

Jugal Kishore and ors. v. Bhagwan Dass and others (J. V. Gupta, J.)

conditions prevailing in cold countries but our climate is much warmer. In fact, temperature is normally above 70°F. throughout the year, the summer temperature being very much higher. There are also not such facilities available here for preservation of the samples as in those advanced countries. So even if the applicant had kept the sample bottle with him, still no useful purpose would have been served after lapse of one year because by that time the sample must have decomposed and would not have been fit for analysis. In view of the inordinate delay in this case, it does not matter that the applicant did not apply under Section 13(2) of the Act for sending the sample bottle to the Director of Central Food Laboratory.....”

On this score also, the petitioner is atleast entitled to the benefit of doubt.

(7) In view of the foregoing discussion, I accept this Criminal Revision; set aside the conviction and sentence awarded to the petitioner and acquit him of the charge. Fine, if paid, be refunded to him.

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P.C.G.

*Before J. V. Gupta, J.*

JUGAL KISHORE AND ORS.,—*Petitioners.*

*versus*

BHAGWAN DASS AND OTHERS,—*Respondents.*

*Civil Revision No. 2591 of 1988*

*February 28, 1989.*

*Code of Civil Procedure (V of 1908)—O. 35, Rl. 5—Applicability and scope of—Tenant filing interpleader suit against his landlord—Such suit—Whether maintainable.*

**Held**, that according to Orders 35, Rl. 5 of the Code of Civil Procedure, the tenant could not sue his landlords for the purposes of compelling them to inter-plead with any person other than persons making claim through such principals or landlords.

(Para 5)

*Held*, that no such inter-pleader suit is maintainable on behalf of the tenant. (Para 6)

*Petition under Section 115 of Act V of 1908 C.P.C. for revision of the order of the court of Shri Gurdial Singh Kotla, Sub Judge 1st class, Jhajjar, dated 4th October, 1988, holding that the suit of the plaintiff is well maintainable in the present form and deciding this preliminary issue against the defendants No. 1 to 3.*

*CLAIM: Inter Pleader Suit.*

*CLAIM IN REVISION: For reversal of the order of Lower Court.*

H. L. Sarin, Sr. Advocate with Ritu Bahri, Advocate and Jaishree Thakur, Advocate, for the petitioner.

R. S. Mittal, Sr. Advocate with P. L. Verma and P. S. Bajwa, Advocates, for the respondents.

#### JUDGMENT

*J. V. Gupta, J.—*

(1) This petition is directed against the order of the trial Court dated 4th October, 1988, whereby the preliminary issue with regard to the maintainability of the inter-pleader suit has been decided against the defendant Jugal Kishore.

(2) Bhagwan Dass tenant filed the present inter-pleader suit with the submissions that Jugal Kishore defendant No. 1 transferred his rights in respect of the demised premises through a civil court decree in favour of defendants Nos. 2 and 3. After the said transfer, the defendants Nos. 2 and 3 filed a petition under Section 4 of the Haryana Urban (Control of Rent and Eviction) Act, against the plaintiff and the rent was fixed at Rs. 80 per month by the Appellate Authority,—*vide* its judgment dated 8th September, 1987. The plaintiff then received a registered notice dated 11th December, 1987 from defendants Nos. 4 to 19 claiming themselves to be the owners of shop in dispute and alleging Jugal Kishore defendant No 1 to be their agent and Manager and he was having no right of ownership over the shop in dispute. They further claimed that future rent of the shop in dispute be not paid to defendants Nos. 1 to 3. On the other hand, defendants Nos. 1 to 3 are claiming themselves to be the owners of the shop in dispute and, therefore, the plaintiff being ignorant regarding the rights of

Jugal Kishore and ors. v. Bhagwan Dass and others (J. V. Gupta, J.)

the defendants, filed the present inter-pleader suit to decide as to who is entitled to receive rent from him. According to the plaintiff-petitioner he is ready and willing to pay the rent of the shop in dispute as may be directed by the Court. The suit was contested by defendants Nos. 1 to 3. They pleaded that they are the landlords and the plaintiff is a tenant under them. Defendants Nos. 4 to 19 were having no right to issue any notice to the plaintiff for payment of rent to them. Since the plaintiff has not denied the relationship of landlord and tenant between the plaintiff and defendants Nos. 1 to 3 and, therefore, the plaintiff was bound to pay rent to them and he has no *locus standi* to file the present suit.

(3) Defendants Nos. 4 to 19 in their written statement claimed themselves to be the owners of the shop in dispute and denied the rights of defendants Nos. 1 to 3 and prayed that defendants Nos. 4 to 19 be declared as owners of the shop in dispute and defendants Nos. 1 to 3 be restrained from collecting any rent of the shop in dispute from the plaintiff and he be further directed to give rent to them. One of the preliminary issues framed was, "Whether the suit of the plaintiff is not maintainable in the present form ? OPD".

(4) The learned trial Court, relying upon the judgment reported as *Yeshwant Bhikaji Vilankar v. Sadashiv Govind Arekar and another* (1) came to the conclusion that the suit was maintainable. According to the trial Court, the provisions of Order 35 rule 5 of the Code of Civil Procedure, were not applicable to the facts of the present case. Consequently, it was held that the suit of the plaintiff was maintainable in the present form. Dissatisfied with the same, defendants Nos. 1 to 3 have filed this petition in this Court.

(5) The learned counsel for the petitioner submitted that in view of the provisions of Order 35 rule 5, C.P.C., the present suit, as such was not maintainable. According to the learned counsel *Yeshwant Bhikaji's case* (supra) has not been rightly interpreted by the trial Court. Rather it supports his contention. He further cited *Sadashiv Hirve v. Trimbak Chitnis* (2) in support of his contention. Order 35 rule 5, C.P.C., reads as under:—

"Agents and tenants may not institute interpleader suits,—  
Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to use their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords."

(1) A.I.R. 1940, Bombay, 414.

(2) AIR 1957, Madhya Bharat 171.

According to the said provisions, the tenant could not sue his landlords for the purposes of compelling them to inter-plead with any persons other than persons making claim through such principals or landlords. Admittedly, in the present case defendants Nos. 4 to 19 are not claiming through the landlords defendants Nos. 1 to 3. They claim themselves to be the owners of the shop in dispute and have denied the rights of defendants Nos. 1 to 3. In these circumstances, the said provisions of Order 35 rule 5, C.P.C., were clearly attracted and the tenants here could not maintain the suit against the landlords i.e., defendants Nos. 1 to 3 compelling them to interplead with defendants Nos. 4 to 19. In *Yeshwant Bhikaji's case* (supra), it was held that "a tenant is not permitted to deny his lessor's title at the commencement of the tenancy, and therefore, in order that in inter-pleader suit may lie, the claim of the party other than the landlord must be consistent with the title of the landlord at the commencement of the tenancy in question."

(6) In the present case, defendants Nos. 4 to 19 are claiming independent rights of ownership and, therefore, the said dispute between the parties *inter se* could not be decided in the present interpleader suit. In these circumstances, the view taken by the trial Court was wrong and illegal. No such interpleader suit was maintainable on behalf of the tenant. Defendants Nos. 4 to 19 may seek their remedy if any, in accordance with law. The tenant is liable to pay rent to his landlords defendants Nos. 2 and 3. Consequently, this petition succeeds, the impugned order is set aside and the preliminary issue is decided in favour of the defendants and against the plaintiff. The parties are directed to appear in the trial Court on 15th August, 1989.

P.C.G.

Before I. S. Tiwana, J.

RON SON EXPORT HOUSE PRIVATE LTD. AND  
ANOTHER.—Appellants.

versus

NEW BANK OF INDIA LTD.—Respondents.

Regular First Appeal No. 573 of 1981

March 8, 1989.

*Code of Civil Procedure, 1908—Order 10, Rl. 4(2)—Court fixing date for admission or denial of documents—Defendant not present on said date—Defence counsel present and such counsel not examined—Striking of defence—Justification of such order.*