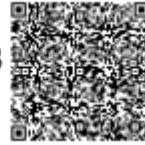


2025:PHHC:128588



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

**SAO-33-2025 (O&M)
Decided on:-15.09.2025**

Balraj and others

....Petitioners..

VS.

The Scheduled Caste Land Owning Society Ltd. Bitmara
and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Prateek Mahajan, Advocate,
for the appellants-defendants

Mr. Vishnu Dutt Sharma, Advocate
for contesting respondent No.1-plaintiff.

HARKESH MANUJA J. (Oral)

CM-12519-CII-2025

1. This is an application under Rule 2 Chapter I-C of the High Court Rules and Orders Vol. V read with Section 151 CPC for seeking leave to appellant No.29(i) to (iii) to file appeal as legal representative of Bharath Singh (deceased) appellant No.29.
2. In view of the averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present appeal.

Main case

1. By way of present appeal, challenge has been laid to an order dated 27.02.2025 passed by the Court of Ld. Additional District Judge, Hisar (for short, "First Appellate Court") whereby, the judgment and decree dated 20.01.2020 passed by the learned Civil Judge (Junior Division), Hisar, has been set aside, and the matter has been remanded to the learned Trial Court for its fresh adjudication.

2. Briefly stating, respondent No.1-the Scheduled Caste Land Owning Society Ltd. (hereinafter referred to as 'SCLO') filed a suit for declaration claiming itself to be owner of agricultural land measuring 395 kanal 1 marla, situated in the revenue estate of Village Bithmara, District Hisar, based on sale certificate dated 28.04.1965, followed by mutation No.3157 dated 22.11.1966. Respondent No.1-SCLO also prayed for possession of part of the suit property by claiming that the appellants as well as the other defendants were in unauthorized and illegal possession thereof. Along with the suit, an application under Order 1 Rule 8 CPC was also filed by respondent No.1-SCLO (plaintiff) so as to treat the suit been filed in a representative capacity against the defendants. On 27.05.2015, the ld. Trial Court allowed the application filed under Order 1 Rule 8 CPC and ordered for issuance of notice to all the defendants. However, despite the order, no steps in pursuance thereof were ever taken and the suit was contested by respondent No.1-SCLP (plaintiff) against the defendants only, who were impleaded by name in the plaint.

2.1 The learned Trial Court vide judgment and decree dated 20.01.2020 though dismissed the suit filed at the instance of respondent

No.1-SCLO, however, recorded a positive finding to the effect that the land in question was Nazool one which was admittedly allotted and transferred in favour of respondent No.1. It was also recorded that respondent No.1-SCLO was owner in possession of the suit land. Having recorded the aforesaid, the suit preferred at the instance of respondent No.1-SCLO was dismissed while holding that respondent No.1-SCLO failed to prove the illegal possession of defendants over the suit land.

3. Aggrieved thereof, respondent No.1-SCLO filed first appeal. The same was decided vide judgment and decree dated 27.02.2025 while setting aside the judgment and decree dated 20.01.2020 and remanding the matter to the Id. Trial Court to decide the suit afresh.

4. Impugning the order dated 27.02.2025, learned counsel for the appellants submits that the Id. Appellate Court went wrong while holding that no finding on the issue of relief of declaration was recorded by the learned Trial Court. While referring to paragraph No.14 from the judgment and decree dated 20.01.2020 passed by the learned Trial Court, it was submitted that a specific finding was recorded to the effect that respondent No.1-SCLO was allotted the land in question and the same was even transferred in its name. Further, learned counsel also points out that respondent No.1-SCLO did not press for its application under Order 1 Rule 8 CPC before the Id. Trial Court and as such, was estopped at this stage to ask for remand on the ground of its non-compliance. He thus, submits that the Appellate Court went wrong while remanding the case to the learned Trial Court for its fresh adjudication without setting aside the findings recorded in the suit and thus, the impugned order is liable to be set aside.

5. On the other hand, learned counsel for respondent No.1-SCLO submits that once the ld. Trial Court allowed the application filed at the instance of respondent No.1-SCLO vide its order dated 27.05.2015, the subsequent procedure of issuance of notice and service of the suit/plaint upon the interested parties was required to be adopted. Learned counsel, thus, submits that the ld. Trial Court having failed to comply with the same, there was no illegality in the impugned order passed by the ld. First Appellate Court. He also points out that once a finding was recorded in favour of respondent No.1-SCLO of being owner in possession of the property in question, issue No.1 could not have been decided against it and thus, no interference was called for with the impugned order.

6. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the appellants.

7. The findings relevant for the purpose of adjudication of the present appeal; been recorded by the ld. First Appellate Court in its judgment and decree dated 27.02.2025 are extracted hereunder:-

“9. In this case, the Plaintiff's attempt to sue a large number of persons was met with the failure of the trial court to follow the mandatory procedure prescribed under Order I Rule 8, which obligates the court to ensure that the representation is properly sanctioned, and that all persons interested are notified or included in the suit. The failure to pass an order on the representational nature of the suit is a clear violation of this rule and undermines the efficiency and fairness of the judicial process. This also prevents the Appellant from properly pursuing the relief sought for all interested parties. The trial court's inaction in formally addressing the representative nature of the suit creates a situation

where the defendant no. 32 is left unrepresented as there was no clear directions or judicial validation of defending the group action, thereby frustrating the very purpose of Order I Rule 8. Without following due procedure and giving the permission to one person to defend the suit in representative capacity, the learned trial court could not have proceeded with the trial.

10. Further, the judgment dated 20.01.2020 titled The Scheduled Caste Land Owning Society Ltd. Vs. Balraj and others shows that the learned trial court has not given any finding on issue no.1. The issue No.1 in the learned trial court framed as under-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP

The perusal of judgment shows that the learned trial Court take up issue No.1 and 2 together. However, in the findings learned trial court has started its finding directly from the relief of possession. There is no finding on the relief of declaration as sought. Even otherwise, the declaration was sought as discussed above against defendant No.32.

11. In light of the above discussion this Court is of the view that the trial court has failed to follow due process in granting permission for a representative action. It is imperative that the trial court takes immediate steps to remedy these procedural lapses. Accordingly the decree in question is set aside. The case is remanded to learned trial court with a direction to decide the application under Order 1 Rule 8 CPC filed by the plaintiff and to give findings on issue No.1 on the aspect of declaration of the suit property and to decide the suit afresh on merits. The pleadings already filed by the plaintiff and appearing defendants shall be considered as such by the learned trial court. Only the newly appearing defendants if any either for themselves or in the representative capacity shall be given an opportunity to file their pleadings. The learned trial court shall proceed to retry/rehear the case from that stage. Remand is only for the purpose to give

hearing to the defendant no. 32 and to follow the procedure under order I rule 8 and for giving findings on issue no.1. It is not to give a second chance to already appearing parties to improve their pleadings or evidence. The appearing parties can only supplement their pleadings or evidence to the extent which has been necessitated due to any new fact or evidence brought by newly appearing defendants. The appeal stands disposed of accordingly. The parties are to appear before the learned trial court on 10.03.2025 i.e. successor Court of Sh. Manoj Dahiya, the then learned Civil Judge (Jr. Division), Hisar. Trial court file alongwith copy of this order be sent back. Appeal file be consigned to record room.”

8. Before proceeding further, it may be relevant to reproduce

Order 1 Rule 8 CPC:-

“ 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.

(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.

(3) 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.”

A perusal of order 1 Rule 8 (2) CPC clearly shows that once permission or direction was given by the Court in exercise of powers vested with it under Order 1 Rule 8, sub-rule (1) CPC, the notices of the suit were required to be issued to all persons interested, at the expense of the plaintiff-respondent-SCLO only.

9. In the present case, no document or order has been brought to the notice of the Court to establish that in terms of Order 1 Rule 8 (2) CPC, respondent No.1-SCLO ever deposited any expenses for the purpose of issuance of notice to all persons interested regarding institution of suit. In such circumstances, mere fact that the application under Order 1 Rule 8 CPC, filed by respondent No.1–SCLO, was allowed on 27.05.2015 by the Id. Trial Court was not to render the entire trial vitiated, especially when no steps were taken by respondent No.1–SCLO in furtherance of the order dated 27.05.2015, as required under Order 1 Rule 8(2) CPC about deposit of requisite expense.

9.1 Furthermore, during the entire trial, respondent No.1-SCLO never ever pressed for issuance of notice of the suit to the persons interested or ever sought permission of the Court for deposit of expenses towards the same. No such plea was even pressed by respondent No.1-SCLO at the time of final submission made in the suit. Record further shows that no such plea was ever raised in the grounds of appeal filed before the Id. First Appellate Court by respondent No.1-SCLO about the procedure under Order 1 Rule 8 CPC not been followed or complied with by the learned Trial Court. In such

circumstances, respondent No.1-SCLO was estopped by its own act and conduct having failed to deposit the necessary expenses towards issuance of notice in the suit to the persons interested in terms of Order 1 Rule 8 CPC. Be that as it may, the effect of non-compliance of Order 1 Rule 8 CPC would only be that the decree passed by the learned Trial Court shall remain binding inter-se the parties i.e. the plaintiff and the defendants, who were party by name in the suit. In this regard, reliance can be placed upon decision dated 31.05.2021 passed by the Kerala High Court in case **“M.V. Narayanan vs. Periyadan Narayanan Nair”, reported as 2021(4) RCR (Civil)813**. Relevant paragraphs No.38 and 39 of the **M.V. Narayanan’s** case (supra) are reproduced hereunder:-

“38. *There is also substance in the arguments of the learned counsel for the respondents that there is no right as such in a party to sue or be sued in a representative capacity. Once the requirement is apprised to the court, it is the responsibility of the court to grant permission or issue direction for complying the necessary formalities. In normal cases, if the procedure is not complied, necessarily it will end in passing a decree inter parties in contrast to a representative decree. Once it is brought under Order 1. Rule 8, it becomes a representative suit or a class action. Individuals are relegated to the background. Then it will become representative suit or class action. However, we have come across at least one decision of the Apex Court reported in Singhai Lal Chand Jain (Dead) Rashtriya Swayam Sewak Sangh, Panna and others AIR 1996 Supreme Court 1211, where, even though procedure under sub-rule (2) of Rule 8 of Order 1 CPC was not complied in the peculiar facts position obtained in the case, the Apex Court ruled that still an eviction through its Manager, the President and the Member who all were diligently prosecuting the suit, in which case execution of the decree cannot be frustrated for*

mere want of permission under Order 1. Rule 8 CPC. In that case, a suit for eviction was decreed against the respondents in which the office bearers of the respondents were parties. The matter went upto the Supreme Court and the decree was confirmed. Thereafter, when the decree was put to execution for evicting the tenant, the respondents opposed the decree of eviction on the ground that the appellants had not followed the procedure under Order 1. Rule 8 CPC and that the decree was a nullity. The contention was upheld by the execution court, which was confirmed in revision by the High Court. The appellant moved the Hon'ble Supreme Court with special leave. The Supreme Court held that even though permission of the court was not taken to be sued in a representative capacity, since the President of the Sangh, the Manager and the Member had duly represented the organisation and defended the case and also having regard to the fact that there is no allegation of collusion, such a technical plea cannot hold good for the mere reason that procedure under Order 1, Rule 8 CPC was not followed and the decree cannot be defeated. Thus the Apex Court allowed the appeal.

39. *But this decision has turned up on its own facts. The ordinary rule is that procedure under sub-clause (2) of Rule 8 of Order 1 CPC shall be followed for the purpose of making the suit a representative one. IF the procedure is not complied and publication is not made, a suit will not become a representative action and decree passed will bind only the eo nomine parties.”*

9.2 Moreover, a perusal of paragraph 14 of the judgment and decree dated 20.01.2020 passed by the Id. Trial Court clearly shows that the findings regarding ownership and possession over the suit property was categorically recorded in favour of respondent No.1-SCLO, however, it was non-suited for the reasons that respondent No.1-SCLO failed to establish on record that the unauthorized and illegal encroachment over the suit property

by the appellants-defendants.

10. In view of the aforesaid discussion, the order dated 27.02.2025 passed by the First Appellate Court is accordingly set aside with a request that the ld. First Appellate Court would now adjudicate upon the appeal afresh after hearing the parties. The needful be done within 06 months from the date of receipt of copy of this Court. The parties are directed to appear before the learned First Appellate Court through their counsel/representative on 30.09.2025.

11. Pending applications, if any, also stand disposed of.

15.09.2025

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No