

**ORDER BELOW EXHIBIT NO.61 IN R.C.S.NO.12/2019.**  
**(CNRNO.MHSI090000522019)**

01. Present application is filed by the plaintiff under Order-XI, Rule-01 of Code of Civil Procedure.

02. Read the application and say filed by defendants. Heard learned advocates for the parties at length.

03. By present application the plaintiff has prayed for granting leave to deliver interrogatories on defendant No.01, 03 to 05. The plaintiff has sought permission to administer the following interrogatories;

- (a) The defendants to admit that, no common ancestor of the parties to the suit and if they deny, then, to state who is their common ancestor,
- (b) If the defendants denies the genealogy then, to state the names of persons who are remained to be mentioned in genealogy and their relation with the plaintiff,
- (c) The defendants to admit half share of the plaintiff in the suit properties and if they deny, state share of the plaintiff,
- (d) Whether the defendants admits Dinkar Sadashiv Aayre and Sahdev Babaji Aayre are not having interest in suit property and if the defendants denies the said fact, state how said persons are related to the plaintiff's genealogy and their interest in the suit property.
- (e) Who and why, necessary party to the suit.

04. The plaintiff contended that, aforesaid interrogatories are relevant to the issue involved in the suit. Vague and false assertions have been made in the written statement by defendant No.01, 03 to 05. Considering, scope and ambit of Order-XI, Rule-01 of C.P.C. prayed for allowing the application.

05. Defendant No.01, 03 to 05 by filing their say at Exh.62 strongly objected the application on ground that, present suit has been instituted for the partition therefore, burden lies on the plaintiff to prove the genealogy and implead all persons interested in the subject-matter of the suit. By way of interrogatories said burden cannot be shifted on the defendants. The plaintiff has to stand on his own legs. Considering well settled proposition of law, a party cannot obtain disclosure of evidence by which opponent hopes to prove his case. Party is not entitled to administer interrogatories for obtaining discovery of facts which constitutes exclusive evidence of his adversary's case. The proposed interrogatories are part of the evidence. Accordingly, prayed for rejection of application.

06. Perused written notes of argument at Exh.69 filed by learned advocate Shri.Jain of the plaintiff. In support of argument learned advocate relied on following rulings.

- i. **Transport Corporation of Indian Ltd. Vs. Reserve Bank of India, (2018) 2 AIRDelR 585,**
- ii. **Delhi Vanaspati Syndicate Vs. K.C.Chawala, (1983) AIR (J&K) 65,**
- iii. **Bhakta Charan Mallik Vs. Nataorar Mallik & Ors., (1991) AIR (Orissa) 319,**
- iv. **Jamaitrai Bishansarup Vs. Rai Bahadur Motilal Chamaria, (1960) AIR (Calcutta) 536,**

- v. **Javed Akhtar Vs. Lana Publishing Company Private Limited & Ors., (1987) AIR (Bombay) 339,**
- vi. **Narain Ramchandra Bakhle Vs. Govind Datta Bakhle, (2018) 5 BCR 836,**
- vii. **P.Balan Vs. Central Bank of India, Calicut, (2000) AIR (Kerala) 24,**
- viii. **Shrivallabh Vs. Ibrahimkhan, (2015) 149 AIC 687,**
- ix. **Sonia Senroy of Mumbai Vs. Amit Senroy of Mumbai, (1998) AIR (Bombay) 302,**
- x. **A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamasathu Madalaya Nandhvana Paripalanai Sangam Represented by its President etc., (2012) AIR (SC) 2010.**

07. Heard learned advocate Shri.Nathgosavi for defendant No.01, 03 to 05. In support of his argument learned advocate relied on following rulings;

- i) **State of Bihar & anr. Vs. Shri.Radha Krishna Singh & ors.1983 STPL 1639 SC.**
- ii) **Raj Narain Vs. Smt.Indira Nehru Gandhi & ors.1972 STPL 925 SC.**

08. I have given anxious consideration to rival contentions of the parties and argument advanced by learned advocates. Before proceeding towards deciding present application it is necessary, to state the settled proposition of law regarding Order-XI of C.P.C.

09. The provisions of Order-XI of C.P.C are intended to curtail evidence thereby expediting trial of suit. Saving time of the court and costs of litigation to the parties. They have to be liberally used and parties have

to encouraged to used them in the course of trial. One of the great objects of interrogatories when properly administered has always been to save evidence that is to diminish the burden of proof which was otherwise on the plaintiff. Their object is not merely to discover the facts which will inform the plaintiff as to evidence to be obtain, but also to save the expenses of proving a part on the case. Interrogatories are not limited to giving the plaintiff knowledge on that, which he does not already know but include the getting an admission of anything which he has to prove on any issue which is raised between him and the defendant.

10. Order-XI of C.P.C. gives a party a right to interrogate with a view to obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings. Interrogatories are admissible which go to support the applicant's case or to impeach or destroy the opponent's case. The court is not at this stage, to examine as to what would be the impact of the answer of the interrogatories. The court, at the stage of administration of interrogatories, has to only consider whether the answer to the interrogatories would have some bearings on the issue involved in the case and as to whether they relate to any matter in question to the suit.

11. It is also well settled proposition of law that, rule of interrogatories is enacted to know the nature of the opponent's case but rule does not entitle the party to ascertain the facts which constitute the exclusively evidence of other side. The party cannot obtain disclosure of evidence by which the opponent hopes to proves his case. The party is not entitled to administer interrogatories for obtaining discovery of facts which constitute exclusively the evidence of his adversary's case.

12. Keeping in mind ratio laid down in the rulings cited supra and submissions canvassed by learned advocates for the parties and above settled proposition of law, turns to proceed appreciate merits of present application.

13. Present suit is instituted for the relief of partition and separate possession. The plaintiff specifically pleaded that, the parties to the suit are close relative and the suit properties are ancestral properties of the parties and properties are yet to be partitioned. The plaintiff in Para-2 of the plaint specifically described the genealogy of the parties to the suit. Defendant No.01, 03 to 05 in their written statement have specifically denied assertions made in the plaint and further pleaded that, the parties to the suit are not only the close relatives but, they are branches of the common ancestor. The plaintiff intentionally has not mentioned the name of the common ancestor and relation between Suryaji and Parshuram Aayre. The defendants further pleaded that, genealogy given by the plaintiff is incomplete. Dinkar Aayre and Sahdev Aayre are related to the genealogy of the plaintiff and they are having interest in the suit property.

14. From above pleadings of the parties it transpires that, it is specific case of the plaintiff that, the parties to the suit are close relative and their ancestor is not common. Dinkar Aayre and Sahdev Aayre are not related to the genealogy of the plaintiff and they are not having any interest in the suit property. The defendants have denied the said fact and contended that, the plaintiff intentionally has not mentioned the name of common ancestor. The parties to the suit are heirs of the common ancestor. The genealogy given by the plaintiff is incomplete and Dinkar and Sahdev Aayre are having interest in the suit property. The defendants also pleaded that, plaintiff has not impleaded all persons interested in the suit property as

a party to the suit. However, the defendants neither mentioned the name of the common ancestor nor mentioned the names of the person which the plaintiff omitted from the genealogy. The defendants have also not stated the relation of Dinkar and Sahdev Aayre with the plaintiff. This shows that, avernments in the written statement are vague and incomplete. Thus, considering the rival pleadings of the parties, interrogatories (a), (b), (d) and (e) are appears to be relevant and appears to be directly connected with the issue involved in the present suit.

15. Form assertions made in reply to present application and argument canvased by learned advocate Shri.Gosavi it appears that, the defendants have objected the application on ground that, interrogatories cannot be administer for obtaining discovery of facts which constitutes exclusively the evidence of adversary. However, the proposed interrogatories by any stretch of imagination it cannot be said that, by way of interrogatories the plaintiff is trying to discover the fact which constitute exclusive evidence of the defendants. On the contrary, as discussed above answer to interrogatories (a), (b), (d) and (e) would curtail the evidence and thereby expedite trial of the suit. Above interrogatories are thus relevant to the issue involved in the suit.

16. As per Order-XX, Rule-18 of Code of Civil Procedure in suit for partition and separate possession the court has to declare the share of the parties to the suit. Therefore, interrogatory (c) cannot be permitted to be delivered.

17. Cumulative effect of the facts and circumstances of the case and well settled proposition of law that, administering of interrogatories is to be encouraged as it is a means of obtaining admissions of the parties and

tends to shorten litigation. As a general rule the interrogatory should be allowed whether they answer to them would either strengthen the case of the party administering them or to destroy the case of adversary. The court should not be hyper technical at the stage of the service of the interrogatories. This rule is to be used liberally whenever it could shorten the litigation and serve the interest of the justice. Thus, keeping in mind facts of the case in hand and ratio laid down rulings cited supra application deserves to be partly allowed. Hence, following order is passed.

**:: ORDER ::**

- 01) Application at Exh.61 is hereby partly allowed.
- 02) The plaintiff is permitted to deliver interrogatories (a), (b), (d) & (e) and defendant No.01, 03 to 05 required to answer said interrogatories.
- 03) Cost in cause.

Date : 15/11/2022  
Place : Deogad.

(Sunil B. Walke)  
Civil Judge(J.D.),  
Deogad.