

**ORDER PASSED BELOW EXH.45**

1. This application is filed by defendant Nos.1 to 3 praying therein to declare that defendant No.4 has no right to take cross-examination of plaintiff on account of collusion between plaintiff and defendant No.4.

2. According to applicants, defendant No.4 has filed written statement and admitted claim of the plaintiff. He also contended that he has no objection to decree suit. Therefore, he has no right to take cross-examination of plaintiff.

3. Defendant No.4 filed his say and opposed to allow this application contending that being opposite party he has every right to take cross-examination of plaintiff. According to defendant No.4, if it is the contention of applicants that interests of defendant No. 4, are similar to plaintiff, in that case first opportunity be given to defendant No.4 and after completion of his cross-examination, applicants can be permitted to take cross-examination of plaintiff.

4. Heard learned advocate for both sides and gone through the record. Applicant in support of their contention relied upon judgment passed by the Hon'ble Andhra Pradesh High Court reported in *Karumanchi Subbarao Vs.*

Yarlagadda, AIR 1987 A.P. 193 , wherein the Hon'ble High Court has held that -

*Section 137 confers right to cross-examine witness upon the person concerned only when he has an interest adverse to the one who is proposed to be cross-examined. The very purpose of the cross-examination is to vest the veracity of the witness. Therefore, where in a suit by the partner against the other partners for declaration that the debt due by the plaintiff to be defendants was partially discharged, the defendants specifically admit in their written statement that the accounts were properly maintained by the plaintiff and request the court to decree the suit as prayed for the defendants cannot be said to have an interest adverse to that of the plaintiff and therefore they cannot be permitted to cross-examine the plaintiff because they have no statutory right to do so.*

5. Second authority relied upon by applicant is from the case of Hussens Hasanali Pulavwala Vs. Sabbirabhai Hasanali Pulavwala and others, AIR 1981 Gujarat 190, wherein the Hon'ble Court has held that -

*It would appear from the scheme of the aforesaid provisions of the Evidence Act that in order to cross-examine a witness, it must be shown that the party seeking cross-examination is an 'adverse party'. Merely because a party is shown as a defendant in the cause title of the plaint, that party can not be styled as an adverse party, unless it is further shown that the party is a contesting party in the sense that he disputes the case , put by the plaintiff in the plaint.*

6. On the other hand, defendant No.4 in support of his contention relied upon judgment passed by the Hon'ble Delhi High Court in the case of *Des Raj Chopra and Ors. Vs. Pooran Mal and Ors, 1974 DGLS (AHC) 1020*, wherein the Hon'ble Delhi High Court has held that -

*Cross-examination by the opposite party is a 'right' which, if denied, becomes a mockery of justice.*

7. From perusal of aforesaid rulings, it becomes clear that in order to take cross-examination, party who is seeking right of cross-examination must have adverse interest. Merely his status as opposite party is not sufficient. In the case at hand also, interest of defendant No.4 and plaintiff is not adverse to each other. Hence, he is not entitled to take cross-examination of plaintiff. Therefore, application deserves to be allowed. In result, I pass following order.

**ORDER**

Application is allowed and right of defendant No.4 to take of cross-examination of plaintiff is rejected.

Sd/-

**( K.G. Sawant )**

Civil Judge Senior Division,  
**Jaysingpur.**

Dt.: 10.10.2018.



