

ORDER ON I.A.5 U/O. 3 RULE 2 (A) OF CPC.
READ WITH SECTION 151 OF CPC.

The GPA holder of the plaintiff has filed I.A. under Order 3 Rule 2(A) of CPC seeking leave of the Court to permit the GPA holder to come on record on behalf of the plaintiff to prosecute the case on his behalf and to give evidence.

2. The defendant No.5 has filed objections.

3. Heard the arguments and perused the pleadings and materials placed on record.

4. The point that arises for consideration is as follows:-

“Whether the power of attorney holder can be permitted to participate the suit on behalf of the plaintiff?”

5. The finding on the above point is in the affirmative for the following:-

REASONS

6. Original notarized GPA is produced along with the memo. The grounds urged in the accompanying affidavit by the GPA holder of the plaintiff is that the plaintiff is his father, he is aged and suffering from ill-health and he is taking treatment and as such, she is unable to attend the Court on each and every hearing date and hence, he has executed SPA in favour of deponent of the affidavit and prayed to allow the application.

7. The objection of the defendant No.5 is that the plaintiff has not filed any medical certificate for his ill health as alleged and on false ground the present application is filed and prayed to dismiss the application.

8. It is well settled that the plaintiff has got a right to defend the suit through PA holder, but such a right does not extend to giving evidence before the Court. The PA holder deposing on behalf of his principal cannot be considered as if the words of PA holder are

exactly the one deposed by the party to the suit. In other words, the PA holder will be considered only as a witness in the suit, but not as a party to the suit. The evidence of PA holder cannot partake the nature of evidence of a party, unless the very PA holder himself is a party in his individual capacity. Acceptance of his ocular testimony would depend upon his personal knowledge regarding the dispute. That is a matter of appreciation of evidence. In view of this principle, how the case has to be prosecuted or defended is left to the discretion of each and every individual, who would participate in the suit. It is up to his own volition as to how he would participate in the suit in which he/she is a party. How to prove the disputed aspect and how to defend the disputed claim, in accordance with law, is left to the discretion of each every individual, in this adversarial system of dispensation of justice. Court cannot compel any of the party to examine any particular witness for proof of any particular dispute. Similarly, Court cannot

compel any party to enter into witness box to substantiate the pleadings put forth by him/her. A party cannot compel the opposite party to be his witness or to appear as a witness. If at all the presence of a party was absolute necessity under the facts and circumstances of the case; and if such a party abstains from entering the witness box, then adverse inference can be drawn against the said party, if drawing of such adverse inference is warranted under the circumstances of the case.

9. Granting leave to depose or refuse is not necessary. Fact remains that it is up to the party concerned to take a decision in this regard. Each party would be bound by the costs and consequences upon taking decision as to conducting himself in the suit.

10. Regarding the law governing power of attorney, the decision of *Hon'ble High Court of Karnataka in WP 26773/2013* is relevant, wherein the Hon'ble High Court of Karnataka has observed as follows:

“Whether a party to a proceeding in court could be represented by his P.A. holder is the question that needs to be answered in this writ petition.

The answer is obviously in the Affirmative. Whether a P.A. holder could be examined as a witness in the case is altogether a different matter...

There is no impediment in law for a party to prosecute his case through his P.A. holder. Rules 1 and 2 of Order III of the CPC permit a P.A. holder of a party to appear, apply and act on his behalf in court. This does not ipso facto mean that an attorney holder could be examined as a witness in the case to give evidence or that he could address the court A P.A. holder of a party can be examined as a witness like any other witness, if he is competent in law to testify to the existence of non-existence of any fact in issue in any suit or proceeding or of such other facts as are declared to be relevant under the provisions of the evidence act, if such facts are within his personal knowledge, but he cannot appear as a witness in the capacity of that party i.e., himself as the Plaintiff or the Defendant. When and to what extent a P.A. holder could give evidence is explained by the Supreme Court in Man Kour Vs., Hartar Singh

Santha (2010-10 SCC 512)..... The application of the Petitioner filed before the trial court to prosecute his suit through his P.A. holder is allowed.”

11. Keeping the above law in mind now let me consider the necessity to grant the leave prayed for by the plaintiff. The power of attorney holder is said to be the son of the plaintiff. It is also mentioned that the said son is fully conversant with the facts of the case. Whether he is fully conversant or not cannot be considered at the stage of considering the present application. It is up to the plaintiff as to how to conduct the case on his side and whom to examine on his behalf. It is true that the evidence of power of attorney holder cannot be considered as evidence of a party. The acceptability of the evidence of any witness depends upon the personal knowledge of the witnesses regarding the facts deposed by him. Therefore, at the cost of the repetition, it is stated that as it is the burden of the plaintiff to prove his case pleaded by him, when the law enables to prosecute/defend the suit through

power of attorney, it is proper to grant leave prayed for. It is up to the plaintiff to decide as to whether she would examine himself to prove her contentions or whether he would examine only witnesses (power of attorney holder or some one else), as it is he who will face ultimate consequences. Subject to this observation, if the application is allowed, no irreparable injury will be caused to the plaintiff. Considering the statutory presumption under Sec.85 of the Evidence Act, 1872, when a notarized power of attorney is produced, the authority of the PA holder to represent his principal cannot be disputed. Such permission to merely represent the principal by an agent cannot be negated. Therefore, valid grounds are made out for grant of leave prayed for by the plaintiff. Hence, the point for consideration is answered in the affirmative and I proceed to pass the following:-

ORDER

I.A.5 filed by the GPA holder of the plaintiff under Order 3 Rule 2 of CPC is hereby allowed.

The power of attorney holder is permitted to participate in the suit, to represent the plaintiff in the suit, subject to the condition that, this grant of leave shall not be deemed to be implied permission for the power of attorney holder to depose as the plaintiff, on the facts of which he does not have personal knowledge; and this rider shall not be treated to be bar to depose on the facts by the power of attorney holder as a witness, of which he has personal knowledge.

(A.C.DAYANAND MURTHY)
Prl. Civil Judge, Bangarpet.