

**THE COURT OF THE PRL., SENIOR CIVIL JUDGE AND
J.M.F.C., HUNSUR.**

Present: **Smt. Shirin Javeed Ansari, B.A., L.L.B.,(Hon's) LL.M**
Prl. Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 30th day of September 2022

OS NO.102/2018

Plaintiffs : Sri. Naveen Kumar & others

V/s

Defendants : Sri. Krishna @ others

PARTIES IN I.A. NO. VI

Applicant : Gopal Rao.N/SPA holder of the
defendants No. 2 to 6

V/s

Respondents : Sri. Naveen Kumar & others

ORDERS ON IA NO.VI

IA No. VI is filed U/O 3 Rule 2 R/W/S 151 of CPC seeking to permission of the court to represent the defendants No. 2 to 6 by SPA holder to proceed in the matter. The present application is filed at the stage of defendant's evidence.

2. IA No. VI is supported the affidavit filed by the applicant SPA holder of the defendants No. 2 to 6 wherein it is

stated that the the plaintiff has filed the suit for the relief of partition and separate possession. That now the case is posted for defendant's evidence.

3. That it is further submitted by the applicant/ SPA holder of the defendants No. 2 to 6 that the defendant s No. 2 to 6 have executed the SPA in his favour. That the defendants No. 2 to 6 are unable to prosecute the case due to their old age and are unable to travel from one place to another. Hence, the defendants No. 2 to 6 have executed Special Power of attorney in favour of applicant to represent the case on behalf of the defendants No. 2 to 6. Hence, the applicant/SPA holder is prayed to allow the present application.

4. The present application is opposed by plaintiff wherein it is stated that defendants No. 2 to 6 have not produced any documents to show that they are suffering from any age old problems. As such the defendants No. 2 to 6 hale and healthy persons able to appear before the court, if the defendants No. 2 to 6 appear before the court entire truth will come out. Therefore, the present application which is neither

maintainable in the eyes of law nor on the basis of the facts. The SPA holder is a stranger to the suit schedule property. He is not having any personal knowledge of the suit schedule property as well as plaint and written statement. Hence, prayed to reject the IA No.VI with cost.

5. Heard both the side and perused the materials available on record.

6. The following points arise for my consideration.

1. Whether the applicant/SPA Holder has made out grounds to allow the present application?

2. What order?

7. My findings to the above points are as under.

Point No.1: In the Affirmative.

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

REASONS

8. **Point No.1**: According to IA No.VI the defendants No. 2 to 6 have executed SPA (Special Power of Attorney) in favour of applicant's who is their a friend. The applicant/SPA

holder has already produced the original copy of said SPA dated 05.06.2022. The reason mentioned in the said power of attorney that the defendants No. 2 to 6 are residing at different places in Mysuru and Bengaluru. They are not in a position to attend the proceedings effectively, they are unable to travel from different place and due to their inconvenience, they are unable to prosecute the case effectively. Hence, they have executed the SPA in favour of the applicant. Therefore, the applicant has sought permission of the court to be represented by the SPA holder.

9. Since the defendants No. 2 to 6 have executed SPA in favour of their friend, now the case is posted for defence evidence.

10. On careful and meticulous perusal of the materials available on record it is found that, the defendants No. 2 to 6 are aged persons and residing at different places in Bengaluru and Mysuru. The suit filed by the plaintiff is one for the relief of partition and separate possession. No doubt, the defendants No. 2 to 6 have not produced any medical documents but the said reason of age old health issue is also

mentioned in the SPA of the defendants No. 2 to 6. Therefore considering prevailing situation in the counter as stated supra the court is of the opinion that, the application filed the applicant U/O 3 Rule 2 R/W/S 151 of CPC deserve to be allowed. In view of the reason mentioned, I answer point No.1 in the affirmative.

11. **Point No.2:** In view of the reason assign above, I proceed to pass the following.

ORDER

IA No. VI filed by the applicant
U/O 3 Rule 2 R/W/S 151 of CPC is
hereby allowed.

The defendants No. 2 to 6 are
permitted to proceed in the case
further through their Special Power of
Attorney holder Sri.Gopal Rao N. S/o
Late. Nagendra Rao.

Plaintiff to carry out amendment
in the cause title and furnish

amended plaint on next date of
hearing without fail.

No order as to cost.

Call on 27.10.2022.

(Dictated to the stenographer on the computer typed
by her, revised, corrected and then pronounced by me in
the open court on this the 30th day of September 2022.)

(SHIRIN JAVEED ANSARI)

Senior Civil Judge & JMFC
Hunsur