

ORDER BELOW APPLICATION VIDE EXH.74 IN R.C.S.No.223/2012.

(Mandabai Vs. Anusaya & Others)

1] This present application is filed by defendant no.1 seeking permission to depose Narayan Appasaheb Shinde on behalf of defendant no.1 as a Power of Attorney Holder.

2] It is contended by the defendant that, in the suit plaintiffs have closed their oral evidence and the matter was since long posted for defence evidence. Defendant no.1 has filed his examination in chief long back but, due to her ill health, she could not attend the Court regularly, so, the application for appointment of Court Commissioner was granted by the Court to record evidence of defendant no.1.

3] The cross examination of defendant no.1 by Court Commissioner could not be pleaded due to ill health of defendant no.1. It is submitted that, the Power of Attorney holder Narayan is having personal knowledge of the facts of the case, so, the permission be granted to lead evidence on behalf of defendant no.1. The plaintiffs have filed their say overleaf the application and resisted the same. It is contended that, defendant is time to time filing false application in the matter. Defendant no.1 has till date prolonged the matter. Defendant no.1 is not ill and she is able to depose and this fact is noticed by plaintiffs. There is no reason to depose by Power of Attorney holder on behalf of defendant no.1. Hence, prayed to reject the application.

4] I have gone through the proceedings, pleadings and documents on record. It is pertinent to note that, the suit is for partition, possession and declaration. Plaintiffs have already closed their oral evidence and the matter is posted for cross examination of defendant no.1 since long. Considering ill health of the defendant no.1, the Court has appointed advocate N. D. Gavli

for recording evidence of defendant no.1, but, the report filed by the Court Commissioner below Exh.72 and deposition record by Court Commissioner below Exh.73 shows that defendant no.1 was enable to depose due to her illness. The said fact has been specifically recorded by the Court Commissioner. Prima facie the report of Court Commissioner disbelieve. Moreover, defendant has filed copy of Power of Attorney executed by defendant no.1 in favor of Narayan Appasaheb Shinde. It is pertinent to note that, the matter is old one and on the verge of concluding trial after recording of defendant's evidence. The fact whether the defendant is having knowledge about the facts of the case is part of recording evidence and plaintiffs will certainly get opportunity to cross examination and bring the truth on record. Hence, no prejudice would be cosed to the plaintiff if the application is allowed as they will get opportunity to cross examine the Power of Attorney holder. Considering the Roznama, since long the matter is posted for evidence of defendant no.1. Hence, the matter is necessary to be expedite as it is more than 5 years old. Hence, considering all these aspects I pass following order:

:: ORDER ::

- 1] The application vide Exh.74 is allowed.
- 2] Narayan Appasaheb Shinde is permitted to deposed on behalf of defendant no.1 as Power of Attorney holder and filed his evidence examination in chief on next date.
- 3] Cost in Cause.

Date: 19/11/2018.

(R.B.Kulkarni)
3rd Jt. Civil Judge (J.D.),
Shrigonda.