

ORDER IA No.II

The plaintiff has filed an application under Order III Rule 1 and 2 r/w Sec.151 of CPC to permit him to appoint the power of attorney holder to conduct the case on his behalf.

2. The defendant have filed objections.

3. Heard.

4. Now, the point that arises for consideration of this Court is :

“Whether the plaintiff has made out grounds to permit her to conduct the case through her Power of Attorney holder?”

5. On hearing both and perusal of relevant material on record, this court answers the above point in the **Affirmative** for the following:

R E A S O N S

6. POINT No.1:- Along with application, the plaintiff has filed an affidavit sworn to by her. In the said affidavit, it is stated by her that she has filed the suit for the relief specific performance of contract and now the

said case is posted for evidence. But she is now suffering from ill health due to joint pain. She has lose hearing power and lose eye sight due to diabetes. Due to heavy weight she is unable to walk property and hence he is unable to come to the court on all dates of hearing.

7. The defendants on the other hand, in the objections have denied the entire allegations of the application. They have contended that the GPA holder is not competent to give evidence as the GPA holder does not have any personal knowledge about the transaction. The plaintiff is appearing personally in OS No.474/2019. In order to elicit the truth the plaintiff herself is required. In order to avoid the facing of cross examination, the plaintiff has given the GPA to some other person. To give proper findings, the evidence of the plaintiff herself is necessary and hence the application has to be dismissed.

8. But this contention of the defendants is not acceptable. **In a recent reportable judgment rendered by Hon'ble High court in W.P No. 200500/22 dated 1/6/23, it is held it is clear from the provisions of order III of CPC that a power of attorney, be a geneal power of attorney or special**

power of attorney is appointed in a particular matter by one of the parties to the matter, such power of attorney can subject to the contents and powers vested under the power of attorney carry out such duties is authorized to do so under the power of attorney. It is further held that in so far veracity or otherwise of the evidence which is led, the same shall have to stand test of the Indian evidence act, which would include personal knowledge of the facts, as also stand the test of cross examination as also rules relating to appreciation of evidence as per applicable under law. It is also held that geneal power of attorney or special power of attorney cannot be shut out or prevented from leading on behalf of a party and such power attorney would not be required to make a separate application seeking permission to lead such evidence in the matter.

9. As such, it is very clear that the questions as to the personal knowledge of the transaction or that the plaintiff herself has to be present for cross examination would not arise for consideration in examination of a GPA or SPA holder. All the objections raised by the defendants

are matters of trial and appreciation of evidence on merits. At this stage they do not have any relevance. In fact, as per the above decision, there is even no requirement of making application for permission to lead the evidence of GPA holder on behalf of the party. It would be sufficient to produce the GPA and directly give the evidence of the GPA or SPA holder. However, with abundant caution application is filed. Therefore, this court does not find any merits in the objections raised by the defendants at this stage. Under these circumstance, in order to avoid the multiplicity of proceedings and put an end to the litigation between the parties finally and completely and decide the case on merits, the application needs to be allowed. Accordingly, **Point No.1 is answered in the Affirmative** and this court proceeds to pass the following:

ORDER

The application filed by the plaintiff under Order III Rule 1 read with section 151 of CPC is hereby allowed.

Call of evidence of the plaintiff as last
chance by 29/8/23.

(M.C. NANJE GOWDA)
ADDITINAL SENIOR CIVIL JUDGE AND
JMFC., MADDUR