

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.****CMPMO No. 652 of 2024****Decided on: 26.11.2025**

Nand Lal

..... Petitioner

Versus

Roshan Lal and Ors.

.....respondents

Coram:**Hon'ble Mr. Justice Bipin Chander Negi, Judge**Whether approved for reporting? ¹

For the petitioner : Mr. Neeraj Gupta, Sr. Advocate,
with Mr. Harshit Sharma,
Advocate.**For the respondents** : Mr. Aman Parth Shrama,
Advocate.

Bipin Chander Negi, Judge (oral)

The present petition has been preferred laying a challenge to the impugned order dated 05.10.2024, passed by the learned Civil Judge Court No. 2, Ghumarwin, District Bilaspur, H.P. (Annexure-P5), whereby the present respondents/plaintiffs have been permitted to institute a suit in a representative capacity on behalf of all co-sharers.

2. Heard learned counsel for the parties and perused the pleadings.

3. The sole contention urged on behalf of the petitioner is that at the time of filing of the suit, no list along with the application under Order 1 Rule 8 of CPC giving the names,

¹ Whether the reporters of the local papers may be allowed to see the judgment?



parentage and details of all persons on whose behalf the suit was purported to be filed, had been provided.

4. Learned Senior Counsel appearing on behalf of the petitioner contends that on account of the aforesaid flaw, the application under Order 1 Rule 8 of CPC filed before the Trial Court, which had been allowed by the impugned order dated 05.10.2024 was defective and therefore, the same should have been rejected. It is further contended that the publication done in pursuance to the impugned order dated 05.10.2024 therefore is also defective.

5. Per contra, learned counsel appearing on behalf of the respondents/plaintiffs submits that there exists no defect in the publication made in pursuance to the impugned order and neither in law is he required to file a list along with his application under Order 1 Rule 8 of CPC giving the names, parentage and details of all persons on whose behalf the suit purported to be filed.

6. In so far as the contention of the learned Senior Counsel, appearing on behalf of the petitioner is concerned with respect to filing of list along with an application under Order 1 Rule 8 of CPC, giving the names, parentage and details of all persons on whose behalf the suit is purported to be filed, learned Senior Counsel has placed reliance upon the judgment of a Co-ordinate Bench of this Court passed in ***RSA No. 435 of 2005***, titled ***Devi Singh and others vs. Chairman, Managing***



Committee, DAV Public School Chitar Gupt Road, New Delhi and others, dated 19.11.2009. In view of the law so pronounced,

it is incumbent upon the respondents in the case at hand to have filed a list along with his application Under Order 1 Rule 8 of CPC, giving the names, parentage and details of all persons on whose behalf the suit is purported to be filed.

7. Since a list in this respect had not been furnished, therefore, the Trial Court should not have passed the impugned order, dated 05.10.2024 granting permission to the present respondents/plaintiffs to institute the suit on behalf of other co-sharers. Other than the aforesaid, I have perused the publication made in furtherance to the impugned order dated 05.10.2024. The same is placed at page 59 of the paper book.

8. Provisions of Order 1 Rule 8 of CPC are mandatory and not directory in nature and notice under Order 1 Rule 8(2) of CPC is an essential pre-condition for trial of the suit. Besides the aforesaid, Courts must see that if they direct that the notice should be by public advertisement, then the same must disclose the nature of the suit as well as the reliefs claimed therein in order to enable the persons interested to get themselves impleaded as parties to the suit either to support the case or to defend against it. Further, the notice must mention the names of the persons who have been permitted to represent them so that the persons interested may have an opportunity of knowing who have been selected to represent them.



9. In this respect, reference can be made to the decisions of the Hon'ble Orissa High Court, in ***Kusasan Samal and others vs. Chandramani Pradhan (dead) after him Panchel Bewa and others, AIR 2003 Orissa 157 & Nityananda Majhi vs. Sipra Das and etc. AIR 1986 Orissa 102.***

10. Taking into account the number of persons sought to be represented by the present respondents/plaintiffs in filing the representative suit, no fault can be found in issuance of public advertisement in the case at hand. However, a close examination of the public advertisement in the case at hand clearly reflects that the same does not contain the details of the persons, who have been permitted to file the suit in the case at hand. The public advertisement only mentions two names, whereas from a perusal of the cause title, it is evident that there are ten plaintiffs.

11. Having said so, in case of non-compliance with the provisions of Order 1 Rule 8 CPC, the suit itself cannot be dismissed. At best the suit can be treated to be a suit filed by the parties in their individual or personal capacity. It may not be treated as a representative suit but it cannot be said that the suit itself has to be dismissed.

12. Order 1 Rule 8 of CPC does not prescribe any stage at which the application can be filed. In this respect reference can be made to ***(2005) 12 SCC 180, titled Krishan Vasudevan and others vs. Shareef and others.*** Further it is not a mandatory pre-condition for the institution of a suit or for a grant on interim relief.



It is procedural requirement that cannot be disregarded altogether which bears upon the binding nature of orders issued. In this respect reference can be made to ***SLP(C) Nos. 9079-9081 of 2024, titled Dr. Vimal Sukumar vs. D. Lawrence and Ors., decided on 02.05.2025.***

13. In this aforesaid backdrop, while allowing this petition and quashing impugned order, liberty is reserved to the respondents/plaintiffs for moving appropriate application under Order 1 Rule 8 of CPC in terms of what has been stated hereinabove. The same when filed shall be considered and decided in accordance with law by the Trial Court.

14. The present petition is disposed of in the aforesaid terms, so also, the pending miscellaneous application(s), if any. The parties are directed to appear before the learned Trial Court on **10.12.2025.**

(Bipin Chander Negi)
Judge

November 26th, 2025
Susheel