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CASE COMMENTARY: RAJENDRA NAGRATH v. L VOHRA

(AIR 2009 MP 131)

-Tazkiya

INTRODUCTION:

Rajendra Nagrath was a co-petitioner of original petitioner; Smt. Vidyavati Nagrath who had filed a petition in XIII Additional District Judge (Trial Court) in Jabalpur¹ where an interlocutory procedural order was passed by the honble court which had aggrieved the co-petitioner i.e., Rajendra Nagrath who then sought a writ petition in the High Court of Madhya Pradesh where judgement was finally passed in December, 2008 and the case was recorded in AIR in 2009.

BRIEF FACTS OF THE CASE:

- A civil suit was filed by Smt. Vidyavati Nagrath seeking a declaration regarding ownership and partition of certain family property. During the pendency of the suit, she allegedly executed a Will dated 8 June 1992 in favour of the co-plaintiff, Rajendra Nagrath.
- After her death, the Will was brought on record and the plaint was amended accordingly. The defendants were given an opportunity to amend their written statement but did not do so.
- Rajendra Nagrath argued that since the defendants had not specifically denied the Will in their written statement, the execution of the Will should be treated as admitted and the defendants should not be allowed to cross-examine the witnesses produced to prove it.

¹ *Rajendra Nagrath v l vohra* (2009) Supreme today ai. <https://supremetoday.ai> (Accessed: 17 june 2026).

- One of the witnesses was Advocate A.S. Usmani, who was also appearing as counsel for the plaintiff in the same case. The defendants objected, contending that an advocate who is a witness in the case should not continue as counsel.

ISSUES:

I- Whether the defendants could cross-examine the witnesses regarding the Will when it is not expressly denied by the other party?

II- Whether an advocate who is a witness on a material fact can continue to appear as counsel in the same case?

RULES AND LAWS INVOLVED:

The honourable High Court of Madhya Pradesh relied on following rules and laws while deciding on the case of Rajendra Nagrath v. L Vohra:

1. Bar Council of India (BCI) Rules Rule 13, Chapter II (Standards of Professional Conduct and Etiquette)²:

This was a central provision debated in the case. It mandates that if an advocate is a witness on a material question of fact in a case, they should not continue to appear as a counsel/advocate for any party in that matter. The Court observed that the BCI rules are not an exhaustive code, and a higher standard of professional ethics is expected of an advocate, making it improper to balance the roles of an active counsel and a material witness simultaneously.

2. The Doctrine of Dual Role Conflict:

This doctrine is not expressly classified but it is denoted in Legal Ethics that a lawyer who happens to be a witness of any material fact in a case cannot act as a counsel in the same case. It is an important principle that exists so that the credibility of a case is not lost and the principles of Natural Justice are upheld.

3. Indian Evidence Act, 1872 Section 137 & 138 (Examination-in-chief, Cross-examination, and Re-examination)³:

These sections define the meaning and procedure for Examination-in-chief, Cross Examination and Re- Examination of witnesses. These were some of the fundamental laws that were considered by the court as it related to an Issue in question that was: Whether the defendants could cross-examine the witnesses regarding the Will especially when it is not expressly denied

² Bar Council of India Rules, part VI, Chapter II, Rule 13.

³ Indian Evidence Act No. 1 of 1872, {137 & 138} (India)

by the other party even after notice? The court in this case withheld the opposite party's Right to Cross-examination especially if the Examination-in-chief is filed with an affidavit.

4. Code of Civil Procedure (CPC), 1908⁴

- Order VIII, Rule 5 (Specific Denial):

This procedural provision was invoked by the plaintiff regarding whether the execution of the will was specifically denied or implicitly admitted by the defendants in their written statements.⁵

- Order III, Rules 1 and 4 (Appearances and Applications by Recognized Agents/Advocates):

Involved in the procedural challenge raised by the defendants seeking to bar the plaintiff's advocate from acting as counsel because his affidavit was filed in support of the contested will.

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- **Section 151 (Inherent Powers of the Court):** Applied alongside the procedural applications submitted by the parties.

JUDGEMENT:

The court first examined the right of the defendants to cross-examine witnesses whose affidavits were filed in support of the will. It noted that Order 8 Rule 5 C.P.C. states that facts not denied are deemed admitted unless the court orders otherwise. The court emphasized that once examination-in-chief was filed by affidavit, the defendants, as adverse parties contesting the suit, have a legal right to cross-examine the witnesses. The court referred to Section 137 of the Evidence Act, which defines cross-examination as the examination of a witness by the adverse party while also citing the case of *Sadhu Singh v. Sant Narain Singh Sewadar and ors.*⁷ Court held that there was no reason to deny this right. It distinguished the cited Andhra Pradesh case *Karumanchi Subba Rao v. Yarlagadda Venkatappaiah and others*⁸, where parties were not adverse, and the case of *Hussens Hasanali Pulavwala v. Sabbirbhai Hasanali Pulavwala*⁹ where

⁴ Code of Civil Procedure No. 5 of 1980 (India).

⁵ Code of Civil Procedure 1980, Order VIII, RULE 5.

⁶ Code of Civil Procedure 1980, Order III Rule 1 & 4.

⁷ *Sadhu Singh v. Sant Narain Singh Sewadar and ors*, AIR 1978 Punjab & Haryana 319

⁸ *Karumanchi Subba Rao v. Yarlagadda Venkatappaiah and others*, AIR 1978 A.P 193

⁹ *Hussens Hasanali Pulavwala v. Sabbirbhai Hasanali Pulavwala* AIR 1981 Gujrat 190

this right was expressly preceded by the court confirming the right of cross-examination here.¹⁰

Regarding the issue of Shri A. S. Usmani continuing as counsel while being cited as a witness, the court referred to Rule 13 of the Bar Council of India Rules on professional ethics, which prohibits an advocate from accepting or continuing a brief if he is or is likely to be a witness on a material question of fact. The will being a material fact in the case, the court held that it was improper for Shri Usmani to continue as counsel. The court also relied on the Supreme Court precedent in *Motilal v. Anandibai*¹¹, which condemned such conduct to maintain independence and detachment of counsel from litigants. The court thus affirmed the trial court's order restraining Shri Usmani from appearing as counsel and advised him to voluntarily retire.

ANALYSIS AND AFTERMATH:

The case of *Rajindra Nagrath v. L. Vohra* was an important milestone that covered two important aspects of law, one procedural i.e., Indian Evidence Law and another Disciplinary which included both implied and exhibited rules of legal ethics. Courts opinion with regards to credibility of a counsel as witness in the same case laid down a judicial and ethical precedent that ensured that a witnesss reliability is not lost and no harm is caused to the suit because of it as honourable court proposed that an advocate who at any stage of case stands witness to a material fact of a case should voluntarily retire from such case, therefore this cases judgement also provided a secure exit for protecting status of the case without losing client's confidence in judicial procedure. At the same time this judgement affirmed what actually stands as a natural right; the right to cross examine a witness laying a precedent for other cases where it was reiterated.¹² Honourable court did affirm that an Examination-in-chief filed with an affidavit strengthens reliability of such witnesss statement but it cannot become a reason to deny Right of Cross Examination of opposite party as it is their right which is not negotiable and it also doesnt matter whether a specific denial was made by such party or not.

¹⁰ *Rajendra Nagrath v L vohra*, Casemine.

<https://www.casemine.com/judgement/in/56b48dde607dba348fff3dcb>. (Accessed 08 June 2026)

¹¹ *Motilal v. Anandibai* (1971)1 SCC 701

¹² *Randhir Singh vs Hon'Ble High Court Of Punjab & Haryana & ... on 27 July, 2012*, Indian Kanoon - search engine for Indian law. <https://indiankanoon.org/> (Accessed: 07 June 2026).

This judgement proved as a window for marking limitations of a vakalatnama. It also later became an important case of the legal curriculum in various law courses as it symbolised and scrutinised the importance of Legal Ethics, Professional Misconduct and Court Craft.

