

: ORDER ON I.A.No.II

The plaintiff No.1 has filed I.A. under Order III Rule 2 r/w Sec.151 of CPC seeking the permission to conduct the case through his son Maruthi as SPA holder on behalf of plaintiff No.1.

2. The plaintiff No.1 has sworn to an affidavit in support of his I.A and contended that, this is a suit filed for partition and separate possession against the defendants. Now the matter is set down for evidence of plaintiffs side. On account of his old age he is suffering from old age diseases, unable to hear properly and also suffering from their old age diseases and taking regular treatment. He is also suffering from weakness and not in a position to attend the court by travelling in the bus, apart from that he is unable to understand the Kannada language. Considering his age and health he has executed SPA in favour of his son who is acquainted with the facts in detail. Hence SPA holder may be permitted to lead evidence on behalf of plaintiff No.1 in the interest of justice.

3. The Defendants No.4 to 10 have filed objections to this I.A by contending that plaintiff No.1 has sworn to a false affidavit in support of his I.A. Plaintiff has stated that he is suffering from old age diseases, but he has not produced any documents in support of his contention. Plaintiff No.1 has filed the suit along with

other plaintiffs and therefore if plaintiff No.1 is suffering from old age diseases, other plaintiffs No.2 and 3 are capable of giving evidence. Just to hide the real facts, the plaintiff No.1 has filed this I.A. At the time of filing vakalath itself plaintiff No.1 ought to have appointed his SPA holder. Hence the above said application at this belated stage is not maintainable. Hence prays to dismiss the I.A. with exemplary cost in the interest of justice.

4. Heard the arguments and perused the materials placed before me.

5. The points that arise for my consideration are as follows;

1. Whether the I.A.No.II filed by the plaintiff No.1 under Order III Rule 2 r/w Sec.151 of CPC is deserves to be allowed?
2. What order?

6. My findings to the above points are as follows;

Point No.1 : In the Affirmative.

Point No.2 : As per final order
for the following;

:REASONS:

7. **POINT No.1:** The plaintiff has filed this suit for partition and separate possession by holding that

registered sale deed dated 06.10.2016 is not binding on the plaintiffs and defendants No.1 to 3 and for consequential relief of permanent injunction. The defendants have filed written statement and taken specific contention that suit is bad for non joinder and misjoinder of parties. They have further contended that plaintiff No.1 had already filed O.S. 156/2013 and obtained false decree against the defendants and since long decades defendant No.5 to 10 are in lawful possession and enjoyment over the suit item No.4 property. It is true that plaintiff No.1 along with his brother and sister have filed this petition. The plaintiff is aged about 65 years, whereas plaintiffs No.2 and 3 are aged about 50 and 55 years respectively. Plaintiff No.1 has nowhere stated that he intends to give evidence through SPA on behalf of other plaintiffs also. Since plaintiff No.1 is aged more than 65 years, it has to be believed that he is suffering from old age diseases and unable to regularly appear before the court to give evidence. Since this is a suit for partition and separate possession and SPA holder is none other than the son of the plaintiff and also staying together will be definitely having personnel knowledge of the facts of the case. If the SPA does not give proper answers during cross examination then the court can draw adverse inference against plaintiff No.1. The plaintiffs have contended that suit schedule properties

are the ancestral and joint family properties, therefore the burden is always upon plaintiff No.1 to prove his case through oral and documentary evidence. Since plaintiff No.1 is aged and suffering from old age diseases, there is no impediment in permitting his son to lead evidence on his behalf. Whereas plaintiffs No.2 and 3 have to lead their independent evidence, if they are willing to do so. Hence, I answer Point No.1 in the **Affirmative.**

8. **POINT No.2:** For the aforesaid reasons on Point No.1, I proceed to pass the following;

: ORDER :

I.A.No.II filed by the plaintiff No.1 under Order III Rule 2 r/w Sec.151 of CPC is hereby allowed.

Plaintiff No.1 is permitted to lead evidence through SPA holder Maruthi S/o Narasimhappa.

Sd/-

**Prl. Senior Civil Judge & JMFC.,
Madhugiri.**