

(2005) 01 CAL CK 0033
In the Calcutta High Court
Case No : C.O. No. 3269 of 2004

Gour Hari Ghosh	Vs	APPELLANT
Punjab National Bank and Others		RESPONDENT

Date of Decision : 10-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 35 Rule 5, Order 7 Rule 11

Citation : (2005) 2 CHN 248

Hon'ble Judges : Soumitra Sen, J

Bench : Single Bench

Advocate : Biswanath Mitra and Manas Ghosh, for the Appellant;

Final Decision : Allowed

Judgement

Soumitra Sen, J.—Let affidavit of service filed in Court today be kept with the record. In spite of service no one appears to contest this revisional application, when the matter is called on.

2. In this revisional application the petitioner has challenged Order No. 12 dated September 7, 2004 passed by the learned Civil Judge (Junior Division), Second Court at Diamond Harbour in Title Suit No. 241 of 2002, whereby the learned Trial Judge has rejected the petitioner's application filed under Order 7 Rule 11(d) of the Civil Procedure Code.

3. The opposite party/Bank has filed a suit under Order 35 Rule 5 of the CPC being Title Suit No. 241 of 2002, which is interpleader suit. It is the contention of the opposite party/bank that as one of the landlords was claiming sole ownership of the suit property, the bank's right as a tenant was required to be determined.

4. It is an admitted position that the Bank had granted loan for construction of the suit premises by creating mortgage by deposit of title deed. In the said title deed, the names of three persons appeared as the landlords. The amount of rent was first required to be adjusted against the loan amount and thereafter was to be paid to the landlords. The bank also admits that the petitioner along with his

two other brothers were the landlords, but since one of the said landlords has written to the bank that he was the sole owner, the necessity of filing of the suit arose.

5. It is contended on behalf of the petitioner that the language of Order 35 Rule 5 of the Code is clear to the extent that if any person claims an independent right not through the landlord, then a tenant cannot file an interpleader suit compelling the landlords to interplead as they cannot be compelled to interplead with any person other than the persons making their claim through such landlords.

6. In the instant case it is clear that the said landlords, namely, the opposite party No. 2 herein, was claiming an independent right in respect of the suit premises. Therefore, an interpleader suit cannot lie. In order to clarify the confession that has arisen, the bank may initiate any other legal proceedings, but by reason of the clear language of Order 35 Rule 5 of the Code, the interpleader suit shall not lie.

7. In the decision relied upon by the learned Court below in the case of J. Chakrabarti v. Chief Justice and Ors., reported in 68 CWN 965 there is no decision on the said issue as to whether under such facts and circumstances of the case an interpleader suit will lie or not.

8. In the case of Jugal Kishore and others Vs. Bhagwan Dass and others, , it has been clearly held that a tenant cannot sue his landlords under Order 35 Rule 5 of the Code for the purpose of compelling them to interplead with any person other than persons making claim through their principal or landlord.

9. Since in the instant case the opposite party No. 2 is claiming an independent title and not through their brothers as landlords, therefore, an interpleader suit shall not lie. Accordingly, the impugned order is set aside. The application filed by the petitioner under Order 7 Rule 11 (d) of the Code is hereby allowed.

10. The revisional application is, thus, allowed without any order as to costs.