

ORDERS ON I.A FILED BY THE PLAINTIFF
U/O 3 RULE 2 OF CPC

The plaintiff has moved the application to permit her to appoint K.N.Phanindra S/o late.K.R.Narayana Rao as her General Power of attorney holder to prosecute the case on her behalf.

2. In the affidavit appended to the application, the plaintiff deposed that, she has filed the case for the relief of declaration, possession and other reliefs against the defendants. Due to ill-health, she is unable to prosecute the case effectively. She has felt is expedient to appoint K.N.Phanindra S/o late.K.R.Narayana Rao who is her husband and as he is personally involved in the affairs of the subject properties and aware about the subject properties. If the application is allowed, no harm will be caused to other side. On the other hand, if the application is rejected, she would undergo irreparable and injury. Hence, it is prayed to allow the application.

3. The advocate for the defendants have filed detailed objection contending that, the application is not maintainable and the grounds mentioned in the affidavit are not legal. Hence, prayed to dismiss with cost. The plaintiff has filed the suit for declaration and possession and it is posted for evidence of plaintiff. At this stage, the plaintiff has not produced any documents and also medical papers regarding treatment. The plaintiff has stated that, on 20.07.2005 there is a sale deed of suit property. Hence, if the plaintiff is enquired then only it will be fruitful to get the truth. Under these circumstances, the evidence of the plaintiff is very necessary, the plaintiff has created the grounds in his affidavit. But has not filed any documents. Hence, it is prayed to dismiss the application.

4. In the premise of rival contentions of the parties, the following point emerge for consideration:-

*Whether the application deserves
to be allowed ?*

5. Having heard the arguments, the Court perused the application in the backdrop of materials made available. Now, findings of the Court on the point is in the “Affirmative” for the reasons herein after assigned:-

REASONS

6. On perusal of the application affidavit is that, due to ill-health of plaintiff, her husband prosecute the case effectively. Hence, the plaintiff has not appeared before the Court due to ill-health. Hence, it is prayed to allow the application.
7. The decision rendered by the Hon'ble High Court of Karnataka in ILR 2015 KAR635, between Sajida Banu V/s Halema Banu and others is as under :-

Order III Rule 1 of CPC., Enables a party to appear, file application or act in a Court personally without engaging a counsel and all such acts can also be performed by a recognized agent if the party executes a power of attorney in favour of such agent; this can also be done by a pleader who is duly authorized. The only exception is, 'if under any law, the party has to appear in person then neither the pleader nor the power of attorney holder can appear'.

Order III Rule 2 of CPC, provides that persons holding power of attorney under which they are duly authorized, to make such appearances, applications and act as recognized agents.

Further in the said decision, it is held that, it is not obligatory on the part of the party to the litigation to appear in person, unless the law so requires. The party could prosecute or defend a legal proceedings through a power of attorney holder or even a pleader. Therefore, when the statute confers such a power on a party, it has to be honoured. The question of Court granting permission to a party to prosecute the matter through a power of attorney holder or a pleader would not arise. However, the Court cannot prevent a party from prosecuting the litigation or defending it through a power of attorney holder or a pleader. Under the above circumstances, the application filed for such permission is wholly misconceived.

It is further held that, once a power of attorney holder enters the witness box and gives evidence, whether that evidence has to be acted upon, whether it is a direct evidence or hearsay evidence, is to be decided by the Trial Court at the time of appreciation of the evidence. On the ground that the power of attorney holder has not personal knowledge of the case, he cannot be prevented from entering the witness box and from deposing.”

8. Under the above circumstances, if the application is allowed, no hardship will be caused to

defendants, as defendants are having right to cross examine the power of attorney holder of the plaintiff and contradict the documents. Wherefore, the Court inclined to hold the point is in the “Affirmative” and proceed to pass the following:-

ORDER

I.A filed by the plaintiff U/o 3 Rule 2 r/w Sec.151 of CPC is hereby allowed on cost of Rs.200/-.

Resultantly, the GPA holder of the plaintiff is taken on record to prosecute the case.

**Prl., Senior Civil Judge & CJM,
Ramanagara.**