

ORDER BELOW EXH. 73

1. The plaintiff filed present application for permission to give evidence through power of attorney instead of plaintiff.

2. By this application plaintiff submitted that the suit is filed for possession of suit property. The plaintiff was 70 years old while the suit is filed. Now, she is 80 years old and suffering from various diseases. She cannot move, speak or heard. The proposed power of attorney Mallinath Budage is son of plaintiff's sister. She executed power of attorney on 4.01.2015 in favour of Mallinath Budage and gave him rights to proceed with the suit.

3. The defendant filed their say at Exh.77 and strongly objected this application. He submitted that the plaintiff is fit for examination as even after the date of alleged execution of power of attorney. The plaintiff personally filed her examination-in-chief. There is no documentary evidence in support of alleged contention. Hence, he prayed to reject this application.

4. Heard the Ld. Advocate for defendant. Plaintiff, her power of attorney and her advocate are absent when called out repeatedly. The suit is pending since last 10

years. The present application is pending since last one year. Hence, in order to avoid the delay, it will not be proper to wait for the argument of plaintiff.

5. Perused the record. The plaint itself discloses that the plaintiff is 70 years old while filing this suit. She filed this suit through power of attorney on 04.11.2015. However, she filed her chief examination at Exh.14 on 12.08.2016. The contents in the affidavit discloses that she is old aged and suffering from knee pains. So, she could not attend the Court. In this circumstances she remains absent for cross-examination. Therefore, on 08.10.2024 her chief-examination is discarded. On 23.10.2024 the plaintiff filed application for setting-aside the order of evidence discard. The said order was set-aside on 28.11.2024. Before the passing of that order the plaintiff filed the preent application for permission to adduce evidence through power of attorney. Considering all these factual position one thing is clear that the plaintiff is old aged and sick lady. She cannot attend the Court. She executed power of attorney on 4.11.2015 and appointed Mr. Mallinath Budge as power of attorney. The said power of attorney filed preent suit. Though the evidence of plaintiff is read and recorded, it was discarded and before the order of setting-aside order of discarding evidence the present application is filed. So, it is necessary to give permission to lead evidence through

power of attorney. The plaintiff is very well aware the execution of power of attorney. But he failed to file evidence through power of attorney. She has opportunity to lead evidence through power of attorney while the evidence of original plaintiff was discarded. But she unnecessarily filed application at Exh.71. Due to conduct of plaintiff the trial is prolong. Thus, she deserve for costs. It will not be proper to reject this application only on the ground that the evidence of plaintiff was restored by setting-aside the order of evidence discard. It will cause serious injustice to the plaintiff. Resultantly, I pass the following order-

ORDER

1. Application at Exh.73 is allowed subject to costs of Rs.500/- to be paid to the defendant.
2. Permission granted to power of attorney Mr. Mallinath Shankarrao Budge to lead evidence on behalf of plaintiff.

Date : 27.06.2025.
Place : Nilanga.

(Smt. A. S. Gunjawate.)
Jt. Civil Judge, Jr. Divi., Nilanga.
District Latur.