

IN THE COURT OF THE PRL CIVIL JUDGE & JMFC,

AT CHANNAPATNA.

PRESENT

SRI. MAHENDRA.M B.A, LL.B.,
Prl. Civil Judge & JMFC,
Channapatna.

Dated this 24th day of May -2022

O.S. NO.13/2015

PLAINTIFF : Sri. M.N.Ramesh Babu

-Vs-

DEFENDANT'S : Smt. R.Manjula & Another

I.A.NoVIII

APPLICANT

DEFENDANT No.1 : Smt. R.Manjula

-V/s-

OPPONENT

PLAINTIFF : Sri. M.N.Ramesh Babu

ORDERS ON IA.No.VIII

This is an application filed by the defendant No.1 under Section 151 C.P.C. seeking discord the evidence of PW1 I.e.,

general power of Attorney of the plaintiff and directing the plaintiffs to be present before this court for adduce his evidence.

2. The averments of the affidavit filed in support of the application are as follows:-

This suit filed by the plaintiff against the defendants on the basis of agreement to sell dated.07.11.2012. The defendant No.1 filed written statement and denied the plaint averments. On behalf of the plaintiff the power of attorney holder has deposed the evidence as PW1. The plaintiff has no reason to keep himself away from this court. The Power of Attorney holder have no knowledge of anything in the subject matter of the suit. Hence, it is required to discard the evidence of PW1. If this application is not allowed the defendant No. 1 will be put to irreparable loss and injury which cannot be compensated. Hence allow the I.A No.VIII.

3. The counsel for the plaintiff filed an objection to IA.No.VIII and contended that, the application filed by the 1st defendant is not maintainable either in law or on facts the same is liable to be dismissed in limine. The plaintiff contended that, the defendant No.1 was appeared before this court through her counsel. The PW1 examined on 18.04.2017. The witness also examined on behalf of plaintiff. The 1st defendant not cross examine the PW1 and 2 till this date. The 1st defendant filed several application to drag on the the proceedings. Hence prayed that dismiss the I.A No.VIII filed by the 1st defendant.

4. The following points are arise for consideration of this court :-

POINTS

1. Whether the applicant/1st defendant proves that the I.A No.VIII is deserves to be allowed?
2. What order?

5. Heard both sides and perused the records. I answer the above points as follows:-

- Point No.1:- In the Negative
Point No.2:- As per final order
for the following:-

REASONS

6. **Point No.1**:- The plaintiff filed present application seeking discord the evidence of GPA holder of the plaintiff. The suit filed by the plaintiff against the defendants for the relief of specific performance and declared that sale deed is null and void. The case is posted for cross-examination of PW.1 and 2, at this stage the present application filed by the 1st defendant.

7. The 1st defendant stated in this application that, the GPA holder not have personal knowledge about matter in dispute. In the said suit the GPA holder not have any right to depose on behalf of the plaintiff.

8. The defendant No. 1 appear before this court through her counsel and filed her written statement. Before filing of Written statement the GPA holder of the plaintiff was examined on 18.04.2017 as PW1 and got marked some of the documents. At the time of evidence of PW1 the defendants not opposed the said evidence of GPA holder of the plaintiff. After that the witness also examined for the plaintiff. The defendant No. 1 not cross-examine the PW1 and 2 till today. In spite of applications filed by the 1st defendant seeking recall of PW1 and 2 for the purpose of cross - examination but not cross examine the PW1 and 2. The 1st defendant filed many applications. The order sheet shows that the 1st defendant intended to drag on the proceedings.

9. The counsel for the 1st defendant relied upon the decisions reported in 2013 AIR SCW 3561 between S. Kesari Hanuman Goud V/s Anjum Jehan and others and 2013 (4) KCCR SN 458 (SC) between Jitindra Kumar Khan and others V/s Peerless Gen. Finance and investment com. Ltd., and others. With great respect these decisions are not applicable to present stage.

10. The 1st defendant not challenged the evidence of PW1 at the time of recording of evidence after 5 years of recording of evidence of PW1 the present application filed by the 1st defendant is not maintainable under the law. The application filed by the 1st defendant is not maintainable under the law.

Hence, answer the Point No.I in the Negative.

11. **Point No.2**:- For the above reasons I proceed to the pass the following:-

ORDER

The IA.No.VIII filed by the 1st defendant under section 151 of C.P.C. is hereby rejected, subject to cost of Rs.500/-.

Sd/-

(MAHENDRA. M)
Prl. Civil Judge & J.M.F.C,
Channapatna.

(Order pronounced vide separate order in the open court)

ORDER

The IA.No.VIII filed by the 1st defendant under section 151 of C.P.C. is hereby rejected, subject to cost of Rs.500/-.

The PW1 and 2 are absent.

Directed to plaintiff keep present the PW1 and 2 in the next date of hearing without any fail.

Cross of PW1 and 2 by
03.06.2022.

Sd/-
(Mahendra. M)
Prl. Civil Judge & J.M.F.C,
Channapatna.