

**ORDERS ON IA NO. 3**

The above IA No. 3 under Order 3 Rule 2 read with Section 151 of CPC dated 01.06.2024 is filed by the Plaintiff Smt. SM Shashikala by seeking Appointment of her Son as the SPA Holder to conduct the Case on her behalf.

To the IA No. 3, the Defendants have filed their detailed Objections.

In support of the IA No. 3, the Plaintiff has filed her Affidavit by Depositing on Oath that, the above Suit is filed by her for the relief of Declaration of Ownership and for Permanent Injunction. The Case is Posted for her Evidence. Since her health is not in good condition and she could not walk and stand and her eyes and ears are not properly working and therefore, she seeks Appointment of the SPA Holder to give her Evidence. In support of the IA No. 3, only the SPA copy is furnished and No Medical documents showing the alleged illness and Physical infirmity of the Plaintiff are produced.

In their detailed Objections, the Defendants have denied all the averments made in the Affidavit of the Plaintiff and they have contended that, the Defendants have already

obtained Decree in OS No. 136/1989 and they have already Obtained delivery of Possession of the Suit Schedule Property from the Plaintiff and therefore, they have sought for Dismissal of the IA No. 3.

I have Heard both side Parties on the IA No.3 and perused the documents on record.

The above case is Posted for Evidence of the Plaintiff on 30.03.2024 and she has filed the IA No. 3 after Posting of the case for her Evidence. The Suit is for Declaration of Ownership of the Suit Schedule Property bearing Door No. 592 measuring 29 x 46 feet of 5<sup>th</sup> Ward in Hirehadagali. The Plaintiff contends that, she has purchased the Property from one Mujavar Nanusab on 24.07.2019. The Plaintiff has not stated anything about her Son and SPA Holder purchasing the said Property on her instructions and on her Authority given to him.

The Hon'ble Apex Court has held in the case of **S. Kesari Hanuman Goud vs. Anjum Jehan** reported in **2013 AIR SCW 3561** that, *It is a settled legal proposition that the power of attorney holder cannot depose in place of the principal. Provisions of Order III, Rules 1 and 2 CPC empower the holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined only to "acts"*

*done by the power-of-attorney holder, in exercise of the power granted to him by virtue of the instrument. The term “acts”, would not include depositing in place and instead of the principal. In other words, if the power-of-attorney holder has preferred any “acts” in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined. (See: Vidhyadhar v. Manikrao & Anr., AIR 1999 SC 1441; Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217; M/S Shankar Finance and Investment v. State of A.P & Ors., AIR 2009 SC 422; and Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512).*

Therefore, in the absence of any such acts performed by the SPA Holder on the instructions of the Plaintiff, his Evidence cannot be considered by this Court as declared by the Hon’ble Apex Court in the above mentioned Cases.

However, I am also aware of the reported Judgments of the Hon'ble High Court of Karnataka to the effect that, a Party can give Evidence through his Agent or Power of Attorney Holder but, the Court can consider the Evidence given by the Agent or Power of Attorney Holder only at the time of appreciating the Evidence.

Therefore, if a Person chooses to keep away from the Witness Box and he gives Evidence through his Agent by delegating that Power to the Agent, the Court has least to say in that matter and it is the choice of the Party to give Evidence through his Agent by withholding the best Evidence. Hence, by allowing the Plaintiff to give her Evidence through her SPA Holder and to decide the Evidentiary value of the SPA Holder only at the time of writing of the Judgment, I proceed to pass the following:

**ORDER**

**The IA No. 3 of the Plaintiff is allowed by imposing costs of Rs.600/- Payable to the Defendants.**

**The SPA Holder of the Plaintiff is permitted to give Evidence subject to its admissibility will be decided only at the time of writing of Judgment.**

**OS No. 38/2023**

Call on for Payment of Costs  
and for SPA Holder's Evidence by  
08.11.2024.

**Itinerary**  
**Senior Civil Judge**  
**Hoovinahadagali.**