

The plaintiff / applicant has filed an application under Sec.151 and 94(e) of C.P.C. to permit the plaintiff to give evidence himself as P.W.2 as the G.P.A. holder i.e. P.W.1 is not in a position to give further evidence due to his ill – health and grant such other reliefs.

In the accompanying affidavit it is stated that, the suit is filed against the defendants for partition of plaint 'A' schedule properties as briefly mentioned in the 'A' schedule of the plaint. The case is posted for cross – examination of P.W.1. It is also stated in the affidavit that, his son Nagaraj Kamath, G.P.A. holder of the plaintiff already filed the affidavit and examined as P.W.1 and documents got marked. But, due to his ill-health he is not in a position to give evidence at the time of cross – examination. Now the plaintiff wishes to enter into the witness box and give further evidence personally as P.W.2.

Objections came to be filed, wherein the averments narrated out in the affidavit are being denied flatly and it is stated in the objection that, it is a repeated trick played by the plaintiff to protract proceedings. So therefore, when the case is posted for cross – examination of P.W.1 the plaintiff has come up with an application to discard the evidence

of P.W.1 and lead himself the case in the place of his son. Therefore, prays to dismiss the application.

Heard on both sides. The matter is of the year 2022 and the matter was posted for cross – examination of P.W.1 on 13.08.2025, then if further proceedings have been seen from 13.08.2025 it was the defendants who had filed an application and the court passed the orders. Hence for this reason, the cross – examination of P.W.1 get deferred and the plaintiff was also examined on 18.01.2024 and then onwards repeatedly the matter was adjourned for cross – examination of P.W.1 and P.W.1 kept on remaining absent. So on perusal of the order sheet it is crystal clear that both the plaintiff and defendants took sufficient time to post this case for the evidence. But on brief analyzing, the hardship is caused to the defendants for the reason that, the plaintiff took sufficient opportunities only to decide who will lead the case. First his son on the strength of the G.P.A. stepped into the witness box to lead the case and now it is stated that due to his ill-health his examination – in – chief be achieved and plaintiff himself will enter the witness box to lead the case. So therefore, it is quite natural that hardship is caused to the defendants. However that can be compensated by imposing cost.

Therefore, this court proceeds to pass the following :

ORDER

The application filed under Sec.151 and 94(e) of C.P.C. is hereby allowed on cost of Rs.6,500/- payable to the defendants and plaintiff / applicant is given permission to enter the witness box and lead the case and it is made very clear to the plaintiff that no further adjournments will be given in this regard.

Call for plaintiff's evidence finally subject to the payment of cost by 14.07.2026.

(Santosh Srivastava)

I Addl. Senior Civil Judge and A.C.J.M.,
Udupi.