

KAUK720000072025



**IN THE COURT OF THE SENIOR CIVIL JUDGE & PRL. JMFC.,
KUMTA, AT; KUMTA, UTTARA KANNADA**

Dated this the 10th day of March, 2026

PRESENT

**Smt. B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta.**

O.S.No.1/2025

BETWEEN:

Sri. Balachandra Rama Nayak,

...Plaintiff

(Rep.by Sri. R.G.N.-Advocate)

V/s.

AND:

Smt. Radha W/o. Rama Naik and others

...Defendants.

(Rep.by Sri. G.G.G.-Advocate)

IA.NO.VI

BETWEEN:

Sri. Balachandra Rama Nayak,

.....Applicant/Petitioner.

V/s.

AND:

The Managing Director and others

...Opponents/Defendants.

Provision	U/s. III rule 2 R/w. 151 of CPC
Relief sought for	To permit the applicant/plaintiff to proceed the suit through his GPA holder.
Application dated	20-01-2026
Application No.	VI
Objection filed on	03-02-2026
Order passed on	10-03-2026

ORDER ON I.A.No.VI

The present I.A.No.VI is filed by the applicant/plaintiff under Order III Rule 2 R/w Section 151 of CPC with an prayer to permit the plaintiff to proceed the suit through his GPA holder Vinayak Devaray Naik.

2. The application supported with affidavit of GPA holder of plaintiff, wherein it is stated that, in the present case, the plaintiff Balachandra Rama Nayak is suffering from cancer,

hence he could not able to appear before this court. Hence the plaintiff executed a General Power of Attorney in his favour. Hence if the application is allowed no hardship caused to the defendants, and if the application is not allowed hardship caused to the plaintiff, Hence, prayed to allow the application.

3. IA opposed by defendants by filing written objection contended that the said application is not tenable both on question of law as well as question of facts. The plaintiffs filed the suit against the defendant for specific performance of contract, direct the defendant to execute the sale deed. Hence the burden is on plaintiff to prove the agreement of sale , hence the plaintiff is the competent person to give evidence. Hence if the plaintiff is permitted to appear through his GPA holder, the true facts and the truth will not come before the court.

4. Already this plaintiff filed I.A.No.III on the same ground that permit the plaintiff to appear through his GPA holder and the same was dismissed on 02.12.2022 by this court. But the same was not challenged by the plaintiff. Hence section 11 of

CPC is applicable. As per Section 11 of CC-Explanation v- Any relief claimed in the plaint which is not expressly granted by the decree, shall, for purpose of this section, deemed to have been refused.

5. And in several cases the Hon'ble Supreme Court held that the provision of Res-Judicata not only applicable to the suit but also applicable to interlocutory applications. The principle of Res-judicta applies at different stages of the same suit. That is, a order passed at one stage cannot be questioned again at a later stage. Once an interim application is decided on merit, this principle acts as a bar to review its order or to apply again for the same relief. Hence prays to dismiss the said application.

6. Heard both respective counsels for plaintiff and defendants, perused I.A, annexed affidavit, and objection filed by the defendants.

7. The points that arise for consideration are as follows.

1. Whether the plaintiff has made out a sufficient ground to permit him to appear through his GPA holder?

2. What order?

8. Findings of this court on the above points are as follows:-

Point No.1 : In the Affirmative

Point No.2 : As per final order

For the following:

REASONS

9. **Point No.1:** Plaintiff filed this suit against the defendants for Specific performance. Admittedly in this case already the plaintiff filed I.A. No.III which was dismissed by this court by its order dated 02.12.2025 as the plaintiff along with his application has not produced the GPA.

10. Now the plaintiff again filed application on same grounds but by producing the GPA executed by him in favour of Vinayak Devray Naik. On perusal of material on record shows that the plaintiff is aged about 70 years, in his application plaintiff mentioned that he is suffering from cancer and he could not able to appear before the court, hence he executed GPA in favour of his relative Vinayak Devray Naik.

11. Defendant opposed the application and learned counsel for defendant submits that, the burden is on plaintiff to prove the agreement of sale, hence the plaintiff is the competent person to give evidence. Hence if the plaintiff is permitted to appear through his GPA holder, the true facts and the truth will not come before the court. And already this court dismissed the same application filed by the plaintiff, hence the application is hit by the principles of resjudicata.

12. Admittedly this court dismissed the application that is I.A.No.III filed by the plaintiff under the same provision. But the application was dismissed as plaintiff not produced the GPA. But now the present application is filed with GPA. Parties generally cannot file the same application on the same ground, Res judicata generally does not apply to interlocutory application because they do not definitively decide the maid suit, issues or rights. However the principle can apply if an I.A Order decides a substantial specific issue between the same parties. Interlocutory order are interim measures, that do not permanently

settle the litigation. To constitute a matter res-judicata, the following conditions must be proved.

(1) That the litigating parties must be the same.

(2) That the subject matter of the suit also must be identical.

(3) That the matter must be finally decided between the parties, and

(4) That the suit must be decided by a court of competent jurisdiction.

13. It is well settled that the principle of res-judicata is applied for the purpose of achieving finality. Hence in the present case order on I.A.No.III is not based on a final finding regarding a specific issue. Hence application cannot be rejected as hit by section 11 of CPC. Now the plaintiff filed application with GPA, hence if the application is not allowed hardship caused to the plaintiff. Hence the plaintiff made out sufficient grounds to allow the application. Accordingly, **point no.1 answered in the Affirmative.**

14. **Point No.2:** In view of findings on point No.1, this court proceed to pass the following:

ORDER

I.A.No.VI filed by the plaintiff under Order III Rule 2 R/w Sec 151 of CPC is hereby allowed on cost of Rs.500/-.

The plaintiff is permitted to appear through his GPA holder.

(Dictated to the stenographer, transcribed by her, then corrected and pronounced by me in the open court on this the 10th day of March, 2026)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta.