

(1980) 01 GAU CK 0001
In the Gauhati High Court
Case No : Civil Revision No. 178 of 1979

Monoranjan Dey

APPELLANT

Vs

Dhirendra Chandra Paul and Another

RESPONDENT

Date of Decision : 09-01-1980

Acts Referred:

Administration of Justice and Police in the Khasi and Jaintia Hills Rules, 1937 — Rule 35
Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12

Citation : AIR 1981 Guw 46

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : B.K. Das and B.C. Das, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Hansaria, J.—The petitioner who was a defendant in Title Suit No. 8/78 filed an application under Order 11, Rule 12 for discovery of certain documents. This prayer was rejected by the learned trial Court after having perused the reply on behalf of the plaintiff filed by one Subhas Chandra Paul claiming himself to be an attorney of the plaintiff in which it was stated that the plaintiff had no documents to produce. Against this order a petition was preferred under Rule 35 of the Rules for Administration of Justice and Police in Garo Hills District. The learned Deputy Commissioner has dismissed the same being of the view that the petition before him was not maintainable as it was against an interlocutory order.

2. Shri Das urges that the view taken by the learned Deputy Commissioner is erroneous inasmuch as the order against which he approached the learned Deputy Commissioner has to be regarded as a case decided within the meaning of first para of Rule 35 of the aforesaid Rules. To bring home this point Shri Das refers to the decisions which have dealt with this question in the context of Section 115 of the C. P. C. which has also provided that a revision lies against a case decided only. It has been held in Major S.S. Khanna Vs. Brig. F.J. Dillon, that the word "case" is not limited in its import to the entirety of the matter in

dispute. But then every order of the Court in the course of a suit does not also amount to a case decided. If some legally enforceable claim or right is decided by an order that would be a "case decided" within the meaning of Section 115. This point was further examined in *Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others*, wherein it has been observed that a case may be said to be decided if the Court adjudicates for the purpose of the suit some right or obligation of the parties in controversy.

3. Relying on these decisions, it is submitted by Shri Das that Order 11 Rule 12 has conferred valuable right on the party and any order refusing discovery of documents would be a case decided, against which the aggrieved person could invoke Rule 35 of the aforesaid Rules. It is also submitted, in the present case the learned trial Court had refused the prayer not because the discovery was not regarded necessary or not necessary at this stage, on any one of which grounds alone an application under the aforesaid provision can be rejected, as stated in the rule itself. A perusal of the order of the learned trial Court shows that the petition was dismissed because it accepted the statement made by the aforesaid Subhas Chandra Paul that the plaintiff had no, more documents to produce. If this stand is taken by the party in whose custody the document is said to be, naturally the petition for discovery cannot be granted because there would be no document to inspect.

4. Thus, though the view of the learned Deputy Commissioner that the petition before him was not maintainable is not correct, no relief can be given to the petitioner because of the stand taken by the plaintiff that he did not have the documents sought to be inspected.

5. In the result, the petition is dismissed. But it is made clear that the plaintiff would be estopped in future from presenting the documents in question in the Court at any stage of the suit.