

after the expiry of the said period, vacant possession will be handed over to the landlord.

N.K.S.

Before J. V. Gupta, J.

KUNDAN SINGH AND OTHERS,—Appellants.

versus

GURNAM SINGH AND OTHERS,—Respondents.

Second Appeal from Order No. 66 of 1984.

May 22, 1985.

Code of Civil Procedure (V of 1908)—Order 1 Rule 8—Representative suit—Notice of the suit not issued to all the residents either by personal service or by public advertisement—Suit allowed to proceed and subsequently dismissed—Decree—Whether liable to be set aside on the ground of non-compliance with the provisions of order 1 Rule 8—Such provisions—Whether mandatory.

Held, that where the Court failed to comply with the provisions of Order 1 Rule 8 of the Code of Civil Procedure, 1908, the decree passed in the suit would be liable to be set aside. The said provision of law is mandatory in nature and in the absence of any notice, the provision of sub-rule (2) would become redundant and grave injustice may result therefrom in the form of a decree against persons who were never told that a case was pending against them. The issue of a notice under Order 1 Rule 8 is not a mere empty formality but a *sine qua non* for the applicability of the rule.

(Para 3)

Petition under Section 43 Rule 1 (U) C.P.C. for revision from the order of the Court of Mrs. Gurdial Singh, Additional District Judge, Amritsar, dated the 29th day of September, 1984, reversing that of Shri Surjit Singh, PCS, Sub-Judge, 1st Class, Amritsar, dated the 21st day of December, 1981, allowing the appeal and setting aside the impugned judgement/decree and remanding the case to the trial court for disposal in accordance with law and further ordering remand the trial court shall re-admit the suit, issue notice of the institution of it to the inhabitants of the village Wadala Johal at the expense of the plaintiff 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 it may direct, and then to proceed and try the suit.

H. S. Mattewal, Advocate, for the Appellants.

Bhagirath Dass, Advocate with Ramcsh Kumar, Advocate, for the Respondent.

Kundan Singh and others v. Gurnam Singh and others
(J. V. Gupta, J.)

JUDGMENT

J. V. Gupta, J.—

(1) This appeal is directed against the order of the Additional District Judge, dated 29th September, 1984, whereby the decree of the trial court dismissing the suit was set aside and the case was remanded to the trial court for fresh decision after complying with the provisions of Order 1 Rule 8, Code of Civil Procedure.

(2) Admittedly, the plaintiffs Gurnam Singh and others filed the suit for declaration in a representative capacity after filing an application under Order 1, Rule 8, Code of Civil Procedure. It appears that the trial court did not issue notices for the institution of the suit to all the residents of the village either by personal service of public advertisement as required under Order 1, Rule 8, Code of Civil Procedure and the suit was allowed to proceed as such. Ultimately, the suit was dismissed by the trial court. In appeal, the learned Additional District Judge found that since there was non-compliance of Order 1, Rule 8, the decree was liable to be set aside and thus remanded the case, to the trial court for a fresh decision after compliance of Order 1, Rule 8. Dissatisfied with the same, the defendants have filed this appeal.

(3) After hearing the learned counsel for the parties I do not find any merit in this appeal. Admittedly, the trial court failed to comply with the provisions of Order 1, Rule 8, C.P.C. The said provision of law is mandatory in nature. In the absence of any notice, the provisions of sub-rule (2) would become redundant and grave injustice may result therefrom in the form of a decree against persons who were never told that a case was pending against them. It was held in *Radha Kishan v. Raja Ram*, (1) that the issue of a notice is not a mere empty formality but a *sine qua non* for the applicability of the rule. Under the circumstances, the lower appellate court rightly set aside the decree of the trial court and remanded the case for fresh decision after complying with the provisions of Order 1, Rule 8. Consequently, the appeal fails and is dismissed with no order as to costs. The parties have been directed to appear in the trial court on 14th June, 1985.

(1) 1976 P.L.R. 271.
N.K.S.