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Question:

What is representative suit? What formalities are required to be observed for filing a representative suit?

Answer:

REPRESENTATIVE SUITS:

Normally all persons interested in a suit should be made parties to the suit, so that the decision may operate as res judicata in respect of such persons. However at times, the number of persons interested is so numerous as to render it inconvenient to make all of them parties. In such cases a convenient procedure is provided in the form of representative suits, which are an exception to the rule that all persons interested should be parties. AIR 1933 PC 183. The provisions of rule 8 are only enabling and permissive in nature, and it is not mandatory that wherever there are several persons interested in a suit, it should be instituted as a representative suit, and as such rule 8 only lays down an alternative procedure. PLJ 1983 SC 262.

All the persons interested should have the right of action, including the plaintiff who seeks to represent them. They should all have the same and an equal interest in the suit. Suits may be in a representative form, both in respect of plaintiffs and defendants. Every suit sought to be instituted as a representative suit, should be filed in accordance with the procedure provided by rule 8, which is mandatory.

CONDITIONS FOR INSTITUTING REPRESENTATIVE SUIT:

The following conditions must be fulfilled in order to institute a representative suit:-

- Persons interested in the suit must be numerous.
- They all must have the same interest in the suit.

- o The permission of the court under rule 8 should be obtained.
- o Notice must be given to all persons whom it is sought to represent.

NUMEROUS PERSONS:

The number of persons should be such that is inconvenient to implead them all individually as parties. However, the term 'numerous persons' does not refer to the general public, but it may refer to a defined class of the public. Where the number of persons is sufficiently small to make it convenient to implead them all as parties individually, order 1 rule 8 will be inapplicable. It is not necessary that this body of persons be capable of ascertainment, but it should be a sufficiently definite body. A list of all the ascertainable persons must be filed.

It may even be a fluctuating body of persons. Whether the persons are numerous or not is determined on the facts of each case. For instance, suits by or against clubs, or unregistered bodies, can only be instituted as representative suits. The rule being merely enabling it does not prevent individual members of communities or associations from bringing suits for their individual rights. However, in such cases the court can require the conversion of the suit into a representative action otherwise the decision will not be binding on other members of the community. A registered society can be represented by its office bearers. For suits against firms.

HAVING THE SAME INTEREST:

A representative suit can only be filed on behalf of, or against persons having the same or similar or common interest in the suit. PLD 1983 Quejta 30. However, interest merely as a member of the public is not sufficient. Where the interest of such persons is not the same, a representative suit cannot be filed, and all such persons must be made parties on the record. The plaintiff must also have the same and an equal interest in the suit. Where a substantial majority of a community are of one opinion, and a minority do not agree, persons constituting the minority may be made pro forma defendants. This rule is only procedural, and where the community itself has no right to sue, the rule will not enable the institution of representative actions. Where the several persons do not have the same interest, they all may join together as co-plaintiffs or co-defendants.

Representative suits can be brought in respect of actions for debts, or money claims, or liabilities in contract or in tort, for declaration, injunction or possession. It is the community of interest amongst the persons suing that is the determinative factor and not the nature of the suit. Although the persons represented may be bound in so far as the decree effects the common interest of the community, they are not personally bound unless they are made parties. A decree for injunction can be executed against all the persons interested. A representative suit does not lie for damages.

PERMISSION OF THE COURT:

Permission ought to be obtained at the time of instituting the suit, or even after institution. In appropriate cases it may even be given by the appellate court by its allowing the amendment of the plaint. Though violation of the rule cannot be condoned under Section 99, leave can be granted even at the appellate stage when all the formalities must be fulfilled. Permission may be expressly granted or may be implied from the circumstances. A suit instituted on behalf of, or against numerous persons without having obtained the permission of the court, is not a representative suit. However, where all the persons interested are individually parties to the suit, there is no need to obtain permission under rule 8. Permission once obtained is good for appeal also.

PERMISSION, WHEN GRANTED:

The principle consideration on the basis of which permission is granted is, whether there is sufficient community of interest between the numerous persons to justify the institution of a representative suit, and, whether, the rights of all such persons are being asserted or only the personal rights of some of them. Permission is to be applied for by the plaintiff desirous of suing on behalf of numerous persons, or of suing numerous persons in a representative capacity, or by a defendant wanting to defend on behalf of numerous persons in a representative capacity. Leave must be granted to definitely named person. When such a person withdraws from the suit it is for the court to continue it or not. In the ultimate analysis it lies with the judge, taking into consideration all the factors of the case to determine whether to allow permission or not.

NOTICE OF INSTITUTION:

A notice of the institution of the suit is mandatory, and is to be given to all the persons interested in the suit. Where notice has been given by the court of first instance, it is not necessary to serve all the persons represented once again at the appellate stage. Where the number of such persons so permits, personal service may be effected on the basis of a list containing the names and addresses of such persons, which is to be supplied by the plaintiff. However, where the number is larger, notice may be given by public advertisement specifying the names of the persons interested if the names are known. The manner in which this is to be done is to be determined by the court. It may be by beat of drum. After receipt of notice, the persons interested may join as parties, even at the appellate stage. Non-compliance with the requirement of giving notice is an irregularity which cannot be overlooked in terms of Section 99, as it is bound to affect the merits of the case, unless the litigation is bona fide and the omission is only a technical irregularity. Where notice has not been given the suit cannot be a representative suit, and the decree will be binding only upon the parties.

RES JUDICATA:

Although the persons represented are not parties to the suit, yet they are deemed to be claiming under the parties to the suit and as such the decree is binding upon such persons. However, the adjudication should have been upon the merits, and should be respecting matters in which such persons have the same interest, and the procedural requirements of rule 8 must have been fulfilled. A decree based upon consent will also be binding upon such persons. Such a decree shall be for the benefit of all persons represented. The provisions of this rule being mandatory, the persons represented will not be bound by the decree, unless the requirements will not be fulfilled. Where the suit is abandoned by the plaintiff, the parties represented will not be prevented from re-agitating the matter by separate suit. The persons represented can file an appeal.
