

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **RFA NO. 283 OF 2008**

+ Date of Decision: 6th October, 2009

ANANG PAL ...Appellant
! Through: Mr. S.S. Panwar and Mr. Sunil Dutt
Baloni, Advocates.
Versus

\$ **UOI & ORS.** ...Respondents
^ Through: Mr. Baldev Malik, Adv. for UOI
Mr. J.K. Jain, Adv. for R-8 to 10 & 12.
Mr. Jayant Bhushan, Sr. Advocate
with Mr. Vipin K. Singh, Adv. for R-
13.

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment? (No)
2. To be referred to the Reporter or not? (Yes)
3. Whether the judgment should be reported in the digest? (Yes)

JUDGMENT

P.K.BHASIN, J:

The appellant's suit for declaration, injunction and damages has been dismissed being not maintainable in the 'present form' as well as being time barred by the Additional District Judge vide order dated 10th April, 2008. The appellant has questioned the correctness of the trial Court's decision by filing this appeal.

2. The factual matrix leading to the filing of this appeal may first be noticed. On 16/12/03 the appellant and one Kartar Singh had sought permission of the Court to file a suit for declaration, mandatory injunction, permanent injunction and damages in a representative capacity for and on behalf of the villagers of village Khirki where they themselves were also living and also for the public at large. For seeking the permission of the Court to sue in a representative capacity an application under Section 91 read with Order 1 Rule 8 of the Code of Civil Procedure, 1908 (in short 'CPC') was moved. The relevant facts which necessitated the initiation of this litigation in a representative capacity as pleaded by the applicants have been noticed by the trial Judge in the impugned judgment and the same are being re-produced below:-

"The plaintiffs are permanent residents of village Khirki, New Delhi - 110017, since the time of their forefathers, being the proprietors of village Khirki, New Delhi. The said village is an urbanized village and therefore, falls under the limits/jurisdiction of M.C.D/DDA. The land of Khasra no. 88(0-9), village Khirki, New Delhi is a land of common utility and has been earmarked as Gair Mumkin KUAN(WELL) and is surrounded by open space, which is reserved and has been used for public purposes, namely festive occasions, marriages parties, functions, meetings places and parking etc.(hereinafter referred to as Common Land). The land of Khasra no. 89(0-5), village Khirki, New Delhi is a public passage and has been entered in the Revenue Record as Gair-Mumkin-Rasta.....In the month of March, 1993, the defendants no. 8 to 13 illegally encroached upon the land of Public Passage of Khasra no. 89(0-5), Village Khirki, Malviya Nagar, New Delhi-17 and started raising illegal construction thereon, which was brought to the notice of police and concerned authorities by the plaintiff vide a written complaint dated 25.10.1993.....but no action was taken.....The plaintiffs have been illegally deprived of their right and use of public passage which has caused special damages, mental torture & harassment to them as well as to general public..... Defendants no. 8 to 13 have illegally and forcibly created the passage through land of Khasra no. 88, which is also a land of public utility.....The plaintiffs served a Legal Notice dated 26.03.2002 upon the defendant no. 1 to 7 by registered

A/D post as well as under certificate of posting and dasti, which was duly served upon them but the same has not been replied yet. After the receipt of the notice dated 26.03.2002, the respondent no. 5(SDM), suo-moto initiated proceedings U/s 133 Cr.P.C. and issued show cause notice to the defendants no. 8 to 13 with information to the plaintiffs. However, the said proceedings have been dropped by the Ld. SDM vide order dated 11.07.2003, after replies and rejoinders to show cause were filed by the parties. After the dismissal of the proceedings U/s 133 Cr.P.C., the defendants no. 8 to 13 have become more bold and are intending to raise further constructions and/or addition/alteration in public passage and encroachment in land of common utility of Khasra no. 88 and have threatened as such inasmuch as they have collected the building material on the spot on 09.12.2003 and are adamant to achieve their illegal designs despite objections on the plaintiffs. Hence, the plaintiffs are entitled to decree of Permanent Injunction against the said defendants. The plaintiffs have no personal interest in the public passage, however they are fighting for a good and general cause for and on behalf of all the villagers.....”

3. The reliefs which the two applicants sought from the Court were as under:-

“(a) Decree for mandatory injunction directing the defendants to demolish the illegal construction and remove the same from the public passage of land of Khasra No. 89(0-5), village Khirki, P.O. Malviya Nagar, New Delhi-17;

(b) Decree for permanent injunction restraining the defendants No. 8 to 13 and/or their agents, employees, workmen, or any person acting through or under them from raising any further construction and/or additions, alterations or encroachment in any manner on the public passage of Khasra No. 89 (0-5) and land of common utility of Khasra No. 88 (0-9);

(c) Decree for damages against the defendants No. 8 to 13 @ Rs. 1,00,000/- (Rupees One Lac only) per month along with interest @ 24% p.a. till realization of the actual damages.”

Before any decision could be taken by the Court concerned on the application under Section 91 and Order 1 Rule 8 CPC applicant no.2, Kartar Singh moved an application before the trial Court that he may be permitted to withdraw from the suit since his differences with the defendants had been sorted out. The trial Court allowed the application of

applicant no.2, Kartar Singh vide order dated 23rd March, 2006. While allowing him to withdraw from the proceedings the trial Judge permitted applicant-plaintiff no.1, Anang Pal to continue with the suit in his individual capacity as well as in representative capacity. Thereafter some of the private defendants filed applications for review of the order dated 23rd March, 2006 to the extent it permitted the sole plaintiff Anang Pal to continue with the suit in a representative capacity. However, those review applications were rejected.

4. Defendant no.6 (Delhi Development Authority), which is respondent no.6 in this appeal, claimed in its written statement that it had no concern with the suit lands in khasra nos. 88 and 89. An objection that the suit was barred for want of notice under Section 53-B of the Delhi Development Act was also taken.

5. Defendants no. 8,9,11 and 12, who are respondents no. 8, 9, 11 and 12 in this appeal, filed a joint written statement. These defendants took a preliminary objection that since one of the plaintiffs had withdrawn from the proceedings the suit under Section 91 CPC was not maintainable and also because land forming part of khasra nos. 88 and 89 was not public land. Regarding khasra no. 89 the stand of these defendants was that the same was owned by village proprietary body and recorded in the jamabandi as *Shamalat Deh*. There was an old temple existing in a portion of the land of khasra no. 89 and that temple was constructed by the

villagers and even the plaintiffs were using that temple for worshipping and further that no objection was raised during its construction by anyone. These defendants also pleaded that they were not in possession of any part of khasra no.89.

6. The stand of defendant no. 10 was that he had not encroached any portion of land in khasra nos. 88 and 89 and that the suit was not maintainable in view of the provisions of Section 41(1)(h) of the Specific Relief Act. It was also pleaded that the present suit had been filed by the plaintiffs because of enmity.

7. Defendant no. 13, Raghubir Singh, who is respondent no. 13 in this appeal, pleaded in his written statement that he had not encroached any part of land in khasra no. 89. Regarding khasra no. 88 his stand was that his grand-father was a co-owner having 21 shares and further that he(defendant no.13) being a co-owner had been in possession thereof and had constructed a house which was in existence since 1970. Objections relating to the valuation of the plaint for the purposes of court fees and jurisdiction and the suit being time barred were also raised.

8. The suit was surprisingly and regrettably not contested either by the Union of India or by Municipal Corporation of Delhi and not even the Commissioner of Police despite the fact that it had been alleged in the plaint that public lands had been encroached upon by defendants 8-13 and massive unauthorized construction had been carried out on public

land in village Khirki and that encroachments and unauthorised constructions had been carried out by the private defendants in connivance with the Government/municipal and police officials.

9. The trial Court framed as many as fourteen issues and out of those fourteen issues, five were treated as preliminary issues. These are those five preliminary issues:-

- “4. Whether the suit is not maintainable for want of notice u/s 53-B of DDA Act? OPD6.
5. Whether the suit is barred u/s 41 (h) of the Specific Relief Act? OPD10.
6. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD6.
7. Whether the suit is barred by limitation? OPD10.
8. Whether the suit is not maintainable in the present form? OPD 8, 9, 11 & 12.”

Vide impugned order the trial Court decided issue no.4 in favour of the plaintiff-appellant and issues no.5, 7 and 8 against the plaintiff. Issue no. 6 was not decided as according to the trial Judge that issue could not be decided without evidence. As a result of the findings on issues no.5,7 and 8 the suit came to be dismissed. Issue no.5 was decided against the plaintiff on the ground that he had an alternative remedy of claiming the relief of partition and so the suit was barred under Section 41(h) of the Specific Relief Act. Issue no.7 was decided against the plaintiff on the ground that since as per the plaintiff the cause of action had arisen in the year 1993 the suit filed after three years was time barred. On issue no.8

the trial Judge observed that the application under Section 91 and Order 1 Rule 8 CPC was still pending but since one of the two plaintiffs had already withdrawn from the suit no permission to one plaintiff to sue could be granted under Section 91 CPC and so the suit was not maintainable in the 'present form'.

10. The learned counsel for the plaintiff-appellant, Shri S.S.Panwar, contended that vide order dated 23rd March, 2006 the trial Court had granted permission to the sole plaintiff to sue in individual capacity in view of sub-section 2 of Section 91 CPC as well as in a representative capacity under Order 1 Rule 8 CPC. Thereafter the private defendants had sought review of that order and in the review application of defendants 8,9,11 and 12 they had themselves stated that the application for leave had been allowed. Their applications were, however, rejected and so the order dated 23rd March, 2006 giving permission to the appellant-plaintiff attained finality and, therefore, the trial Judge was not justified in observing in the impugned order that the application under Section 91 and Order 1 Rule 8 CPC was still pending decision and the permission sought for, could not be granted now in view of the fact that there was only one plaintiff pursuing the suit. Regarding the issue of limitation it was contended that this issue could not be decided as a preliminary issue since the same was not a pure issue of law in the facts of this case and in any event, the suit could not be said to be time barred since the acts

complained of in the suit constituted continuing wrongs and section 22 of the Limitation Act gets attracted and every moment gives a fresh cause of action to the plaintiff for seeking the reliefs sought for. It was also contended that one of the reliefs was prohibitory injunction for which cause of action had arisen in December, 2003 only and that averment in the plaint had been totally ignored by the trial Court and so in any event the entire suit could not be said to be time barred. As far as issue no.5 was concerned, Mr. Panwar contended that the findings of the trial Court could not be sustained since the plaintiff was not claiming ownership in respect of the suit lands and so he could not ask for the relief of partition and the suit for injunction and damages was maintainable.

11. From the side of the contesting private respondents arguments were mainly advanced by Shri Jayant Bhushan, senior advocate, appearing for respondent no.13 and his main thrust was to have the decision of the trial Court on the points of non-maintainability of the suit under Section 91 CPC(covered under preliminary issue no.8) and limitation(covered under preliminary issue no.7) upheld by this Court. Mr. Jayant Bhushan, submitted that the suit was time barred and Section 22 of the Limitation Act was not applicable since the entire encroachments and unauthorized constructions allegedly had been started and finished also in the year 1993 and so it could not be said to be a case of a continuing wrong. Reliance was placed on one decision of the Apex Court in "**Balkrishna**

Savairam Pujari v. Shree Dnyaneshwar Maharaj Sansthan and ors., AIR 1959 SC 798 and one decision of this Court in ***Faqir Chand vs Lalla Ram***, AIR 1994 Delhi 161. Learned senior counsel, however, did not support the findings of the trial Court that the suit was barred under Section 41(h) of the Specific Relief Act and that appropriate remedy of the plaintiff was to claim partition of the suit lands which according to the private defendants belonged to their forefathers. Shri J.K.Jain, learned counsel appearing for respondents 8 to 10 and 12 adopted the submissions of Mr. Bhushan while generally supporting the impugned judgment of the trial Court. Regarding the observation of the trial Court that the application under Section 91 CPC had not been disposed of Mr. Jain submitted that it had been rightly observed by the trial Judge that the said application under section 91, CPC had not actually been disposed of.

12. No arguments were advanced on behalf of Union of India. Its counsel Shri Baldev Malik had during the course of hearing of the appeal been asked by me as to what was the Government's stand in the matter in which private persons were litigating in respect of some land which according to the plaintiff-appellant was public land and had been encroached upon by respondents 8-13 herein while these respondents were claiming that the suit land was not public land. Mr. Malik had sought time to get necessary instructions from the concerned department but unfortunately he could not get any response from the Government

and so the hearing was concluded without any assistance whatsoever from the side of the Government.

13. After going through the record of the trial Court and giving my thoughtful consideration to the rival contentions made before me I have come to the conclusion that the dismissal of the suit cannot be sustained. As noticed in the beginning, two persons had initially come to the Court and had filed an application under Section 91 and Order I Rule 8 CPC seeking permission to sue in a representative capacity. The private defendants and DDA had opposed that application. However, before that application could be disposed of, one of the two applicants, namely, applicant no.2 Kartar Singh, had moved an application seeking permission of the Court to withdraw from the proceedings. Vide order dated 23rd March, 2006 the trial Court had allowed the applicant no.2 Kartar Singh to withdraw from the suit and at the same time it also permitted the applicant no.1 Anang Pal, the appellant herein, to proceed with the suit in a representative capacity. This shows that the trial Court had granted permission to the appellant herein under Order I Rule 8 CPC whereunder even one person can be permitted to sue on behalf of numerous other persons in a representative capacity. That it was the permission granted under Order I Rule 8 CPC was clearly understood even by the contesting defendants. Defendants 8,9,11 & 12 had filed a review application requesting the trial Court to re-call the order permitting one person only

to sue in a representative capacity on the ground that they had not been heard and also because no permission could be granted since the suit land was not public land and even public notice had not been issued. Defendant no. 13 also filed similar application for review of the order dated 23rd March,2006. In the application dated 7th April,2006 filed by defendant no.13 it was stated that "This Court has observed that the suit can proceed under Order 1 rule 8 CPC." The review applications were, however, rejected by the trial Court. Thus, the decision of the trial Court giving permission to one applicant, the appellant herein, to sue in a representative capacity had attained finality.

14. Mr. Panwar had thus rightly submitted that the trial Court was not right in observing in the impugned order that the appellant-plaintiff's application seeking leave of the Court to sue in a representative capacity was still pending and it was also rightly contended that the suit could not be dismissed for that reason. That observation appears to have been made by the learned trial Judge without going through the record and particularly the order dated 23rd March,2006 passed by the predecessor Judge and that casual approach of the trial Judge has now emboldened the private respondents in this appeal in defending the dismissal of the suit for this reason given by the trial Judge by adopting the factually incorrect observation that the application for leave was still pending. But for this observation of the trial Judge it would have been difficult for the

respondents to support the dismissal of the suit for this reason since it had not even been claimed by any of the defendants before the trial Court that the application under Section 91 and Order 1 Rule 8 CPC was pending. All that was pleaded before the trial Court by some of the defendants was that since one of the two applicants had withdrawn from the proceedings the other applicant singly could not maintain the suit since it was the requirement of Section 91(1) CPC that a minimum of two persons were required to maintain a suit relating to 'public nuisance' or some wrongful act affecting the public in general. The trial Judge should have dealt with that argument instead of holding on his own that the application for leave was still pending. Same argument was raised in this appeal also on behalf of the private respondents that after withdrawal of one of the two plaintiffs from the proceedings the other plaintiff alone could not have proceeded with the suit even if he had been permitted by the trial Court. This argument is liable to be rejected being without any merit. As noticed already, the permission which the trial Court had granted to the appellant-plaintiff was under Order 1 Rule 8 CPC whereunder even one person can be permitted to sue or be sued in a representative capacity. So, even for this reason urged by the private respondents-defendants the dismissal of the suit cannot be sustained.

15. I am also of the view that even the learned Judge who had granted permission to the appellant-plaintiff to sue in a representative capacity

had not proceeded with the matter in correct direction after granting the permission. Legally speaking, the suit, which was a representative suit, stood instituted only on 23rd March, 2006 when necessary permission was given to the appellant herein. The trial Court after granting the permission was expected to proceed further in accordance with the provisions of Order I Rule 8 CPC but that was not done. Rule 8(1) reads as under:-

“8. One person may sue or defend on behalf of all in same interest.

(1) Where there are numerous persons having the same interest in one suit,-

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.”

The next step to be followed by the Court after grant of permission under Rule 8(1) is provided in Rule 8(2) which reads as under:-

“ (2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct. ”

Under Rule 8(1)(a) the grant of permission to an applicant to sue in a representative capacity is the first step in a representative suit. The next step after grant of the permission is to give notice of the institution of the suit to all the persons who may be interested in the subject matter of the suit. That is the mandatory requirement of Rule 8(2) which in the present

case has not been complied with. The purpose of giving such a public notice is to invite the attention of all the persons, who may be equally interested in the outcome of the litigation as the parties already on record, to the fact that some person had been permitted to sue in a representative capacity on their behalf, so that they can also come forward to participate in the proceedings, if they so desire, since under Rule 8(6) of Order 1 CPC the decree passed in a representative suit binds not only the parties on record but all others on whose behalf and for whose benefit the suit was instituted. In this regard reference can be made to a Division Bench judgment of this Court in “**Subhash Market Association & Anr. Vs. Municipal Corporation of Delhi and Ors**”, AIR 2005 Delhi 209, wherein also the requirement of issuance of public notice under Rule 8(2) came to be considered and this is what the Bench had observed:-

“..... Sub-rule (2) of Rule 8 of Order I of the Code of Civil Procedure mandates that the court in all cases where permission or direction is given under sub-rule (1) to allow one more such persons to sue or be sued, or may defend such suit, on behalf of or for the benefit of all persons so interested, to give notice of institution of the suit to all persons so interested either by personal service or by public advertisement.”

16. A Single Judge bench of this Court as well while dealing with a suit of representative nature had observed in its decision reported as **AIR 1991 Delhi 334** that after grant of permission to some person to sue in a representative capacity notice of the institution of the suit at plaintiff's expense has to be given to all interested persons as required under Rule

8(2) of Order 1 CPC. Accordingly in that suit, after granting the leave to the plaintiff of case notice was ordered to be issued to all interested persons whose interest was sought to be protected. In this regard reference can be made to a decision of the High Court of Punjab and Haryana also wherein, because of non-compliance of the mandatory provisions of Rule 8(2) of Order 1, CPC, the decree passed by the trial Court was set aside in appeal by the first appellate Court and matter was remanded back to the trial Court for a fresh decision after compliance of Order 1 Rule 8(2) CPC. That judgment is reported as **AIR 1986 P & H 51, “Kundan Singh and ors. vs Gurnam Singh and ors.”**. The relevant paras from that judgment are re-produced below:-

“2. Admittedly, the plaintiffs Gurnam Singh and other filed the suit for declaration in a representative capacity after filing an application under O. 1. R. 8, code of Civil Procedure. It appears that the trial court did not issue notices for the institution of the suit to all the residents of the village either by personal service or public advertisement as required under O. 1. R. 8, code of Civil Procedure and the suit was allowed to proceed as such. Ultimately, the suit was dismissed by the trial court. In appeal, the learned Additional District judge found that since there was non-compliance of O. 1. R. 8, the decree was liable to be set aside and thus remanded the case to the trial court for a fresh decision after compliance of O. 1 R 8 . Dissatisfied with the same, the defendants have filed this appeal.

3. After hearing the learned counsel for the parties I do not find any merit in this appeal. Admittedly, the trial court failed to comply with the provisions of Order, 1, Rule 8, C.P.C. The said provision of law is mandatory in nature. In the absence of any notice, the provisions of sub-rule (2) would become redundant and grave injustice may result therefrom in the form of a decree against persons who were never told that a case was pending against them. It was held in Radha Kishan. v. Raja Ram (1976) 78 Pun LR 271 that the issue of a notice is not a mere empty formality but a sine qua non for the applicability of the rule. Under the circumstances, the lower appellate court rightly set aside the decree of the trial court and remanded the case for fresh decision after complying with the provisions of Order 1, Rule 8”

17. Orissa High Court has gone a step further in recognising the importance of the notice under Rule 8(2) CPC in “**Kusasan Samal vs Chandramani Pradhan**”, AIR 2003 Orissa 157. In that case notice to the public was issued but was found to be defective and the High Court held that when the notice under Rule 8(2) CPC is defective even then the entire proceedings in a suit of representative character get vitiated. This is what was held in this judgment:-

“Now coming to the question as to whether notice indicates all the requirements or not, reference may be made to a decision of this Court in the case of Purna Chandra Panigrahi v. Baidya Jani, reported in (1992) 74 Cut LT 309. In the said decision this Court held that notice under Order 1, Rule 8(2), C.P.C. is mandatory in nature and is an essential pre-condition for trial of the suit. Notice under the provision must disclose the nature of the suit as well as reliefs claimed therein in order to enable the persons interested to get themselves impleaded as parties to the suit either to support the cause or opposite it. The notice must state about why the suit has been filed and what is the relief claimed therein, and it must also state who are the persons selected to represent the cause. Relevant portion of the judgment is quoted below:

“It is not in dispute and indeed learned Single Judge has accepted the position that notice under Order 1, Rule 8, C.P.C. is of mandatory character. The provisions of Order 1, Rule 8, C.P.C. are mandatory and not directory in nature and notice under Order 1, Rule 8(2), C.P.C. is an essential pre-condition for trial of the suit. This view was succinctly expressed in Harihar Jena v. Bhagabat Jena, AIR 1987 Orissa 270 and Lakhana Nayak v. Basudev Swamy, AIR 1991 Orissa 33. The notice under the provision must disclose the nature of the suit as well as reliefs claimed therein in order to enable the persons interested to get themselves impleaded as parties to the suit either to support the cause or opposite it. The notice must state about why the suit has been filed and what is the relief claimed therein, and it must also state who are the persons selected to represent the cause. The object for which Order 1, Rule 8, C.P.C. has been enacted is really to facilitate the decision of question in which a large body of persons are interested without recourse to ordinary procedure where each individual has to maintain an action by a separate unit. Where there is community of interest amongst numerous persons to avoid expenses, trouble and multiplicity of proceedings, few of them are allowed to represent the whole. In a proceeding for a declaration that a particular institution does not have a hereditary trustee or has one, if the members of Hindu public are neither impleaded, nor the suit framed under Order 1, Rule 8, C.P.C. there can be

no adjudication of the question whether the institution is a hereditary or not. It will be futile to declare that the public have no right in the institution without impleading the members of the public under Order 1, Rule 8, C.P.C. A similar view was expressed by the Patna High Court in Bihari Pd. Sinha v. Mahanth Ramswarath Das, AIR 1972 Pat 511 relating to a public charitable trust."

18. In ***"Sukadev Tapaswai vs Sri Sidheswar Mahadev Bija Silod and ors."***, AIR 1986 Orissa 100, also the Orissa High Court had held that if the public notice itself does not clearly give the necessary particulars of the case then there is no compliance of Rule 8(2) CPC. The relevant observations in that regard are re-produced below:-

"On going through the notice under Order 1, Rule 8, C.P.C. which was published in the 'Samaj' on 6-2-771 find that there is no mention therein that Abhi Tapaswi and others who were described as opposite parties were authorised and had been permitted to represent other members of the Hindu public. Judged by the test laid down in the aforesaid decision of the Calcutta High Court the notice in the present case falls far short of the requirements of Order 1, Rule 8 C.P.C. Courts, when called upon to deal with applications under Order 1, Rule 8, C.P.C. should bear in mind that the provisions contained therein are mandatory and not merely directory and are essential preconditions for trial of the case as a representative suit. Courts must see that if they direct that the notice should be by public advertisement, it must disclose the nature of the suit as well as the reliefs claimed therein in order to enable the persons interested to get themselves impleaded as parties to the suit either to support the case or to defend against it. Further the notice must mention the names of the persons who have been permitted to represent them so that the persons interested may have an opportunity of knowing who have been selected to represent them. These mandatory requirements having not been complied with in this case, I agree with the conclusion of the learned lower appellate court that the provisions contained in Order 1, Rule 8 C.P.C. have not been complied with."

After making these observations, the order of remand passed by the appellate authority because of non-compliance of Order 1 Rule 8(2) CPC and the directions given to the original authority, whose order had

been appealed against, to proceed with the matter after due compliance with this provision of law was upheld by the High Court.

19. Such being the significance of the issuance of notice under Rule 8(2) of Order 1 CPC and consequences of a defective notice, the non-issuance of the notice would certainly vitiate the entire proceedings conducted by the trial Court in the case in hand after grant of permission to the appellant-plaintiff to sue in a representative capacity without ordering issuance of a public notice of the suit. The learned trial Court was not justified in proceeding to frame the issues arising out of the pleadings of the parties who had been impleaded by the plaintiff without first issuing notice of the suit to the public at large and without that having been done no decision on the merits of the case could have been passed.

20. So, the impugned judgment and decree passed by the trial Court dismissing the suit are liable to be set aside and the case deserves to be remanded back to the trial Court with a direction to comply with the mandatory requirement of issuance of public notice of the suit and then to proceed to examine the merits of the suit afresh after considering the pleadings of the defendants already on record as well of those who might choose to participate in the proceedings on coming to know that one Anang Pal, a resident of village Khirki, has been permitted to sue in a representative capacity in respect of some land in village Khirki which was

being claimed by the private defendants to be their land and to be public land by the plaintiff, Anang Pal.

21. In the light of the above conclusions, this appeal is allowed. The judgment and decree passed by the Additional District Judge are set aside and the case is remanded back to the trial court which shall now ensure strict compliance of Rule 8(2) of Order 1 CPC at the plaintiff's expense and only thereafter shall proceed to examine the merits of the case afresh.

The case shall now be listed before the trial Court on 20th October, 2009.

OCTOBER 06 , 2009

P.K. BHASIN, J.