

### **Orders on I.A.No.40**

The learned counsel for SPA holder of the defendant No.15 has filed present application seeking permission to represent the case on behalf of defendant No.15 and to lead evidence on behalf of the plaintiff stating that he being defendant No.11 in the above case and husband of defendant No.15 who is not feeling well and suffering from back pain and studied at Tamilnadu, as such she cannot understand Kannada properly and could not appear before this court to give evidence.

2. Per contra, it is contended in the objections filed by the counsel for plaintiff that application is not maintainable either in law or on facts and liable to be rejected with cost. The contention raised in para 2 & 3 of the affidavit are incorrect, concocted and denied as false and lacks bona fides.

3. Heard and perused the material on record.

4. The point that arises for my consideration is

Whether the application is fit to be allowed ?

5. My answer to the above point is in the negative for the following;

#### **-: REASONS :-**

6. It is worth to note that, admittedly plaintiff filed the above numbered suit for the relief of declaration and possession in the year 2006. The defendants No.1 to 10 appeared and filed written statement. In the meanwhile plaintiff got amended & impleaded as defendant No.11 to 14, they also filed written statement. This court has framed issues / Addl. Issues. Both the parties adduced their evidence. Again the counsel for defendant No.3, 8, 9 & 11 to 14 file I.A.No.35 along with Vakalath for proposed defendant No.15 and got impleaded on 16/10/2017 itself. Again on 14/12/2017 he examined SP holder of defendant No.3 as DW.6 and fully cross-examined by the other side, but defendant No.15 filed written statement on 19/02/2018, this court has also framed Addl. Issue No.4, thereafter the SPA holder of defendant No.15 has filed I.A.No.39 & 40 to represent the case on behalf of his wife.

7. It is worth to note that on careful evaluation of the averments made in application and accompanying affidavit we

can find that whether the defendant No.15 nor her alleged SPA holder or counsel are not conversant with facts of the case on hand. Because from the beginning of the cause title he has mentioned as **Addl Small Cause Court, instead of Pri. Small Cause Court**. Again in 5<sup>th</sup> line of I.A.No.40 states that he has filed the present application seeking permission to represent defendant No.15 and lead evidence on behalf of **plaintiff**. Further in the cause title of the plaint name of defendant No.11 mentioned as **Sri. M.K. Kailasamurthy**, on the contrary in the first line of accompanying affidavit of present IA he has sworn as Sri. M. Shrisha Puranik the 11<sup>th</sup> defendant in the above case and state on oath on behalf of **his wife defendant No.15**. Apart from this fact the counsel for defendant No.15 initially filed I.A.No.39 with another SPA and got withdrawn as not pressed.

**8.** It is to be noticed that in view of General Circular No.6/2018 dated 06/08/2018 of our Hon'ble High Court this court has directed both the parties and counsels to co-operate for speedy disposal. Again he has come up with present IA with all these defects, which is nothing but not only abuse of process of law, but shows that defendant No.15 purchaser using delay in tactics.

**9.** Therefore having regard to the facts and circumstances of the case, I am of the opinion that the application is liable to be dismissed with cost. Hence, I answer point raised for consideration is in the negative and proceed to pass the following,

### **ORDER**

I.A.No.40 filed U/o 3 Rule 2 r/w section 151 of C.P.C. by the counsel for SPA holder of defendant No.15 is hereby dismissed on payment of cost of Rs.500/-.

The defendant No.15 is hereby directed to appear and adduce oral evidence if any **or** parties and counsels are directed to address oral arguments on merits or to file written arguments call at 3. p.m.

**Sd/-**

**Pri., Judge,**  
Court of Small Causes &  
Senior Civil Judge,  
Mysuru.