

2006 ALD 1 370 .

**K.C Kanniyappa v. K.C Lalitha & Anr.**

Andhra Pradesh High Court (26 Sep, 2005)

**CASE NO.**

4783 of 2005

**ADVOCATES**

M.V.S.Suresh Kumar

**JUDGES**

Mr. Justice C.Y. Somayajulu

**Summary**

1. 2. The main contention of the learned Counsel for the revision petitioner is since the second respondent herein is not a party to O.S.No. 20 of 2003, question of his cross-examining the first respondent who is being examined as a witness in connection with O.S.No. 20 of 2003, does not arise and so the Court below was in error in overruling the objection of the revision petitioner, more so because second respondent did cross-examine the revision petitioner who is a party to both the suits.

2. Either revision petitioner or first respondent can have an objection only if the questions put to the first respondent during cross-examination are not concerned with relevant facts in either of the suits but not otherwise.

**JUDGMENT**

1. Revision petitioner is the first plaintiff in O.S. No. 47 of 1998 on the file of the Court of the I Additional District Judge, Nellore and is the defendant in O.S. No. 1141 of 2000 on the file of the Court of the Principal Junior Civil Judge, Nellore, which stood transferred to the Court of I Additional District Judge,

Nellore, as per the order in transfer O.P.No. 151 of 2000 on the file of the District Court, Nellore, to be tried along with O.S.No. 47 of 1998 on the file of the Court of the I Additional District Judge, Nellore and was renumbered as O.S.No. 20 of 2003. During the course of joint trial when the first respondent herein, who is the second plaintiff in O.S.No. 47 of 1998 and the plaintiff is transfer O.S.No. 20 of 2003, filed her affidavit in lieu of chief examination, first defendant in O.S.No. 47 of 1998 (second respondent herein) who is not a party to O.S.No. 20 of 2003 filed a memo seeking permission of the Court to cross-examine her. Revision petitioner objected the request on the ground of his not being a party to O.S.No. 20 of 2003 and as she is being examined as a witness only in O.S.No. 20 of 2003 and that objection is overruled by the learned trial Judge by the order impugned in this petition. Hence this revision.

2. The main contention of the learned Counsel for the revision petitioner is since the second respondent herein is not a party to O.S.No. 20 of 2003, question of his cross-examining the first respondent who is being examined as a witness in connection with O.S.No. 20 of 2003, does not arise and so the Court below was in error in overruling the objection of the revision petitioner, more so because second respondent did cross-examine the revision petitioner who is a party to both the suits.

3. Since O.S. No. 1141 of 2000, later renumbered as O.S. No. 20 of 2003, was ordered to be tried along with O.S. No. 47 of 1998, obviously common evidence is being recorded in both the suits. When two suits are clubbed and tried together, all the parties to the suits have a right to cross-examine the witness examined by the adversary, because Section 138 of the Evidence Act, 1872 ('the Act') confers such right on them. As per that Section 138 of the Act the witness called by a party shall first be examined-in-chief and if the adverse party so desires he can cross-examine him and then if the party calling him so desires, can re-examine him. That section specifically lays down that Chief examination and cross-examination must relate to relevant facts, but cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

4. First respondent herein, when she is being examined by the revision petitioner, would be adversary to the second respondent, who is a party to O.S.No. 47 of 1998 and so by virtue of Section 138 of the Act, second respondent has a right to cross-examine her. Either the revision petitioner or first respondent can object to the questions put to her during cross-examination by the second respondent, only if those questions do not relate to relevant facts in the suit but not otherwise, because when two or more suits are clubbed, adversaries will have a right to cross-examine the witnesses called by the other side, either to

prove their case or to demolish the case of other side, by putting questions to the witness on relevant facts. Therefore, either revision petitioner or first respondent can have an objection only if the questions put to the first respondent during cross-examination are not concerned with relevant facts in either of the suits but not otherwise.

5. Hence, the civil revision petition is dismissed at the stage of admission.