

ORDER ON IA No.V

The learned counsel for the plaintiffs has filed an IA No.V under order III rule 2 (a) of CPC seeking permit to plaintiff No.1 to proceed with the suit through General Power of Attorney Holder.

The plaintiff No.1 has filed sworn affidavit in support of IA No.V and stated that she is suffering from aged decease and she unable to stand much time before the court. She is unable to produce her evidence before this court. Hence she is executed GPA in favour of her son namely P. Siddegowda. Hence, filed this application.

The learned counsel for the 4th defendant has filed an objection to application and contended that application filed by the plaintiff No.1 is not maintainable under law, the same is liable to be dismissed in limine. The defendant No.4 further contended that without permission to the court the plaintiff No.1 has filed this suit through power of attorney holder. The plaintiffs have filed false suit against defendant. Hence, prayed

that dismissed the application filed by the plaintiffs with cost.

Heard the arguments from the both the counsels appeared on behalf of parties to the suit.

This court has perused the material available on record. The plaintiffs have filed this suit for the relief of partition and separate possession over the suit schedule properties. The plaintiff No.1 has filed this suit through GPA Holder. At the time of filing of the suit the plaintiff No.1 has produced General Power of Attorney before this court. The defendants taken contentions that the plaintiff No.1 has not filed necessary applications before this court seeking permit to proceed with the case through GPA Holder. Hence, the suit of the plaintiffs is not maintainable. In this regard, this court has relied upon provision under Order III Rule 2 of CPC. The said provision read like this:

recognised agents – the recognised agents of parties by whom such appearances, applications and acts may be made or done are:-

(a) persons holding powers-of-attorney authorising them to make and do such appearances,

applications and acts on behalf of such parties.

(b) persons carrying on trade or business for and in the names of parties and not resided within the local units of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such grade or business only, where no other agent is expressing authorised to make and to such appearance, applications and acts.

In the present suit the plaintiff No.1 has appointed the GPA holder the find a deed of General Power of Attorney before this court at the intense of filing of this suit. This court has relied upon own decision of **Hon'ble High Court of Karnataka reported in ILR 2015 Karnataka 635 between Sajita Baanu V/s Haleena Baanu and others.** In this decision Hon'ble High Court of Karnataka observed in para No.10 and 11 as follows:

“this is a recent trend in our jurisdiction, we find in almost every case such applications are filed objections are filed, arguments are canvassed and

lengthy orders running to several pages are written, either allowing or rejecting the application and thereby wasting the precious time of the court as well as the public. This ultimately results in delay in disposal of cases, which trend has to be put an end to forth with.

Therefore, the court before such applications are filed shall apply their mind at the earlier point of time i.e., immediately on receiving the application in the court and reject that application without waiting for the other side to file objection to it. A party should be permitted to be represented by a power of attorney holder. Once a power-of attorney holder enters the witness box and gives evidence, whether that evidence has to be acted upon whether it is a direct evidence or hears evidence is to be decided by the High Court at the time of appreciation of the evidence. On the ground that the power-of attorney holder has no personal knowledge of the case, he cannot be prevented from entering the witness box from deposing".

The above decision is aptly applicable to present suit to decide the present application. Even though only filed memo with general power of attorney is maintainable as per the above decision of Hon'ble High Court of Karnataka. In the present suit the plaintiff No.1 has already produced General Power of Attorney before this court at the time of filing of the suit. According to the said general powers-of attorney, the plaintiffs are prepared and submitted. According to the defendants the 1st plaintiff has not obtained the permission of the court to issue a letter of authority to institute this suit. This court will registered the suit and proceed. A perusal of this clearly reveals that the 1st plaintiff has been granted permission by this court to conduct the suit through a power of attorney holder. According to the above said decision of Hon'ble High Court of Karnataka only submission of memo along with power of attorney is sufficient and there is no need to filed permission application. Hence, filing of application seeking permit to proceed with the case through GPA holder. The plaintiff No.1 has filed present application only formalities. Already the

plaintiff No.1 has proceed with the case through GPA holder. Hence, this court has proceed to pass the following:

ORDER

IA No.V filed by the learned counsel for the plaintiff No.1 under Order III Rule 2 (2) of CPC is hereby disposed as not required for filing of this application in this stage.

The plaintiff No.1 is permitted to continued proceed with the suit through GPA holder.

**Senior Civil Judge and JMFC.,
Malavalli.**