

IN THE COURT OF ADDL. CIVIL JUDGE & JMFC, HUNSUR**Dated this the 27th day of June, 2025****:Present:****Smt. Namrata S Hosmath, B.A., LL.B.,
Addl. Civil Judge & JMFC,
Hunsur.****O.S./116/2011****PLAINTIFF : Devamma and others****// Vs //****DEFENDANT : Siddamma and others****PARTIES TO I.A. NO.XV****APPLICANT : Somashetty2nd defendant****// Vs //****OPPONENT : Devamma and others****ORDERS ON I.A NO. XV FILED UNDER ORDER 3 RULE 2 R/W SECTION
151 OF CPC**

Defendant No.2 has filed the present application U/O 3 Rule 2 of CPC, seeking permission for Special Power of Attorney Holder his son to prosecute the case and to lead evidence on his behalf.

2. In the memorandum of facts annexed to the application, it is averred that defendant No.2 is aged about 52 years and is currently suffering from health issues, which prevent him from attending the court proceedings in person. Owing to this, he has executed a Special Power of Attorney in favour of his son to represent and defend him in the present case. Accordingly, it is

prayed that the said SPA holder may be permitted to lead evidence on behalf of defendant No.2.

3. The plaintiffs have filed objection, contending that defendant No.2 cannot be permitted to examine his SPA holder as a witness in lieu of himself. It is argued that defendant No.2 is deliberately avoiding personal appearance and has not submitted any medical certificate to substantiate his claim of ill health. Hence, plaintiffs pray to dismiss the application.

4. Heard on both side. Perused the materials available on record.

5. The following points arise for my consideration:-

1) Whether the application deserves to be allowed?

2) What order?

6. My findings on the above points are as under:-

Point No.1 : In the Affirmative

Point No.2 : As per final order

for the following;

-:: REASONS ::-

7. **POINT No.1:** It is well settled law that the plaintiff or the defendants need not seek permission of the court to lead evidence through GPA or SPA holder. The Hon'ble High Court of Karnataka, in the case of **Sajida Banu Vs Haleema Banu** and others, reported in **ILR 2015, Kar 635**, has made it clear that application U/O 3 Rule 1 and 2 of CPC need not be filed. The Power of Attorney Holder can be lead evidence without the permission of the court.

8. In the said judgment, the Hon'ble Court observed that a Power of Attorney Holder is legally entitled to represent a party in proceedings and can lead evidence on their behalf. The court further observed that the mere fact that the Attorney Holder does not have personal knowledge of all the facts in issue, does not preclude him from entering the witness box and deposing. The veracity and evidentiary value of such depositions are matters for judicial appreciation during trial.

9. In the instant case, defendant No.2 has executed a valid SPA in favour of his son, empowering him to represent him in all legal proceedings. The absence of medical certificate, is not a sufficient ground to deny the statutory entitlement of a party to act through a constituted attorney, especially when the law does not mandate the court permission for the same. Thus the objection raised by the plaintiffs are not sustainable in law. Accordingly, I answer Point No.1 in ***Affirmative***.

10. **POINT No.2**: In view reasoning assigned above, I proceed to pass following;

ORDER

IA-XV filed under Order 3 Rule 2 R/w Sec. 151 of CPC is allowed. The power of attorney of defendant No.2 is permitted to adduce the evidence on behalf of defendant No.2.

For defendant No.2 evidence by: 31.7.2025

(NAMRATA S HOSMATH)
Addl. Civil Judge & JMFC.,
Hunsur.

