

## Hiru and Others Vs Sarpanch, Gram Panchayat and Another

**Court:** Madhya Pradesh High Court (Indore Bench)

**Date of Decision:** July 18, 2003

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 1 Rule 8, 100

**Citation:** (2003) 4 MPHT 478

**Hon'ble Judges:** A.M. Sapre, J

**Bench:** Single Bench

**Advocate:** S.K. Pawnekar, for the Appellant;

**Final Decision:** Dismissed

### Judgement

A.M. Spare, J.

Two Courts have non suited the plaintiffs by dismissing the suit. It is now in this second appeal filed u/s 100 of CPC, the

plaintiffs have contended that the appeal involves substantial question of law as required to be made out and hence, it be admitted. So the question

that arises for consideration in this second appeal is, whether appeal involves any substantial question of law ? The impugned judgment and decree

is dated 26-11-2002, passed by learned Ist Additional District Judge, Barwani, in C.A. No. 10-A of 2000, which in turn arises out of Civil Suit

No. 15-A of 1998, decided by Civil Judge, Class II, Rajpur, on 29-1-2000.

2. 4 plaintiffs (non-appellants herein) filed a suit by invoking the provisions of Order I Rule 8 of CPC claiming in substance a declaration and

injunction against the defendant alleging inter alia that they have a right to remain in occupation of the land in question and carry on the business of

manufacture of Bricks. It is alleged that they have paid some tax to Panchayat and hence, acquired a right to retain the land to carry on their

business of manufacture of the bricks. It is alleged that since they are doing this business for last 200 years and hence, State and/or Panchayat has

no right to interfere in their possession and hence, injunction is also claimed. The defence was that of denial.

3. It is this issue which was probed and negatived by two Courts below giving rise to filing of this second appeal u/s 100 ibid,

4. Having heard learned Counsel for the appellant and having perused record of the case, I am of the view that the appeal has no merit. In other

words, the appeal does not involve any question of law much less substantial question of law and hence, it must merit dismissal in limine.

5. Indeed, in my considered opinion, the suit out of which this appeal arises itself was a misconceived suit having no factual and legal foundation.

When a person seeks a relief in person, then there can be no suit that can be filed under Order I Rule 8 of CPC. Here is a case where the case of

the plaintiff is that he/they are doing business on a strip/portion of land belonging to State. It is thus, a relief to a particular person in respect of

particular land. In such case, recourse to Order I Rule 8 is misplaced. The suit has to be by an individual plaintiff as against the State and it should

be in respect of particular piece of land. It has to be then pleaded and proved that a particular piece of land was allotted to a particular person by

the State by a particular document for a particular purpose and for particular time on certain terms and conditions. The plaintiff is then required to

file a copy of the said allotment/ document indicating creation of interest in him to retain the possession of land. It can be in the form of irrevocable

licence or lease or grant as the case may be.

6. The present case is so misconceived that it does not disclose anything. Neither it is based on any document, nor any lease, nor allotment made

by State. It only avers payment of one Tax to Panchayat for one year. It does not disclose as to who paid it, for what purpose it is paid, what

interest it created etc. In substance, whole thing is so misconceived that it did not require any trial in the suit except for its dismissal at its threshold.

7. I, thus, do not wish to burden my order by stating any more facts, nor do I wish to deal with several legal submissions urged by learned Counsel

for the appellant on the interpretation of Order I Rule 8 of CPC and decided cases cited at the bar. In my opinion, dealing them in extenso will be

an empty formality - as they are totally de hors the subject.

8. Appeal, thus, fails and is dismissed in limine.