

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,
KARKALA**

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 4th day of June, 2024.

O.S.No.60/2023

Smt. Jayalaxmi and others .. Plaintiffs

Versus -

Sri. K. Subramanya ..Defendant

PARTIES TO I.A.No.4

Sri. K. Subramanya,
Aged about 43 years,
S/o. K. Shankara Narayana Bhat,
Durga Village, Tellar Post,
Karkala Taluk, Udupi District. .. Applicant/
Defendant

-Vs. -

1. Smt. Jayalaxmi,
Aged about 63 years,
D/o. Late Vasudeva Udupa,
R/at. Kenchabhatra Mane,
Kodambala Village and Post,
Kadaba, Puttur Taluk, D.K. District.
2. Sri. Laxminarayana Udupa,
Aged about 52 years,
S/o. Late Vasudeva Udupa,
R/at. Hosa Mane,
Odilnala Village and Post,
Belthangadi Taluk, D.K. District. .. Opponents/Plaintiffs

i.	Provision under which the application is filed	Under Section 151 CPC ,
ii.	Relief sought for	To direct the 1 st plaintiff to give evidence
iii	The date on which the application is filed	18-04-2024
iv	Number of the application	I.A.No.II
v	The date on which the objections are filed by different opponents	19-04-2024
vi	The date on which the orders were passed on the said application.	04-06-2024

ORDERS ON I.A.NO. 4

The Defendant filed the I.A.No.4 under Section 151 of CPC seeking direction to the 1st plaintiff to appear before this court to lead the evidence.

2. It is stated by the defendant who is appearing in person that the 2nd plaintiff has no locus standi to answer on behalf of 1st plaintiff and thus prays to allow the application and direct the 1st plaintiff to give evidence before this court.

3. Counsel for the plaintiffs filed objections that the defendant cannot compel the plaintiffs to get herself examined in person. That the 2nd plaintiff being competent to depose and for other objections, prays to dismiss the I.A.

4. Heard from counsel for the plaintiffs . Defendant filed notes of arguments on I.A.No.4.

5. The following points arise for my determination .

“Whether the 1st plaintiff may be directed to appear and give evidence on her behalf? ”

6. My answer to the above point is in ‘negative’, for the following

REASONS

7. This is a suit filed seeking possession of the suit schedule property where the defendant is appearing and contesting the suit in person. The stage was posted for cross-examination of PW.1, while the defendant filed the present application.

8. In this context, it would be pertinent to note that the 2nd plaintiff got examined himself as P.W.1 and has exhibited several documents on his behalf, where Ex.P.1 is the General Power of Attorney alleged to be executed by the 1st plaintiff in favour of 2nd plaintiff pertaining to the year 2020-21.

9. It is the argument of the defendant that the 1st plaintiff has no authority to authorize the 2nd plaintiff to give evidence on her behalf,

when the 1st plaintiff is very well, healthy able to appear before this court. It was also pointed out by the defendant that the 1st plaintiff has appeared before this court in the year 2023 and has also produced the General Power of Attorney in favour of her son in the year 2023. Thus submits that the earlier General Power of Attorney executed by the plaintiff in favour of 2nd plaintiff has been cancelled. Further urges that the signature of the 1st plaintiff has been forced by the counsel Sri. G. Muralidhar Bhat who is appearing for the plaintiffs in the above case. That it is only the 1st plaintiff who can answer to all these questions and in order to prove that the counsel has forged the signature of the 1st plaintiff, it is necessary to examine the 1st plaintiff. It was also urged by the defendant that he would not deny the conducting of cross-examination of the 2nd plaintiff/P.W.1, which would be at a later stage after the cross-examination of the 1st plaintiff. The defendant also relies upon the following authority of Hon'ble Supreme Court in Appeal (Civil) No.6790/2003 in Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd., and others dated 06-04-2004, where it is held that when the party is able to appear before the court, the General Power of Attorney cannot be examined.

10. As against this, it is the argument of the counsel for the plaintiff that question of forging the signature of the 1st plaintiff by the counsel does not arise at all. Further submits that the plaintiff has the power to examine any person on her behalf and any one of the parties may be examined in order to prove the case of the plaintiffs . Thus submits that the 2nd plaintiff is being examined as P.W.1 and it is the bounden duty of the defendant to cross-examine the P.W.1 at this stage.

11. At this stage it would be important to note the provision of Order III Rule 2 of C.P.C., which reads thus

“Recognized agents: The recognized agents of parties by whom such appearances, applications and acts may be made or done are

(a) persons holding powers-of-attorney, authorizing them to make and to such appearances, applications and acts on behalf of such parties:

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.”

Order III Rue 2 of C.P.C., empowers the party to appoint any person on their behalf, to act or do all the necessary things on behalf of the executor . There is no bar for any person to examine any one on their behalf, which is a mandatory provision embodied under Code of Civil Procedure. The defendant cannot rely upon the weakness of the plaintiffs, but can take advantage of the same. Thus the defendant cannot compel the 1st plaintiff to examine any person who is not interested to appear before this court, when the law empowers the party to the suit to examine any person, this court cannot overrule the provision of C.P.C., and direct the 1st plaintiff to examine herself. Further the execution of General Power of Attorney in favour of son of plaintiff No.1 at the later stage after execution of General Power of Attorney in favour of 2nd plaintiff needs a discussion by this court, with regard to the validity of the said General Power of Attorney , but not at this stage.

12. When the law permits the party to appoint any person on their behalf, this court has to only see whether there is personal knowledge for the General Power of Attorney Holder of the plaintiff about the alleged incident, this court has to discuss at the end of the case i.e., at the time of passing of judgment. Further P.W.1 is none

other than the 2nd plaintiff himself, the brother of the 1st plaintiff.. Therefore P.W.1 is also a party to the suit who is also joining his hands with the 1st plaintiff in order to claim possession from the defendant. Therefore at this stage, this court cannot compel any person to step into the witness box unless and until the party wishes to appear, which is against the fundamental rights of the parties.

13. It was also argued by the defendant that if the plaintiff is unable to appear before the court, this court can appoint the court commissioner to examine the 1st plaintiff. But the plaintiffs are willing to examine the 2nd plaintiff on their behalf and in view of the article embodied in the constitution, it is the the fundamental right also. This court has no authority to force the 1st plaintiff to give evidence on her behalf The entire burden to prove the fraud undue influence etc. lies upon the person who urges the same and is upon the defendant in the present case. Therefore this court is of the considered opinion that the 1st plaintiff cannot be compelled to appear before the court to give evidence. Accordingly the above point is answered in the negative.

14. In view of the above said reasonings, I proceed to pass the following:

ORDER

I.A.No.4 filed by the defendant under Section 151 of CPC , is herewith rejected .

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in Open Court on this the 4th day of June, 2024.)

(SHARMILA C.S.)
Senior Civil Judge & ACJM Karkala.