

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11<sup>TH</sup> DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**WRIT PETITION NO.10577 OF 2022 (GM-CPC)**

**BETWEEN:**

RACHANA T D  
D/O SRI DHARMEGOWDA T M  
AGED ABOUT 35 YEARS  
NO.190, 15TH CROSS  
VIJAYANAGARA RAILWAY LAYOUT  
MYSURU - 570 001

...PETITIONER

(BY MS.SHRUTHI S.P., ADVOCATE FOR  
SRI.VINAY KEERTHY M, ADVOCATE)

**AND**

1. RAVEE KAMATH  
AGED BY 54 YEARS  
S/O LATE B VASUDEVA KAMATH
  2. SHASHI KAMATH  
AGED BY 54 YEARS  
S/O LATE B VASUDEVA KAMATH
- BOTH ARE RESIDING AT  
NO.241, 15TH CROSS  
VIJAYANAGARA RAILWAY LAYOUT  
MYSORE - 570 001.

.....RESPONDENTS

(BY SRI.HARISH M.G., ADVOCATE FOR R.1 AND R.2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 11.03.2022 PASSED IN THE COURT OF CIVIL JUDGE (JN. DN) AND JMFC, MYSURU DISMISSING THE APPLICATION UNDER ORDER 3 RULE 2 READ WITH SECTION 151 OF CPC IN O.S.NO.1385/2016 ANNEXURE -E AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The captioned writ petition is filed by the petitioner - defendant feeling aggrieved by the order passed by the learned Judge on an application filed under Order 3 Rule 2 read with Section 151 of CPC. The said application is rejected, which is under challenge.

2. The present respondents - plaintiffs have instituted a suit for damages claiming a sum of Rs.1,10,000/-. It is the specific case of the respondents - plaintiffs before the Court below is that the act of the defendant has virtually damaged the

character and reputation of the plaintiffs. The respondents- plaintiffs alleged that to take revenge against the plaintiffs father, the father of the defendant has instigated the defendant and has lodged a false criminal case against the plaintiffs and at the instance of defendant, the present plaintiffs were summoned to the police station before the public and they were forced to give statement before the police station, which has caused mental agony. On these set of allegations, the present suit is filed seeking damages. This application is filed by the defendant. The petitioner, who is arrayed as defendant, has contested the suit by filing written statement. The present petitioner filed an application to defend the suit through her father by authorizing him to contest the proceedings on her behalf. The said application is rejected by the learned Judge. The learned Judge while rejecting the application was of

the view that the suit is one for damages and the allegations, which are attributed against the defendant, cannot be elicited by cross-examining the GPA Holder of the defendant.

3. Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondent – plaintiff. Perused the order under challenge.

4. The respondents – plaintiffs have instituted a suit for damages. Therefore, the entire burden is on the plaintiffs to prove the allegations made in the plaint. The respondents – plaintiffs to prove their case cannot bank on the rebuttal evidence of defendant. Even if the original defendant had not opted to lead any rebuttal evidence, the respondents – plaintiffs have to independently prove the allegations by adducing cogent and clinching evidence.

The materials on record clearly indicate that the petitioner – defendant is the neighbor of the respondents – plaintiffs. The present petitioner – defendant claims that she is residing along with her father, therefore authorization is given to defend the suit. The question as to whether the GPA Holder is a competent to defend the suit on behalf of the original defendant is a matter of full fledged Trial. The issue before this Court is squarely covered by the order rendered by this Court in the case of **SMT.ALUVELAMMA AND OTHERS VS. VENKATARAMA REDDY AND OTHERS** in **W.P.No.5788/2017**. In an identical cases, the question that arose for consideration is; as to whether agent can deposes on behalf of principle. In the said case, the Co-ordinate Bench of this court was of the view that evidence tendered by an Agent has to be tested and examined only after full fledged trial.

Therefore, in the light of the dictum laid down by the Co-ordinate Bench in the judgment cited supra , the order under challenge is not at all sustainable. Hence, I pass the following;

**ORDER**

The Writ Petition is ***allowed***.

The impugned order dated  
11.03.2022 passed in  
O.S.No.1385/2016 is set-aside.

The petitioner – defendant  
is permitted to lead her evidence  
through her GPA holder.

**Sd/-  
JUDGE**

NBM