

IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C.,
AT KUDLIGI

PRESENT : ANAND, B.Com., LL.B.,(Spl).,
SENIOR CIVIL JUDGE & JMFC,
KUDLIGI

DATED THIS 26TH DAY OF OCTOBER 2017

ORIGINAL SUIT No. 41 OF 2016

Between :

Danappa .. Plaintiff

- A N D -

T.Devendrappa and others .. Defendants

PARTIES TO I.A.No.3

Danappa .. Petitioner

- V E R S U S -

T. Devendrappa and others .. Respondents

ORDERS ON I.A. No. 3

1. The plaintiff has filed present application under Order 3, Rule 2 read with Section 151 of Code of Civil Procedure seeking permission to appoint his son by name D. Obalesha S/o Danappa, aged about 42 years, agriculturist R/o Karthikeya Temple, Subbarayanahalli village, Sandur taluk,

Ballari District as his lawful attorney to conduct the case on his behalf.

2. It is averred in the affidavit sworn by plaintiff, which is accompanied to the application that, due to old age, his ears are deaf and he is not in a position to walk without the aid and assistance of others and he is not in a position to give evidence in this case before this Court. Hence he intends to appoint his son by name D. Obalesha S/o Danappa, aged about 42 years, agriculturist R/o Karthikeya Temple, Subbarayanahalli village, Sandur taluk, Ballari District as his lawful attorney to conduct this case on his behalf. These amongst other grounds, it is prayed to allow the application.

3. The defendants have filed objections to present application.

It is averred in the objection that, the application is not maintainable, false and vexatious one. The entire averments of the affidavit that, due to his old age the plaintiff's ears are deaf and he is not in a position to walk without the aid and assistance of others, as such he is not

in a position to give evidence in this case before this Court are denied in toto. It is further averred that, the plaintiff is hale and healthy person and he is regularly attending the agricultural works and also he is attending before this Court on last date of hearing. The plaintiff is capable to give oral evidence independently and also his ears are very clear and also he is in a position to walk without the aid and assistance of others. The plaintiff is not old aged person. If the plaintiff enter into the witness box the real truth will come out from the mouth of plaintiff. To avoid the same at the instigation of his son, this false petition is filed. These amongst other grounds, it is prayed to reject the application.

4. The following points arise for my consideration :

1) Whether plaintiff may be permitted to conduct the case through his proposed P.A. holder son as proposed in the application ?

2) What Order ?

5. Heard both sides.

6. My findings to the above points are as under :-

Point No.1 ... *In the Negative.*

Point No.2 .. *As per final order for the following ;*

REASONS

7. **POINT No.1** :- The plaintiff has filed present suit against defendants seeking relief of declaration of title and possession in respect of suit schedule property. It is the specific case of plaintiff that he is absolute owner in possession and enjoyment of suit schedule property and defendants have illegally dispossessed him from said property. On the other hand defendants have seriously resisted the suit by filing their written statement and they have taken specific contention that, defendants No.1 and 2 have inherited suit property from their grandfather Bheemappa and defendants No.3 to 5 are in possession of 3.07 acres in Sy. No. 343/A/1 and 2.36 acres in Sy.No. 343/A/2 by virtue of sale made by Bheemappa in favour of their grandfather Kunta Boraiah.
8. Now the issues in the suit are framed and matter is posted for plaintiff evidence. At this stage plaintiff has come up

with present application seeking to conduct the case on behalf of present plaintiff as his son cum power of attorney holder. The application is also accompanied with a general power of attorney deed said to have been executed by present plaintiff.

9. As per Order 3, Rule 2 of Code of Civil Procedure a person holding power of attorney may appear, file applications and act on behalf of his principal in conducting the case. However, the learned counsel for defendant NO.1 to 4 has vehemently argued that, the plaintiff in intentionally avoiding to enter the witness box, knowing fully well that truth will come out in cross examination.

10. The plaintiff has taken several grounds in his plaint with regard to ownership and possession of suit schedule property, its mortgage in favour one Eshwarappa and discharge of said mortgage. He has also alleged that grandfathers of defendants No.1 to 5 had got entered their name to revenue documents illegally without any title deeds, which are very well within his own knowledge and no

other person including the proposed power of attorney holder is expected to depose and testify with regard to such aspects.

11. It is necessary to refer case law reported under **AIR 2005 Supreme Court 439 in between Janki Ashdeo Bhojwani and another versus Indusind Bank Limited and others.**

Wherein Hon'ble Supreme Court has held as under :-

- (A) *Civil P.C. (5 of 1908), O.3, R.1, O.3, R.2 – Power of attorney holder – Cannot depose in place and instead of principal.*

Order 3, Rr.1 and 2 empowers the holder of power of attorney to 'act' on behalf of the principal. The word 'acts' employed in O.3, Rr.1 and 2, confines only in respect of 'acts' done by the power of attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. If the power of attorney holder has rendered some 'acts' in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

Where in a recovery proceedings before the Debt Recovery Tribunal against the husbands of the appellant wives the appellants had filed objections against the attachment of house property and the

Supreme Court remanded the matter and held that the burden of proving that appellants have a share in property will be on the appellants, it was obligatory on the appellants to have entered the witness box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal. The Tribunal erred in allowing the power of attorney holder to enter the box and depose instead of the appellants. Thus, it could be said that the appellants have failed to establish that they have any independent source of income and they had contributed for the purchase of the property from their own independent income. The Tribunal has erred in holding that they have a share and are co-owners of the property in question.

12. For these reasons the plaintiff is expected to enter into witness box and to discharge the burden by explaining with regard to his title and previous possession over suit property with the help of cogent materials. Hence the proposed power of attorney holder cannot be permitted to give his evidence and testify on behalf of plaintiff. Further the proposed power of attorney holder cannot depose with regard to acts done by her principal i.e., plaintiff and only

the plaintiff is a competent person to testify with regard to the things of his personal knowledge.

13. More over, absolutely no documents are produced by plaintiff to show that he is suffering due to old age and hearing problem. For these reasons, it is incumbent upon this court to hold that, the proposed power of attorney holder of plaintiff cannot be permitted to conduct the case as prayed for in the application and as such Point No.1 answered in the Negative.

14. POINT No.2:- For the reasons stated and findings given on Point No.1, I proceed to pass the following :

ORDER

I.A.No.3 filed by plaintiff under Order 3, Rule 2 read with Section 151 of Code of Civil Procedure is hereby rejected.

No order as to costs.

(Dictated to stenographer directly on computer, typed by him, corrected and signed by me and then pronounced in open Court on this 26th day of October 2017)

**(ANAND)
SENIOR CIVIL JUDGE AND JMFC.,
KUDLIGI**

Orders on I.A.No.3 pronounced in open Court.

(Vide separate Orders)

ORDER

I.A.No.3 filed by plaintiff under Order 3, Rule 2 read with Section 151 of Code of Civil Procedure is hereby rejected.

No order as to costs.

**SENIOR CIVIL JUDGE,
KUDLIGI**