

**IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC AT
K.G.F.**

Dated this the 25th day of February 2020

:Present:

**KIRAN S.P., B.B.M., LL.B.,
II Addl. Civil Judge, K.G.F.**

OS No.290/2017

Plaintiff :- Smt. Ramakka

V/s.

Defendants :- Sri. J. Amaranath and others

CAUSE TITLE ON IA NO. VI

**Applicants :- Smt. Ramakka,
W/O. Krishnareddy,
Aged About 60 Years,
R/at. Parandahalli Village and Post,
Bethamangala Hobli,
Bangarpet Taluk**

(By Sri M.N.P Advocate)

V/s.

**Respondent :- 1. Sri. J.S Amaranath
S/O. Late J.R.Shankarappa
Aged About 58 Years,
R/at. No. 360, Prtichard road,
Robertsonpet, KGF.**

**2. Smt. J.S Vedavathi,
D/O. Late J.R.Shankarappa
Aged About 55 Years,
R/at. D.no. 13/203
Somaiah Street,
Kuppam Town,**

Chittoor District.

3. **Smt. J.S Prabhavathi,**
D/O. Late J.R.Shankarappa
W/O. V.Sampangiramaswamy,
Aged About 53 Years,
R/at. D.No.1, Srinidhi Nivas,
1st Main, 4th Cross,
New Extension, K.R.Puram,
Bangalore-36.
4. **Sri. J.S Murali Babu,**
S/O. Late Late J.R.Shankarappa
Aged About 49 Years,
R/at. No. 360, Prtichard road,
Robertsonpet, KGF.
5. **Smt. J.S Manjula,**
D/O. Late J.R.Shankarappa
W/O. J.Govindappa,
Aged About 48 Years,
R/at. 132,/5, Kothapet Street,
B.Kothakote,
Chittor District, A.P.
6. **Smt. Lakshmidevi,**
W/O. Late Late J.R.Shankarappa
Aged About 62 Years,
7. **Sri. D.S. Jagananath,**
S/O. Late J.R.Shankarappa
Aged About 49 Years,
Def. no.6 and 7 are R/at.
No. 360, Pritchard Road,
Robertsonpet, KGF.

(By Sri K.V.S Advocate)

**: ORDERS ON IA NO.6 FILED UNDER ORDER
3 RULE 2(A) OF CPC:**

The plaintiff has filed application U/O 3 rule 2(A) of CPC prays to permit the plaintiff to proceed the case by appointing her general power of attorney holder.

2.In the accompanying affidavit of the said application, the plaintiff submitted that plaintiff have filed the suit against the defendants for declaration of title over the suit schedule properties and for grant of permanent injunction and for other reliefs as stated in plaint filed on the file of this court. She is aged woman and she is unable to attend this court due to her ill-health, old age, lack of eye sight, lack of hearing, hypertension and diabetic and also personal inconvenience she has executed general power of attorney in favour of husband Krishnareddy, agriculturist, R/at. Parandahalli Village and Post, Bethamangala Hobli, Bangarpet Taluk, as her true and lawful attorney for her in her name and on her behalf authorizing him to make and do such appearances, applications and acts on her behalf and as such this court may be pleased to permit her general power of attorney holder as her true and lawful attorney and to conduct the above case on her behalf otherwise she will be put to substantial loss, injury and hardship On these grounds she prays for allow the application.

3. This application is resisted by the defendants by filing objections and contended in the objections that the application filed by the plaintiff is not maintainable both on law and on facts. The plaintiff is healthy and capable of attending before this court and also its stands cross examination in fact she has already file examination chief affidavit other than she suit before Prl. civil judge at KGF in OS no 122/2012 for the relief of permanent injunction in respect of the same property in the said suit she has adduced evidence and with stand for cross examination , though she is capable of proceedings this case independently to avoid the questions in cross examination, the plaintiff executed the power of attorney in the name of husband and plaintiff intending to dragon the proceeding. On these grounds they pray for dismissal of application.

4. Heard the arguments of both counsels

5. On the basis of the above, the points that arise for my consideration is :

Point No.1: Whether the application filed by the plaintiff U/O 3 Rule 2(a) of CPC is liable to be allowed and permit the plaintiff to proceed the case by appointing the general power of attorney holder?

Point No.2: What Order ?

6. My answer to the above points as under:

Point No.1: In the Affirmative

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

REASONS

7. **Point No.1:** I have gone through the averments mentioned in the accompanying affidavit of the said application. It is the contention of the plaintiff that due to her ill health, old age, lack of eye sight, lack of hearing, hypertension, and diabetic and also personal inconvenience, she has executed general power of attorney in favour of her husband by name Krishnamurthy as her true and lawful attorney for her. As per sec 118 of Indian Evidence Act. "All persons shall be to testify unless the court considers that they are prevented from understanding the questions put to them. Therefore, the general rule is, be competent to testify unless the court considers that they are prevented from understanding the questions put to them. Whether the power of attorney holder is admissible or not is to be considered after completion of evidence at the time of argument. But at this stage, it can not be held that the power of attorney holder evidence is not permissible. Hence, at this stage on the basis of the facts and law, I am of the opinion that the application filed by the plaintiff is liable to be allowed and permit the plaintiff to lead further evidence through

her General Power of Attorney holder. Accordingly I answer the above point no.1 in the affirmative.

8. **Point No.2**: For the foregoing reasons I proceed to pass the following;

: ORDER :

IA No.6 filed by the plaintiff under order 3 Rule 2 (a) of Civil procedure code is hereby allowed.

Permitted the plaintiff to lead further evidence though her general power of attorney holder.

Evidence of PW1 is hereby discarded.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced in the open Court on this the 25^h day of February 2020)

(KIRAN S.P)
II Addl. Civil Judge & JMFC: K.G.F.

