

T.S. No. 03 / 2012

Order No.39 dtd. 14-03-16

Plaintiff files Advocate's hazira.

The record is taken up for passing order.

The plaintiff has filed an application u/o. 1 r. 8 CPC stating that a portion of the schedule property is used as a graveyard by the Muslim Community in the locality. The graveyard has been maintained by the committee which is being represented by defendant no.1 to 4. The plaintiffs state that as the interest of the general Muslim Community is invested in the suit property, the defendant no.1 to 4 are representing the community as a whole and as such the suit is representative in nature. The plaintiffs however at the time of the filing of the suit inadvertently failed to seek leave u/o 1 r. 8 CPC as is required. The plaintiffs at this stage pray for granting leave u/o. 1 r. 8 CPC.

Ordinarily a leave u/o.1 r. 8 CPC should be granted before the filing of the suit or at the time of filing but the subsequent granting of leave if not taken earlier is not precluded as is seen from the judgment reported in AIR 1978 HP 22.

Although this is a partition suit with parties having specific right, title and interest, it is averred that a portion of the suit property is being used for the benefit of local community. For the purpose of precaution, I do not see any impediment in granting post facto leave. Hence, the application is allowed. Permission is granted to the plaintiffs to sue the defendants no.1 to 4 in a representative character on behalf of the community as a whole.

However, the plaintiffs are directed to issue notice of the institution of the suit to all interested parties either by personal service or if such service is not practicable through public advertisement.

In this case, as personal service is not possible, notice be issued by making advertisement in a Bengali & English Daily Newspaper, which are widely circulated in the area. They are also directed to paste copy of notice in a conspicuous place in the locality and also by proclamation.

The plaintiffs are directed to submit draft of the publication to Court for approval.

Fix – **10.05.16** for filing draft

**Dictated & Corrected
by me**

**Civil Judge (Sr. Division),
Bishnupur**

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Bishnupur**