

ORDER ON IA No.VIII

The plaintiff has filed the present application under Order III Rule 2 of CPC., praying to permit him to appear and adduce evidence through his GPA holder namely Mr. Sudarshan.

2. It is averred in the memo of facts annexed to the application that, he is working in Mumbai and not in a position to personally appear before the Court in the above suit to adduce evidence on account of his personal inconvenience. Hence, he appointed his son Mr. Sudarshan by executing a general power of attorney dated 28.10.2020. With these, he prayed to allow the application.

3. On the other hand the defendants resisted the application by filing objection, wherein contended that, the alleged Attorney/GPA holder cannot give evidence in place and instead of plaintiff. The alleged G.P.A. holder can depose for the plaintiff in respect of the acts done by him in pursuance of the alleged GPA. He cannot depose for the principal in respect of which the plaintiff to be cross-examined. He can only act on behalf of plaintiff. The GPA holder cannot appear as a witness in place of principal or as a principal. At the most the GPA holder can examine as witness like any other witness. Therefore, prayed to dismissal of the application.

4. The points that would arise for consideration are:-

1. Whether the application filed by the plaintiff deserves to be allowed?
2. What order?

5. I have heard the learned counsel for the parties to the lis and meticulously perused the material on record.

6. My answer 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:** The plaintiff has filed the present suit against the defendant for grant of Permanent Injunction restraining them, their men, servants and all persons claiming under them or through them from interfering with the property in lawful possession and enjoyment of the plaintiffs or in any way interfere with the plaintiff's peaceful possession and enjoyment of the plaint 'A' schedule property. The learned counsel for the plaintiff submitted that the plaintiff is not in a position to appear before the Court to adduce evidence. The GPA holder is none other son of the plaintiff and he is acquainted with the facts and circumstance of the case. There is no bar to examination of power of attorney on behalf of the plaintiff. As such, he prayed to allow the application. Counter to that, the learned counsel for the defendant vehemently argued that the power of attorney holder cannot act as a witness on behalf of the Principal. As such, he prayed to dismissal of the application.

8. When the matter was posted for the plaintiff evidence, at this stage the plaintiff has filed the present

application seeking to permit him to represent the suit through his GPA holder. It is worth to refer decision of the Hon'ble High Court of Karnataka in the case of Sajida Banu -Vs- Halema Banu and Others reported in ILR 2015 KAR 635, wherein their lordships held that **there is no express bar under the provision of C.P.C., to debar Power of Attorney Holder to be examined as a witness on behalf of party to proceeding. The power of attorney holder has personal knowledge about the case of the plaintiff or not, may be a question, which can be elicited at the time of cross-examination and evidentiary value of his deposition will be determined later.** The present suit is a permanent injunction simplicitor. The GPA holder is none other than son of the plaintiff. Therefore, the plaintiff can represent the suit through his power attorney and power attorney can depose on behalf of the plaintiff. Accordingly, I answer Point No.1 in the **Affirmative.**

9. **Point No.2:** In view of discussion and the findings arrived at point No.1, I proceed to pass the following:

ORDER

IA No. VIII filed by the plaintiff is allowed.

Consequently, the plaintiff is permitted to represent and prosecute the suit through his GPA holder Mr. Sudarshan.

No order as to costs.

For Plaintiff Evidence finally as last chance:

II Addl. Civil Judge & J.M.F.C.,
Karkala.