Subject Name: Civil Procedure Code
Topic Name: Representative Suit

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Introduction

As a general principle, all individuals with an interest in a suit should be included as parties to it to ensure that the issues at hand can be conclusively resolved and to prevent further litigation on the same matters.

However, Rule 8 of Order I of Code of Civil Procedure, 1908 serves as an exception to this rule. It states that when multiple individuals share a common interest in a suit, one or more of them can, with the court's permission or upon the court's direction, initiate or defend the suit on behalf of themselves and others similarly situated. In a representative suit, the plaintiff does not need to obtain prior consent from the individuals they seek to represent.

Therefore, a "representative suit" can be defined as a legal action initiated by one or more individuals on behalf of themselves and others who share a common interest in the suit.

Object and Policy

The purpose behind this provision is to streamline the resolution of issues involving a large number of individuals without resorting to the usual procedural complexities. Order I, Rule 8 of the Code aims to save time and expenses, ensuring a single comprehensive trial for matters concerning numerous parties and preventing undue burden and inconvenience caused by multiple suits.

When the common rights or interests of a community, association members, or large groups are at stake, the traditional procedure of individual suits becomes impractical, leading to the enactment of Order I, Rule 8 to address this challenge. Hence, this provision should be interpreted liberally to fulfil its intended purpose.

To fall under the purview of Order I, Rule 8, all members of a class must share a common interest and grievance regarding a subject matter, and the relief sought should benefit all parties involved. It's important to note that this rule is permissive and doesn't compel anyone to represent others if they have the right to sue individually.

Moreover, if an individual lacks the right to sue independently, they cannot proceed to file a suit on behalf of others using Order I, Rule 8. Nonetheless, this provision doesn't prevent a member of a village community from pursuing legal action independently for harm done to them, even if the act affects other villagers as well.

Essential Conditions of Representative Suit

Numerous Persons

The initial requirement for the application of Rule 8 is that multiple individuals must have an interest in the suit. The term "numerous" does not have a fixed numerical limit; rather, it signifies a group of persons.
It does not equate to "*numberless*" or *"innumerable*" but denotes a significant number of individuals.

Therefore, whether the parties can be deemed "numerous" depends on the specific circumstances of each case, considering factors such as the nature of the dispute and the subject matter in question.

It's important to note that while the exact number of individuals may not be determinable, the group of persons represented by the plaintiffs or defendants must be sufficiently defined to enable the court to recognize them as participants in the suit.

Thus, a representative suit can be maintained under this rule on behalf of inhabitants of a village concerning village property, or on behalf of members of a sect, caste, or community.

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Same Interest

The second requirement for the viability of a representative suit is that the individuals on whose behalf the suit is brought must share the same interest. This interest must be common to all parties involved, or they must collectively seek redress for a common grievance.

Therefore, a community of interest is essential, serving as a prerequisite for initiating a representative suit.

The nature of the interest does not necessarily have to be proprietary, joint, or concurrent. As elucidated by ***Lord MacNaughten in Duke of Bedford v. Ellis***, as long as there exists a common interest and grievance, a representative suit is permissible if the relief sought benefits all those the plaintiff aims to represent.

For instance, if a person dies leaving multiple creditors, any one of them can sue on behalf of themselves and other creditors.

Similarly, any single taxpayer may initiate a suit against a municipality on behalf of themselves and other taxpayers to prevent the misapplication of municipal funds.

The Explanation added by the Amendment Act of 1976 clarifies that the individuals represented in the suit need not have the same cause of action.



Permission by Court

The third requirement for the application of the rule is that permission or direction must be granted by the court. Without fulfilling this essential condition, the suit cannot be considered a representative one. The court holds discretion in granting permission for a person to sue in a representative capacity.

However, such permission cannot be automatically granted based solely on the assertions made in the plaint. When determining whether to grant leave, the primary consideration for the court should be whether there exists sufficient community of interest among the plaintiffs or defendants, as the case may be, to warrant the adoption of the procedure outlined in Rule 8.

Ideally, permission should be obtained before filing the suit. However, it may also be granted after the suit has been filed, or even at an appellate stage through the allowance of an amendment to the plaint.

If a plaintiff intends to sue on behalf of others, it is the responsibility of the plaintiff to apply for leave. Similarly, if numerous defendants with the same interest are sued, and one of them seeks to defend on behalf of the others, that defendant should make the application for leave.

The Code does not prescribe a specific form for granting permission. Permission may be express or implied and can be inferred from the court proceedings in which the suit is initiated. For instance, if the court orders the publication of notice in a newspaper, it can be deemed as granting permission.

According to sub-rule (1)(6), when there are multiple persons with the same interest in the suit, the court may direct that one or more of such persons may sue, be sued, or defend the suit on behalf

of, or for the benefit of, all persons involved. Once permission is granted, it remains effective throughout the appellate process as well.

Violation of Order I Rule 8

Rule 8 is mandatory and must be adhered to. Any suit initiated without complying with the provisions of Rule 8 is not legally sustainable. Similarly, a decree issued in a representative suit without adhering to the conditions outlined by Rule 8 will not legally bind the individuals represented in the suit, although it will be binding on the parties joined to the suit.

Withdrawal and Compromise

According to sub-rule (4), in a representative suit, no portion of the claim can be abandoned under sub-rule (1), and the suit cannot be withdrawn under sub-rule (3) of Rule 1 of Order 23.

Additionally, no agreement, compromise, or settlement can be recorded in such a suit under Order 23, Rule 3, unless the court has provided, at the plaintiff's expense, notice to all interested parties in the manner specified in sub-rule (2). This notice can be delivered through personal service or public advertisement.

Furthermore, Order 23, Rule 3-B, introduced by the Amendment Act of 1976, stipulates that no agreement or compromise can be reached in a representative suit without the court's permission.