

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CIVIL REVISION PETITION NO.348 OF 2017

Between:

Mattam Ravi S/o Raja Yellaiah, Aged about 49 years,
Occu: Agriculture, r/o Veleru Village, Dharmasagar
Mandal, Warangal District and another.

.....Petitioners/
Defendants 1 & 2

and

Mattam Raja Yellaiah, s/o. late Ramaiah,
Aged about 77 years, Occu: Agriculture,
r/o.Veluru Village, Dharmasagar Mandal,
Warangal District and others.

.....Respondents/
Plaintiffs

JUDGMENT PRONOUNCED ON : 23.06.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : No
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : **Yes**
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : No
See fair Copy of the Judgment ? :

***HON'BLE SRI JUSTICE P.NAVEEN RAO**
+ CIVIL REVISION PETITION NO.348 OF 2017

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!Counsel for the petitioners : Sri B.Ranganatha Rao

Counsel for the Respondents: Sri P.Hari Prasad

<Gist :

>Head Note:

? Cases referred:

1. (1969) 1 ALT 32
2. 1996 (3) ALT 1019
3. AIR 1964 SC 1563
4. (2012) 4 SCC 327
5. (1976) 1 SCC 727
6. (2001) 2 SCC 205
7. (1976) 4 SCC 233

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.348 OF 2017

ORDER:

O.S.No.347 of 2009, on the file of II Additional Senior Civil Judge, Warangal, is instituted praying to grant preliminary decree declaring that the plaintiffs are entitled to 5/6th share in item Nos.1 to 4 of the suit schedule properties and to pass a final decree in terms of the preliminary decree. Defendants 1 and 2 filed I.A.No.720 of 2016 to summon DW.2, namely, Chilpuri Shekaraiah @ Srekaraiah, S/o Mallaiah r/o. Veluru Village, Dharmasagar Mandal, Warangal District to declare him hostile and to cross-examine him by the defendants. The said application was dismissed by the learned II Additional Senior Civil Judge on 11.11.2016, impugned in this revision.

2. The averments made in the affidavit filed in I.A.No.720 of 2016 would disclose that DW.2 filed chief affidavit on 26.08.2016 supporting the stand of the defendants. When he was cross-examined by the plaintiffs, he deposed against his chief-examination and supported the plaintiffs. The defendants, therefore, prayed to declare him hostile and to permit to cross-examine him. The said plea of the petitioners was opposed by the respondents/plaintiffs. According to them, in order to divert the issue and to create a false story contrary to the record, chief- examination affidavit was filed on behalf of DW.2. They have also opposed the plea to declare the witness as hostile.

3. Trial Court rejected the said application on the ground that invoking Section 154 of the Indian Evidence Act in civil cases is not

permissible and that Section is invariably invoked in criminal proceedings only. Trial Court held that decision relied by the petitioners is not relevant for the civil cases. Aggrieved thereby, this revision is filed.

4. Heard Sri B.Ranganatha Rao, learned counsel for petitioners and Sri. Podila Hari Prasad, learned counsel for respondent no.2.

5. Learned counsel for petitioners contends that the trial Court erred in dismissing the application on the ground that provision in Section 154 of the Indian Evidence Act is not attracted to civil cases. According to the learned counsel, when a wrong deposition was given in cross-examination by the defense witness, opportunity should be given to the defendants to further cross-examine the said witness, who turned hostile and denial of the same would amount to denying the opportunity to rebut the allegations of the plaintiffs. He further submits that even assuming that Section 154 of the Indian Evidence Act is not attracted the trial Court has got inherent powers under Section 151 of Civil Procedure Code. The application is filed both under Section 154 of the Evidence Act and Section 151 of Civil Procedure Code and by exercising inherent powers under Section 151 to do complete justice, the trial Court ought to have allowed the application filed by the petitioners/defendants.

6. Learned counsel for respondents/plaintiffs opposed the claim of the petitioners. According to the learned counsel, application is not filed in a *bona fide* manner to elicit the information to support the stand of the petitioners. This application is filed to drag on the litigation. The suit is of the year

2009 and is at the stage of trial and petitioners are dragging the matter on one pretext or the other. He, therefore, submits that petitioners lack *bona fides* and that trial Court rightly dismissed the said application.

7. The issues for consideration in this revision are:

- (1) Whether Section 154 of the Indian Evidence Act is applicable only to criminal proceedings and has no application to the civil cases as held by the trial Court?;
- (2) In what circumstances the trial Court can grant such permission? and
- (3) to what relief ?

8.1. Section 154 of Indian Evidence Act reads as under:

“S.154. Question by party to his own witness :-- The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.”

8.2. A plain reading of the section makes it clear that it does not make any distinction between civil and criminal cases. It only vests discretion in the Court to permit the person, who calls a witness, to put any question which can be put in cross-examination by the adverse party. Such a request can be made in civil as well as in criminal cases. What is required to be considered is when such a request should be made and how such wide discretion vested in the Court ought to be exercised by the Court.

9. Though on a bare look at the provision, it does not appear to impose any fetters on both aspects, wealth of precedents on Section 154 illuminate path on which trial Court can tread and

examine the claims made under Section 154. Having regard to narrow and pedantic view adopted by trial Court, I deem it proper to consider few precedent decisions touching various aspects of Section 154.

9.1. In **B.N.Chobe v. Sami Ahmed**¹, *Justice Gopal Rao Ekbote*, as he then was succinctly delineated the scope and width of Section 154. Learned Judge pleased to hold that hostility may appear either during the examination-in-chief or the cross-examination. But, permission must be obtained during the course of the examination of the witness and before it includes. Even a one day delay in making a request would defeat the very object of Section 154. Learned Judge reasoned that on such delay, it is not possible to the trial Judge to recollect the demeanor of the witness and to remember whether his attitude was hostile. No formal written application is necessary and an oral request is sufficient for the trial Judge to consider.

9.2. This Court held:

“.....To me, it seems clear that Section 154 applies when the witness is under examination. Such a permission can be sought and granted during the examination-in-chief or at the stage of cross-examination or perhaps there may be cases even where he is under re-examination. In any case, however, before his evidence is concluded, his hostility must be brought to the notice of the Court and the permission sought to put questions in cross examination by the party who happens to produce him. If this procedure is not followed and an application is filed on a subsequent date before altogether a new Judge, as is the case here, I do not think such an application can be granted.”

¹ (1969) 1 ALT 32

9.3. In **Y.Syamalamma v. Kamalamma**², trial Court held that Section 154 is not attracted in civil cases. Learned single Judge is pleased to hold as under:

“12. On a reading of the provision and the various decisions of several Courts on this aspect, I am inclined to say, there is no embargo to cross-examine a witness by the party who calls the witness even in civil proceedings. The provision Under Section 154 of the Evidence Act does not distinguish between civil and criminal proceedings. What all the provision postulates is that a party could be permitted to cross-examine his own witness if such witness has exhibited an element of hostility and the Court must satisfy itself as to whether such cross-examination could be permitted or not. The words so used in the provision are "The Court, may, in its discretion permit the person to put any question....." Legislature has guardedly used the word "may" while giving discretion to the Courts to grant permission or not. The Court must satisfy itself on the question of permitting a party to cross-examine his own witness. This permission, however, is not as a matter of right Therefore, it is clear mat there is no embargo in the provision Under Section 154 of the Evidence Act to restrict the benefit of cross-examination of one's own witness only to criminal proceedings.”

9.4. In **Dahyabhai Chhaganbhai Thakker v. State of Gujarat**³, Supreme Court delineated the scope of Section 154. It held:

“14.**Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand.** To confine this power to the stage of examination-in-chief is to make

² 1996 (3) ALT 1019

³ AIR 1964 SC 1563

in ineffective in practice. A clever witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party. ***To confine the operation of s. 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the section which are not there.*** We cannot also agree with the High Court that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness on the answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. ***The court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage*** of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief.” (emphasis supplied)

9.5. In **Bhajju @ Karan Singh v. State of M.P.**⁴, Supreme Court observed:

“19. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot

⁴ (2012) 4 SCC 327

be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law.”

9.6. In **Sat Paul v. Delhi Admn.**⁵, Supreme Court extensively dealt with the terms ‘hostile’, ‘adverse’ and ‘unfavorable witnesses’, the object of the provisions of the Evidence Act and the distinction between English Law of Evidence and Indian Law. Supreme Court held:

“38. To steer clear of the controversy over the meaning of the terms “hostile” witness, “adverse” witness, “unfavourable” witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared “adverse” or “hostile”. Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in *Baikuntha Nath v. Prasannamoyi* [AIR 1922 PC 409 : 72 IC 286]). ***The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of “hostility”. It is to be liberally exercised whenever the court from the witnesses’ demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice.*** The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, ***in the order granting such permission it is preferable to avoid the use of such expressions, such as “declared hostile”,***

⁵ (1976) 1 SCC 727

“declared unfavourable”, the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English courts.

(emphasis supplied)

9.7. In **Gura Singh v. State of Rajasthan**⁶, Supreme Court cleared the misconception on the efficacy of the testimony of a witness declared hostile. After extensively referring to precedent decisions, Supreme Court held:

“11. There appears to be a misconception regarding the effect on the testimony of a witness declared hostile. It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration.....

12. The terms “hostile”, “adverse” or “unfavourable” witnesses are alien to the Indian Evidence Act. The terms “hostile witness”, “adverse witness”, “unfavourable witness”, “unwilling witness” are all terms of English law. The rule of not permitting a party calling the witness to cross-examine are relaxed under the common law by evolving the terms “hostile witness and unfavourable witness”. Under the common law a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him and an unfavourable witness is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves the opposite test. In India the right to cross-examine the witnesses by the party calling him is governed by the provisions of the Indian Evidence Act, 1872. Section 142 requires that leading question cannot be put to the witness in examination-in-chief or in re-examination except with the permission of the court. The court can, however, permit leading question as to the matters which are introductory or undisputed or which have, in its opinion, already been sufficiently proved. Section 154

⁶ (2001) 2 SCC 205

authorises the court in its discretion to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. ***The courts are, therefore, under a legal obligation to exercise the discretion vesting in them in a judicious manner by proper application of mind and keeping in view the attending circumstances. Permission for cross-examination in terms of Section 154 of the Evidence Act cannot and should not be granted at the mere asking of the party calling the witness.***

(emphasis supplied)

9.8. In **Rabindra Kumar Dey v. State of Orissa**⁷, Supreme Court explained how to exercise discretion vested in the trial Court under Section 154 of the Evidence Act. Supreme Court observed:

“11. It may be rather difficult to lay down a rule of universal application as to when and in what circumstances the court will be entitled to exercise its discretion under Section 154 of the Evidence Act and the matter will largely depend on the facts and circumstances of each case and on the satisfaction of the court on the basis of those circumstances. Broadly, however, this much is clear that the ***contingency of cross-examining the witness by the party calling him is an extraordinary phenomenon and permission should be given only in special cases. It seems to us that before a court exercises discretion in declaring a witness hostile, there must be some material to show that the witness has gone back on his earlier statement or is not speaking the truth or has exhibited an element of hostility or has changed sides and transferred his loyalty to the adversary.*** Furthermore, it is not merely on the basis of a small or insignificant omission that the witness may have made before the earlier authorities that the party calling the witness can ask the court to exercise its discretion. The court, before permitting the party calling the witness to cross-examine him, ***must scan and***

⁷ (1976) 4 SCC 233

weigh the circumstances properly and should not exercise its discretion in a casual or routine manner.”

(emphasis supplied)

10. Principles deducible from the precedent decisions, noted above are as under:

- a) Permission under Section 154 can be sought before evidence of witness is concluded;
- b) Section 154 vests vide discretion in the Court to grant or refuse permission and it is an unqualified discretion.
- c) Such discretion should be liberally exercised whenever the Court, from the witnesses' demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice.
- d) In Indian law, there is no scope to use words 'hostile' and 'adverse', therefore, grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared 'adverse' or 'hostile'.
- e) While granting permission under Section 154, Court should avoid use of expression as 'declared hostile' and 'declared un-favorable'.
- f) Section 154 authorizes the Court, in its discretion, to permit the person who calls a witness to put any question to him which might be put in cross examination by the adverse party.
- g) The Courts are under a legal obligation to exercise the discretion vesting in them in a judicious manner by proper application of mind and keeping in view the attending circumstances. Such permission should not

be granted at the mere asking of the party calling the witness.

- h) Contingency as provided by Section 154 is extraordinary phenomenon and permission should be given only in special cases. There must be some material to show that the witness has gone back on his/her earlier statement or is not speaking the truth or has exhibited an element of hostility or has changed sides and transferred his loyalty to the adversary. The Court must ignore small or insignificant omission. Court must scan and weigh the circumstances properly and should not exercise its discretion in a casual or routine manner.
- i) Under Section 154, it is not necessary to file a formal application and oral request can be made during the cross examination or re-examination or immediately after the conclusion of the examination of witness.

11. Having regard to the language employed in Section 154 of the Indian Evidence Act and the law laid down in precedent decisions, few of which are noted above, it is beyond pale of doubt that the trial Court grossly erred in dismissing the application only on the ground that Section 154 is not attracted to Civil cases and erred in not applying its mind to the facts on record and to come to appropriate conclusion on the prayer of petitioners.

12. Having regard to the parameters laid down by the precedent decisions referred to above on the scope of exercise of discretion by the trial Court under Section 154, heard learned counsel for petitioners on the merits of the plea.

13. Learned counsel for the petitioner contends that no request could be made immediately after the closure of cross-examination

of Dw.2, as the counsel was not present at the time of closure of evidence as he was engaged before another Court. Thus, the moment the counsel realized that the evidence given by DW.2 was contrary to what was deposed in his chief-affidavit, the party was advised to file petition for declaring DW.2 as hostile and to cross-examine him. The time taken thereafter was only to ensure filing of affidavit and petition by the party.

14. Learned counsel for the petitioners submits that on 08.09.2016, after closing of cross-examination of DW.2, matter was adjourned for further defence evidence to 20.09.2016 and on a request made on behalf of the petitioner, on payment of costs, adjournment was granted to 27.09.2016. On 27.09.2016 petitioners filed I.A.No.720 of 2016.

15. On these adjournments, learned counsel for the petitioners submits that the delay occurred only to secure presence of the party and to file affidavit and it was not deliberate and wilful and in the peculiar facts of the case, the delay of 20 days cannot be treated as inordinate delay, in order to deny the genuine claim of the petitioner to cross-examine the defence witness No.2 having regard to his deposition in chief-examination and taking contrary stand in cross-examination.

16. The affidavit filed in support of the said I.A., makes bald assertion that DW-2 turned hostile, deposed against chief-examination, colluded with the plaintiff and, therefore, to summon him to declare him as hostile and permit to cross examine him. No details are furnished as to in what context and how DW-2 resiled

from his earlier statement and such statements made are against the petitioners.

17. It is not in dispute that after conclusion of cross-examination and before closure of evidence of DW.2 or immediately thereafter, no request was made to permit the petitioner to cross-examine DW.2. The application was filed after two adjournments and after 20 days of the closure of the evidence of DW.2. Though learned counsel for the petitioner made vain attempt to explain the delay, neither in the affidavit filed in support of I.A.No.720 of 2016 nor in the grounds urged in the Revision, no such explanation was given.

18. As seen from the principles laid down in the precedent decisions, though the discretion of the trial Court is wide under Section 154, each application requires consideration, in the facts of the given case. As succinctly put by this court in **B.N.Chobe** (supra), request for putting questions by a person who calls a witness, as can be put by adverse party in the cross-examination, ought to be made during the course of the examination of the witness and before the examination is concluded, but not after words. Even one day delay after conclusion of recording of evidence of the concerned witness is fatal. Demeanor/hostility of the witness should be apparent either during the examination-in-chief or in the cross-examination or further examination and it is only then the question of permission by the Court to put questions in cross examination by the party, to his witness can arise. There must be sufficient material to show that the witness has gone back on his earlier deposition, Court must scan and weigh the

circumstances properly and should not exercise discretion in casual or routine manner. Such assessment may not be possible if such request is made after closure of the evidence and after some delay, as in this case. In **B.N.Chobe**, the evidence was closed on 16.12.1965, whereas application was filed on 9.1.1966. Having regard to the facts of the case and the delay in filing such application, the decision of the trial Court in rejecting the request for recalling the witness under Section 154, was upheld by this Court. The principle laid down therein would also equally apply to the facts of this case.

19. Further, in **B.N.Chobe**, on the conclusion of the evidence of P.W.3, plaintiff expressed his intention to file an application to treat P.W.3 as hostile. This Court held that mere declaration of intention that he would intend to file an application to treat the witness as hostile without asking the Court for permission to cross examine his witness would not attract the provisions of Section 154 of the Evidence Act. In the case on hand, even such a request was not made immediately after the closure of evidence. After the closure of evidence of DW.2, two adjournments were sought to bring further evidence.

20. Having regard to the above assessment of the facts of the case and law, though the Court is of the opinion that the reasons assigned for rejection by the trial Court were erroneous, refusal to permit the petitioners to call DW.2 to the witness box for cross-examination is upheld. The points in issue are answered accordingly,

21. Accordingly, the Civil Revision Petition is dismissed. Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 23.06.2017
Kkm/tvk/rds



HON'BLE SRI JUSTICE P.NAVEEN RAO



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