

ORDER ON IA-7 AND 8

The defendant filed an application under section 151 of CPC seeking discard of the evidence of Pw1-HM Shivalingaiah.

2. The plaintiff has filed objections to the said application.

3. Heard both.

4. Now the point that arises for the consideration of this court is “

“Whether the defendants has made out grounds to discard the evidence of Pw1?”

5. On hearing both and perusal of the necessary materials on records, this court answers the above point in the **Negative** for the following;

REASONS

6. **Point No.1:-** Along with the application, the defendant has filed an affidavit which is sworn to by him. The sum and substance of the affidavit filed by him is that the plaintiff has filed the suit for specific performance of contract. The plaintiff has examined her GPA holder as Pw1. But the said witness/Pw1 is the attesting witness to Ex.P2-Agreement of sale deed dated 12/6/2019. Pw1 being the attesting witness cannot conduct the above case on behalf of the plaintiff as a GPA holder. It is further

case of the defendant that the plaintiff has filed another suit in O.S No. 474/2019 and in that case, the plaintiff herself has given evidence as Pw1. But in this case has got appointed a GPA holder in order to give evidence. Therefore, evidence of Pw1 is not sustainable under law and hence it is to be discarded.

7. On the other hand the plaintiff denied the entire averments of the affidavits and contended that they are baseless and false and there is no merit in the application. She has contended if the defendant was aggrieved, he could have challenged the orders passed by this court dated 14/8/2023 under which this court permitted the GPA holder to adduce evidence. The application is filed with an intention to drag the proceedings. This court has already considered the objections filed by the defendant while passing orders on IA-III. For bonafide reasons the plaintiff is leading the evidence through GPA holder. The application is bald, vague and baseless and hence the application is liable to be dismissed.

8. At the outset, it is most important to note that as rightly contended by the plaintiff, the plaintiff had filed an application under order III rule 1 and 2 CPC seeking permission to lead the

evidence through the GPA holder and this court has allowed it on 14/8/23. In the said orders this court by relying upon the decision of hon'ble High court rendered in WP No. 200500/22 observed that the evidence lead by the GPA holder is subject to tests provided under evidence act and appreciation and scrutiny provided under the provisions of other law being in force. This court also observed that GPA holder cannot be prevented or shut out from leading the evidence on behalf of any party. It is to be noted that this position would not be changed just because the GPA holder is a attesting witness of an agreement of sale. There is absolutely no bar under any provision of law for a GPA holder being also an attesting witness to give evidence before the court. The defendant has not specifically stated how he will be prejudiced if the evidence of GPA holder has given the evidence on behalf of the plaintiff.

9. Similarly, it is necessary to be noted that if the plaintiff has given evidence in some other case and not giving evidence in this case, then it is for the GPA holder or for the plaintiff to offer proper and acceptable explanation during the trial in this regard. If the defendant has convinced the court on this point certainly

this court can very well reject the evidence of the GPA holder and pass consequential adverse orders. But at this stage itself, this court cannot discard the evidence of the GPA holder. It can be done only on the basis of appreciation of evidence on record. It is always kept open to the defendant to raise all these contentions at a right stage. But at this stage there are no reasons to discard the evidence of Pw1. Therefore, this court does not find any merit in the present application and hence it is liable to be dismissed.

Accordingly, above point is answered in **the negative** and proceed to pass the following.

ORDER

**Application filed by the defendant
under section 151 of CPC (IA-6) is hereby
rejected.**

Call for cross of Pw1 **Call on by 05/2/24**

**Additional SENIOR CIVIL JUDGE &
JMFC,. MADDUR.**