

ORDER ON I.A.No.III

This is the I.A.No.III filed by the applicant/plaintiff under Order 3, Rule 2(A) R/w Section 151 of C.P.C., seeking permission to receive the special power of attorney executed by the plaintiff in favour of his son by name Mahadevegowda.C.P to appear in this case.

2. In I.A.No.III it is stated that, for the reasons mentioned in the accompanying affidavit that, the plaintiff has filed the above suit against the defendants for the relief of declaration, permanent and mandatory injunction in respect of suit schedule properties. The plaintiff is unable to appear before this court due to his age factor. The S.P.A. holder is son of the plaintiff. Hence, plaintiff has authorized him as his recognized agent to appear before this Court. Accordingly, prayed to allow the I.A.No.III.

3. On the other hand, learned counsel for the defendant No.2 objected the above said I.A. on the ground that, the plaintiff has already adduced his evidence on 03.06.2024 and case is posted for further chief of P.W-1. The plaintiff is hale and healthy and he is not suffering from the alleged diseases mentioned in the affidavit. Further, no documents have been produced in support of the said application. Since the plaintiff is well versed with the facts of the case he cannot delegate his authority to the power of attorney holder. Some of the facts are in personal knowledge of the plaintiff and to elicit the same he has to appear before this court. Hence, the application

filed by the applicant/plaintiff is not maintainable either on law or on facts. Accordingly, prays to reject the I.A.No.III.

4. Heard on both sides and perused the materials available on record.

5. Under Rule 2 of Order 3 of C.P.C., the person holding the power of attorney is the recognized agent of the party to the proceedings. The recognized agent can represent the party. It is the right of the party to appear before the Court through recognized agent. In the present case the plaintiff has filed the above suit for declaration, permanent and mandatory injunction against the defendants. As per the order dated:22.07.2024 in view of the memo filed by the plaintiff the chief examination of P.W-1 is hereby discarded. Now the evidence of the plaintiff yet to be started and the matter has been posted for plaintiff evidence. At this stage the plaintiff has filed the present application seeking permission to adduce the evidence through S.P.A. holder on the ground that, S.P.A holder is his son and the plaintiff is old aged person and suffering from ill-health and he could not able to appear before the Court.

6. On careful scrutiny of the above said provisions of law and decisions, it is crystal clear that, the recognized agent can represent the party. It is the right of the party to appear before the Court through recognized agent. Therefore, in the instant case, the suit filed by the plaintiff for the relief of declaration, permanent and mandatory injunction. Therefore, the sufficient opportunities are to be given to plaintiff to prove

his case. Now the case has been posted for plaintiff evidence. There is no bar under law the plaintiff is to adduce evidence through S.P.A. holder. There is no irregularity if the plaintiff is permitted to adduce evidence through S.P.A. holder. Therefore, in my opinion, if this I.A. is allowed, no hardship will be caused to the defendants. If it is permitted, the defendants have also having right to cross-examine the S.P.A. holder. It is settled principle of law that the parties are liberty to lead their evidence through G.P.A/S.P.A. holder. I have perused the Special Power of Attorney (S.P.A.) filed along with I.A.No.III. The grounds mentioned in I.A. are satisfied. Therefore, it is necessary to allow instant I.A. in the interest of justice and equity. Hence, I proceed to pass the following:-

ORDER

I.A.No.III filed under Order 3, Rule 2(A) R/w Section 151 of C.P.C. by the applicant/plaintiff is hereby **allowed**.

The plaintiff is permitted to conduct the case and adduce evidence through S.P.A holder.

For plaintiff evidence.

Call on:20.01.2025.

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura.****