



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE &
JMFC, GUBBI.**

PRESENT

SMT. POORNIMA K. YADAV, B.A.LL.B., LL.M.,

Addl. Sr. Civil Judge & JMFC, Gubbi.

Dated on this the 7th day of July, 2023

ORIGINAL SUIT NO. 60/2020

**Plaintiff/s : Narasimhaswamy M.L
(By Sri. V.K. Adv.)**

Vs.

**Defendant/s : M.P. Lakshmikanth and others
(By Sri. H.L.R.S. Adv.)**

PARTIES TO I.A.NO.V11

Applicant/Defendant : A.R.Sowbhagyamma

Vs.

**Opponent/Plaintiff : Narasimhaswamy M.L
dead by LRs**

: ORDERS ON I.A.NO.VII:

When the matter was pending for defendant evidence, the defendant No.2 filed the present application.



- 2.** The applicant/defendant No.2 filed this application Under order 3 Rule 2 of CPC seeking to prosecute the suit through her power of attorney holder.
- 3.** The application is accompanied with the affidavit of the defendant No.2, wherein it is stated that the plaintiff filed the present suit. Due to inconvenience, the defendant No.2 is unable to attend the court on all the dates of hearing. It is stated that she has authorized her husband's friend by name Chandrashekaraiah M.N. S/o Nagarajaiah as her special Power of attorney who is well conversant with the facts and circumstances of the case. Hence, sought to allow the application.
- 4.** On the other hand, the counsel for the plaintiff filed objection and contended that the application is not maintainable and it is liable to be rejected. It is contended that the defendant No. 2 is hale and healthy and she is not suffering from any disease to execute power of attorney in favor of Chandrashekariah. It is contended that the defendant No.2 is avoiding to enter



the witness box as she is not the wife of deceased Lakshmikanth. The Power of attorney holder is a stranger to the suit schedule property and also to the family of the defendants. It is contended that the said Chandrashekaraiyah is interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property and there are various criminal cases pending against him. Hence sought to reject the application.

5. Heard the counsel for the plaintiff and the defendants.
6. Upon hearing both the counsel and on perusal of the materials available on record, the point that arise for my consideration is;

***Whether the defendant No.2 has
shown grounds to permit her to
prosecute the case through her SPA
Holder?***

7. My findings to the above point is in the **"Affirmative"** for the following ;



REASONS

8. Admittedly, the plaintiff has filed this suit seeking relief of Declaration that only the plaintiff's have rights and are the owners of the suit schedule properties and other relives in respect of Suit schedule properties.
9. The material on record depict the fact that when the matter was pending for defendant evidence, the present application came to be filed. The plaintiff objected the present application on the ground that the defendant No.2 is hale and healthy and the power of attorney holder Chandrashekaraiah is stranger to the suit schedule property and the family of the defendants.
- 10 At this juncture, I would like to place reliance on the reportable judgment of Hon'ble High Court of Karnataka in **WP No. 200500/2022 between Smt. SHANKARAMMA AND ANOTHER v/s SMT. ANUSUYADEVIN AND OTHERS** wherein it is held that:



“9.6. In the light of the above provisions, it is clear that a power of attorney, be a General power of attorney or Special power of attorney is appointed in a particular matter by one of the parties to that matter, such by one of the parties to that matter, such power of attorney can subject to the contents and powers vested under the power of attorney carry out such duties as is authorized to do so under the power of attorney.

9.7 Insofar the veracity or otherwise of the evidence which is led, the same shall have to stand the test of the Indian Evidence Act, which would include personal knowledge of the facts, as also stand the test of cross-examination as also rules relating to appreciation of evidence as per applicable law.

9.8. I am of the considered opinion that a power of attorney cannot be shut out or prevented from leading evidence on behalf of a party to a proceeding.

9.9. Hence, I answer Point No.1 by holding that a party seeking ton lead evidence



through a general power of attorney or special power of attorney would not be required to make a separate application seeking permission to lead such evidence in the matter.

10.1. In view of my answer to point No.1, no application for permission is required for the power of attorney to lead evidence on behalf of a party. The question of rejection of such application on the ground that no grounds have been made out by a power of attorney to lead evidence is not sustainable.

10.2 The application in the present matter was not even required to be filed but appears to have been filed by abundant caution. That being the case, irrespective of rejection of IA-24 defendant No.2 and 3 always have a right to lead evidence through power of attorney in the matter subject to rules of evidence and rules of appreciation of evidence.”

- 11.** The said ratio is aptly applicable to the facts on hand. Further, the plaintiff can cross-examine the SPA Holder pertaining to the facts of the case. In the said



circumstances and based upon the ratio of Hon'ble High Court of Karnataka, I feel it is just and proper to allow the application. The defendant No.2 has shown sufficient ground to prosecute the matter through her SPA Holder. Accordingly, I proceed to pass the following :

ORDER

I.A. No.VII filed by the defendant No.2 under Order 3 Rule 2 of CPC is hereby allowed.

The defendant No.2 is permitted to prosecute the matter through her SPA Holder.

Parties to bear their own cost.

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the 07th day of July, 2023)

Sd/-

(POORNIMA. K. YADAV)

**Addl. Sr. Civil Judge & JMFC,
Gubbi**