

(1890) 05 CAL CK 0005
In the Calcutta High Court

Ali Kader Syud Hossain Ali

APPELLANT

Vs

Gobind Dass

RESPONDENT

Date of Decision : 27-05-1890

Acts Referred:

Citation : (1890) ILR (Cal) 840

Hon'ble Judges : Wilson, J; Pigot, J

Bench : Division Bench

Judgement

Wilson J.

1. The plaintiff in this suit seeks to recover a plot of land and sets out his alleged title to it in the plaint. The defendant, in answer, relies upon the law of limitation as a bar to the plaintiff's claim and also asserts a title in himself, the particulars of which are given in the written statement. The plaintiff obtained leave to interrogate the defendant, and filed his interrogatories accordingly. The defendant, by his affidavit, answered certain of the interrogatories, and objected to others as being questions which he was not bound to answer. Those objected to are the second, part of the third, part of the fifth, the sixth, seventh, eighth, and eleventh. The matter comes before us on a summons taken out by the plaintiff to consider the sufficiency of the answers. And the question is whether the defendant is bound to answer the interrogatories to which he has objected. As to some of these interrogatories it was admitted by the learned Counsel for the plaintiff that they could not be supported, for it was admitted that their effect was to ask the defendant by what evidence he intended to support his case. The rest of the interrogatories were insisted upon. It is not necessary to refer to the questions in detail: it is enough to say that they have all one characteristic in common. They all refer to, and are based upon, not matters alleged in the plaint as part of the case of the plaintiff, but matters alleged in the written statement as part of the case of the defendant.

2. It was sought to support these interrogatories on two distinct grounds. First, it was contended, on the strength of English authorities, that a plaintiff may

interrogate a defendant in order to ascertain with sufficient clearness, and in sufficient detail, what the case of the defendant is which he has to meet at the hearing. Such interrogatories are really framed to anticipate or supply defects of pleading. Interrogatories for this purpose have undoubtedly been frequently allowed in England; but this has been the result of the systems of pleading and procedure prevailing in English Courts of several kinds. The system of procedure in this country differs widely from anything that has ever prevailed in England, and under the Procedure Code two modes are specially provided for meeting the difficulty in question. If the pleading of either parties is too vague, the Court may require him to file a further and fuller written statement u/s 112.1 This method is not, so far as we know, in use in this province outside Calcutta; but in this Court it has several times been adopted. The other method provided by the Code is the settlement of issues. By Section 146," at the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend." This is the provision under which, not in this Court only, but in the mofussil as well, the case raised on the one side and on the other, by the plaint and written statement, is ordinarily ascertained with the necessary precision. If, under the system of procedure in force in this country, we were to allow interrogatories to be used by one party in order to ascertain with sufficient clearness the case of the other side, we should, we think, be misapplying the English authorities, following the decisions and overlooking the reasons on which they were based. We should further be introducing a practice wholly novel, so far as we know, unnecessary, and likely to prove very inconvenient. Moreover, if in any case such a use of interrogatories were allowable, they would not, we think, be so in this case, for we do not think the written statement is open to exception on the ground of insufficiency of information as to the case set up.

3. The second ground upon which it was sought to support these interrogatories was this. It was said that a plaintiff may interrogate with a view to obtain information or admissions in support of his own case, and that this right extends, not only to his original case, but also to any answer which he has to make to the defendant's case. With proper qualifications this may be accepted as correct. But, amongst other qualifications, it is always subject to this qualification, that the interrogatories must be directed to a case on which the plaintiff has already determined, and to which he has committed himself. He cannot be allowed to put fishing questions in order to try whether he can discover any flaw in the defendant's case or suggest any answer to it. If this test be applied, it is clear, we think, that the interrogatories in question are inadmissible. The summons must therefore be dismissed with costs.

4. The same considerations govern the case of the same plaintiff v. Hurdeb Das, in which also the summons must be dismissed with costs.

1 No written statement to be received after first hearing.

[Section 112: Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

Provisos.

Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same:

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.]