

Dated: 06-03-2020

ORDERS ON IA No.IV

The power of attorney holder of plaintiff No.1 has filed IA No.IV U/o 3 Rule 3 R/w 151 of CPC seeking permission to conduct the case on behalf of plaintiff No.1.

2. In support of the application, the power of attorney holder Sarkarpash S/o Dadabashy Peerazade who is the husband of plaintiff No.1 sworn to his affidavit stating that plaintiff No.1 is his wife and she has executed power of attorney in his favour. Due to her ill-health and distance from Maharashtra to attend the case become difficult for her. He has every knowledge about the plaintiffs family and their properties and plaintiff No.1 also disclosed about her personal knowledge about her family to him, hence he prayed to allow the application.

3. To oppose the same, the defendant No.1 to 4 filed their objection contending that the said application is misconceived

and untenable both in law and facts. Already plaintiff No.1 has filed her chief-examination affidavit and she has been already partly cross-examined wherein she has given some admission in her cross-examination. Now the plaintiff under law cannot give the power of attorney to another so as to conduct her case. The plaintiff No.1/PW.1 is hale and healthy and the contents of the affidavit stated by the power of attorney holder in the affidavit filed in support of IA is untenable. PW.1 just to overcome her admission got filed this false application, hence same is liable to be rejected in the ends of justice, so they prayed to reject the application.

4. Heard both sides, perused the material available on record.

5. Now, the points that would arise for the consideration of this court are;

- 1) Whether the Power of Attorney of PW.1 has made out grounds to allow the IA No.IV?
- 2) What order?

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:** Admittedly this suit is filed by plaintiffs seeking partition and separate possession in respect of the suit properties against the defendants. Already the plaintiff No.1 has led her evidence as PW.1 and she has been cross-examined in part on 12-07-2019, thereafter the PW.1 remained absent and on 30-08-2019 she came up with the present application seeking permission to continue the case by her power of attorney.

8. As per the contention of the Power of Attorney of PW.1, she is suffering from ill-health and due to distance of Maharashtra to this court it is difficult for her to attend the court. In support of her ill-health the plaintiffs have not produced any iota of evidence. If at all she is facing difficulties in attending the court how she has led her evidence by attending the court and also offered herself for part cross-examination? At that time she has not complained about her ill-health and distance, now she is complaining about the same which is not supported by any evidence.

9. The contention of the defendants is appears to be probable that since PW.1 has given various admissions during her cross-examination and in order to overcome from the

same she has filed the present application. If at all she is suffering from ill-health she could have appointed the Court Commissioner to record her evidence at her place but without opting for the same she has chosen to file the present application which is not tenable. If at all plaintiff has chosen to lead her evidence through her power of attorney prior to examining herself as PW.1 the question would have been different. Now after examining herself as PW.1 and facing the part of the cross-examination she cannot avoid her further cross-examination. Therefore, viewed from any angle the present application is not maintainable in the eye of law. Hence, the Power of Attorney of PW.1 has not made out any grounds to allow the application, hence, I answer Point No.1 in the negative.

10. Point No-2: For the foregoing reasons, I proceed to pass the following:

O R D E R

I.A. No.IV is hereby rejected.

Keep present PW.1 for further cross-examination.

Addl. Senior Civil Judge
Basavana-Bagewadi.