

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20<sup>th</sup> DAY OF NOVEMBER 2014

BEFORE

**THE HON'BLE MR. JUSTICE DILIP B BHOSALE**

W.P.NO.20298/2014 (GM-CPC)

BETWEEN

NAGARATHNAMURTHY  
W/O A N RAMESH MURTHY  
D/O LATE D S HANUMANTHA RAO  
AGED ABOUT 59 YEARS  
R/AT NO.29, 3RD CROSS  
JUDICIAL OFFICERS LAYOUT  
RMV 2ND STAGE  
BANGALORE-560094

... PETITIONER

(BY SRI K B CHANDRASHEKAR SWAMY, ADV.,)

AND

1. SRI S NARAYANAPPA  
DEAD BY HIS LRS

1(a) MASTER SANTOSH  
S/O LATE NARAYANAPPA  
AGED ABOUT 7 YEARS  
C/O SUBBANNA

1(b) KUMARI CHANDAN  
D/O LATE NARAYANAPPA  
AGED ABOUT 5 YEARS  
C/O SUBBANNA

BOTH ARE R/AT SHIVAKOTE  
HESARAGHATTA HOBLI  
BANGALORE NORTH TALUK  
BANGALORE-562149

RESPONDENTS NO.1(a) & 1(b) ARE  
MINORS, REP BY THEIR  
MOTHER & NATURAL GUARDIAN  
SMT. BHAGYAMMA – 2<sup>ND</sup> RESPONDENT

2. SMT. BHAGYAMMA  
W/O LATE NARAYANAPPA  
AGED ABOUT 34 YEARS  
C/O SUBBANNA  
R/AT SHIVAKOTE  
HESARAGHATTA HOBLI  
BANGALORE NORTH TALUK  
BANGALORE-562149
3. SRI KRISHNAPPA  
S/O LATE SIDDARAMANNA  
AGED ABOUT 52 YEARS  
R/AT SHETTERAHALLI  
VISHWANATHAPURA POST  
KASABA HOBLI, DEVANAHALLI TALUK  
BANGALORE RURAL DISTRICT-562110
4. SMT. T RABITHA  
W/O A.D.R. PRASAD  
AGED ABOUT 37 YEARS  
R/AT NO. 165, PARKSTONE WAY  
MARIETTA, GA 30066  
UNITED STATES OF AMERICA
5. SRI G SRINIVASA RAO  
S/O SUBBA RAO  
AGED ABOUT 39 YEARS  
R/AT NO. 6475, RED OAK DRIVE  
CORONA CA-92880  
UNITED STATES OF AMERICA

RESPONDENTS NO.4 & 5 ARE  
REPRESENTED BY THEIR GPA HOLDER  
SRI T P S SATHYANARAYANA S/O RAGHAVIAH  
R/AT NO. 306, SAI GOLDEN NEST APARTMENT  
MALLESHPALYA EXTENSION  
VIGNAN NAGAR MAIN ROAD  
BANGALORE-560075

6. SRI A MURALIKRISHNA  
S/O A.B.L.PRASAD  
AGED ABOUT 37 YEARS  
R/AT NO.301, SAI GOLDEN NEST APARTMENT  
MALLESHPALYA EXTENSION  
VIGNAN NAGAR MAIN ROAD  
BANGALORE-560075
7. SRI T P S SATHYANARAYANA  
S/O RAGHAVIAH  
AGED ABOUT 56 YEARS  
R/AT NO.306, SAI GOLDEN NEST APARTMENT  
MALLESHPALYA EXTENSION  
VIGNAN NAGAR MAIN ROAD  
BANGALORE-560075 ... RESPONDENTS

(BY SRI H V RAJARAM & SRI C M MANJU, ADVS., FOR R3;  
SRI B A RAVIRAJ & SRI R SURESH KUMAR, ADVS., FOR R4-7;  
R2 SERVED; R1(a & b) REPRESENTED BY R2)

THIS W.P. FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD 23.04.2014 VIDE ANNEX-F IN O.S.NO.734/2007 PENDING BEFORE THE SENIOR CIVIL JUDGE AND JMFC, DEVANAHALLI, ON THE APPLICATION FILED UNDER ORDER 3 RULE 2 R/W SECTION 151 OF CIVIL PROCEDURE CODE FOR PERMISSION TO PROSECUTE THE CASE THROUGH THE GPA HOLDER AND ETC.,

THIS W.P. COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

PC:

Heard learned counsel for the parties.

This writ petition is directed against the order dated 23.4.2014 passed by the Court below, rejecting the application (I.A.No.12 in O.S.No.734/2007) filed on behalf

of the petitioner. The prayer in the application (I A.NO.12) reads thus:

"That, for the reasons stated in the affidavit accompanying this application, this Hon'ble Court be pleased to permit the Plaintiff to produce the General Power of Attorney executed by the Plaintiff in favour of one Sri.Madappa S/o Munishami and permit the GPA Holder to act on behalf of the Plaintiff and to do the acts and conduct the above suit, in the interest of justice and equity."

2. I have heard learned counsel for the parties and they have fairly stated that I need not record reasons for disposing of the writ petitions, with observations that I propose to make, and they have agreed for the following order :

It is open for the General Power of Attorney-Madappa, S/o Munishami (for short "GPA") to produce power of attorney executed by the plaintiff in his favour and "act" on her behalf in the suit. It is relevant to notice, what the Supreme Court observed while considering the word "acts", as occur in Order III Rule 1 and 2 of the Code of Civil Procedure, in *S.Kesari Hanuman Goud vs.*

*Anjum Jehan and Ors., 2013 SCW 3561.* The relevant observations in paragraph 13 of the report read thus:

"13. It is a settled legal proposition that the power of attorney holder cannot depose in place of the principal. Provisions of Order III, Rules 1 and 2, CPC empower the holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined only to "acts" done by the power of attorney holder, in exercise of the power granted to him by virtue of the instrument. The term "acts", would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has preferred any "acts" in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined."

Similarly this Court in *Narasimha vs. S.P.Sridhar, ILR 2014 Kar. 84* considered similar provisions and in paragraphs 6 and 7 observed thus:

"6. Parties to a suit or proceeding are permitted to give evidence within the limits prescribed by S.5 of the Indian Evidence Act, 1872. A Power-of-Attorney holder of a party can be examined as a witness like any other witness, if he is competent in law to testify to

the existence or non-existence of any fact in issue in any suit or proceeding or of such other facts as are declared to be relevant under the provisions of the Evidence Act, if such facts are within his personal knowledge, but he cannot appear as a witness in the capacity of that party i.e., himself as the plaintiff or the defendant. When and to what extent a Power-of-Attorney holder could give evidence is explained by the Supreme Court in MAN KAUR vs. HARTAR SINGH SANGHA.

7. Rules 1 and 2 of Order III of the Code of Civil Procedure are subject to the provisions of the Advocates Act, 1961 and in particular Ss.32 & 33. Hence, a Power-of-Attorney holder, who is not an Advocate, cannot be placed on the same footing as an Advocate. A non-advocate cannot be permitted to address the court on behalf of a party on the strength of the Power-of-Attorney. For that purpose, the party has to seek the leave of the Court. Grant of such leave is governed by S.32 of the Advocates Act, 1961. As held by the Supreme court in HARISHANKAR RASTOGI vs. V. GIRDHARI SHARMA, a private person who is not an advocate, has no right to argue for a party without the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion."

Thus, in the present case, the learned Judge shall allow GPA to 'act' on behalf of the plaintiff within the parameters as reflected in the aforementioned judgment of the Supreme court and this court. In other words, it is open to

GPA to act on behalf of the plaintiff. He may also examine himself as witness like any other witness, if he is so competent in law to testify the existence or non-existence of any fact in issue in the suit or proceedings or such other facts as are declared to be relevant under the provisions of the Indian Evidence Act, if such facts are within his personal knowledge. In any case, he can not appear as a witness in place of principal or as a principal. As observed by the Supreme Court, the learned Judge while allowing the GPA to step into witness box like any other witness shall see to it that his deposition confines only to the acts done by him, in exercise of the power granted to him by virtue of the instrument. He may depose for the plaintiff in respect of such acts but he cannot depose for the principal for the acts done by the principal, and not by him. He cannot depose for the principal in respect of the matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined. Keeping all this principles in view, the learned Judge shall allow the GPA to produce power of

attorney and 'act' on behalf of the plaintiff. Insofar as admissibility of any portion of his deposition, if he steps into the witness box, shall be considered on merits in accordance with law and in the light of the aforesaid judgments and other judgments that will be cited by the parties.

With these observations, the writ petition is disposed of. The order impugned in the present writ petition accordingly renders ineffective.

Sd/-  
JUDGE

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