

FORM NO. III

फर्द अहकाम

ADJ NO: 1 Kekri(Ajmer)

	HarishChand Singh Vs Indra Kumari&Ors, Co. No. 6/16 CIS NO: 6/16	
8/10/25	<p>Counsel Present:</p> <p>(i)ShriB.V.Dadhich-PlaintiffAdvocate. (ii) Shri Hemant Jain-Defendant Advocate. By this order application under Order 8 rule-1 A(3) CPC and premiliary objection regarding Affidavit are to be decided .</p> <p>1.Application under Order 8 rule-1 A(3) CPC :</p> <p>(i) The Defendants filed an application under O-8 R-1 A(3) CPC dated 4/10/25 and briefly contended that Laxman Singh has executed general power of Attorney dated 30/7/25 in favour of his son Laksya Raj and which was duly registered before Sub-Registrar,udaipur.The power of Attorney is relevant document to be taken on record and the document was registered at Udaipur so, it was not present earlier . The document is genuine .</p> <p>Hence, humbly requested to take the document on record .</p> <p>(ii) The plaintiff filed reply to above application and briefly contended that the above application is not filed on behalf of defendant and the power of attorney is not party to suit ,so he has no right to file the application on behalf of defendants. The defendant Laxman Singh is suffering from disease and was in coma and all relating document were submitted before the court.</p> <p style="text-align: right;">ॐ 8/10/25 अपर जिला न्यायाधीश क्र.सं.1, केकड़ी (राज.)</p>	


The so called power of attorney doesnot bear photo of Laxman Singh , which clearly shows that the said docunment is not genuine and fabricated. No reason has been assigned why the said docunment was been produced before and the said application is filed just to delay the case.

Hence, humbly requested to reject the application with heavy cost.

(iii) The Advocate on behalf of Defendantd repeated the averments as mentioned in the application and the learned Advocate on behalf of Plaintiff repeated the averments as mentioned in reply to application.

(iv) Heard and pursued the concerned Law & file.

(v) The plaintiff has filed suit for partition &Permanent Injunction.The evidence of Plaintiff were closed on 3/7/2025.Then thereafter the defendants evidence started since then the defendant did not produced any evidence and seeked adjournment on the ground of illness of Laxman Singh & produced docunment of his illness regarding bed rest,and in application dated 19/7/2025 mentioned that Laxmansingh under supervision of Doctors &unable to hear &understand but no such docunment has been produced that Shri Laxmansingh was in coma and not in fit stage of mind to execute the power of attorney in favour of his son.


8/10/25
अपर जिला न्यायाधीश
क्र.सं.1, केकड़ी (राज.)

The genuineness of the said document cannot be seen while deciding the application and the said document is duly attested by Sub -Registrar, udaipur&signed by Laxmansingh. By taking the said document on record the plaintiff would have right to cross -examination the witness.Looking to all facts & circumstances the said document is likely to be taken on record .

: ORDER :

(vi) Thus ,the application filed by Defendants under O-8 R-1 A(3) CPC under is hereby accepted and the above document(power of Attorney) is taken on record . No order as to cost.

[Signature] 8/10/25

(ADJ NO.1 Kekri,Ajmer)

2. Preliminary Objection regarding Affidavit :

(i)The Plaintiff submitted preliminary objection regarding Affidavit filed by Daksh Raj and briefly contended that Shri Laxmansingh gave power of attorney in favour of his son Daksh Raj and no permission seeked from the court to depose evidence so, the affidavit filed by him cannot be part of record .Hence,requested that the affidavit filed by power attorney holder Daksh Raj cannot be allowed to depose evidence and the affidavit filed be rêjected.

(ii) The defendants did not filed the reply to the above application and briefly contended that Shri laxman Singh has executed the power of attorney in favour of his son Daksh Raj and there is no infirmity if he depose evidence.

[Signature] 8/10/25

Hence, humbly requested that the preliminary objection raised be disallowed.

(iii) The Learned plaintiff Advocate repeated the averments as mentioned in the application .

(iv) Heard & pursued the concerned Law & File.

(v) Shri laxman Singh has given general power of attorney in favour of his son Daksh Raj and he has filed affidavit and the plaintiff objected that the power of attorney holder of defendant to appear in the witness box on behalf of defendant no.2 Shri Laxmansingh.

(vi) Order -3 Rule-1&2 CPC- Empowers the holder of power of attorney to "Act" on behalf of the principal, in my view the word "Act" empowered in Order-3 Rule- 1&2, confines only in respect of 'acts' done by the power of attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of principal. In other words, if power of attorney holder has rendered some 'acts' in pursuance to power of attorney, he may depose for principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

8/10/25

अपर जिला न्यायाधीश
क्र.सं.1, केकड़ी (राज.)

(vii) On the question of power of attorney it was held that a general power of attorney holder can appear, plead and act on behalf of party but he cannot become a witness on behalf of party. He can appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of plaintiff in the capacity of plaintiff.

(viii) The word 'acts' used in O-3 R-2 CPC does not include the act of power attorney holder to appear as witness on behalf of a party. power of attorney holder of a party can appear only as witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in capacity of that party. If the plaintiff is unable to appear in the court , a commissioner for recording his evidence may be issued under the relevant provisions of the CPC.

(ix) **Honorable Apex Court in Jhanki Vashdeo Bhojwani & another vs Inds bank Ltd & another AIR 2005(SC)439 – Held- O-3 R01 CPC – Power of Attorney cannot be allowed to appear and depose as witness on behalf of principal . He can appear only as a witness in his personal capacity regarding the acts done by him on behalf of the principal.**

8/10/25

अपर जिला न्यायाधीश
क्र.सं.1, केकड़ी (राज.)

(x) In the light of above citation the power of attorney holder can appear only as a witness in his personal capacity regarding the acts done by him on behalf of the principal.

:ORDER :

(xi) Hence , the preliminary objection regarding the affidavit application is hereby accepted in part and the power of attorney holder can appear as witness only in his personal capacity and cannot be placed by the principal .

Put up the file for defendant evidence on 16/10/25

dp

16/10/25

अपर जिला न्यायाधीश
क्र.सं.1, केकड़ी (राज.)