

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

**RSA No.801 of 2005 (O&M)
Date of decision:05. 04.2016**

Jagsir Singh and others ... Appellants

Vs.

Bhushan Kumar and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. B.S.Bhalla, Advocate
for the appellants.

Mr. Gaurav Chopra, Advocate
for respondents No.1 to 4.

AMIT RAWAL J. (Oral)

Appellant/defendants No.5, 6, 8, 10 and 12 are in Regular Second Appeal against the concurrent findings of facts and law, whereby, decree for possession of the suit land described in red colour in the site plan and forming part of the land measuring khasra Nos.2312/0-9, 2313/1-16, 2359/4-5, situated in the area of revenue estate of Moga Mehla Singh, khewat No.6106, khatauni No.7240 as mentioned in the jamabandi for the year 1977-78 and decree of mesne profits of ₹4,00,000/- along with interest @ 6% per annum from the date of filing of the suit till realization, has been granted.

Mr. B.S.Bhalla, learned counsel appearing on behalf of the appellants submits that suit was filed in a representative capacity

by invoking the provisions of Order 1 Rule 8 of the Code of Civil Procedure which envisage permission of the Court to pursue the suit, much less, defend the suit for the benefit of all the persons so interested. However, in the instant case, no such permission has been granted. Though independent application was filed and therefore, in the absence of statutory permission, the suit was liable to be dismissed. He further submits that besides this, various other objections had been taken in the written statement vis-a-vis acquisition of title on the basis of adverse possession but for the purpose of present Regular Second Appeal, he confines his prayer with regard to non-compliance of provisions of Order 1 Rule 8 of the Code of Civil Procedure, *ibid*. In support of his contention, he has relied upon the judgment of the Hon'ble Orissa High Court rendered in **Lakhana Nayak and another vs. Basudev Swamy and others AIR 1991 Orissa 33** to contend that in the absence of compliance of the provisions of sub-rule (2) of Rule 8 of Order 1 of the Code of Civil Procedure, the suit is liable to be dismissed. He also submits that there is no order of the Court where a permission has been granted under sub-rule (2), and at the plaintiffs' instance, institution of the suit has not been notified to all the persons so interested either by personal service or by public advertisement. In support of his contention, he has also drawn attention of the Court to the findings rendered by the trial Court on the specific issues framed in this regard but no reason has been assigned, thus, urges this Court to formulate the following substantial question of law which reads thus:-

“Whether in the absence of the permission granted under Order 1 Rule 8 of the Code of Civil Procedure, in a suit filed, presumption suit would fail or not?”

On the other hand, Mr. Gaurav Chopra, learned counsel appearing on behalf of the respondents submits that prior to filing of the present suit which has been filed on 31.05.1984, defendant No.9 -Union on behalf of all 400 members filed a suit against the respondent-plaintiffs seeking injunction not to interfere into peaceful possession, and as well as, not to forcibly dispossess. The said suit was filed on 24.03.1982 which was decreed on 26.10.1983. It is only thereafter, the present suit for possession was filed in the year 1984. Once notice of the suit along with application has been issued to the contesting respondents, much less, Trade Union has been arrayed as respondent No.9, permission under Order 1 Rule 8 of the Code of Civil Procedure, deemed to have been granted. In support of his contention, he has relied upon the judgment of the Hon'ble Patna High Court rendered in **Ramrup Pandey vs. Kamla Pradas Sinha and another 1981 AIR (Patna) 315** and as well as, judgment of the Hon'ble Calcutta High Court rendered in **Christopher Housing Developers Pvt. Ltd. vs. Manjit Poddar 2011 (4) Cal. H.C.N.152**. He has also drawn attention of this Court to the findings rendered in paragraph 13 of the judgment by the Lower Appellate Court. Thus, urges this Court that concurrent findings cannot be interfered until and unless, substantial question of law arises as the substantial question of law sought to be raised does not arise and thus, prays for

dismissal of the appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no merit in the appeal as the Lower Appellate Court, while dealing with the objections qua grant of implied or express permission, gave the findings in the following manner which read thus:-

“13. In the case in hand, the plaintiff has specifically alleged in para No.3 of the plaint that the defendants No.1 to 13 alleged themselves to be consisting of 400 persons and they are doing palledari business and further alleged that they have 16 chowkidars and other persons are doing the work under defendants No.1 to 13. It was also mentioned that the interest of all the defendants are similar to that of defendants No.1 to 13 and the suit filed against defendants No.1 to 13 in their representative capacity, known as Punjab Labour Union (defendant No.9). The contesting defendants in reply to this para of the plaint has pleaded that the suit has not been rightly framed. The other facts mentioned by the defendants in this para of the written statement are with regard to their alleged adverse possession of the defendants. The defendants have not taken up this objection in their written statement that the suit is not maintainable for want of compliance of the provisions of Order 1 Rule 8 of the

CPC nor any issue was framed qua this plea. The perusal of the impugned judgment goes to show that this point was not agitated by the defendants before the learned trial Court. In the authority cited by the learned counsel for the appellants as AIR 1987 Madras, 187 (supra) the matter with regard to the non-compliance of the provisions of Order 1 Rule 8 of the CPC was argued before the trial Court, but in the case in hand this objection was not argued by the defendants before the lower Court. Moreover, according to the plaintiffs defendants No.1 to 13 are the main concerned persons, who have illegally entered into possession over the land belonging to the plaintiffs and it were the defendants, who have alleged that there are 400 members of defendant No.9 Punjab Labour Union who are in joint possession of the land. Moreover, no other person has come forward to become a party to the suit alleging that he being in possession of the property is also the aggrieved person. The present defendants cannot take up the plea that injustice is being done to the other persons. Order 1 Rule 8(3) of the Code of Civil Procedure contemplates that any person on whose behalf or for whose benefit, a suit is instituted or defended, under sub rule(1), may apply to the Court to be made a party to such suit. But in the present case no such person other than the defendants

impleaded by the plaintiffs has come forward to become a party to the suit. Further more, when the plaintiff filed the suit against the defendants in representative capacity and the same has been entertained by the Court, then the compliance of Order 1 Rule 8 of the CPC is deemed to have been made. The authorities cited by the learned counsel for the appellants are distinguishable from the facts of the present case. Thus, this Court is of the opinion that firstly this plea with regard to the non-compliance of the provisions of Order 1 Rule 8 of the CPC was not specifically pleaded by the contesting defendants in their written statement. Secondly, no other person other than the defendants impleaded by the plaintiffs has come forward to become a party to the suit. Thirdly, this point was not argued by the defendants before the learned trial Court. Fourthly, when the suit as filed by the plaintiff has been entertained by the trial Court, the compliance of Order 1 Rule 8 of the CPC is deemed to have been made. The suit pertains to the year 1984 which was decreed on 15.09.1990 and the present appeal has been pending since 14.11.1990, but during all this period, the defendants did not take any step to get their written statement amended so as to take up this plea. Under these circumstances, this Court is of the opinion that this point raised by the learned counsel

for the appellants at the time of arguments before this Court does not in any way affect the case of the plaintiffs and the arguments raised in this behalf by the learned counsel for the appellants stands repelled.”

I am in agreement with the submissions of Mr. Gaurav Chopra, for the reasons that once prior to filing of the present suit for possession, Trade Union instituted a suit espousing the cause of 400 members and in the present suit, Trade Union has been arrayed as defendant No.9. In my view, impleadment of only 18 defendants instead of all 400 members would not be fatal to the adjudication of the lis. Once the trial proceeded by entertaining the suit in representative capacity, the permission is implied. There may not be express permission. The aforementioned mine view, is supported by the judgment rendered in *Ramrup Pandey's case (supra)* and *Christopher Housing Developers Pvt. Ltd.'s case (supra)*, whereas, on the contrary, judgment relied upon by Mr. Bhalla, in *Lakhana Nayak's case (supra)* is with regard to the publication of the notice which would not be applicable, for, in view of the previous round of litigation between the parties to the lis, as noticed above. I am in agreement with the findings rendered by the Lower Appellate Court extracted supra and thus, of the opinion that suit cannot be dismissed for non-grant of any express permission in accordance with the provisions of Order 1 Rule 8 of the Code of Civil Procedure.

In view of what has been noticed above, no ground for interference is made out. Substantial question of law, as noticed

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above, is answered in favour of the respondent-plaintiffs and against the appellant-defendants.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 05, 2016
savita