

Court No. - 53

Case :- ORIGINAL SUIT No. - 17 of 2023

Plaintiff :- Bhagwan Shri Krishna (Thakur Keshav Dev Ji Maharaj)
Virajman And 4 Others

Defendant :- Anjuman Islamia Committee Of Shahi Masjid Idgah And 7
Others

Counsel for Plaintiff :- Ajay Kumar Singh, Ashish Kumar Singh, Madhav
Jain, Tejas Singh

Counsel for Defendant :- Hare Ram, Nasiruzzaman, Pranav Ojha

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard learned counsel for the plaintiffs Sri P.V. Yogeshwaran (through VC) assisted by Shri Tejas Kr. Singh, Shri Ajay Kumar Singh learned counsel for the plaintiff are present.
2. Ms. Tasneem Ahmadi, Shri Mahmood Pracha, appearing through V.C., Shri Nasiruzzaman, Shri W.H. Khan, senior counsel appearing for the defendants. Shri Markandey Rai, learned Amicus Curie is also present.
3. Written submissions have been filed on behalf of applicant's counsel Shri Ajay Kumar Singh, Shri Ashish Kumar Singh and Shri Tejas Singh which are placed on record. Written objections have been filed on behalf of Shri M.P. Singh Gaur, on behalf of plaintiff nos. 2 to 5 in OSUT 7 of 2023, Shri Nassiruzaman advocate on behalf of defendant no.1 in present suit, Ms. Reena N. Singh advocate appearing for plaintiff no. 1 in OSUT No. 7 of 2023, Shri Satyaveer Singh Advocate who also appeared virtually on behalf of plaintiff in OSUT No. 12 of 2023 and 15 of 2023.
4. Written objections have also been filed by Shri Hare Ram Tripathi advocate on behalf of defendant no. 7 Bhagwan Shri Krishna (Thakur Keshavdev Ji Maharaj Virajman) in present suit.
5. An **Application 7C** under Order I Rule 8 C.P.C. has been moved by the plaintiffs through Shri Ajay Kumar Singh advocate with following prayers:-

5.1. The defendant no. 1 is the Committee alleges itself to manage the unauthorized super structure at Janambhoomi Mathura on behalf of and for the benefit of all the persons of Muslim community

of India having the same interest. The defendants nos. 2 to 6 are local Muslims. They actively participated in the activities of Muslim Community of India and as such the defendants are competent to represent all persons of Muslim community of India having same interest in the subject matter of the suit.

5.2 “It is, therefore, most respectfully prayed that plaintiffs are permitted to sue and deal the suit in the representative capacity against all persons of Muslim Community of India having same interest through defendant nos. 1 to 6 representing on behalf of and for the benefit of all persons of Muslim community of India having the same interest under Order 1 Rule 8 of the Code of Civil Procedure 1908 and any other order be also passed as the Hon’ble Court deem fit and proper.” So that justice be done

6. It is pertinent to mention here that vide this Court's order dated 11.01.2024 15 Original Suits (Original Suit Nos. 1/2023, 2/2023, 4/2023, 5/2023, 6/2023, 7/2023, 8/2023, 9/2023, 11/2023, 12/2023, 13/2023, 14/2023, 15/2023, 16/2023 and 18/2023) were consolidated and Original Suit No. 1/2023 was made as leading Case. Hence these consolidated suits were being listed as connected cases. Rest 3 Original Suits (Original Suit Nos. 3/2023, 10/2023, 17/2023) are being listed separately.

7. In present suit the pleading has been made by the plaintiffs that plaintiff no. 1 and 2 namely Bhagwan Shri Krishna (Thakur Keshavdev Ji Maharaj Virajman) at Shri Krishna Janambhoomi and Asthan Shri Krishna Janambhoomi Mathura) with other idols and places of worship are juridical persons with Bhagwan Shri Krishna as the presiding deity of the place. Plaintiff no. 3 is a Hindu, devotee and worshipper of plaintiff no. 1 and 2. He usually visits the deity and asthan for darshan, seva and worship since long time. He has no adverse interest to the plaintiff nos. 1 and 2. Plaintiff no. 4 and 5 are

also devotees and worshippers of plaintiff no. 1 and 2. Plaintiff nos. 1 and 2 are minors and juridical persons under law who have filed this present suit through their next friend plaintiff no. 3. The defendant no. 1 is the Committee alleging itself to manage the unauthorized super structure at Shri Krishna Janambhoomi Mathura. The defendant no. 2 to 6 are local muslims at Mathura and very actively participate in the activities of muslim community of Mathura. They also represent the entire muslim community of Mathura. The defendant no. 7, Shri Krishna Janambhoomi Trust, was formed by some of the devotees with an object to construct and renovate a grand and magnificent temple of Lord Shri Krishna and its ancillary building and defendant no. 8 was formed to manage the religious activities of the temples. In **Schedule 'A'** of the plaint the entire property is shown by red colour boundaries commonly known as Krishna Janambhoomi and is the place where Shri Krishna was born as the son of Vasudev and manifested himself in human form as the incarnation of Lord Vishnu in Dwapar Age (about 5100 years ago) on the Ashtmi tithi Krishan Paksh in the month of Bhadrapad in the prison cell of the then King Kans at Mathura. Since time immemorial the place has been called Shri Krishna Janambhoomi by all and is considered most scared. It is evident from historical documents that in the year 1017 A.D., the grand temple at Shri Krishna Janambhoomi built by King Chandragupta was destroyed by Mahmood Ghaznavi. The temple was renovated and constructed by Jajja in 1150 A.D when Maharaj Vijaypal Dev was the ruler of Mathura. It is revealed in historical books that in the early 16th century during the reign of Sikandar Lodi, the aforesaid grand temple of Bhagwan Shri Krishna was destroyed and about 125 years later, during the reign of Jahangir, Raja Veer Singh Dev Bundela of Orchha constructed a magnificent temple of Lord Shri Krishna. It is locally affirmed that Mughal ruler Aruangzeb demolished a portion of Katra Keshav Dev Temple and, on its site

raised super structure which was called as Masjid Idgah by local muslims around 1670. However, the divine character of the place was not affected and the devotees continued to flock to Shri Krishan Janambhoomi and offer worship. The entire property was recorded in the revenue records in British period as Katra Keshav Dev and before settlement of 1312 fasali revenue, number of the said property was 291. With some efforts to protect and manage the suit property, defendant no. 7 Shri Krishna Janambhoomi Trust was formed in the year 1951 with an object to construct and renovate a grand temple of Lord Shri Krishna. Defendant no. 8 was formed in the year 1958 as Shri Krishna Janamshtan Seva Sangathan. The deity is the perpetual minor. No interest can be created detrimental to it nor its right can be taken away. That, after demolition of temple, over a portion of Garbhgrih, the said illegal and unauthorized superstructure was created near the eastern staircase of the said illegal and unauthorized superstructure a very old well is still in existence which is called “Shre Krishna Koop”.

8. It is also pleaded that the disputed structure standing at the superstructure claimed to be Idgah mosque is not a valid mosque nor it is a valid waqf, as the dedication of “deity property” for creation of wakf is impermissible both under Hindu law as well as under Islamic law. On 27.09.1998 the Revenue Court also demarcated the property known as Shri Krishna Janambhoomi (Katra Keshav Dev) having Khata No. 255 and an area of 13.37 acres by installation of stone pillar, defendant no. 1 to 6 and the entire muslim community of India have no right, title or interest in the aforesaid composite and compounded suit property or any part of it.

9. The prayer has been made in the plaint to declare the entire premises of Shri Krishan Janambhoomi at Mathura belonging to the plaintiff deities in favour of the plaintiffs and against defendants including the entire muslim community of India. A perpetual

injunction against the defendants including the muslim community of India has also been sought prohibiting them from interfering with, or raising any objection to, or placing any obstruction in the construction of the new temple building at Shri Krishan Janambhoomi Mathura after demolishing or removing the existing buildings and superstructures etc. situated there. A relief in the form of permanent prohibitory injunction has also been sought against defendant nos. 1 to 6 and entire muslim community of India to restrain them from entering the suit property and interfering in performance of Pooja and other rituals.

10. It appears that written statement have been filed on behalf of defendant Nos. 1 and 7.

11. In application under Order I Rule 8 C.P.C., the applicant has stated that the Defendant Nos. 2 to 6 are the local Muslims of Mathura and very actively participate in activities of Muslim Community at Mathura. They also represent the entire Muslim Community of Mathura. The unauthorized and illegal disputed structure alleged as Idgah mosque was erected by force and by using the building material of the ruins of the temple and even today the symbol and images of Hindu temple may be seen very easily. Though the said illegal and unauthorized structure still exists, the engraved symptom and images of Hindu Murties can be seen on the unauthorized superstructure. The so-called Idgah Mosque is unauthorized structure and even under tenets of Islamic law, it cannot be treated as a valid mosque and at this place, the offering of the Namaz is not acceptable by ALLAH. That no suit, has been filed by the defendants or any other person against the deity Bhagwan Sri Krishan enthroned at Shri Krishna Janam Bhumi in respect of the said property. In all the previous suits, the deity Bhagwan Shri Krishna was not the party. Therefore, finding, if any, affecting the right, title or interest of the deity is not binding on Plaintiff Nos. 1 & 2. The Defendant Nos. 1 to 6 and the entire Muslim

Community of India have no right, title or interest in the aforesaid composite and compounded suit property or any part of it. There are numerous persons of Muslim Community of India having same interest in the subject matter of Suit. Hence this suit is being filed against the entire Muslim Community of India and for such purpose the Plaintiff seeks permission from the Hon'ble Court to file this Suit under Order 1 Rule 8 CPC. It will also avoid multiplicity of the litigations.

12. Learned Senior counsel for applicant Sri P.V. Yogeshwaran submitted that if the permission under Order I Rule 8 read with Section 151 C.P.C. is granted, it will serve the purpose of complete and effective adjudication of the subject matter of suit between the parties otherwise there will be no end of litigation. Under these circumstances and in the interest of justice, it is just and proper to permit the plaintiff to sue and deal the suit as representative suit under Order I Rule 8 C.P.C. He further submitted that from a bare perusal of Order I Rule 8 C.P.C. it is evident that in a suit where there are numerous persons having the same interest one or more persons may be sued on behalf of, or for the benefit of all persons so interested with the above permission of the Court.

It is stated in the written submission that the scheme of Order 1 Rule 8 is an exception to the general rule that the all persons interested in the suit must be made parties to it. The object of this exception is to facilitate the redressal of grievances in which a large body of persons are interested, but there several practical difficulties would arise if every individual so interested were to either join in one suit or file a separate suit under the general rule. The special rule facilitates prosecution of a cause in which numerous persons are interested, whilst, at the same time, protects the opponent from having to face a multitude of causes. It is also submitted that there are numerous persons of Muslim Community

having same interest in the subject matter of Suit and therefore the present civil suit is being filed against the entire Muslim Community and for the purpose the Plaintiff has filed the above captioned Application in which he seeks permission to file the present Suit under Order 1 Rule 8 CPC to avoid the multiplicity of the litigations.

13. He also contended that the application comes within purview of Order 1 Rule 8 (1B CPC). If plaintiffs are permitted to sue and deal the suit in representative capacity against all the persons of Muslim Community of India, the entire muslim community will be bound by any decree if passed in this case. He lastly, submitted that a decree passed in the representative suit binds not only the parties thereto, but all those who are interested in suit property. Admittedly, the defendant no.1 does not represent the entire muslim community and therefore, in the interest of justice and consistent with the objective of the provisions as contained under Order 1 Rule 8 CPC, the present application deserves to be allowed. The present application is nothing but an application seeking leave to allow the plaintiff to sue the entire muslim community of India in representative capacity. The objections filed by the defendant no. 1 are untenable and are liable to be rejected.

14. Hon'ble Supreme Court in **Krishnan Vasudevan v. Shareef, (2005) 12 SCC 180** it is held that Order 1 Rule 8 CPC does not prescribe any stage at which the application can be filed. The pleadings of defendant no. 7 are hostile to the interest of the plaintiffs deities and, therefore, dis-entitle them from claiming any right as Manager or the Shebait of deities.

15. Learned counsel placed reliance on judgments of Hon'ble Supreme Court in **Raje Anandrao vs. Shamrao and others, (1961) 3 SCR 930, Ahmad Adm Sait vs. M.E. Makhri, (1964) 2 SCR 647 = AIR 1964 SC 107 and V.J. Thomas vs Pathrose Abraham, (2008) 5 SCC 84.**

16. Per contra, Ms Tasneem Ahmadi appearing for defendants referred the pleadings contained in para 71 of the plaint wherein it is stated that; “there are numerous persons of muslim community of Mathura having same interest in the subject matter of the suit. Hence this suit is being filed against the entire muslim community of India and for such purpose the plaintiffs seeks permission form the Hon’ble Court to file this suit under Order 1 Rule 8 CPC. It will also to avoid the multiplicity of the proceedings”. Learned Counsel contended that it appears that the pleadings with regard to Order 1 Rule 8 CPC have already been made in the plaint itself and subsequently an application under Order 1 Rule 8 CPC read with Section 151 CPC has been filed as application **7C** on 11.08.2023 which was amended on 30.01.2024 by order of the Court.

17. Learned counsel Sri Nasiruzzaman for defendant no. 1 submitted that the plaintiff’s application under Order 1 Rule 8 CPC is not maintainable as the same is against the object, purpose and spirit behind enactment of Order 1 Rule 8 CPC. Order 1 Rule 8 envisages an application from the party who wants to sue or defend it in representative capacity, hence the plaintiff who is the applicant herein can only file an application seeking leave for itself to sue in his/her representative capacity. The answering defendant has not sought leave of the Court to defend/be sued on behalf of the Muslims of India and hence is not to be treated as a representative of the muslim Community of India.

18. Ms. Ahmadi drew attention of the court in Para 6 of order dated 19.11.2024 wherein it is stated as under:-

“Although in Order 1 Rule 8 (2) CPC the Court is mandated in every case where permission or direction is given under sub-rule (1), at the plaintiff’s expense to give notice of the institution of the suit to all persons so interested either by personal service, or, where, by public advertisement. Yet, keeping in view the peculiar facts and

circumstances of this case and public concern therein, it would be in fitness of things to issue a public notice prior to granting permission to the plaintiff to sue in representative capacity in all the suit, in representative capacity; a prior public notice need to be issued in the matter. She contended that in aforesaid order notice to Muslim Community of India is not mentioned or directed to be issued in said order.

18.1. Chattisgarh High Court in **Bhupendra Singh Babra and another vs Municipal Council Ambikapur 2001 (3) MPHT 80 (CCG)** observed in para 9 that Order 1 Rule 8 provides that where there are numerous persons having the “same interest” in all suits, one or more of such persons may with the permission of the Court sue on behalf of or for the benefit of all persons so interested. An application under Order 1 Rule 8 CPC cannot be granted straight away but a notice of such application is to be published by the Court in the daily newspaper having circulation on the said locality at the expense of the plaintiff. The people interested in the suit or opposing the suit may come and join the proceeding. If the permission is not granted by the Court then the Court is obliged to reject the application and dismiss the suit.

19. Learned counsel for contesting defendant also submitted that it appears from above order that the notice was directed to be issued only on the basis of considering grant of permission to the plaintiff to sue in a representative capacity and not on the basis of considering grant of permission that the defendants be sued in a representative capacity. In as much as unknown stranger cannot force to become representatives of the defendants (muslim community) and defend the plaintiff's suit. The defendants cannot be forced to accept strangers as their representatives especially when the answering defendant is categorically refusing to accept them as their representative. No member of the muslim community nor the answering defendant have filed any application under Order I Rule 8 to seek permission to sue or

defend the suit is a representative capacity. He lastly submitted that plaintiffs can seek permission for himself to sue in their representative capacity. However, the plaintiff cannot demand that he be permitted to force the defendants to defend themselves in the representative capacity.

20. Shri M.P. Singh Gaur advocate has filed objections on behalf of plaintiffs no. 2 to 5 in OSUT 07 of 2023 in which it is stated that Shri Ajay Pratap Singh belongs to the clan of Lord Shri Krishna and is still working to save the interest of Lord Shri Krishna. He is entitled to represent Lord Shri Krishan. Therefore, an application under Order 1 Rule 8 CPC may be dismissed.

21. Shri Anil Kumar Singh appearing for plaintiff nos. 2 to 5 in OSUT 7 of 2023 submitted that this application under Order 1 Rule 8 CPC is not maintainable as such because it is the deity whose title is claimed over property in dispute and no other person can claim the right, title or interest in suit property except the deity, therefore, there is no need to permit the plaintiff in OSUT 17 of 2023 which is not consolidated with the 15 suits to prosecute the suit as representative suit on behalf of Hindu community. The suit no. 17 of 2023 could not be consolidated with other 15 suits related to subject matter of present suit due to prayer made therein that the plaintiff may be permitted to prosecute the suit under Order 1 Rule 8 CPC. Suit No. 1 of 2023 is leading case along with 14 other consolidated suits.

22. If the application under Order 1 Rule 8 CPC is allowed, it will have adverse affect on order of consolidation of 15 suits with regard to the subject matter in dispute.

23. Ms Reena N. Singh appearing for plaintiff no. 1 in OSUT 1 of 2023 submitted that application under Order 1 Rule 8 CPC in question is not a principal provisions of CPC and is an attempt to waste precious time of Court by abusing the process of law. The plaintiffs

cannot invoke Order 1 Rule 8 CPC to seek representation on behalf of the defendants or the entire community of defendants. A plaintiff can only invoke Order 1 Rule 8 CPC to represent a large group of plaintiffs with a common interest in the suit. The rule does not permit the plaintiff to assume representation on behalf of the defendants where the suit involves multiple defendants who share common interest, it is the prerogative of the defendants to apply under Order 1 Rule 8 CPC for collective representation. A plaintiff has no legal standing to make such an application on behalf of defendants. Courts have consistently held that a plaintiff cannot impose collective representation upon defendants. The defendants must on their own volition apply for such representation in as much as a suit against an entire community may violate principles of natural justice. The application is entirely mis-concluded.

24. A suit that seeks to represent an entire community without specific cause of action or individual consent may be dismissed for vagueness and arbitrariness. Learned counsel raised strong objection in Para 7 of the affidavit filed under Order 1 Rule 8 CPC wherein it is stated that defendant no. 2 to 6 should represent the entire muslim community of India as this statement is against the sentiments of Hindu community from which the plaintiff being the next friend of Bhagwan Shri Krishan comes. The application is beyond the scope of Order 1 Rule 8 CPC as the plaintiffs seek to sue entire religious or social community which is not permissible in the suit. It is unequivocally established that a plaintiff cannot invoke Order 1 Rule 8 CPC to represent defendants or entire community of defendants.

25. Shri Satyaveer Singh advocate appearing for plaintiffs in OSUT 12 of 2023 and 15 of 2023 submitted that in present case 15 suits except OSUT No. 3,10 and 17 of 2023 have been consolidated by order dated 11.01.2024 by this Hon'ble Court and OSUT No. 1 of 2023 has been specified as leading suit. The present application under

Order 1 Rule 8 CPC is not maintainable as such and has been filed to achieve cheap popularity and wastage of precious time of Court. Order 1 Rule 4 provides that Court may give judgment for or against one or more joint parties, the plaintiffs in OSUT 12 and 15 of 2023 want to proceed in the suit separately.

26. Shri Hare Ram Tripathi advocate appearing for defendant no. 7 in present suit has filed written objection in which it is stated that it is important to point out here that as per the record and facts it is undisputed that defendant no. 7, the Trust is the real and recorded owner of the suit property and no injunction can be granted against the said defendant and the suit no. 18 of 2023 is filed and pending before this Hon'ble Court to save the interest of the Deity. That the declaration has been sought in favour of deity by its next friend which is a person designated and not any community or communities of people, nor the plaintiff represent entire Hindu Community or religion and so it cannot be treated as a representative suit, only on the ground the relief is also sought against entire Muslim Community. That in the application 7-C there appears no allegation that the suit involves any common cause of the plaintiffs or any common cause of many people or few people are involved. That admittedly the plaintiff Nos. 1 and 2 are juristic person and have right to sue and be sued to protect its own property in its personal capacity and the suit need not to be treated as a representative suit.

27. In OSUT 13 of 2023 on behalf of Shri Mahendra Pratap Singh Advocate wherein it is stated that the plaint of the suit has not been filed in any representative capacity. There is no pleading that the suit is being filed in representative capacity and plaintiff is authorized to file suit in representative capacity. The plaintiffs have not filed any document with plaint which shows that they are authorized to file suit on behalf of or against all members of muslim community or Hindu community of Mathura or India. The application is not in consonance

with the provisions of Order 1 Rule 8 C.P.C. If anyone has to be given the right to represent all the suits, it is the plaintiff suit No. 13 of 2023 filed before the Trial Court should be given an opportunity to represent all the suits as it was first suit which was filed in the interest of entire Hindu community. The objection is supported with affidavit of Shri Mahendra Pratap Singh advocate.

28. The provisions of Order 1 Rule 8 may be extracted as under:-

8. One person may sue or defend on behalf of all in same interest.

(1) Where there are numerous persons having the same interest in one suit,-

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under

sub-rule (3), of rule 1 of [Order XXIII](#), and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation- For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the person on whom behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

29. The plaintiffs has sought relief in the plaint, in prayer clause against defendant no. 1 to 6 including the entire muslim community in Mathura, however, by way of amendment the word Mathura was deleted and the word "India" was substituted. This amendment was allowed on 25.09.2024. The plaintiffs have stated in para 71 of the plaint as under:-

“ That there are numerous persons of Muslim Community of India having same interest in the subject matter of Suit. Hence, this suit is being filed against the entire Muslim Community of India and for such purpose the plaintiff seeks permission from the Hon'ble Court to file this Suit under Order I Rule 8 CPC. It will also avoid multiplicity of the litigations.

30. Thus, in view of above pleading it is obvious that the prayer of treating this Suit as representative suit is included in the plaint itself and all that was needed was to have got the permission of the Court in respect to prosecute the suit as representative suit. In view of what has already been pleaded by the plaintiffs in para 71 of the plaint, the other facts in the entirety as pleaded in other paragraphs of the plaint and the facts stated by the plaintiffs in their present application under Order 1 Rule 8 CPC, the defendants would not stand surprised nor the complexion of the suit would get changed if the permission under Order 1 Rule 8 CPC is granted and the suit is declared to have been instituted in representative capacity as asserted by the plaintiffs in the plaint itself.

31. As regards cause of action, it is stated in Para 72 that cause of action arose in favour of the plaintiffs and against the defendants on each and every day as the standing of an illegal and unauthorized superstructure over the suit premises is a continuous cause of action. That the cause of action further arise in favour of plaintiffs and against the defendants on each and every day when the defendants enter into the part of suit premises on daily basis and interfere the peaceful worship of Lord Krishna by Devotees at the superstructure and as such the cause of action is *de die in diem* and against the defendants on each and everyday as the standing of illegal and unauthorized superstructure over the Suit premises is a continuous cause of action.

32. The cause of action arises in favour of plaintiff on each and everyday when the defendants enter into the part of suit premises only on daily basis and interfere in the peaceful worship of Lord Krishna by devotees at the superstructure.

33. It is also stated in plaint that the defendant no. 2 to 6 are local muslims of Mathura and very actively participate in activities of Muslim Community at Mathura. They also represent the entire Muslim Community of Mathura. However, this fact is categorically

denied by contesting defendants that they represent the entire muslim community of Mathura or India.

34. In application under Order I Rule 8 CPC read with Section 151 CPC the plaintiffs have stated that the devotees of Lord Shri Krishna and entire Hindu Community as well as entire world have great deep faith and belief and is also evident from records that a part of the Garbhgrih of the temple of Lord Shri Krishna is where an unauthorized structure alleged as Idgah Mosque is existing. The foundation of such unauthorized superstructure is rested on the old structure temple of Lord Shri Krishna. The devotees, since ages, have been visiting the suit property with their firm belief that it is the birth place of Lord Shri Krishna.

35. In present case, the dispute between the parties is with regard to the site where Shahi Masjid Idgah is situated. The plaintiffs claim that the site where this structure is lying is the birth place of Lord Shri Krishna and a grand temple situated there which was in, course of time demolished and this alleged mosque was constructed, during Mughal rule. The contesting defendants have taken stand that this property Shahi Idgah Mosque is a waqf property. The persons who have no concern have been impleaded in representative capacity and defendants are Waqf Board who is a necessary party in the suit has not been impleaded. The Shahi Idgah Mosque has been in existence since 1600 A.D. and in continuous possession of the muslim community where prayers are regularly offered till date. The mosque is not a part of Krishna Janambhoomi and it has not been a place of worship for hindu devotees. Prayers are regularly offered by muslim community in mosque. The present suit is not a public interest litigation nor a suit in relm, therefore, Order 1 Rule 8 CPC is not applicable to present suit and it does not permit the plaintiffs to file a suit against the entire muslim community. The suit is barred by Limitation also.

36. There is dispute of title between the parties in dispute with regard to disputed property and a declaration of title has been prayed alongwith other reliefs in the plaint. In present application Order 1 Rule 8 CPC the plaintiffs have prayed for being permitted to sue and deal the suit in a representative capacity against all persons of Muslim Community of India “having the same interest through defendant no. 1 to 6 representing on behalf of and for the benefit of persons of Muslim Community of India having the same interest”.

37. Thus, on a perusal of prayer clause in the application reveals that the plaintiffs have prayed for being permitted to file this Suit in representative capacity against the contesting defendants as well as Muslim Community of India. However, defendant no. 1 to 6 have denied this fact that in their objection they represent the entire muslim community. Defendant no. 1 is the Committee in the care and management of Shahi Idgah Mosque and does not represent the Muslim Community of India. The answering defendant has not sought relief by the Court to defend or be sued on behalf of muslims of India and hence, is not to be treated as representative of muslim community of India.

38. If we go through the prayer in the amended prayer clause in the application it is clear that the plaintiffs have sought permission to sue and deal the suit in representative capacity against all persons of Muslim community of India including contesting defendants. It cannot be inferred from the prayer clause that the plaintiffs seeks to sue and deal the suit in representative capacity on behalf of and for the benefit of all persons of Muslim community having the same interest. No other inference can be drawn from perusal of the prayer clause otherwise it will lead to absurdity. Although the prayer clause in application under Order 1 Rule 8 CPC is not happily worded, yet on reading the pleadings contained in the application the intention of the applicant becomes evident.

39. A bare perusal of provisions of Order 1 Rule 8 CPC reveals that under Rule 8 (1)(a) “the plaintiff may, with permission of Court file representative suit where there are numerous persons having the same interest in one suit and in clause (b) the Court may direct that filing of representative suit where conditions of Order 1 Rule 8 (a) are applicable, on behalf of, or for the benefit of all persons so interested.

40. In the present case a public notice was issued by orders of this Court dated 19.11.2024 in daily newspaper Dainik Jagran in respect of application under Order 1 Rule 8 CPC wherein it is stated that the plaintiffs have filed the above titled original suit on behalf of Hindu devotees in general in representative capacity under Order 1 Rule 8 CPC against the defendants on the ground that he and all the persons are interested in the subject matter in the suit. The reliefs claimed in the plaint are also mentioned therein and which is sought against the contesting defendant nos. 1 to 6, they are followers, men, workers, supporters or any other person acting under them including the entire Muslim community of India.

41. It is worth judicially noticeable that the large communities of Hindus to which the plaintiffs claim to be belonging to cannot be said to be homogeneous in terms of its devotion and faith just in one or common god, goddess, idol or deity, in as much as the community of Hindus maintains its faith, reverence in divergent gods, goddess, deities, some believe in idolatory, some believe in formless god like Arya samajis. There are various sects and sub-sects in Hindus like vaishnavites, shivaities, ramanandies, smarthas, shakts, members of Iskcon, who are spread in India and abroad, atheists, agnostics and many more others who together constitute a larger community of Hindus. However, amongst them there are large number of devotees of Lord Shri Krishna in India and across the globe on whose behalf and for their benefit the permission sought by the plaintiffs to contest and

deal with the suit in representative capacity against the contesting defendants is acceptable.

42. Hon'ble Supreme Court in **M. Siddique (Ram Janambhoomi Temple) case vs. Suresh Das (2020) 1 SCC 1** held that "in representative suit under Order 1 rule 8 CPC it is essential that, there must be numerous persons having the same interest in the suit to be filed as a representative suit under Order 1 Rule 8 CPC. Before a person can be allowed either to prosecute or to defend the suit on behalf of others interested, specific permission of the Court is mandated. Order 1 Rule 8 (2) CPC requires notice of institution of the suit to be given to all persons interested, in the manner as directed or by advertisement. A person on whose behalf of or for whose benefit the suit has been instituted or is being defended may apply to the Court to be impleaded as party to the suit. Under sub-rule (4) Rule 8 of Order 1 CPC, no part of the claim in the suit can be abandoned and the suit cannot be withdrawn nor can a compromise, agreement or satisfaction be recorded unless notice has been furnished to all persons interested."

43. As prayer made in application Order 1 Rule 8 CPC appears to be somewhat ambiguous, therefore, the relief is liable to be modified in the operative order in exercise of powers under Order 1 Rule 8(1)(B) vested in the Court in the following manner:

43.1 The application under Order 1 Rule 8 CPC is allowed in the manner that the plaintiff is permitted to sue in representative capacity on behalf of and for the benefit of devotees of Lord Shri Krishna who may be interested in the suit, against the defendant no. 1 to 6 and entire Muslim community of India.

43.2 Let notice under Order 1 Rule 8 (1)(a) CPC be issued within 15 days in a National Newspaper at the plaintiffs's expense to all the persons so interested in the suit. Pursuant to this order of the

Court, the plaintiff may move separate application seeking consequential amendment in the plaint wherever necessary.

44. List on 22.08.2025 at 2.00 p.m.

Order Date :- 18.7.2025

Dhirendra/Rashmi