

(1996) 01 DEL CK 0088

In the Delhi High Court

Case No : Interim Application No. 1035 of 1994 and Suit No. 186 of 1990

Tarun Kumar and Others

APPELLANT

Vs

Ajay Kumar

RESPONDENT

Date of Decision : 01-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1

Citation : (1996) 1 CLT 198 : (1996) 61 DLT 174

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Y.K. Jain, Suiifeet, Kirti Uppal, P.A. Rao, Vaishali and Deshpande, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) This order will dispose of the application of the plaintiff for delivering interrogatories upon defendant No. 2. The brief facts which have resulted in filing the present application are that :- 7 The plaintiff No. 3, the wife and plaintiffs 1 and 2 the son and daughter of defendant No. 1, have filed this suit for partition, rendition of accounts and declaration in respect of certain properties, as have been mentioned in the plaint. The allegations made in the plaint are that defendants 1 to 4 were carrying on business at various places in India and abroad as members of a joint Hindu family and some of the business names owned by the said joint Hindu family are "Khem Chand Raj Kumar", "Khem Chand Vijay Kumar", "Shiv Chand Steel Rolling Mills", "Steel Corporation of Punjab", "Khem Chand Ajay Kumar", "Malvika Machine Tools" besides others. It is alleged that defendant No. 2 being the eldest male member of the family had been acting as Manager and Karta of Hindu Undivided Family and had been maintaining all accounts of various incomes and funds belonging to the family. plaintiffs 1 and 2 claiming themselves to be co-parceners of the said joint Hindu property have claimed their share by partition in the properties which are owned and possessed by the said joint Hindu family. The details of the properties

which are stated to be owned by the joint Hindu family have been given in Annexure-A to the plaint.

(2) In the written statement filed by defendant No. 2 while the factum of joint Hindu family has not been denied, however, it is alleged that there was a partition of the joint Hindu family properties in 1957 and defendant No. 1 at that time is alleged to have satisfied himself that partition was in the best interest of defendant No. 1 who was minor at that time. It is alleged that in 1973 defendant No. 1, on attaining majority had filed a suit challenging the previous partition and had claimed fresh partition and rendition of accounts. The said suit is stated to have been ultimately dismissed. It has also been stated in the written statement that except in Jalandhar, the Hindu Undivided Family with Lala Khem Chand as Karta owned no property or business in any other part of the country and it was only after his death that defendant No. 2 as Karta expanded the business manifolds. From the written statement of defendant No. 2 it is clear that factum of there being the Hindu Undivided Family of which he was the Karta, has not been denied. On the pleadings of the parties, the Court framed issues on 23rd September, 1983. Some of the issues framed are as under :- 8. Have the plaintiffs or any one of them locus standi to re-open the partition, if proved, as per issues 1 to 7, and to what extent? 9. In case, Issue No. 8 is found for the plaintiff, were the partitions or any one of them referred to in issues 1 to 7 equal just, fair and conscionable? 10. In case, Issue No. 9 is found against the defendants, what properties can be re-partitioned and what are the respective shares of the plaintiffs and defendants 2 to 4 therein? Present application has been filed by the plaintiffs navy for delivering interrogatories upon the defendants with a view to elicit information about the properties which are now to be partitioned. The case of the plaintiffs in the application is that the extent, the origin and the constitution of properties and business houses and corporations is a question material to the decision of the case and is a matter in issue. The interrogatories which are proposed to be delivered upon defendant No. 2 are stated to be relating to the matters in question in the suit.

(3) Reply to the application has been filed by defendant No. 2 alleging, inter alia, that the application was an abuse of the process of the Court as the joint Hindu family had been disrupted on 24th March, 1954 when part partition had taken place followed by complete partition on 25th March, 1957. Ids, Therefore, alleged that the plaintiffs have no locus standi to file the present application and the suit, in any case, is alleged to be hopelessly barred by time. It is, Therefore, slated that there is no case for delivering interrogatories upon the said defendant.

(4) The object of delivering interrogatories is seeking information from the opposite party about certain facts which are to be proved in the case. Interrogatories can be for discovery of documents as well as for discovery of facts. The main object of interrogatories is to save expense by enabling the party to obtain from his opponent information as to facts material to the question in dispute between them and to obtain admission of fact which he has to prove on

any issue which is raised between them. Interrogatories are generally allowed to be delivered upon the adversary provided the said interrogatories are necessary for obtaining information from the adversary either to maintain the case of the party administering them or even to destroy the case of the adversary. Interrogatories cannot be allowed to be delivered in case they are in the nature of making fishing inquiries from the adversary. Interrogatories must be confined to facts which are relevant to the matters in question in the suit.

(5) The dispute in the present case is as to whether there had been earlier partitions and in case it is held that earlier partitions were unconscionable and can be reopened, the Court has to find out as to which were the properties which are owned by the joint Hindu family. To obtain this information about the properties to be partitioned, the plaintiffs propose to deliver interrogatories upon defendant No. 2. Specific properties have been mentioned in Annexure Nos. I (III), 2(11) and 3 of the interrogatories. In my opinion, none of the said interrogatories is irrelevant or scandalous. Plaintiff has to prove as to which are the properties which are required to be partitioned in the event of issue Nos. 8 and 19 are decided against the defendants and to prove this fact, in my opinion, plaintiff can deliver interrogatories upon any of the defendants. There cannot be any objection by defendant No. 2 to reply to the said interrogatories.

(6) After, Therefore, having gone through the interrogatories which are annexed with the application and which are sought to be delivered upon defendant No. 2 for reply on oath, this application needs to be allowed to the extent that the interrogatory Nos. 1, 2, 3 and 4 with all its sub-paragraphs are permitted to be delivered upon defendant No. 2 for answer in accordance with the provisions of Order 11 of Code of Civil Procedure, 1908. I find that interrogatory Nos. 5, 6, 7, 8, 9 and 10 are in the nature of fishing inquiries which are being made by the plaintiffs from defendant No. 2. In my opinion, these interrogatories are not relevant for decision of the matters in controversy between the parties.

(7) Let answer interrogatory Nos. 1, 2, 3 and 4 with all its sub-paragraphs on affidavit in accordance with the provisions of Order 11 of Code of Civil Procedure, 1908 within eight weeks from date of passing of this order. With these observations, the matter stands disposed of.