

(2005) 08 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 293 of 2004

Sanjeev Kumar and Others	Vs	APPELLANT
H.P. Housing Board and Others		RESPONDENT

Date of Decision : 29-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 8, Order 1 Rule 8(3)
Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 30

Citation : (2005) 3 ShimLC 205

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : H.K. Bhardwaj and Baldev Singh, for the Appellant; C.N. Singh, for the Respondent No. 1, K.D. Sood, for the Respondents No. 2 to 25, for the Respondent

Judgement

V.M. Jain, J.—This petition under Article 227 of the Constitution of India has been filed by the Petitioners against the order dated 13.8.2004 passed by the Trial Court, dismissing their application under Order 1 Rule 10 CPC for being impleaded as Plaintiffs.

2. The facts which are relevant for the decision of the present petition are that Plaintiffs Roshan Lal etc. had filed a suit for declaration etc. under Order 1 Rule 8 CPC against the Defendants. It was alleged in the plaint that the Plaintiffs were filing the said suit in representative capacity under Order 1 Rule 8 CPC on behalf of the other inhabitants of village Bharolian Khurd and their interests were common with the Plaintiffs. A separate application under Order 1 Rule 8 CPC was also filed seeking permission to sue in the representative capacity. List of interested persons (115 in number) was also filed alongwith the said application. Vide detailed order dated 21.6.2004, the learned Trial Court allowed the application under Order 1 Rule 8 CPC and granted necessary permission to the Plaintiffs to institute the suit in representative capacity. It was also directed that the persons named in the list (115 in number) filed alongwith the application

under Order 1 Rule 8 CPC may be served by way of publication in the newspaper Punjab Kesri.

3. Subsequently the persons at Sr. Nos. 19, 20, 43, 45 and 67 in the list attached with the application under Order 1 Rule 8 Code of Civil Procedure, had filed an application under Order 1 Rule 10 CPC for being impleaded as Plaintiffs in the suit on the ground that they have a right to join the array of Plaintiffs for effective and proper adjudication of the matter in the controversy. The learned Trial Court vide order dated 13.8.2004 dismissed the said application with the observations that the application was not maintainable nor tenable as the Court had already permitted the Plaintiffs to institute the suit in representative capacity under Order 1 Rule 8 CPC and the names of the applicants who had filed the application under Order 1 Rule 10 CPC also figured in the list of persons on whose behalf the said suit had been filed and those applicants were already found to have joined the suit as Plaintiffs in representative capacity and no question arises to pass orders for them to be treated as Plaintiffs again and that they were free to join the proceedings as and when they liked and the presence of their counsel had already been marked and the application thus stands dismissed. Aggrieved against this order dated 13.8.2004, the Petitioners, who were the applicants in the application under Order 1 Rule 10 Code of Civil Procedure, filed the present petition under Article 227 of the Constitution of India in this Court.

4. Notice was issued. Records were also requisitioned. I have heard the learned Counsel for the parties and have gone through the record carefully.

5. After hearing the learned Counsel and perusing the record, in my opinion, the order dated 13.8.2004 passed by the Trial Court has to be set aside. Under Order 1 Rule 8 CPC it is provided that where there are numerous persons having the same interest, in one suit, 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. It is further provided therein that in every such case where permission is given, the Court shall give notice of the institution of the suit to all persons so interested either by personal service or by public advertisement. It is further provided under Order 1 Rule 8(3) CPC that any person on whose behalf or for whose benefit, a suit is instituted or defended, may apply to the Court to be made a party to such suit. In spite of this specific provision given under Order 1 Rule 8(3) Code of Civil Procedure, the learned Trial Court passed the order dated 13.8.2004 dismissing the application of the present Petitioners for being impleaded as Plaintiffs in the suit, even though the law permits such persons to be impleaded as Plaintiffs. It appears that the learned Trial Court had passed the order dated 13.8.2004 without going through and understanding the provisions of Order 1 Rule 8(3) Code of Civil Procedure.

6. Since the names of the Petitioners were mentioned in the list filed by the Plaintiffs alongwith the application under Order 1 Rule 8 CPC and since all those persons were ordered to be served by way of publication and since the present

Petitioners had filed the application for being made party to the suit, as Plaintiffs, in my opinion, it was a fit case where the learned Trial Court ought to have passed the orders impleading the present Petitioners as co-Plaintiffs in the suit alongwith the Plaintiffs who had originally filed the suit in representative capacity. Instead of allowing the said application, the learned Trial Court dismissed the same with the observation that they were free to join the proceedings as and when they liked to do so and that they were already found to have joined the suit since the Plaintiffs had filed the suit in representative capacity. These observations made by the learned Trial Court, in my opinion, are contrary to law and the provisions of Order 1 Rule 8(3) Code of Civil Procedure.

7. For the reasons recorded above, the present petition is allowed, the order dated 13.8.2004 passed by the Trial Court dismissing the application under Order 1 Rule 10 CPC is set aside and the application under Order 1 Rule 10 CPC filed by the present Petitioners is accepted and the present Petitioners are ordered to be impleaded as co-Plaintiffs in the suit.

8. It has also been brought to my notice that another application under Order 1 Rule 10 CPC was filed on behalf of certain other persons for being impleaded as party in the suit and that the said application is still pending. The learned Trial Court shall consider the said application and dispose of the same expeditiously in accordance with law.

9. At this stage, it has also been brought to my notice that since there was a dispute between the parties as to who will be entitled to receive the amount of compensation for the acquired land, the Land Acquisition Collector has already made a reference u/s 30 of the Land Acquisition Act to the District Judge, Una. If that being so, in my opinion, it would be appropriate if the present suit for declaration filed by the Plaintiffs and the said reference u/s 30 of the Land Acquisition Act are decided together by consolidating the same. Under these circumstances, it is directed that in case the District Judge, Una has received a reference u/s 30 of the Land Acquisition Act, with regard to the acquired land which is also the subject-matter of the present litigation, the learned District Judge shall transfer the present suit from the Court of Civil Judge, Senior Division, Una to his own Court, or to the Court of Additional District Judge, if any, to whom, the reference petition u/s 30 of the Land Acquisition Act may have been transferred. Thereupon, the learned District Judge/Additional District Judge shall decide the reference u/s 30 of the Land Acquisition Act and the present suit together by consolidating the same. A copy of this order be sent to the District Judge, Una, for information and strict compliance.

10. Parties through their counsel are directed to appear before the learned Trial Court on 27th September, 2005, for further proceedings in accordance with law.

CMP No. 469 of 2004 and CMP Nos. 54, 59 and 64 of 2005:

11. In view of the orders passed in the main petition, the stay order shall stand vacated and all the applications stand disposed of.