

IN THE COURT OF THE MUNSIFF, IRINJALAKUDA
Present: Sri. Eldos Mathew., Principal Munsiff
Wednesday, 13th August 2025/22nd Sravana, 1947

IA 11/2025 in IA 1254/2017 in O.S. 651/2017

Petitioners/Plaintiffs:-

1. Ramankutty, 73 years, S/o Kocheri Kunjappu, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
2. Sekharan, 65 years, S/o Kocheri Kunjappu, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
3. Sajayan, 41 years, S/o Kocheri Kumaran, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
By Adv. Vipin Vijayan

Respondents:-

1. Rajan, 64 years, S/o Kocheri Manikyan, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
2. Aravindakshan(Died), 60 years, S/o Kocheri Raman, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
3. Aju, 53 years, S/o Kocheri Kumaran, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
4. Kocheri Dharma Daiva Kshethram Trust, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
Rep. by Secretary.
5. Omana, 62 years, W/o Kocheri Aravindakshan, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
6. Tintu, 32 years, D/o Kocheri Aravindakshan, Chengattumuri Desom, Kaduppassery Village, Mukundapuram Taluk.
By Adv. Alphonsa Antony

This petition coming on this day for hearing and the court passed the following:-

ORDER

This is a petition to publish notice in the newspaper as per Order 1 Rule 8(2) CPC.

2. Petitioner is the 1st plaintiff in this case. He is a member of Kocheri family. The dispute is with respect to the administration of the Kocheri family temple and he filed this suit under Order 1 Rule 8 along with I.A.1254/2017 for allowing him to contest the suit in representative Capacity. Though this petition was allowed, no further step was taken by the plaintiff to publish notice by public advertisement as per Order 1 Rule 8(2) CPC. Without noticing this aspect, suit was posted for trial and PW1 was examined from the side of the plaintiff. In the meantime, the defendants having noticed this defect, questioned the maintainability of the suit by filing I.A.10/2025. Thereupon, the plaintiff filed this I.A for effecting public advertisement.

3. Defendants filed objection to this petition. According to them, the plaintiffs having filed this suit under representative capacity, it was their bounden duty to give notice to all interested persons either by personal service or by public advertisement. But in this case, effective notice was not issued to the interested persons on either way. Though they had filed IA.1254/2017, no step was taken for public advertisement and now they have filed this I.A which is highly belated and hence, not maintainable. The defendants prays

that the petition may be dismissed.

4. Point for consideration is:

1. Whether petition can be allowed?

2. Costs?

5. **Points 1-2:-** I have heard both counsel and perused the records. It is seen that the above suit was filed by the plaintiff under Order 1 Rule 8 CPC in a representative capacity. As per the order in I.A 1254/2017 he was permitted to file the suit in representative capacity. According to him, there are 64 families who are interested in this case. But Plaintiffs have failed to effect public advertisement as per O.1 R.8(2) CPC. The learned counsel argued that it is only a clerical mistake and it can be cured at any time.

6. In this regard, it is trite that the provisions of Order 1, Rule 8, C.P.C. are mandatory and not directory in nature and notice under **Order 1, Rule 8(2),C.P.C.** is an essential pre-condition for trial of the suit. This view was succinctly expressed in **Harihar Jena v. Bhagabat Jena,(AIR1987 Orissa270)** and **Lakhana Nayak v. Basudev Swamy, (AIR 1991 Orissa 33)**. Such being the significance of the issuance of notice under Rule 8(2) of Order 1 CPC and consequences of the non- issuance of the Public notice would certainly vitiate the entire proceedings conducted by this Court after grant of permission to the plaintiff to sue in a representative capacity without ordering issuance of a public notice of the suit.

7. Is the leave of the Court, a pre - condition for institution of a suit in representative capacity was the moot issue in **Narayanan v. Periyadan Narayanan Nair (2021 (3) KHC 211)** it was held that:- ‘On the other hand, in the case of a representative action under Order I, Rue 8 CPC, there is no such precondition. Permission can be granted to the plaintiff or plaintiffs or direction can be issued to the defendant or defendants under Order I, R.8 CPC during the course of enquiry or trial. Such a permission or direction is not at all a condition precedent for the institution of the suit. It can be granted at any time, even at the appellate stage, in appropriate cases’.

8. Thus evidently, permission can be granted at any time, to sue in a Representative Capacity. In this case Permission has already been granted. Public Advertisement alone is remaining. So there is no irregularity in permitting the Plaintiff to effect Public Advertisement at this stage, in the interest of justice, though it is highly belated.

9. Section 35B (1)(a) CPC applies when a party to a suit fails to take the step which he was required by or under CPC to take on that date. Here the Plaintiff has to take steps in the year 2017. This I.A for Public Advertisement is filed after 8 years. Defendant appeared through counsel all these years. In view of S.35B & O.XXA CPC, Circular No.6/2009 of High Court, it is found that Rs.10,000/- is a reasonably sufficient amount of cost.

Hence, Petition is allowed on payment of cost of Rs.10,000/- to the defendant within 7 days. If the amount is not paid within time, this order shall be deemed to have been dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and revised by me and pronounced in open court on this the 13th day of August, 2025)

Sd/-
Eldos Mathew,
Principal Munsiff.

APPENDIX:- Nil

Sd/-
Principal Munsiff.

//True copy//

Principal Munsiff.

Copied by:rh
Com by:

Order in IA 11/2025 in IA 1254/2017
in OS 651/2017
Dated: 13.08.2025