

**ORDERS ON I.A. u/Order 3 Rule 2 of CPC**

1. This is a suit for partition and separate possession the defendants have contested by filing the written statement.

2. Issues have been framed. The plaintiff is examined as PW.1 and the stage is set for cross examination of PW.1. At this juncture an application u/Order 3 rule 2 is filed by the plaintiff to permit the wife of PW.1 to depose in the above case and continue the suit for the reason stated in the affidavit accompanying the application. The defendant has filed objections stating that the PW.1 is hale and healthy, doing his routine activities and participating in the construction work daily. The defendant has further contended that the reasons assigned by the plaintiff in the affidavit accompanying the application is utterly false. The plaintiff has furnished the certificate issued by the Doctor reflecting his health condition.

3. On the basis of the rival contention, the following points arise for my determination

1. Whether the plaintiff has shown sufficient grounds to permit the power of attorney holder of the plaintiff to act on behalf of the plaintiff?
2. What order?
4. Heard the counsel for both the parties.
5. My findings on the above points are as under;
  - 1) In the Negative,
  - 2) As per final order,for the following;

### **REASONS**

**6. Point No. 1:-** In the affidavit accompanying the application, the power of attorney holder of the plaintiff has stated on oath that her husband is not healthy. The Doctor has advised him to take rest. Hence the power of attorney holder has been executed in favour of her. She is acquainted with the facts and circumstances of the case. Thus this application. The General Power of Attorney Holder is adduced with the application. Per contra, it is the contention of the defendant in the objections that the plaintiff is hale and healthy and the application is an attempt to deny the opportunity to the defendant to cross examine DW.1 and extract truth from him.

7. I have perused the provision of Law applicable to the application on hand. In the Janaki Vasudev V/s Bhojwani V/s Ind Bank Limited reported in AIR 2005 SC 439, the Hon'ble apex court has discussed with regard to provision of 3 rule 2 in detail. I have carefully read the above judgment. The Hon'ble apex court discussed the term act mentioned in the order 3 rule 2 and was of the opinion that the power of attorney can depose only those aspects which are in the knowledge of the power of attorney holder. The power of attorney holder cannot depose about those which are in the personal knowledge of the executant.

8. Order 3 rule 2 of CPC provides that a Power of Attorney Holder can appear appeal or act in any court. The term act necessarily mean to depose in place and instead of principal. Further the power of attorney holder can depose for the principal in spite of such act which has rendered in furtherance of power of attorney but can not depose for principal for the act by principal not by him. Further he can not depose for the principal about the matter which only the principal can have personal knowledge and of which the principal is entitled to be cross-examined. The present suit is for partition and

separate possession, it is the contention of the defendant that the plaintiff in no way relative to the family of the defendant the relationship is no dispute.

9. It is not necessary that the plaintiff and the plaintiff alone should enter the box to depose. It is privilege vested with the plaintiff to examine any person on behalf of him. It is the plaintiff who has to prove his case. In my opinion the court cannot curtail the privilege vested with the party to appoint any person as his power of attorney. Thus I answer the Point No1 in the Negative.

**10. Point No.2:-** As per discussion made above, I proceed to pass the following;

**ORDER**

The application filed under Order 3 Rule 2 of CPC is hereby allowed.

(Dictated to stenographer, transcribed by her, the transcript corrected by me and then pronounced in the open court on this the 15<sup>th</sup> day of November, 2017)

(Namratha Rao.K.S)  
Addl., Civil Judge and J.M.F.C,  
Channapatna.

