

MHKO170001662002



Order below Exh.156

1) Perused the application and say of plaintiff vide Exh.156. Perused medical certificate filed by plaintiff vide list below Exh.150 and heard both the sides.

2) By this application, defendant nos.1 and 2 have prayed for discarding the evidence on affidavit of power of attorney for plaintiff, as he is not having knowledge about the facts and circumstances in this suit. As per the application, plaintiff has filed this suit for partition and defendants have denied the claim of plaintiff by filing written statement and thereafter, Ashok Babu Chavan has filed power of attorney on behalf of plaintiff and medical certificate of plaintiff. The said power of attorney holder Ashok has filed his affidavit of examination in chief on behalf of plaintiff, however, he is not having knowledge regarding the transaction in respect of the suit properties and some important incidents in respect of the suit properties including adoption deed, transactions done by Yesaba Aba Chavan, sale deed dt. 20/12/1952 and power of attorney holder is not witness in respect of the said transactions and he was not born at that time and so he cannot give evidence about the same and if the evidence of plaintiff Babu, is recorded then important facts and circumstances, may come on record. The medical certificate of plaintiff filed on record, is false and plaintiff Babu is doing his day to day activities and travelling by S.T. bus. So also he is in fit physical and mental state. So

defendant nos.1 and 2 have prayed for discarding affidavit of evidence of P.W.1 power of attorney holder of plaintiff namely Ashok Babu Chavan.

3) Plaintiff has filed say to this application vide Exh.157 and opposed the contents in the application. As per the say of the plaintiff, application is false and power of attorney holder Ashok is son of plaintiff Babu and plaintiff Babu has executed power of attorney in favour of his two sons. The health of plaintiff Babu is not good and he is ill and filed on record medical certificate regarding his health and illness and he cannot move here and there and cannot do his day to day activities. It is contention of the plaintiff that the contents in the paragraph (d) of the application, are false and original plaintiff Babu is also not direct witness about any deed as mentioned in the said paragraph, and the same is reflected in his affidavit and the adoption deed has been executed during his minority and plaintiff Babu and his power of attorney, have pleaded that the deed dt. 20/12/1952 is false. The adoption deed is 30 years old document and there is presumption u/s.90 of the Indian Evidence Act about it and anyone can depose as a witness on behalf of others and power of attorney holder is son of plaintiff Babu and he is competent to depose. It is contention of plaintiff that defendant nos.1 and 2 are wise and claver persons and they are greedy for grabbing the ancestral properties and properties in the adopted family and for that purpose, they are harassing plaintiff. The reason of ill health of plaintiff Babu is correct and he is also suffering from high blood pressure and heart disease and other diseases and he is not able to depose in the court. The power of attorney holder, is competent

witness on behalf of the plaintiff and he is having right to depose on behalf of plaintiff. So plaintiff has prayed for rejection of the application.

4) Heard both the sides and perused the record. Learned advocate for defendant nos.1 and 2 submitted that power of attorney holder Ashok (P.W.1) is not acquainted with the important facts and circumstances about the suit properties and he is not having knowledge about the transaction in respect of suit properties. So also, the medical certificate of the plaintiff Babu is false and plaintiff can adduce evidence and plaintiff Babu is physically and mentally fit to depose. Per contra, ld. advocate for the plaintiff submitted that plaintiff Babu is ill and he is unable to adduce evidence and so he has given power of attorney to sons and P.W.1 Ashok, who is also knowing all the facts about suit properties and having knowledge about suit properties and he is competent witness and having knowledge in respect of the transactions about the suit property as like that of plaintiff Babu. Defendants have filed this false application only to prolong the matter. He submitted that power of attorney holder Ashok, is competent witness and evidence of P.W.1 Ashok (Exh.151) cannot be discarded, as plaintiff Babu is ill and cannot remain present in the court for evidence.

5) In support of the said arguments, ld. advocate for plaintiff, has relied upon the decision of Hon'ble Bombay High Court in the case of **Humberto Luis and another Vs. Floriano Armando Luis and another 2000 (1) M.L.J. 690** wherein it is held that '*There is no restriction imposed upon the holder of power of attorney of a party*

to the suit to depose for and on behalf of Principal giving such power. The competency of such person to depose on behalf of the party to the litigation has not been curtailed in any manner by the provisions contained in order III Rule 1 or Rule 2 and Order XVIII Rule 3 (a) of Civil Procedure Code.'

6) Heard both the sides and perused the record. Perusal of record shows that plaintiff has filed this suit for partition and separate possession and mesne profits. Record shows that P.W.1 Ashok has filed on record his power of attorney given by plaintiff Babu vide list below Exh.150 and medical certificate of plaintiff Babu Kondi Chavan. The said medical certificate is issued by Dr. Arun B. Nagane and it is specifically mentioned in it that plaintiff Baburao Kondiba Chavan has under gone surgery of coronery artery bypass in the month of October 2011 and he has examined him on 15/10/2018 and found that he is physically and mentally unfit for doing any kind of physical and mental work. The said certificate is dated 15/10/2018, which supports the contents in this application.

7) Further, plaintiff has filed on record power of attorney vide list below Exh.50, which is executed by plaintiff Babu in favour of his two sons namely P.W.1 Ashok and other son namely Mahadev Babu Chavan. By the way of said power of attorney, plaintiff Babu, has given authority for doing all necessary acts for proceeding with this suit to power of attorney holder. Further, perusal of say of the plaintiff vide Exh.157 shows that plaintiff has specifically stated that plaintiff Babu himself is not witness on adoption deed or the transaction of sale in the year 1952, in respect of suit properties.

Plaintiff has specifically stated that power of attorney holder Ashok is also having equal knowledge regarding the facts and transactions about the suit properties and he is competent to depose. Plaintiff Babu is unable to depose due to his physical and mental condition and power of attorney holder is his son having knowledge regarding the suit properties and both plaintiff and defendants are close relatives of each others. Further, as per the ratio laid down by Hon'ble Bombay High Court in the above cited case law, every person is competent to depose as a witness and in the light of entire facts and circumstances of this suit, say of the plaintiff, relations between the parties and nature of dispute between the parties, it is crystal clear that defendant nos.1 and 2 have filed this application only with an intention to prolong the matter and in the light of above discussed entire facts and circumstances of this suit, son of plaintiff namely Ashok, who is power of attorney holder for plaintiff Babu, is entitled for adducing evidence on behalf of the plaintiff as his power of attorney. So in the light of above entire discussion, I do not find any substance in this application. Hence, I proceed to pass the following order;

ORDER

Application stands rejected.

Sd/-

Place : Panhala

Date : 17/01/2019

(V.A.Awaghade)
Jt. Civil Judge Junior Division,
Panhala.

-: CERTIFICATE :-

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original Order.

Name of the Stenographer	Shri. A.A.Patil
Name of Court	Shri. V.A.Awaghade
Date of Dictation	17/01/2019
Order signed by the P.O. on	23/01/2019
Order uploaded on	23/01/2019