

MHILA050002782020

Spl.C.S.No.13/2020
Shivaji Vs. Balaji**ORDER BELOW EXH. 118**

01. The application is filed by defendant No.2 with the contention that, defendant No.1 has been cross-examined by the plaintiff and has given certain admissions to the plaintiff, which are against the interest of defendant No.2. Defendant No.2 is nowhere concerned with the alleged acts. It is necessary that, defendant No.1 should be cross-examined by defendant No.2 and unless permission is given to cross-examine defendant No.2 by defendant no.1, the real facts would not be revealed. Therefore, it is prayed that, he may be permitted to cross-examine defendant No.1.

02. Say is filed by defendant No.1 that, necessary order may be passed.

03. Say of plaintiff is that, there is no such provision to cross-examine the co-defendant. The written statement filed by defendant No.1, 2 and 3 are helpful to each other. The application is given to obtain certain admissions against the plaintiff. There is no specification given as to on which part of cross-examination the defendant No.2 want to cross-examine defendant No.1. There is no affidavit in support of the application. There is opportunity to defendant No.2 to lead his own evidence. Therefore, it is prayed that, the application may be rejected.

04. Heard Ld. Advocates for the parties. Advocate for defendant No.2 submitted that, defendant No.1 has given admissions in his cross-examination and has dragged defendant No.2 to face consequences. The main objection is regarding the proceeding book of Grampanchayat. Defendant No.2 is deliberately made party to the suit. He needs to discharge burden, which is deliberately put upon him by defendant No.1. There is no mention regarding the act of defendant No.2 and there is no evidence upon it. So, it is prayed that, defendant No.2 may be permitted to cross-examine defendant No.1.

05. Per contra, Ld. Advocate for the plaintiff submitted that, one co-defendant cannot cross-examine other defendant in absence of the provision. The pleadings of the plaintiff are specific against defendants. Written statement given by each of them is distinct from each other and helpful to each other. There is no adverse interest of defendant No.1 against defendant No.2 and therefore, the application is not maintainable. So, he submitted that, it may be rejected with costs.

06. The only question for consideration is whether defendant No.2 has a right to cross-examine defendant No.1.

07. It is necessary to summarize the contents in the pleadings of the parties. The plaintiff has brought the suit against defendant No.1, who is a Gramsevak, defendant No.2, who is the Sarpanch and defendant No.3, who is a Village Development Officer, that they have dragged him to face criminal case, which ultimately resulted into acquittal and has claimed compensation worth of Rs.20,00,000/- as a tortious liability.

07. Each of the defendants has filed independent written statement below Exh.26 and 38 respectively. Defendant No.1 and 3, being revenue officers have jointly filed written statement, whereas defendant No.2 being Sarpanch has independently filed his written statement.

08. The allegations levelled by plaintiff are denied by all of them and as such none of the defendants have claimed adverse interest against each other. The unanimous say of all of them is that, they are not liable for any action of defamation and are not responsible to payment of compensatory costs to the plaintiff, as the action is taken by police machinery against the plaintiff for the offence against him.

09. Turning to the question in dispute, defendant No.1 is being cross-examined by the plaintiff on Exh.112, which is his examination-in-chief. It would be unjust to express anything about cross-examination at this juncture. The prayer of the defendant No.2 to seek permission of cross-examination of defendant No.1, whether fits within the purview of section 137 and 138 of the Indian Evidence Act, 1872 is to be considered.

10. Section 137 of the Indian Evidence Act, defines term examination, cross-examination and re-examination. The term cross-examination in this section means examination of witness by adverse party. What is an adverse party can be determined as two persons whose interest stand against each other.

11. So, also section 138 of the Indian Evidence Act, provides order of

examination and it says that, the witness shall first be examined in chief, then, if adverse party so desires, cross-examine and then, if a party calling witness, so desires can re-examined. A plain reading of these provisions of section 137 and 138 of the Indian Evidence Act, shows that, the right of cross-examination has been given only to the adverse party. So whether defendant No.1 and 2 or their interest are adverse to each other ? The answer is 'No'. Both the defendants have filed their written statement and have defended the suit. Defendant No.1 who is cross-examined by the plaintiff might have given certain admissions to the plaintiff. Defendant No.2 is yet to be stepped into the witness box to disprove the case of the plaintiff. His right is reserved until evidence of defendant No.1 is over. So he can put his defence through examination-in-chief and with the help of his witnesses.

12. The Hon'ble Bombay High Court in the case of **Piroja Ghadiali Vs. Pestonji Ghadiali 1946(48) Bom.L.R.36** has observed that, "*The Indian Evidence Act gives the right of cross-examination only to the adverse party.*" There is nothing in the evidence given by the defendants, which can any way be said to be adverse to the co-defendant.

13. In the matter on hand, defendant No.1 is not a witness of defendant No.2. He stands on his own feet to disprove the case of plaintiff. Similarly his interest are not adverse to defendant No.2.

14. To summarize, there is no adverse interest of defendant No.1 against defendant No.2. So, in exceptional cases like the suit for partition, where all plaintiffs are defendants and all defendants are

plaintiffs, where the interest of each of them are one and the same, in such situation such application can be looked into and if found necessary permission is given to cross-examine. But, such is not the case here. Therefore, there is no necessity to allow the application. Hence, in view of these observations, I pass the following order.

ORDER

The application is rejected.

Sd/-

(S.N.Sarde)

Civil Judge Sr. Div., Ahmedpur.

Date:24/09/2025.