

**Regular Civil Suit No.157/2014**

CNR : MHSN050006062014

**Order below Exh. 140**

1. The plaintiffs have filed present application and prayed that they may be permitted to cross-examine their own witness PW No.6 Sarjerao Kamble. It is submitted that the concerned person of the Urun-Islampur Co-operative Water Supply Society Ltd. Urun Islampur was summoned to produce necessary documents in respect of water supply to the suit property. Accordingly, the secretary of the said society i.e. Sarjerao Bhau Kamble appeared before the Court on dated 22/11/2021. But he sought time to produce the documents. Thereafter he appeared with the documents before the Court on dated 2/12/2021 and his examination-in-chief has been recorded. But thereafter at 4.00 p.m. learned counsel for defendants sought time to cross-examine the said witness and his cross-examination was recorded on the next date.

2. On the next date, the said witness contrary to the documents produced on record has given admission in his cross examination. The said witness has given admission in respect of ownership and cultivation of the suit property. He also has given admission in respect of memorandum and rules of the said society. In his cross-examination the said witness become hostile to the plaintiffs. Therefore, to brought on record real facts the plaintiffs may be permitted to cross examine him.

3. Say of the defendant has been called which is at Exh.141. The defendant denied the contents of the application. He submitted that the application is not legally maintainable. The plaintiffs have filed the suit for specific performance and for alternatively for payment of earnest amount.

4. The plaintiff's witness appeared in the first session on dated 3/12/2021 but his examination-in-chief was recorded in afternoon session. At the time of examination-in-chief, he has filed 34 documents and, therefore, time has been sought for his cross examination on the next date. The examination-in-chief of the witness is recorded as per the plaintiffs case and thereafter, his cross-examination has been taken. The said witness has given some admission as per the facts and circumstances. As the said admissions are against the plaintiffs therefore, by such application, the plaintiffs are taking doubt of their own witness. If the witness is not supporting to the case who has called him in examination-in-chief, only then there is a provision to declare hostile to the said witness. In this case, cross-examination of the witness is completed and only to wash out admissions given by the witness, this application is filed. The said witness is not hostile to the plaintiffs. Therefore, application be rejected. If the application is allowed the defendant will cause irreparable loss. It is submitted that application be rejected with costs.

5. Heard the learned counsel for plaintiffs. It is submitted that cross examination of the witness is not conducted on the same date. On the next date the said witness has given admissions contrary to the documents filed by him on record and in respect of ownership and cultivation of the suit property. Learned advocate has pointed following statements made in cross examination by the said witness -

१. मी दाखल केलेल्या कागदत्रांनुसार युवराज पाटील यांच्या रिव्हीजन सर्व्हे नं. २५०, २४०, ११७, २६२,२५५, २६०, ११६, २५४ या मिळकतींना आम्ही पाणी दिले आहे किंवा नाही हे मला सांगता येणार नाही.

२. हे म्हणणे खरे आहे की आमच्या संस्थेचा सभासद होण्यासाठी त्या व्यक्तीकडे स्वतःच्या मालकीची जमीन असायला हवी. तसेच आम्ही त्या सभासदाला पाणी देतो त्या सभासदाची ती मिळकत असायला हवी.

३. हे म्हणणे खरे आहे की रिव्हीजन नं.२६०/१ या मिळकतीचे मालक वादी नं.१ ते ९ कधीही नाहीत. हे म्हणणे खरे आहे की रिव्हजन सर्व्हे नं.२६०/१ बाबतचा एकही कागद मी याकामी दाखल केलेला नाही.

४. हे म्हणणे खरे आहे की संगणकातील नोंदी मध्ये आम्हाला जेव्हा वाटेल तेव्हा योग्य बदल करता येतो. हे म्हणणे खरे आहे की आमच्या संस्थेच्या कोणत्याही संगणकीय कागदामध्ये बदल अथवा हाताने खाडाखोड केली असल्यास तो कागद आमच्या संस्थेचा नसतो.

५. हे म्हणणे खरे आहे की सिटी सर्व्हे नं.२६०/१ या मिळकतीचे मालक वहिवाटदार जयवंत शिवाजी पाटील आहेत.

6. The learned counsel for plaintiff on the basis of above deposition of the witness submitted that he is hostile to the plaintiff and therefore permission may be granted to cross examine him. For his submission he relied on following case laws,

1. Atul Bora v. Akan Bora, AIR 2007 Gauhati 51.
2. Dinkar Sukhdeo Dambale vs. State of Maharashtra, 2007 ALL MR (Cri) 342.
3. Dahyabhai Chhaganbhai Thakkar vs. State of Gujrat, AIR 1964 SC 1563.
4. Sivhamurthy Swamy vs. Agodi Songanno, AIR 1969 Mysore 12.

7. On the other hand, the learned counsel for defendant submitted that he has cross examined the witness on the next date because his examination-in-chief is recorded in second half and the witnesses produced bulky documents. The said witness has given admissions in cross-examination as per real facts. He submitted that application is not maintainable. If such application is allowed the admissions given in cross-examination by the said witness will be washed out and it will cause irreparable loss to the defendant. He submitted that only on the basis of some admissions given by the

witness, it cannot be said that that witness is hostile to the plaintiff. Hence, the application be rejected.

8. Considering the statements of both sides, I have gone through the case record and case laws submitted by the plaintiffs.

9. In **Atul Bora** case (cited supra) the witness in examination-in-chief has stated different facts which were contrary to the video recording produced before the Court. The said witness was in respect of counting process. Already video recording of the counting process was recorded. The said witness has stated some facts in his examination-in-chief which were contrary to the video recording of the said counting process. In such circumstances, the said witness has been permitted to be cross-examined by the party who called him. The Hon'ble Gauhati High Court held that the Court can allow to cross examine his own witness to the party who called him if the Court satisfied that (a) the witness exhibits an element of hostility or (b) that the witness has resiled from a material statement already made by him or (c) whether the Court is satisfied that the witness is not speaking the truth and it is necessary to cross-examine him to extract the truth from him.

10. In **Dinkar Dambale** case (cited supra) the Hon'ble Bombay High Court (Nagpur Bench) held that the witness can be declared hostile even at the stage of cross examination. This case is in respect of allegation of taking bribe of Rs.2000/-. The witness in examination-in-chief stated that he has given bribe of Rs.2000/- to the accused. But in cross examination he given admissions that he wanted to return the amount of Rs.2000/- of fees to the accused. It is held that the same witness tried to answer the suggestion given by the learned counsel in cross-examination for the defence making out that the amount must not bribe and it is fees. In that circumstances the said witness was declared

hostile. It is held that the admissions which are tending to state true case may not be sufficient to declare him hostile but essentially when his admissions in cross-examination tending to destroy the prosecution case, the prosecution is certainly entitled to seek declaration of his hostility with permission to cross examine him.

11. In **Dahyabhai Thakkar** case (cited supra) it is held that the party calling a witness may be permitted to cross examine at the stage of re-examination and thereafter the adverse party must have to be given further opportunity to cross examine him.

12. In **Sivhamurthy Swamy** case (cited supra) it is held that it is not necessary to make a formal declaration that a witness is hostile before permission is granted under section 154. The discretion of the Court in granting permission is judicial discretion and is required to be exercised in a judicious way. It is held that the a witness should be regarded as adverse liable to cross examination by the party calling him only when in the opinion of the Court he bears hostile animus to the party calling him and further that a hostile witness in the real sense is one who from the manner in which he gives his evidence shows that he is not desirous of telling truth.

13. Considering the above case laws, the circumstances of this case has to be considered. In view of above cited cases, permission to cross-examine only can be given to the party to call the witness in following conditions.

- (1) the witness exhibits an element of hostility or,
- (2) that the witness has resiled from a material statement already made by him or,
- (3) whether the Court is satisfied that the witness is not speaking the truth and it is necessary to cross-examine him to extract the

truth from him.

Considering this principle I have gone through the plaint. The plaintiffs have filed the suit for specific performance of contract and alternatively for payment of earnest amount. It is case of plaintiffs that defendant owns and possesses Gat No.260/1 admeasuring area 3.02 Hectare-Are potkharab 0.13 Are, i.e. in total 3.15 Are. Out of the said area of Gat No.260/1 the defendant has agreed to sell 40 Are as per agreement dated 21/5/1997. It is plaintiffs' case that as per the said agreement the possession of 40 Are land is delivered to them on dated 21/5/1997. They are in possession of said 40 Are land since the said agreement.

14. In para No.6 of the plaint, they have stated in respect of providing water supply by the co-operative society to their 40 Are land. They pleaded that the defendant was a member of the water supply society but as he has not paid the loan amount of Bhuvikas Bank, water has not been supplied to the defendant. The plaintiffs have given assurance to pay loan installments of 40 Are land and therefore, water supply has been provided by said society since 1998-99 to their 40 Are land. Now, this witness is called by the plaintiff only in respect of providing water supply to 40 Are land by the concerned water supply co-operative society.

15. In the light of this pleading of the plaintiffs, I have gone through the evidence of the said witness. From his examination-in-chief it appears that mainly he is a witness for production of document of the concerned society. In his examination-in-chief the documents of the concerned society which he has produced has been exhibited. Those documents are water supply permission given by the concerned society for the year 2017-18 to 2020-21 at Exh.102 to 113 which are in the name of plaintiffs. He has produced copy of water supply register of the

concerned society which is in the name of plaintiffs for the year 2011 to 2017 at Exh.115 to 130 and, the copy of water bill register of the concerned society at Exh.121 to 135. It appears that the said water supply permission is in respect of Gat No.260/1, in the name of plaintiff Nos.1 to 4 for 10 Are each. It appears that the water supply register is in the name of plaintiff Nos.1 to 4 for providing water supply to Gat No.250, 260, 250/1 for the year 2011 to 2015. The water bill assessment list is for the year 2010-2011 to 2018-19 in which the name of plaintiffs are mentioned. It appears that his examination-in-chief is only pertains to the said documents. Except pertaining to those documents no any material facts he has stated in his examination-in-chief.

16. Now, in such circumstances, it has to see whether the said witness is hostile to the plaintiff or he resiled from his earlier statement. I have perused his cross examination. On perusal of cross-examination it appears that the witness nowhere stated that his society has not supplied water to the plaintiffs' land. He nowhere stated that the documents are not pertaining to supply water to the plaintiffs' land. It is to be noted that it is not the case of plaintiffs that they are owners of Gat No.260/1. So the answer given by the witness in respect of ownership of Gat No.260/1 and eligibility for member of the said society cannot be said to be against his statement in examination-in-chief. It is to be noted that the witness had admitted in cross-examination that he has not filed any document in respect of revision survey No.260/1. From the document it appears that the witness has filed document in respect of Gat No.260/1. So it cannot be said that he has resiled his earlier statement in respect of document of Gat No.260/1, because there is a difference between Revision Survey number and Gat number. It is to be noted that said witness had admitted that he do not know in respect of events of the said water

supply society prior to year 2019. Therefore, his evidence only pertains to production of documents on record. He admitted that defendant is owner and possessor of city survey No.260/1. It is not the case of plaintiffs that they are owners and possessor of entire city survey No.260/1. As per 7/12 extract the defendant is owner of entire Gat No.260/1 and it is not disputed. Therefore, his admission cannot be considered as an element of hostility or that he resiled to his earlier statement or he is not speaking the truth.

17. Moreover, it has to be considered that this witness has only stated in respect of documents in his examination-in-chief. Considering those documents it is not come on record that he has stated contrary to the said documents. The statements/admissions of the said witness in respect of rules and regulation of the society, working of the said society and eligibility of the members of the said society cannot be considered elements of hostility or that he resiled of his earlier statement or he is not speaking the truth.

18. Thus, considering the case of plaintiffs, the examination-in-chief and cross examination of this witness, this Court held that from the cross-examination of the said witness no any element of hostility come on record or it is not appear that the witness has resiled from a material statement already made by him in examination-in-chief or, the witness is not speaking the truth. Therefore, permission cannot be granted to cross examine him to plaintiffs. Hence, application is liable to be rejected. Hence, order.

**ORDER**

The application is rejected.

Islampur  
Date: 28/7/2022

(V.G. Chaukhande)  
Jt. Civil Judge, S.D., Islampur

**CERTIFICATE**

I affirm that, the contents of this P.D.F. file order/Judgment are same, word to word, as per the original order.

Name of Stenographer : S. A. Desai (Gd-II)  
Court : Jt. Civil Court Sr.Dn.Islampur  
Date of Order/Judgment: 28/7/2022  
Signed on : 28/7/2022  
Uploaded on : 29/6/2022