



**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 3rd day of October, 2023

OS No. 114/2020

Plaintiff/s : Gowramma
W/o M.M. Paramashivaiah,
D/o Late Mahalingaiah,
Aged about 51 years,
R/at Marashettihalli Village,
Kadaba Hobli,
Gubbi Taluk

(By Sri. N.S.A. Adv.)

Vs.

Defendant/s : 1. Ganganamma
W/o Late Narasimhamurthy,
D/o Late Mahalingaiah,
Aged about 55 years,

2. Renukamma
W/o Late Narasimhaiah,
D/o Late Mahalingaiah,
Aged about 53 years,

3. Kadaraiyah
S/o Late Jadiyappa
Aged about 62 years,

All the defendants are R/o
Marashettihalli Village,
Kadaba Hobli, Gubbi Taluk.

(D1 and 2 by Sri. D.M. Adv.)

(D3 by Sri C.R.B. Adv.)



PARTIES TO I.A.NO.IX

Applicant/defendant : M.M. Paramashivaiah
Vs.

Opponent/plaintiff : Gangamma and
others

Provision under the Application	Under Order 3 Rule 2 R/w 151 of CPC
Application Relief sought for	Permit the SPA Holder of the appellant to conduct the Case on his behalf
The date of the application is filed	05.09.2023
Interlocutory application No.	IX
Date of objection filed by the Respondent	16.09.2023
Date of order passed	03.10.2023

Sd/-
(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.

: ORDERS ON I.A.NO.IX:

When the matter was pending for further cross-examination of PW1, the plaintiff SPA Holder filed the present application.

- 2.** The applicant/plaintiff through her SPA Holder filed this



application Under order 3 Rule 2 of CPC seeking to prosecute the matter through her power of attorney holder.

- 3.** The application is accompanied with the affidavit of the Power of Attorney Holder of the plaintiff, wherein it is stated that the present suit is filed by the wife of the SPA Holder and she is aged about 52 years and she has fractured her leg as such, she is under medication and unable to appear before the Court to give evidence. It is stated that the SPA Holder is conversant with the facts of the case, as such sought to allow the application.
- 4.** On the other hand, the counsel for the defendant No.1 and 2 filed objection and contended that the application is not maintainable and it is liable to be rejected. It is contended that the present application came to be filed when the matter was pending for further cross-examination of PW1 as such, the SPA Holder has no locus standi to file the application. It is contended that the SPA Holder has not produced any medical documents. Hence, sought to reject the application.



5. Heard both the counsel.
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 plaintiff 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 present suit is filed seeking relief of partition and separate possession in respect of Item No. 1 to 8 of the suit schedule properties.
9. The material on record depict the fact that when the matter was pending for further cross-examination of PW1, the present application came to be filed. The defendant No. 1 and 2 objected the present application on the ground that the plaintiff has not shown valid grounds to allow the application.
- 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 to 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 defendant No. 1 and 2 can cross-examine the SPA Holder pertaining to the facts of the case and the evidence of PW1 which is already on record shall remain intact. 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 plaintiff has shown sufficient ground to prosecute the matter through her SPA Holder. Accordingly, I proceed to pass the following :

ORDER

I.A. No.IX filed by the plaintiff through her SPA Holder under Order 3 Rule 2 of CPC is hereby allowed.

The plaintiff 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 **3rd day of October, 2023**)

SD/-

(POORNIMA. K. YADAV)

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