

IN THE COURT OF THE CIVIL JUDGE AND JMFC

AT DANDELI

Dated this the 27th day of August 2015

Present: VEDAMOORTHY B.S. B.A.(L), LL.B.
Civil Judge & JMFC Dandeli.

O.S. No. 82 / 2014

PLAINTIFF : Somanna

Vs.

DEFENDANTS : Ganapati and another

PARTIES TO I.A.No.VI

APPLICANT : SomannaPlaintiff

Vs.

OPPONENTS : Ganapati and anotherDefendants

ORDERS ON I.A.VI

I.A. No. VI filed by the plaintiff under Order III Rule 2 R/w. Section 151 of CPC seeking an order to permit the plaintiff to produce the GPA executed infavour of his GPA holder to give evidence and to act on his behalf.

2. In support of the application, the plaintiff has filed his affidavit. The plaintiff has also produced the original General Power of Attorney executed by him in favour of his GPA Holder.

3. The learned counsel for the 1st defendant has filed objection to the application praying to dismiss the application. The 2nd defendant has not filed objections to application. Hence, objections of the 2nd defendant to I.A.No.VI is taken has not filed.

4. Heard the learned counsels for both side and perused the materials available on record.

5. The following points that arisen for my consideration.

1. Whether the plaintiff has made out sufficient grounds to permit him to produce GPA executed by him infavour of his GPA holder and to act on behalf of him in this case?
2. If so, what order?

6. My answers to the above said 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:** This suit is filed by the plaintiff against the defendants for the relief of specific performance of contract and permanent injunction. The defendants are contesting the suit. The plaintiff has already filed his affidavit by way of examination-in-chief and got marked the documents on his behalf. When the case is posted for further chief-examination of PW1, the plaintiff has filed the present application seeking the permission to produce the GPA executed by him infavour of his GPA holder to give his evidence and to act on his behalf in this case. The reason assigned by him is that he is a heart patient, his hearing capacity is weaken due to his throat and ear problems. He get pain in his throat when he talk. The Power of Attorney is fully aware of the transaction which has been taken place between the 1st defendant.

8. The objections of the 1st defendant is that the plaintiff has not made out any valid and reasonable grounds to execute the GPA. He has not produced any medical certificate to substantiate the reasons assigned by him. The law does not permit the plaintiff to seek the assistance of the GPA holder to through his case.

9. On perusal of the reason assigned by the plaintiff in the affidavit filed in support of the application is satisfactory one. If a person is unable to talk, it is difficult to him to depose before the court. The only course opens to the witness is to give answer in writing. The 1st defendant has not intended to opt the said alternative remedy. It is stated in the affidavit that the Power of Attorney holder is having the knowledge of transaction and therefore, he is a competent witness. The reliability of his evidence subject to appreciation in the due course. Under these circumstances, the plaintiff has made out sufficient grounds to permit him to produce GPA executed by him infavour of his GPA

holder and to act on behalf of him in this case. Hence, I answer point No.1 in the Affirmative.

10. **POINT NO.2:** In the result, I proceed to pass the following;

ORDERS

I.A.VI filed by the plaintiff under Order III Rule 2
R/w Section 151 is hereby allowed.

No orders as to costs.

The plaintiff is permitted to produce the GPA
executed in favour of his GPA holder and the GPA holder
is permitted to act on his behalf in this case.

(Dictated to the Stenographer directly on computer, printout taken by him, corrected by me and then pronounced in the open court on this the 27th day of August, 2015)

(VEDAMOORTHY B.S.)
Civil Judge & JMFC., Dandeli.