

Order Below Exh. 72 in Spl.Darkhast No. 39/2015

01. The judgment debtor nos. 7 to 9 have filed this application under Order 11 Rule 1 and 14 for, delivering the interrogatories to decree holder and judgment debtor nos. 2 to 5 and directing the judgment debtor no. 2 to produce sale deeds in Court in respect of survey no. 292/F.

02. The judgment debtor nos. 7 to 9 submitted that this darkhast is filed for execution of the decree of Spl.C.S.no. 449/2000. The preliminary decree came to be passed on 04.11.2008. The said civil suit was filed for partition and separate possession. The Court has passed the decree and gave 1/5th share to ancestor of present decree holder. The ancestor of present decree holder / main plaintiff instituted the suit and incorporated survey no. 292/F area in the litigation. The matter came to be decided and the survey no. 292/F came to be partitioned. The judgment debtor nos. 7 to 9 filed the application in this darkhast as third party and they came to be impleaded as judgment debtor nos. 7 to 9. The judgment debtor nos. 7 to 9 were an owner of survey no. 292/F. Their share was 4/5th each. In such circumstances the question arises as to how much share was belonging to decree holder and judgment debtor nos. 2 to 5 in respect of survey no. 292/F. The judgment debtor nos. 7 to 9, therefore, want to issue interrogatory to decree holder and judgment debtor nos. 2 to 5. The decree holder and judgment debtor nos. 2 to 5 are required to answer interrogatory. By the said interrogatory judgment debtor nos. 7 to 9 asked as to how much area was belonging to predecessor / ancestor of judgment debtor nos. 2 to 5 and decree holder in respect of survey no. 292/F.

03. The say of the other side came to be invited. The decree holder submitted say vide Exh. 76 and submitted that 1/5th share in the survey no. 292/F was belonging to decree holder but whole of the

survey no. 292/F came to be included. The application of judgment debtor nos. 7 to 9 can be allowed. The judgment debtor nos. 2 to 5 strongly contested the application and submitted that the application of judgment debtor nos. 7 to 9 is false. The judgment debtor nos. 7 to 9 are required to prove their contentions. The decree is already passed and executing Court cannot go behind the decree. The application is illegal and cannot be allowed. The application is liable to be rejected.

04. In view of rival contentions of the parties the following points arise for my determination and I have recorded my findings subject to the reasons as mentioned hereinafter :

Sr. No.	Points	Findings
1	Whether the interrogatory filed by judgment debtor nos. 7 to 9 can be delivered to decree holder and judgment debtor nos. 2 to 5 for answer ?	In the negative.
2	What order ?	As per final order.

REASONS

As to point nos. 1 & 2 :-

05. The judgment debtor nos. 7 to 9 have filed this application and contended that Spl.C.S.no. 449/2000 came to be decided and execution was sought. In the said litigation survey no. 292/F area 190.6 sq.mtrs., came to be partitioned. The judgment debtor nos. 7 to 9 were having 4/5th share each in the said survey number. The whole survey no. 292/F (total) came to be included in the litigation wrongly. The decree holder and judgment debtor nos. 2 to 5 were having limited share. In such circumstances there is question as to how much area was possessed or owned by the predecessor / ancestor of decree holder and

judgment debtor nos. 7 to 9. The decree holder submitted that decree holder was having only 1/5th share. The judgment debtor nos. 2 to 5 strongly opposed the application and contended that such type of interrogatory cannot be given. The interrogatory is illegal. The application is not legal and liable to be rejected.

06. The perusal of documents make it clear that this darkhast has been instituted for the execution of decree passed in Spl.C.S.no. 449/2000. The decree passed in Spl.C.S. no. 449/2000 is on record wherein survey no. 292/F has been partitioned and plaintiff and defendant nos. 2 to 5 came to be given 1/5th share. It is the contention of the judgment debtor nos. 7 to 9 that they are having an ownership over the survey no. 292/F. In such circumstances they are required to prove this fact. They should not take the help of admission from the other side. The decree has been already passed and survey no. 292/F has been partitioned. In such circumstances the judgment debtor nos. 7 to 9 to prove the fact independently. The judgment debtor nos. 7 to 9 cannot seek any help from the admission of the other side.

07. The citation of **Eyre Vs. Rodgers (1891) 40 WR (Eng) 137** has been cited in the book of Mulla on Civil Procedure Code 15th edition 2012 wherein it is expressed that *in an action of ejectment, the plaintiff must prove his own title affirmatively. It is not enough for him to impeach or destroy the defendants title. If he does not establish his own title to the land he will not be entitled to a decree, though he may succeed in impeaching or even destroying the defendants title. The reason is that the defendant being in possession, he cannot be dispossessed of the land except by proof of title on the part of the claimant. Hence, the plaintiff in ejectment should not be allowed to interrogate the defendant merely for the purpose of destroying or impeaching the defendants title.* Likewise in the citation of **Miller Vs. Kirwan (1903) 2 IR 120** it is held that *the*

plaintiff, in an ejectment suit, should not be allowed to interrogate the defendant merely for the purpose of destroying or impeaching the defendant's title. The above mentioned citations are foreign case laws but the principles mentioned therein can be resorted. The citations and ratio expressed therein clearly shows that the title cannot be interrogated by the way of interrogatory.

08. The above mentioned cases clearly show that interrogatory cannot be delivered as regards to title. The judgment debtor nos. 7 to 9 is asking the title of the ancestor of decree holder and judgment debtor nos. 2 to 5 and such course is not permissible. Further more in the book of Mulla on Code of Civil Procedure, 15th edition 2012 it is specifically expressed on page no. 1016 that a party is not entitled to administer interrogatories for obtaining discovery of facts which constitute the exclusive evidence of his adversaries case or total. The question of title or position is the matter of evidence. So the interrogatory as mentioned cannot be given to other side for answer. The application cannot be allowed and is liable to be rejected. The judgment debtor nos. 7 to 9 have prayed for delivering the interrogatory to other side and sought the permission for production of sale deeds. The other side has not filed any say as regards to custody of documents, therefore, order is required to be passed for the production of documents if the party is having the custody of the documents. Having regard to above said reasons I hold that interrogatory filed cannot be delivered to other side for answer. The application as regards to delivery of interrogatory is liable to be rejected. Therefore, my answer to point no. 1 is in negative and I am inclined to pass following order without any order as to costs.

ORDER

1. The application praying delivery of interrogatory to decree holder and judgment debtor nos. 2 to 5 is hereby rejected.

2. The defendant nos. 2 to 5 to produce the sale deeds if they are having its custody.
3. No order as to costs.

Date:- 11.10.2022
Karad.

(V. S. Khot)
Civil Judge, Sr.Division, Karad.