

KAMS080003762014



TITLE SHEET FOR JUDGMENTS IN SUITS

IN THE COURT OF ADDITIONAL SMALL CAUSES, AT
MYSURU.

PRESENT

Smt. ZARIFA BANU A.R. ,
B.A.L., LL.M.

JUDGE, ADDITIONAL COURT OF SMALL CAUSES,
MYSURU

DATED THIS THE 10th DAY OF MARCH 2025

O.S. / 128 / 2014

A.R.Chinthamani ... **Plaintiff**

-Versus-

V.Srinivas and others ... **Defendants**

ORDERS ON I A

The defendant No.12 filed this IA under section 151 of CPC for dismissal of suit on maintainability.

2. In the affidavit sworn by the defendant No.12 he has submitted that, the said suit is filled by Sri.B.N.Vrushabhendra alleging the GPA holder of the plaintiff Sri.Chinthamani. The said GPA marked at Ex.P15 is silent as to the authorization of Sri.B.N.Vrushabhendra to institute the suit and also to engage counsel and to prosecute the same. Ex.P15 is only authorize him to conversion of land from agricultural to non agricultural purpose and in relation to same other to do all deeds. As such the suit filed by the Sri.B.N.Vrushabhendra under capacity of GPA holder is not maintainable, as such the entire proceeding vitiates on account of his incapacity to sue. For the aforesaid

reason and such other reasons the defendant No.12 has prayed to dismiss the suit.

3. On the other hand, the plaintiff filed his objection and contended that the defendant No.12 has not raised any contention with regarding the GPA of the plaintiff before the Hon'ble High court of Karnataka in RFA No.2138/2022. The original plaintiff Sri.Chinthamani has died. His LR's were brought on record, the plaint was amended on 04.12.2018. The Amended plaint was signed by Sri.B.N.Vrushabhendra under the capacity of GPA holder of LR's of the plaintiff. The LR's of the plaintiff has executed a fresh GPA which is marked at Ex.P17 authorized Sri.B.N.Vrushabhendra to sign, verify and file plaint. Therefore the fresh GPA confirms and ratifies the earlier GPA executed by the plaintiff. The defendant No.12 filed this application to mislead the proceedings. Hence prayed to dismiss the application.

4. Heard arguments from both sides.
Perused material on record.

5. The point for consideration arise as follows:

1. Whether the defendant No.12 made out ground to dismiss the suit on ground of maintainability?
2. What order?

6. The answer to the above said points are as follows:

Point No.1 : In the Negative.

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

R E A S O N S

7. Point No.1: It is a suit filed by Sri.B.N.Vrushabhendra under the capacity of GPA holder of the plaintiff Chinthamani for the declaration of title over the suit schedule property and for permanent

injunction against the defendants. Said suit came to be decreed on 17.02.2020 and declared that the plaintiff is the absolute owner of the suit schedule properties and the defendants permanently restrained from interference of the possession of the plaintiff in the suit schedule property. Thereafter the defendant No.12 who not the party to the above said proceeding has filed an application to grant exparte temporary injunction against the plaintiff for the execution of judgment of this court. When case is posted for hearing IA's, the 12th defendant filed RFA No.2138/2022 before the Hon'ble High court of Karnataka. In the aforesaid RFA the HHCK has remanded the matter to this court from the stage of impleading the applicant as one of the defendant and permit her to file her written statement on compensatory cost of Rs.50,000/-. Based on the said order the 12th defendant impleaded and filed her written

statement along with counter claim to the suit and also filed this application raising the question of maintainability of the suit filed by Sri.B.N.Vrushabhendra without authorizing by the plaintiff in the GPA.

8. It is pertinent to note here that, the 12th defendant has not challenged the GPA of the plaintiff in RFA. However she has made the plaintiff Sri.Chinthamani party through his GPA holder Sri.B.N.Vrushabhendra. If she has not accept Sri.B.N.Vrushabhendra as GPA holder of the plaintiff she would have not made him party as GPA holder of the plaintiff. When she has not challenge the maintainability of the suit filed by the GPA holder in the RFA, it is estoppel for her to not to challenge it subsequently. Admittedly, Ex.P15 GPA does not authorize Sri.B.N.Vrushabhendra to prosecute with the case, if entire terms of the power of attorney are read as a whole that the main

intention of the plaintiff was to authorize Sri.B.N.Vrushabhendra to prosecute the case on his behalf.

9. Another thing is after the death of plaintiff Sri.Chintamani his LR's brought on record and they also have executed GPA in favour of Sri.B.N.Vrushabhendra same marked as EX.P17 where in the LR's of the plaintiff authorize Sri.B.N.Vrushabhendra to verify, sign and file plaint and proceed with the proceedings on their behalf. Said GPA has not been disputed by the 12th defendant. In this regard the Hon'ble High court of Karnataka in **RSA No.182/2023 dated 25th February 2014 in Smt Balawwa and Shivappa and others** it was held that, *"Taking into consideration the totality of the authorization given by the plaintiff in favour of PW-1 in Ex.P-1, is evident that verifying the plaint and filing the suit on her behalf even in the absence of a specific authorization to do so cannot be*

considered as a lapse which goes to the very root of the case”.

10. In the case on hand Ex.P17 is evident that the LR's of the plaintiff authorize Sri.B.N.Vrushabhendra to verify, sign and file plaint and proceed with the proceedings on their behalf. As such, execution of Ex.P17 is the ratifying act of the plaintiff Sri. Chintamani. Thus it cannot be say that the GPA holder has filed suit without authorized on behalf of the plaintiff. Therefore by no stretch of imagination it could be said that Sri.B.N.Vrushabhendra was not competent to represent him as the GPA holder in order to prosecute the suit. Thus for all these reasons, **Point No.1 answered in the negative.**

11. Point No.2: In view of above said discussion in Point No.1, I proceed to pass the following:

ORDER

IA filed by the defendant No.12 under section 151 of CPC is hereby dismissed with cost of Rs.500/-.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the Open Court on 10th day of March 2025).

Sd/-

(ZARIFA BANU A.R.)
Judge, Addl. Court of
Small Causes & MACT,
MYSURU.