

**HONOURABLE SRI JUSTICE A. GOPAL REDDY**

**CIVIL REVISION PETITION No. 4995 OF 2009**

**DATED 29<sup>TH</sup> JANUARY, 2010.**

BETWEEN

Gunnam Subba Rao and anr

....Petitioners

and

Anaparthi Murali Krishna and ors

Respondents.

...

**HONOURABLE SRI JUSTICE A. GOPAL REDDY**

**CIVIL REVISION PETITION No. 4995 OF 2009**

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**ORDER:**

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This Civil Revision Petition under Article 227 of the Constitution of India is filed against the order dated 17.7.2009 passed in I.A.No. 665 of 2009 in O.S.No. 36 of 2005 on the file of the Principal District Judge, East Godavari District, at Rajahmundry.

Heard both sides.

The petitioners/plaintiffs filed the aforesaid I.A. under Order 18 Rule 17 and Sections 151 of CPC and Sections 137, 138 and 154 of Indian Evidence Act to permit them to further cross-examine DW.5.

D.W.5 was cross examined on behalf of the plaintiffs on 7.8.2008 wherein he admitted that Ramalinga Chowdary who obtained possessory agreement of sale, Ex.B.18 had utmost affection towards his wife and after death of his wife, he was in

a sorrow state, unhealthy and lost his mental balance and died without executing any document and possessing lands of Kanavaram and lands and house properties of Rayavaram. When he was recalled on 6.3.2009 at the request of the defendants, for cross-examination, he stated that Ramalinga Chowdary signed on original of Ex.B.18 with the knowledge of the contents therein and he was physically and mentally healthy by the date of the marriage of daughter of the second defendant and he (DW.5) also attended the said marriage. He denied that he deposed about the health condition of Ramalingha Chowdary in his previous cross examination contrary to his chief affidavit due to the pressure on him by the plaintiffs and to help them. He voluntarily stated that due to stress and pressure and family problems, gave such version and that version in the previous cross examination regarding health was not correct.

In view of the said version of D.W.5, the plaintiffs have filed I.A. for further cross-examination of DW 5 on their behalf. The Court below dismissed the same on the ground that there is no ambiguity in the evidence of D.W.5 and if his evidence is allowed to be cross-examined on behalf of the plaintiffs, certain admissions made in his cross-examination on behalf of the defendants would be defeated. It was further observed that already certain admissions were made by the witness in support of the claim of the plaintiffs when he was cross-examined by the plaintiffs, which they can make use of.

In the case of Dabyabhai Chhaganbhai Thakkar Vs. State of Gujarat ( AIR 1964 SC 1563), Justice

K.Subba Rao speaking for the Bench of the Supreme Court observed that to confine the operation of Section 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 question 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 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 take 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.

In view of the same, since, earlier the witness was cross examined in favour of the petitioners/plaintiffs, which he cannot give a go bye to the same, the Lower Court ought to have permitted the petitioners/plaintiffs to cross-examine the witness on the said aspect. In that view of the matter, the order dated 17.7.2009 passed in I.A.No. 665 of 2009 in O.S.No. 36 of 2005 on the file of the Principal District Judge, East Godavari District, at Rajahmundry is set aside. Consequently, I.A.No. 665 of 2009 in O.S.No. 36 of 2005 stands allowed and petitioners/plaintiffs are

permitted to cross-examine the witness-D.W.5. as  
prayed for.

C.R.P. is allowed. No order as to costs.

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*JUSTICE A. GOPAL REDDY*

DATED 29<sup>TH</sup> JANUARY, 2010.  
Msnr.