the original power of attorney dated.26.02.2024 with list executed

by plaintiff in favour. Therefore, he has executed power of attorney in favour of applicant to continue the suit and representative him in the present suit. In the facts and circumstances of the case and grounds urged by the plaintiff in support of affidavits, it is just and proper to permit to appoint applicant to continue the suit. In this case the application may allowed very necessary if the application may dismissed will be caused to the heavy loss injury to the plaintiff. in case the application may allowed no hardship caused by the defendant and prays to allow this application.

**8. 2005(2) SCC 2017 Janaki Vasudev
Bojawani and another V/s Industrial bank.**

The Hon'ble High Court of Bombay ordered and opinion as follows order III rule I and II of CPC enforce the holder of power of attorney to act done by the power of attorney holder in excise of power granted by the instrument. The terms act would not include deposing in place on instead of the principal. In other words if the power of attorney holder as rendered some acts. In pursuance of he may depose for the principal in t of such acts but he cannot depose for the principal for the act done by the principal and not by him. Similarly he cannot deposed for the principal in respect of the matter of which only principal is entitled to be cross examination.

9. Heard. Perused the applications and the power of attorney executed by the plaintiff Sri H.M.Girish in favour of A.G.Yogesh S/o H.M.Girish, Aged about 49 years, Occ:Agriculture, R/o:Siddapura Village, Shanivarasanthe Hobli, Somwarpet Taluk. The applications are supported by the

affidavits of the GPA holder stating that plaintiff was suffering from some illness, to his old age and plaintiff was in health person and he was not able to appear before the court regularly. Further applicant stated that he is producing the original power of attorney dated 26.02.2024 with list executed by plaintiff in favour of Sri.A.G.Yogesh. Therefore, he has executed power of attorney in favour of GPA holder to continue the suit and representative him in the present suit. In the facts and circumstances of the case and grounds urged by the plaintiff in support of affidavits, it is just and proper to permit the plaintiff to appoint Sri.A.G.Yogesh to continue the suit and in this case the GPA Holder filed IA No.VII under order III rule 2 of CPC prays to permit to appoint a GPA holder. Perused the entire record the plaintiff filed this suit against the defendants for the relief of permanent injunction in respect of suit property in bearing Sy.No.15/8A measuring 3 cents situated at Alur village, Shanivarashante hobli, Somwarpet taluk. Thereafter written statement filled by the defendants court framed issues. The plaintiff himself examined as PW1 and got marked Ex.P1 to Ex.P9 documents on 4/2/2023. Their after plaintiff regularly absent before the court. The GPA holder is the son of the plaintiff submitted that the plaintiff is aged person he was not well and could not move about due to old age infirmities and ill health. and the plaintiff aged about 74 years he seafaring old age

deceased. in case the present GPA holder to appear before the court and lead the evidence no hardship caused by the other side and also the side given sufficient opportunity to cross examination of GPA holder. My opinion is the present application is maintainable and the plaintiff given sufficient reason to allow this application and GPA holder can be continue the case. Hence, I answer point No.1 in the ***Affirmative.***

10. Point No.2:: In view of the reasons assigned above, I proceed to pass the following;

::ORDER::

IA No.VII filed by the Applicant/G.P.A Holder under order III Rule 2(a) R/w section 151 of C.P.C. hereby allowed.

The plaintiff is permitted to appoint Sri.A.G.Yogesh as power of attorney holder to continue the suit on his behalf as prayed for and also it is permitted to appear before the court. And give evidence on behalf of plaintiff.

For plaintiff evidence

[Dictated to the Typist directly on computer and then corrected by me and thereafter pronounced in the open court on this the 25th day of March 2024]

Sd/-

[K. Gopala Krishana]
Prl. Civil Judge & JMFC,

Somwarpet.