

**Item 20.04.
No. 2026
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**Ct
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2874 of 2025

Sailen Barick @ Sailendranath Barick & Anr.
Vs
Sri Sibū Barik & Ors.

Mr. Rajdeep Bhattacharya.

... for the petitioners

Mr. Sounak Bhattacharya,

Mr. Sounak Mandal,

Ms. Bipasha Bhattacharyya.

... for the opposite parties.

Learned advocates for the parties are present.

Heard learned advocates for the parties.

This application is directed against the order dated 16.07.2025 passed by the Learned Civil Judge (Senior Division), 2nd Court, Baruipur, District South 24 Parganas in Title Suit No. 645 of 2018.

The petitioners before this Court are the defendants in a suit for partition being Title Suit No. 645 of 2018 pending Learned Civil Judge (Senior Division), 2nd Court, Baruipur. The petitioners/defendants being aggrieved by the order dated 16.07.2025, where Learned Trial Judge allowed the application of the plaintiffs for leave to deliver interrogatory upon the defendants for necessary compliance have come up with the instant application.

Learned advocate for the petitioners submits

that the Learned Trial Judge without assigning sufficient reasons has passed this order. Learned advocate further submits that after the evidence of the defendants has started, the plaintiffs took this application for the purpose of delaying the suit. It is also submitted by the learned advocate that necessary particulars are already furnished in the written statement, thus the application for leave to deliver interrogatories upon the defendants is not at all necessary. Learned advocate relies upon a decision of Hon'ble Punjab and Haryana High Court in the case of Satya Devi Vs. Kanta Rani reported in 1998 SCC Online P&H 1543.

Learned advocate for the opposite parties/plaintiffs submits that there is no period which is mentioned under Order 11 Rule 1 to deliver the Interrogatories. Learned advocate further submits that the defendants did not give any sufficient particulars for the plaintiff to proceed in accordance with law with regard to impleading necessary parties. Learned advocate also submits that the decision of the Hon'ble Punjab and Haryana High Court is not applicable in the facts of the case.

Before proceeding to decide the issue it is necessary to consider the provision as provided in Order XI Rule 1 of the Code of Civil Procedure.

Order XI Rule 1 of the Code of Civil Procedure

provides as follows:

“1. Discovery by interrogatories.- In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories, which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.”

The question of praying leave to delivery interrogatories was exercised when in examination in chief the point of non-joinder of parties was taken. Although such statement was given in the written statement but the plaintiff did not exercise this right under order XI Rule 1 of the Code of Civil Procedure pursuant to filing of the written statement. However, as the matter relates to the necessary parties in a partition suit and necessary parties are to be impleaded to prevent multiplicity of litigation, the

delay to implead necessary parties cannot be said to be fatal.

Under Order I Rule 10(2) of the Code of Civil Procedure, the Court has power at any stage of the proceeding either upon or without the application of either party and on such terms as may appear to the Court to be just order that the name of any party improperly joined whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the suit be added.

Thus when the Court is vested with the power to direct addition of necessary parties and deletion of unnecessary parties, the Court has every power to direct that the parties which is necessary in partition suit be added for proper and effective adjudication of the said suit. However, to enable one of the parties to take necessary steps for addition of parties, the particular the said parties should be ascertained. In the event the names of parties appear in any pleading either of the party may apply by way of interrogatories to take necessary steps for impleading such necessary parties. As the Court has power to direct addition of necessary parties for proper adjudication of the suit,

Court has also power to grant leave to deliver interrogatories where necessary particulars of the parties to be impleaded is necessary. As the names and particulars addresses father's names of the persons which the defendant mentioned as necessary parties was not mentioned and the reasons for which those persons who are to be added are not furnished, the Learned Trial Court has not committed any error in allowing the leave to the plaintiffs to deliver interrogatories for necessary particulars of the persons who are to be impleaded as a party and also the ground for which their impleadment is necessary.

As partition suit immovable property is a suit where both the plaintiffs and defendants have right to get their shares declared and the portion demarcated by metes and bounds. Right to property although not a Fundamental Right but it is Constitutional Right. All persons have right to enjoy their property which they lawfully own without any hindrance by others. Thus when a declaration about the right to property is sought for, it is incumbent upon the Court to hear all necessary parties for preventing future dispute and multiplicity of litigation.

In the facts and circumstances, this Court does not find any error of the Learned Trial Court. Thus, the present application under Article 227 of the Constitution of India stands dismissed. The Order

dated 16.07.2025 passed by the Learned Civil Judge (Senior Division), 2nd Court, Baruipur, District South 24 Parganas in Title Suit No. 645 of 2018 stands affirmed.

As the suit is pending for a long period, Learned Trial Court is requested to dispose of the suit expeditiously after compliance with regard to interrogatories and preferably within a period of six months from the next date fixed.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Biswaroop Chowdhury, J.)