

Sukhvir Singh Vs. Sukhvir Singh

Sukhvir Singh Vs. Sukhvir Singh

SooperKanoon Citation : sooperkanoon.com/495000

Court : Allahabad

Decided On : Aug-11-2005

Reported in : 2006(1)AWC202

Judge : Janardan Sahai, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rules 2 and 8

Appeal No. : C.M. Application No. 54648 of 2005

Appellant : Sukhvir Singh

Respondent : Sukhvir Singh

Advocate for Def. : None

Advocate for Pet/Ap. : Pankaj Mithal, Adv.

Disposition : Application dismissed

Judgement :

Janardan Sahai, J.

1. A suit was filed by the respondent Sukhvir Singh against the petitioner Sukhvir Singh for permanent injunction restraining the defendant/petitioner from changing the nature of the pond and from interfering in the plaintiffs or other village inhabitants' right of user thereof. In the body of the plaint it was stated that the suit

has been instituted under Order I, Rule 8, Civil Procedure Code as representative of other village inhabitants and also in the plaintiffs individual capacity. However, no application for permission under Order I, Rule 8, Civil Procedure Code was filed at the time the suit was instituted. Later on the plaintiff/ respondent filed an application under Order I, Rule 8, Civil Procedure Code. The petitioner/defendant raised objections regarding maintainability of the application on the ground that it was not filed at the time of the institution of the suit. The trial court allowed the application and dismissed the petitioner's objections. The petitioner preferred a revision, which has been dismissed by the impugned order dated 18.7.2005.

2. It was submitted by Sri Pankaj Mittal, learned Counsel for the petitioner that the suit as instituted was a nullity inasmuch as a representative suit can only be filed along with an application for permission as contemplated under Order I, Rule 8, Sub-rule 1(a) of the Civil Procedure Code. The court below relied upon AIR 1983 NOC 74 (Cal) in which it has been held that permission can be granted at any stage of the suit. It is submitted by Sri Mittal that the decision has no application to the situation existing in the present case inasmuch as the filing of the application for permission and grant of permission are two different things. Sri Pankaj Mittal relies upon the decision of this Court in Smt. Munni Devi and Ors. v. Satgur Dayal Tandon and Ors. : AIR1973 All281 , in which it has been held that for a suit in a representative capacity permission of Court and notice of the suit is necessary. This decision is distinguishable. No doubt the permission of the Court under Order I, Rule 8, Civil Procedure Code and notice under Rule 2 after grant of permission is needed but the question that falls for adjudication in this case is whether the application has to be filed at the time the suit was instituted. The authority cited does not decide this question. Reliance was placed on Smt. Ram Piari v. Shri Amar Singh and Ors. . This was a case in which an application under Order I, Rule 8, Civil Procedure Code was filed but the application was not disposed of and evidence was recorded. An application for withdrawing the suit with liberty to file another one as there was a formal defect that permission was not granted under Order I, Rule 8, C.P.C. was filed, which was allowed by the trial court. On revision the order was set aside by the High Court holding that permission could be granted at any stage although ordinarily the application under Order I, Rule 8, C.P.C. should be filed and order granting permission passed at the initial stage.

This decision too has no application to the facts of the present case. It is to be noted that Order I, Rule 8, Civil Procedure Code does not contain any specific provision requiring the application to be filed at the time of the institution of the suit. The only requirement is that for the suit to be one under Order I, Rule 8, Civil Procedure Code the permission of the Court is to be sought and granted. Order I, Rule 8, Sub-rule 1(b) of the Civil Procedure Code empowers the Court to 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. It appears that Clause (b) applies to cases where the party may not have applied under Clause (a) for grant of permission but the Court may exercise its power and may issue direction that one or more persons may sue or be sued on behalf of or may defend such suit, on behalf of, or for the benefit of, all persons so interested. For exercise of power under Clause (b) no application seeking permission under Clause (a) is required. The power under Clause (b) would be exercisable after the suit is filed and even though no application has been filed by the plaintiff at the time of the institution of the suit or at all. It cannot be said therefore that a suit is a nullity if no application under Order I, Rule 8, Civil Procedure Code is filed at the time of the institution of the suit. If the contention of Sri Mittal that the suit would be a nullity is to be accepted the provisions of Clause (b) would be almost redundant as it cannot be conceived that the Court can issue the direction contemplated in Clause (b) in a suit which is a nullity. Even if the permission is not sought the suit would not be a nullity but would at best be one on behalf of individuals. Order I, Rule 8, Civil Procedure Code is a rule of procedure, which is a handmaid of justice. Where the statute is silent the Court can follow any procedure that is fair. As there is no specific provision that the application under Order I, Rule 8, Civil Procedure Code must be filed at the time of institution of the suit such a requirement cannot be read in the statute. There is nothing to show that any prejudice has been caused to the petitioner. Issuance of notice under Sub-rule (2) of Order I, Rule 8 is no doubt necessary but that can be done at the stage the application for permission is filed. Sub-rule (2) of Order I, Rule 8, Civil Procedure Code itself contemplates issuance of notice when permission is granted or direction is issued by the Court. The requirement of issuance of notice in no way lends weight to the submission of Sri Mittal that permission has to be sought at the time the suit is presented. It is

settled that the permission to institute a suit in representative capacity can be granted at any stage of the proceedings. In *Shanti Lal Bardi Chand, Mahajan v. Champalal Radheji* : AIR 1962 MP363 , the plaint contained an averment in effect that the suit was being filed in representative capacity and permission was sought in the plaint itself. No notices were issued by the trial court as required under Order I, Rule 8, Civil Procedure Code and no permission was granted by the Court and the suit was even decided as one in a representative capacity oblivious of the fact that neither notices were issued nor permission granted. It was held that although non-issuance of notice could not be said to be a mere procedural irregularity but the defect could be remedied in appeal. The Court accordingly granted permission to sue in representative capacity and directed notices to be issued in the appeal itself. For the reasons aforesaid it appears that an application for permission can be filed even after the suit is filed. The view taken by the Courts below in granting permission, therefore, cannot be said to suffer from any error. Dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com