

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.6478 of 2013

Date of decision: 25.05.2015

Jaswinder Singh

.... Petitioner

versus

Jarnail Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arun Bansal, Advocate,
for the petitioner.

Mr. Sherry K. Singla, Advocate,
for respondent No.2.

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

K.Kannan, J. (Oral)

1. In a suit which is filed in a representative capacity by the plaintiff on behalf of khewatdars, the court had allowed the application under Order 1 Rule 8 CPC and directed also the publication to be effected. Notice had also been sent to all the persons on whose behalf the persons who had verified the pleadings had sought for representation. No objections had been given from any of the joint khewatdars but the defendant pointed out that the court could not have allowed permission under Order 1 Rule 8 CPC

without serving notice of application to all the persons on whose behalf the plaintiffs were seeking for representation. The court rejected the objection taken by the defendant that the error in procedure vitiated the institution of the suit itself and the aggrieved defendant is the revision petitioner before this court.

2. The learned counsel for the petitioner refers me to the judgment of the Supreme Court in **Kalyan Singh Versus Smt. Chhoti and others-AIR 1990 Supreme Court 396** holding that a suit by any member of community to assert his right in community property shall require for permission of the court under Order 1 Rule 8 CPC. In order that a particular action is taken as representative suit, permission under Order 1 Rule 8 CPC is mandatory. The Supreme Court held that in the absence of necessary material, the conclusion one way or the other as to the nature of the suit would not be justified. In the same suit, the court was also considering any member of a community may bring a suit to assert his right in the community property or for protecting such property, in which case even the requirements of Order 1 Rule 8 CPC need not be followed.

3. I do not think the aspect dealt with by the Supreme Court would require to detain us, for, here is a case where on the plaintiff's own showing permission from the court under Order 1 Rule 8 CPC was necessary. The point is whether such permission could have been granted even before service of notice on all the

persons on whose behalf the plaintiff purported to institute a suit. The court had granted permission without notice and issued notice of suits to all the persons whose representation was sought by the plaintiff. None of the persons on whose behalf the plaintiff was seeking to file a suit caused any objection. One of the members amongst the khewatdars who perhaps did not join as plaintiff has been cited as respondent and that also conforms to the procedure under Order 1 Rule 8 CPC. That ought to take due care of the fact that there is no contest or dispute inter se amongst the khewatdars and the representation by the persons who had originally filed the suit was not in any way prejudicial or against law.

4. The counsel would also refer me to the decision of the Allahabad High Court in **Smt. Munni Devi and others Versus Satgur Dayal Tandon and others-AIR 1983 Allahabad 281** where the court found that a permission of the trial Court had not been obtained then the suit cannot be filed under representative capacity. This decision also has no application in a situation where the court has granted permission under Order 1 Rule 8 CPC. There is nothing for the respondents to complain of. The revision petition is wholly without merit. The order passed already is confirmed and the revision petition is dismissed.

(K.KANNAN)
JUDGE

25.05.2015
sanjeev