
(1972) 08 MP CK 0012

In the Madhya Pradesh High Court

Case No : Civil Revision No. 286 of 1970

Saraf and Swarnkar Samiti, Morar and Others

APPELLANT

Vs

Munnal Lal and Others

RESPONDENT

Date of Decision : 30-08-1972

Acts Referred:

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

Citation : AIR 1973 MP 216 : (1973) JLJ 658 : (1973) 18 MPLJ 614

Hon'ble Judges : P.K. Tare, C.J;S.M.N. Raina, J

Bench : Division Bench

Advocate : H.G. Mishra, for the Appellant; H.B. Mangal and A.R. Naookar, for the Respondent

Judgement

Raina, J.

The non-petitioner No. 1 (plaintiff) filed a suit against the petitioners 1 to 4 for permanent injunction and damages.

Petitioner No. 1 is Saraf and Swarnkar Samiti, Morar, which is an unregistered body while petitioners 2 to 4 are its office-bearers. The case of the plaintiff is that he is a member of Saraf and Swarnkar Samiti, Morar. The plaintiff (non-petitioner No. 1) is working as Saraf at Morar and carries on business of manufacture and sale of silver ornaments and other articles. He obtains goods on loan from other gold-smiths for his business and sells them to his customers. According to the plaintiff, defendants Nos. 2 to 4 (petitioners 2 to 4) are illegally bringing pressure on other members of Swarnkar Samiti so as to compel the plaintiff to stop his business and petitioners 1 to 4 (defendants 1 to 4) have passed a resolution against the plaintiff to the effect that all the members of the Samiti shall not transact business with the plaintiff. This has affected his business. He, therefore, filed a suit for permanent injunction restraining them from obstructing other goldsmiths in dealing with the plaintiff in connection with his business and he also claimed an amount of Rs. 400/- as damages.

Since the Swarnkar Samiti is not a juristic person the plaintiff submitted an application under Order 1, Rule 8 of the CPC for permission to sue the defendants in their representative capacity. The application though opposed by the defendants was allowed by the impugned order. Being aggrieved thereby the defendants filed this revision petition.

When the case came up before Shiv Dayal, J. he noticed an apparent conflict of views in G.I.P. Rly. Senior Institute v. Mohit Kumar. AIR 1954 Nag 29. relied upon by the defendants and Municipal Council, Shivpuri v. Sugar Dealers' Association Shivpuri. Civil Revn. No. 26 of 1963 D/- 19-1-1970 (Madh Pra) relied upon by the plaintiff. As both these decisions are of different Judges sitting singly he submitted the case to the Hon'ble the Chief Justice for constituting a larger Bench for the decision of the following question:

"Whether permission can be granted under Order 1. Rule 8 of the CPC to sue an unregistered society or committee in a representative capacity."

In G.I.P. Railway Senior Institute v. Mohit Kumar AIR 1954 Nag 29, the plaintiff had claimed refund of a sum of Rs. 500/- alleged to have been deposited by him with the Railway Institute by way of security together with interest thereon and recovery of arrears of salary. After the written statement was filed the plaintiff applied for an amendment of the plaint and also made an application under Order 1, Rule 8 of the CPC to sue the defendants in their representative capacity that is as members of the G.I.P. Railway Institute as the Institute was not a juristic person. The application was allowed. The defendants, thereupon, filed a revision petition which was allowed by Mudholkar, J. (as he then was). The following observations in paragraph 10 are pertinent.

"The question then is whether the provisions of Order 1, Rule 8, Civil P. C. can be resorted to in this case. It seems to me that Order 1, Rule 8 would apply only where there is a properly constituted suit before the Court. Where a suit is brought against an unregistered and non-proprietary club it is not a proper suit at all and therefore to such a suit the provisions of Order 1, Rule 8 cannot be applied."

In Municipal Council. Shivpuri v. Sugar Dealers' Association, Shivpuri, Civil Revn. No. 26 of 19(58. D/-19-1-1970 (Madh. Pra.). Golvalkar, J. granted leave to the plaintiff to file a suit under Order 1, Rule 8 of the CPC as the Association was not a registered body. It seems that the decision of the Nagpur High Court was not brought to his notice because (there is no reference to it in the order,

For considering the question whether permission can be granted under Order 1, Rule 8 of the CPC to sue an unregistered society or committee in a representative capacity, it is necessary to refer to the provisions of Order 1, Rule 8 which is reproduced below:

"Rule 8. (11 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, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from 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.

(2) 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."

The general rule is that all persons interested in a suit ought to be joined as parties to it. Rule 8 of Order 1 of the CPC forms an exception to this general rule inasmuch as it provides that where numerous persons have 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, in such suit, on behalf of or for the benefit of all persons so interested.

The essential condition for the applicability of Order 1, Rule 8 of the CPC is that the parties must be numerous and there must be community of interest between them. If these conditions are fulfilled permission under Order 1, Rule 8 of the CPC can be granted vide *Laxminarayan Vs. Ram Sarup*, . The rule is enacted to avoid inconvenience and delay in the hearing of a suit where the parties are numerous but have the same interest in the suit, and, therefore, it must be liberally construed in order to achieve the purpose of the rule.

The matter was considered in detail by a Full Bench of Madras High Court in *Kodia Goundar and Another Vs. Velandi Goundar and Others*, . It was held in that case that the object for which the provision is enacted is really to facilitate the decision of questions in which a large body of persons are interested without recourse to the ordinary procedure.

If we carefully analyse the provisions of Order 1, Rule 8 of the CPC it would appear from the words "sue or be sued or defend" occurring therein that it gives option to the plaintiff on the one hand to sue some of the defendants in their representative capacity as representing the interest of the whole body. On the other hand if the plaintiff chooses to implead large number of persons having the same interest in the suit it gives option to some of the defendants to seek permission to defend on behalf of or for the benefit of all.

With great respect, we must observe that we are unable to agree with the view expressed in *G.I.P. Rly. Senior Institute v. Mohit Kumar* AIR 1954 Nag 29. that Order 1, Rule 8 of the CPC would apply only where there is a properly constituted suit before the Court. The suit against an unregistered society or committee can be said to be properly constituted only when all the members thereof have been impleaded and it is to avoid the practical difficulty in doing so, that the rule has been enacted. The rule, in our view, would be rendered nugatory if such a view is adopted. As already pointed out above the rule is in the nature of an exception to

the general rule that all persons interested in a suit must be joined as parties thereto and has been enacted to provide a convenient mode of litigation where a large number of persons have a common interest in the subject-matter of the suit.

We, therefore, hold that permission can be granted under Order 1, Rule 8 of the CPC to sue an unregistered society or committee through some members thereof acting in a representative capacity.

We would, however, like to add that whether permission should be granted or not in a particular case is another matter. Before granting permission the court will have to take into consideration the nature of the suit, as well as the nature of the body itself so as to safeguard the interests of all the members, and only such persons should be permitted to sue or be sued in a representative capacity who can effectively represent the members of the whole body and safeguard the interests thereof.

The case shall now be laid before the Single Judge for decision of the revision petition on merits.