

R.C.S.184/2011
Shahaji and anr. v/s Gulab
CNR No. 18-000925-2011

ORDER BELOW EXH. 98
[Delivered on : 07th February, 2024]

This is the application filed by the defendant no. 1, 4, 5, and 6 for permission to take cross-examination of defendant.

02. Defendant have submitted that they are consenting party therefore they be permitted to cross examine the defendant at first.

03. Call the say of plaintiff they submitted that present defendant were not consenting party to defendant no. 2, 3, 7 to 12. Written statement of present defendant and defendant no. 2, 3, 7 to 12 are different. In the written statement of defendant no. 2, 3, 7 to 12 it is mentioned that defendant no. 10 and 12 have purchased some of the portion in the suit property from defendant no. 1 and 2 and it is sold by defendant no. 1 for his legal necessity. They have not mentioned anything against each other in their written statement. In such circumstances defendant no. 1 cannot be consenting party. So also present defendant have not mentioned anything adverse in their evidence against defendant no. 2, 3, 7 to 12. Only to clear some facts came in cross-examination of defendant no.1 present defendant are trying to take cross-examination as consenting party. Therefore, prayer of defendant no. 1, 4, 5 and 6 cannot be granted. Therefore, prayed for rejection of the application.

04. Heard both the side. Perusal of record. It appears that present suit is filed for partition and injunction. Ld. Advocate for plaintiff argued that permission for cross-examination can be given only when there is conflicting interest. On the other hand Ld. Advocate for the defendant no. 1,

4, 5 and 6 argued that consenting defendant has right to cross-examine at first no prejudice will be caused to plaintiff. Though they admit the suit they have right to cross-examination. They are denying the interest of plaintiff. Further argued that they sold suit property to other defendant. Therefore, they have right to cross-examine them. Co-defendant can cross-examine co-defendant.

05. To support the contention of plaintiff. Plaintiff relied upon *Minal Shaha Vs. New Sagar Darshan Co-op. in Writ Petition no. 442/2020.* Wherein Hon'ble High Court has held that defendant has right to cross examine the co-defendant only in case of conflict of interest between the defendant and the co-defendant. Also relied upon *Shri. Ramchandra Vs. Shri. Vitthal anr. in Writ petition no. 8353/2006.* Wherein Hon'ble High Court has held that the condition precedent for giving an opportunity to a defendant to cross examine a co-defendant is either from the pleadings of the parties or in the evidence, there should exist conflict of the interest between them. Also relied upon *Shri. Mohammad Ziaulla Vs. Sorgra Begam and anr.* Wherein Hon'ble High Court held that where it is shown that the interest between the defendants inter-se conflict each other, the other defendant has necessarily to be treated as an adversary and he is certainly entitled to cross-examine the other defendant or his witness.

06. Cross-examination has defined in section 137 of the Evidence Act is the examination of the witness by "adverse party" and the defendant who are supporting the plaintiff cases are not an adverse party. A general principle, if any of the defendant supports the plaintiff in whole or in part, then he should address the Court and lead his evidence first before the other defendant who do not support wholly or in part the plaintiff's case. Once it is demonstrated that, the interest is common, there is no conflict interest and

no evidence is adduced affecting the interest of the defendant, then there is no question and giving opportunity to such a party to cross examine the opposite party. Only when opposite party stands in the shoes of an adverse party, he has right to cross-examination.

07. It is well settled that, defendant has right to cross-examine the co-defendant only in case of conflict of interest between the defendant and co – defendant. In the case in hand it is the contention of defendant no. 1, 4, 5 and 6 that they are consenting party. Therefore, they have right to cross-examine other defendant at first. On the other hand plaintiff opposed the application and argued that present defendant are not consenting party. In order to clear some fact came in the evidence of defendant No. 1. They are trying to cross-examine as consenting party. Present defendant are not consenting party to defendant no. 2, 3, 7 to 12. As already discussed above defendant has right to cross-examine the co- defendant. Only in case of conflict of interest between the defendant and co- defendant. In the present case, plaintiff filed a suit for partition and injunction. Further on perusal of written statement of defendant no. 2, 3, 8 to 12. It appears that, no where they supported to the defendant no. 1, 4, 5 and 6. Therefore, prima facie it does not appears that defendant no. 1, 4, 5 and 6 are consenting party to defendant no. 2, 3, 7 and 12. Further, there is nothing in the pleadings or in the evidence that there exist conflict of interest between them. As there is nothing on record to shows that interest of present defendant is not common and there is conflict of interest affecting the interest of co – defendant the opportunity of cross-examine should be given. Even, for the sake of discussion it consider that their defence are common the permission for cross - examination cannot be given. Hence, in view of discussion made above,

present defendant have no right to cross-examination co – defendant. Hence,
I pass following order.

ORDER

The application is rejected.

sd/-

[S. D. Mukkanwar]

2nd Jt. Civil Judge, [Jr. Divn.]

Daund, Dist – Pune

Daund

Date : 07/02/2024.