

MHYA150000872021

**ORDER BELOW EXH.38 IN R.C.S. NO. 5/2021****(Passed on 25.08.2025)**

This is an application filed by the defendants for discard the evidence of the plaintiff under Order 18 Rule 3-A r/w section 151 of the Code of Civil Procedure.

2. The defendants submitted that, the plaintiff has filed the suit for possession in respect of the suit property. Further they submitted that, it is admitted position on record that, the one witness who alleged that he is a power of attorney of the plaintiff has examined, and he was cross examined in detailed. Thereafter for feeling lacuna in respect of which that witness was given admission, she filed application for amendment of plaint without showing due diligence and surprisingly that application stands allowed by the Hon'ble Court and thereafter the witness adduce further evidence without permission of the Hon'ble Court and counsel for defendant has taken his cross examination.

3. Further the defendants submitted that, on last date the plaintiff filed her affidavit for examination of chief and her chief examination has been recorded which is contrary to settled law. As per Order 18 Rule 3-A of Civil Procedure Code it is mandatory that party who wishes to examined shall appear as witness before any other witnesses. That after examination of other witnesses he/she

cant appeared as a witness. As the plaintiff has no right to examine at this stage and she has not taken a prior permission, her evidence is liable to be discarded/struck out from the record. Hence, this objection application filed by the defendants.

4. The plaintiff filed say and submitted that, the witness is the plaintiff herself. Further she submitted that, she given the power to attorney holder to appear as witness. The plaintiff can examine herself as witness. Hence, prayed to reject application.

5. On perusal of the record, it appears that the suit is filed for possession of the suit property through the power of attorney by the plaintiff. In the present matter power of attorney examined as P.W.No.1 on 29.07.2025. Now, the plaintiff want to examined herself as P.W. No.2. She filed affidavit of evidence at Exh.35 on 14.08.2025. The defendants filed this application and opposed to the affidavit filed by the plaintiff.

6. The plaintiff can testify as a second witness even if the power of attorney holder has already given evidence. While it is the standard procedure for a party with personal knowledge to testify first, the court has the discretion to allow the plaintiff to enter the witness box at a later stage for recorded reasons.

7. The power of attorney holder can only testify about facts that are within his personal knowledge, such as acts he performed on behalf of the principal. He cannot depose on matters that are exclusively within the personal knowledge of the plaintiff.

8. It is a settled law that, the power of attorney holder cannot depose about matters that are exclusively within the personal knowledge of the principal.

9. The defendants have an opportunity to cross-examine the evidence presented by the plaintiff. Considering the nature of the suit, the pleadings of the both parties, it appears that, if the plaintiff files evidence, it will help to decide matter on merit. It cannot be said in law that the plaintiff cannot give evidence merely because the evidence is given by the power of attorney. Certain matters and facts which are within the knowledge of the plaintiff will come on record when she file her affidavit of evidence. Hence, it appears necessary to examine the plaintiff.

10. In the light of aforesaid discussion, considering the nature of the suit I am of the opinion that, the plaintiff has right to lead evidence by through filling affidavit even though the power of attorney holder examined as P.W. No.1. Hence, I proceed to pass following order.

### **ORDER**

The application is rejected.

Ner.  
Date : 25.08.2025

(G. C. Fulzalke )  
Civil Judge, Jr. Dn.,  
Ner.

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R. C. S. No. 5/2021

Sau. Sanghmitra V/s. Pavan and others

**CERTIFICATE**

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

Name of Stenographer :- Ku. B. N. Nare (Grade-III)

Court :- Civil Judge Jr. Dn., Ner.

Date :- 25/08/2025

Order signed by

the Presiding Officer on :- 28/08/2025

Order uploaded on :- 28/08/2025