
(1971) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Civil Revn No. 85 of 1971

Durea Dass

APPELLANT

Vs

Lt. Col. Banaras Dev.

RESPONDENT

Date of Decision : 07-06-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (1971) 06 J&K CK 0001

Hon'ble Judges : Raja Jaswant Singh, J

Bench : Single Bench

Advocate : D.D. Thakur, for the Appellant; Raunaq Singh, for the Respondent

Final Decision : Dismissed

Judgement

Jaswant Singh, J.—This is a defendant's application to revise an order dated February 9, 1971, of the Sub Judge (Chief Judicial Magistrate)

Jammu. whereby he set aside in appeal the order dated June 26. 1970 of the Sub Registrar, Munsiff, Jammu, dismissing the plaintiff-respondent's

suit as not maintainable.

2. The respondent, it appears, brought a suit for permanent injunction restraining the petitioner from constructing his house in such a manner as to

encroach on the 20 feet wide road lying between the plots of the parties. Although in para 3 of his petition of plaint the respondent averred that the

road was being used by both the parties and other members of the public, in para 4 he specifically averred that the construction contemplated to

be put up by the petitioner would reduce the width of the road, interfere with his right of passage and cause great harm and inconvenience to him.

In the written statement filed by him in opposition to the plaint the petitioner contended that the suit was not maintainable without resort to the

provisions of O. 1, R. 8. of the CPC as the road in respect of which the encroachment was alleged was on the respondent's own showing a public road. A preliminary issue relating to the objection was raised by the trial court and on a consideration of the matter it came to the conclusion that as the respondent had the same interest in the road as the public at large the suit was representative in character and as such it was incumbent on him to have obtained the permission of the court as required by O. 1. R. 8 of the Civil Procedure Code. The trial Court accordingly dismissed the suit as not maintainable. On appeal the learned Sub Judge (Chief Judicial Magistrate) Jammu, set aside the order holding that the suit having been brought in his personal capacity by the respondent was not covered by the provisions of Order 1 Rule 8 Civil Procedure Code. Accordingly he decided the preliminary issue in favour of the respondent and remanded the suit to the trial court for determination of the rest of issues. Aggrieved by this order the petitioner has come up in revision to this court.

3. The short question that I am called to decide in this revision is as to whether the present suit is not maintainable in view of the provisions of Order 1, Rule 8, Civil Procedure Code. It is now well settled that Order 1, Rule 8, C. P. C. is merely an enabling provision formulated for the sake of convenience and it does not debar a member of community from instituting a suit on his own right in respect of a wrong done to him though the act complained by him may also be injurious to the whole community.

4. Explaining the scope of Order 1. Rule 8, CPC a Division Bench of the Calcutta High Court observed in Surendra Kumar Basu Vs. District

Board and Another, :

Order 1, R. 8, Civil P. C. as is well established, is a purely enabling section. It entitles under certain circumstances only some of the interested persons to bring a suit on behalf of all. but it does not force one to represent many if his action is maintainable without the joinder of these persons.

5. Again in S.K. Murugesu Mudaly Vs. Baruda Arunagiri Mudaly and Others, . Raghava Rao J. said:-

After all, the provision of O. 1, R. 8, is only an enabling provision and there is no reason why merely because the plaintiff happens to share the same inconvenience by the obstruction to the highway as other people do he should be debarred of his right to seek relief.

The decisions of the Allahabad and Andhra Pradesh High Courts in Mt. Ram Kali and Another Vs. Munna Lal and Others, and Linsam

Ramaseshayya Vs. Myneni Ramayya and Others respectively are also to the same effect.

6. For the foregoing reasons I am of the opinion that the suit filed by the respondent was not a representative suit so as to attract the provisions of

O. 1, R. 8. of the CPC and the order passed on appeal by the learned Sub Judge (Chief Judicial Magistrate) Jammu, is perfectly in order.

7. In the result this revision fails and is hereby dismissed but in the circumstances of the case without any order as to costs.

Revision dismissed.