

IN THE COURT OF THE PRL.CIVIL JUDGE & J.M.F.C.,
AT CHIKKANAYAKANAHALLY.

Dated: This 27th day of February 2019.

Present: SMT.PRAMEELA M., B.Com., LL.B.,
Principal Civil Judge & JMFC.

OS No.51/2016.

Plaintiff:

Thammaiah s/o Ganganna,
a/a 63 years,
Permanent resident of
Chikkanayakanahalli town,
Now residing at 1st floor,
No.42, Ananda Gokula Apartment,
Chikkalakkasandra,
Ramanjanya nagar,
Bangalore-61.

(By Pleader **Sri.C.Rajashekharaiiah**)

//versus //

Defendants:

1. Siddappa s/o Ganganna,
a/a 65 years,
Near Siddeshwara mutt,
Ward No.18,
Chikkanayakanahalli town,
Tumkur district.
2. Shankaramma w/o late Mastaiah,
Major,
Resident of Hagalwadi,
Nittur hobli,
Gubbi taluk,
Tumkur district.
3. Lakshmidevamma w/o Ningaiah,
a/a 55 years,

Resident of Shukrawara bagilu,
Chikkanayakanahalli town,
Tumkur district.

4. Nagaraju s/o Siddappa, a/a 32 years,
Resident of Near Siddeshwara mutt,
Ward No.18,
Chikkanayakanahalli town,
Tumkur district.
5. Latha w/o Kumara d/o
Siddappa, a/a 29 years,
Resident of Near Siddeshwara mutt,
Ward No.18,
Chikkanayakanahalli town,
Tumkur district.
6. Umesha s/o late Ramaiah,
a/a 30 years,
Resident of Door No.27,
Halebeedu,
Kariyammana gudi,
Belur taluk,
Hassan district.

(By Pleader **Sri.N.N.Sreedhara**,
for defendant Nos.1, 3 to 5,
By Pleader **Sri.G.B.Adarsha**,
for defendant No.6,
Defendant No.2 – exparte)

IA.NO.VII

Petitioner : Thammaiah,
Nagarathnamma (GPA Holder).

Versus

Respondents : Siddappa and others.

ORDERS

1. The applicant/plaintiff has filed this IA.No.VII under order 3 rule 1 and 2 r/w., section 151 of CPC with prayer to permit to conduct the case on behalf of plaintiff.
2. The application is supported with an affidavit duly sworn by the applicant/plaintiff that, she is the wife of plaintiff. They are residing at Bangalore. Her husband filed present suit for the relief of partition and separate possession with respect to suit schedule property. He is 65 years aged person and he is suffering from diabetic, blood pressure and other disease and he has undergone regular treatment. Hence, he is unable to appear before the court regularly. Therefore, he executed the Power of Attorney in favour of her to conduct the case on behalf of her. If the application is allowed, no injustice cause to the other side. Otherwise it is very difficult to proceed the case. Hence, prayed to permit her to conduct the case on behalf of plaintiff.
3. The contesting defendant filed objection by contending that, the applicant has not approached this court with clean hands and also there is no valid ground mentioned for consideration application. Therefore, the application of applicant is liable to be dismissed with cost. It is further contended that, the plaintiff is having good health and also sound mind and he is capable to give evidence. The plaintiff with a malafide intention and also to avoid admission during the course of cross-

examination, she filed the present application. Hence, this application is not maintainable. Therefore, prayed to dismiss the application.

4. Heard arguments of both sides on IA.No.VII.
5. Perused the materials on record.
6. The following points arise for consideration of this court:-
 1. *Whether the applicant has made out ground to conduct the case on behalf of the plaintiff. ?*
 2. *If so, for what order?*
7. My findings on the above points are as under: -

Point No.1 : In the affirmative.

Point No.2 : As per final orders,
for the following-

REASONS

8. **Point No.1:** The plaintiff filed the suit against the defendants for the relief of partition and separate possession with respect to suit schedule property by asserted that the suit schedule properties are the ancestral and joint family properties and he got legitimate share over the suit schedule properties. The defendant denied the said matter by resisting the claim of the plaintiff by filing written statement.
9. The learned counsel for the plaintiff argued that, the plaintiff is an aged person and he is suffering from diabetic, blood pressure and other disease. Hence, for treatment the plaintiff and her wife permanently residing at Bangalore. He is unable to appear before the court regularly. Hence, he executed GPA in favour of his wife Smt.Nagarathnamma.

10. In support of his arguments the applicant furnished original General Power of Attorney executed by the plaintiff in favour of her and also produced some medical documents of plaintiff. To proceed the case it is necessary to permit the GPA Holder to conduct the case of the plaintiff. Therefore, prayed to permit the applicant to conduct the case on behalf of the plaintiff.
11. The learned counsel for the defendant vehemently argued that the plaintiff has not mentioned bonafide grounds to permit her to conduct the case on behalf of plaintiff. It is further argued that the applicant not approached this court with clean hands. She filed petition against the plaintiff on the file of Hon'ble MMTC-II, Bangalore in C.Misc.191/2015 under Domestic Violation Act. There is no cordial relationship between the plaintiff and applicant. To avoid some true facts, the applicant approached this court by filing false application. Hence, the intention of the applicant is only to harass the defendant for one or other manner. The plaintiff is well and healthy person and he never executed GPA in favour of applicant. He is capable to give evidence required by this court. To avoid him she produced the present application along with GPA. In support of arguments the defendant produced order-sheet of C.Misc.191/2015.
12. After hearing both sides it is clear that, plaintiff filed the present suit against the defendant for the relief of partition and separate possession. It is further undisputed fact that applicant is the wife of

plaintiff. Now the application filed the present applicant by inserting that plaintiff is suffering from diabetic, blood pressure and other disease hence, he unable to appear before the court. In support of the aforesaid reason she produced medical certificate of the plaintiff.

13. Admittedly, the defendant opposed the application by filing objection that, there is no cordial relationship between the applicant and plaintiff and never executed any GPA in favour of applicant, because there is dispute between the plaintiff and applicant. In this regard the petitioner filed petition under Domestic Violence Act. By considering the above said objection it is clear that the applicant produced original GPA to show that plaintiff executed the GPA in favour of her. It appears that plaintiff executed the GPA in favour of her. Hence, the question raised by the defendant is not sustainable. Moreover the provision specifically provides that party should prosecute or defend a legal proceedings through a power of attorney holder or even if a Holder. Therefore, when status bars such a power of a party, it is to be honoured. The question of the court to grant permission to a party to prosecute the matter through power of attorney holder or pleader could not arise. If the court cannot prevail a party from prosecuting the litigation and defending through power of attorney holder and pleader. Orally some exceptional cases, such as case arisen due to family court and whether Advocate cannot appear as a matter of ready. But they can appear only with the permission granted by the court. The parties as a right, represented by

power of attorney holder. Under such circumstances cannot curtail the power of attorney to conduct the case on behalf of party as per provision contemplated under order 3 rule 2 of CPC. Therefore, the defendant cannot question the same by filing objection. Hence, Point No.1 is answered in the affirmative.

14. **Point No.2:** In view of the above discussion, I proceed to pass the following-

ORDER

IA.No.VII filed by applicant under order 3 rule 1 and 2
r/w., section 151 of CPC is hereby allowed

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by him, then corrected and pronounced by me in the Open Court on this 27th day of February 2019.)

(Prameela.M)
Prl.Civil Judge & JMFC,
Chikkanayakanahalli.