
(1998) 02 MAD CK 0179
In the Madras High Court

Board of Trustees and Others

APPELLANT

Vs

Dr. Kamala Dakshinamurthy and Others

RESPONDENT

Date of Decision : 03-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (1998) 2 MLJ 356

Hon'ble Judges : Shivaraj Patil, J

Bench : Division Bench

Judgement

Shivaraj Patil, J.—This appeal is by the defendants aggrieved by the judgment and decree dated 12.5.1992 passed by the learned single Judge on the original side in C.S.No, 936 of 1989. For convenience, in this judgment, we shall refer to the parties as described in the suit itself.

2. The plaintiffs filed the said suit C.S.No. 936 of 1989 in a representative capacity, after obtaining necessary permission of the court in Application No. 2219 of 1989 under Order 1, Rule 8 of the Code of Civil Procedure. The third plaintiff was permitted to prosecute the suit on behalf of the other plaintiffs, and those applicants whose names have been mentioned in the plaint. The Order was passed on 3.5.1989 and the court directed to issue notice by way of publication in one issue of Malai Murasu. Accordingly publication was effected and thereafter the plaint has been presented. The first defendant is the Board of trustee of Sri Nagar colony represented by its Executive Trustee, and defendants 2 to 6 are the trustees. 7th defendant is the Commissioner, Corporation of Madras.

3. In the suit, the plaintiffs prayed for a judgment and decree directing the defendants 1 to 6, by a mandatory injunction, to remit to the Corporation of Madras, the amount payable towards betterment charges from and out of the earnest money paid by the plaintiffs, and to conduct auction in which it would be open only to the plaintiffs and other registered applicants to bid for the plots, and allot the plots to the highest bidders; and for a decree for permanent injunction restraining the first defendant from alienating the vacant land

measuring about 20 grounds in Srinagar Colony, Saidapet, Madras-15, in any manner other than by allotment of plots as per circular dated 9.9.1982.

4. The plaintiffs pleaded that the first defendant is a body constituted under a decree dated 18.7.1989 made in C.S.No. 10 of 1964 for the purpose of taking over and dealing with the vacant land in the said colony. The decree vested the vacant land with the first defendant with authority to sell the lands and utilise the sale proceeds for the amenities for the common benefit of the colony. 20 grounds of land is described in the schedule to the plaint.

5. The defendants by their communication dated 9.9.1982 issued notice calling for applications from persons bona fide in need of house site, stating that the Board of Trustees have prepared a sketch or lay out for 20 grounds of land consisting of 16 plots and that it has proposed to allot them to those found eligible on casting lots or by public auction. They called for depositing Rs. 15,000 by the applicants per ground which would be adjusted towards cost of the plot if ultimately allotted to them. The communication also stated that the plots will be sold in public auction, and that the price will be fixed taking into account the market value, ignoring the abnormal value collected by the real estate speculators.

6. In response, originally 40 applicants had applied for allotment of plots. Subsequently because of delay, many of the applicants withdrew their applications, and only 15 were remaining including the plaintiffs. In May, 1988 the first defendant issued a circular informing the applicants that the 7th defendant is insisting on payment of improvement charges before approving the plan, and hence the applicants were requested to contribute Rs. 35,000 each to make the sum of Rs. 8,00 lakhs as demanded by the 7th defendant towards improvement charges. It was also stated that the minimum price per plot would be Rs. 1.5 lakhs. To the same effect a circular dated 26.5.1988 was issued.

7. Plaintiffs 1 and 2 and other applicants paid Rs. 35,000 each as additional advance. The third plaintiff had paid only 25,000. Since no progress was made even thereafter, the plaintiffs got issued a notice to the defendants calling upon them to act in accordance with the circular dated 9.9.1982. The Board of trustees sent a reply stating that there has been no concluded contract, and that the plots were offered for sale not for the purpose of improving the locality but for different consideration. It was also stated that they have decided to return the amount to the persons who had deposited. The plaintiffs refused to accept the cheque sent to them by way of returning the amounts deposited. Under the circumstances the suit was filed.

8. The defendants 1 to 6 filed written statement opposing the claim of the plaintiffs, contending that the suit in a representative capacity was not maintainable, though it may be the same transaction, as the interest of the applicants are different, there could be no representative suit; the provisions of Order 1, Rule 8 of the C.P.C. had not been complied with; though under the

notice dated 9.9.1982 the Board of trustees called for applications, it was clearly stated in the notice that collection of deposit amount from the applicants was without any commitment by the Board of trustee to allot any plot; the claim of the plaintiffs based on the said notice was not maintainable; there was no concluded contract between the plaintiffs and defendants 1 to 6, for sale of the plots, and therefore the suit was liable to be dismissed, and the defendants 1 to 6 had decided to give up the idea to sell the plots as the 7th defendant demanded exorbitant development charges.

9. The plaintiffs filed a rejoinder denying all the allegations contained in the written statement, and pointing out that the publication had been made as per the directions of the court.

10. On the basis of the pleadings of the parties, the following issues were framed by the learned single Judge :

(i) whether the suit is not maintainable as contended in paragraph 2 of the written statement? (ii) Whether the defendants are estopped from contending that the plaintiffs have no right to insist on the defendants enforcing the circular dated 9.9.1982?

(iii) Whether the suit filed in a representative capacity is not maintainable as alleged by the defendants?

(iv) Whether the plaintiffs have no legal right to enforce the circular as contended in paragraph 6 of the written statement and paragraph 5 of the additional written statement?

(v) To what reliefs the parties are entitled to?

11. In view of the additional written statement filed by defendants 1 to 6, the following additional issue was also framed :

Whether for the reasons stated in paragraph 9 of the additional written statement that the lands are not now available, the plaintiffs are entitled to the relief asked?

12. In the trial, the third plaintiff V. Raman was examined as P.W.1 on behalf of the plaintiffs and documents P-1 to P-19 were marked. One R. Butchi, Executive Trustee of the first defendant was examined as D.W.1 on behalf of the defendants 1 to 6, and documents D-1 to D-9 were exhibited.

13. The learned single Judge, on appreciation of the evidence, both oral and documentary, in the light of the submissions made by the learned Counsel for the parties, recorded findings on the issues framed, in favour of the plaintiffs and against the defendants. In the result, the suit was decreed as prayed for by the plaintiffs, by the judgment and decree under appeal. The defendants 1 to 6, aggrieved by the said judgment and decree, have filed the appeal impleading 7th defendant as respondent No. 4. During the pendency of the appeal it appears there was change of trustees. Hence the cause title was amended as per the

Order of the court dated 6.1.1998 in C.M.P.No. 46 of 1998.

14. Shri T.R. Rajagopalan, learned senior counsel for the appellants urged that

(i) the suit as filed by the plaintiffs in a representative capacity was not at all maintainable, and the provisions of Order 1, Rule 8, C.P.C. was not complied with. In support of this submission he cited a decision of the Supreme Court in *The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy*, ;

(ii) since there was no concluded contract, the plaintiffs had not acquired any legal rights so as to seek decree for specific performance, in effect, although the relief sought in the plaint was in different terms;

(iii) even if the plaintiffs wanted to support their case on the basis of promissory estoppel, unless each individual had proved his case, the suit ought not to have been decreed, and

(iv) even if a decree was to be granted, the learned single Judge ought to have directed for conducting auction to sell the plots among all the applicants as per Ex.P-2 instead of confining to only 13 applicants.

15. On the other hand Shri B.T. Seshadri, learned Counsel for the respondents-plaintiffs made submissions supporting the judgment and decree under appeal. He urged that the suit as filed by the plaintiffs in a representative capacity as per Order 1, Rule 8, C.P.C., that too after following necessary procedure and taking permission of the court, was perfectly maintainable. He invited out attention to the explanation to Order 1, Rule 8. He also submitted that on the basis of the principles of promissory estoppel, the decree granted in favour of the plaintiffs is well justified. In support of his submissions, he relied on the decisions in *The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy*, , (ii) *Sankiah and Ors. v. Vadakasi and Ors.* 1980 T.L.N.J. 86; (in) *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, .

16. We have considered the submissions made by the learned Counsel for the parties.

17. In the light of the submissions of the learned Counsel for the parties, the following points arise for our consideration in this appeal, viz

(i) Whether the suit filed by the plaintiffs under Order 1, Rule 8, C.P.C. was maintainable?

(ii) Whether in the absence of concluded contract, the suit of the plaintiffs could be decreed, based on the principle of promissory estoppel? and

(iii) Even if a decree could be granted, whether the learned single Judge was right in directing to auction sale of plots among 13 applicants only as against the terms of Ex.P-2?

18. Re. Point No. 1 : In paragraph 3 of the plaint, it is specifically stated that the suit is filed in a representative capacity for the benefit of themselves and 14

others who were jointly interested in the relief sought for in the suit. In paragraph 4 of the plaint, reference is made to the notice dated 9.9.1982 Ex.P-2 issued by the first defendant inviting applications for allotment of plots. Relevant portions of Ex.P-2 are extracted below :

The Board of Trustees, Srinagar Colony have prepared a lay out for a 20 grounds plot of land at their disposal in T.S.Nos.92/2c and 93/3 at the north eastern part of the colony. The lay out consists of 16 plots of the sizes given below :

Plots 1 to 3, 6 to 8 : 65" X 50"

Plots 4 and 5 : 66.9" X 50"

Plots 9, 10, 15 & 16 : 65" X 40"

Plots 13 and 12 : 66.9" X 52"

Plots 11 and 14 : 65" X 52"

A copy of the lay out plain is available with the Executive Trustee for inspection of intending applicants. The layout is pending final approval by the M.M.D.A. which is expected shortly.

2. With a view to prevent the cornering of the plots by real estate speculators, and the like, it is proposed to call for applications with a view to select only persons bona fide in need of a house site and to allot the plots to them. The allotment of the plots among those found eligible will be by casting lots or by public auction or in such other manner as may be decided on by the Board of Trustees to ensure fair and equitable allotment and their decision will be final and binding on the applicants.

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4. Applicants will be eligible for allotment only if they satisfy the Board of Trustees that they or their spouses do not own any house or house site in the City of Madras and are bona fide in need of a house site.

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7. The conveyance of the site to the successful applicant will be subject to the following covenants to be entered into by the purchaser.

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9. The Corporation usually lays down as a condition for the sanction of the lay out, that the plots should not be sold before the road, drains, sewers, etc. are completed. In Order to find the fund to pay to the Corporation for laying the roads etc. and for that purpose, it is proposed to collect from the applicants without any commitment by the Board of Trustees to allot any plots to the applicants, a deposit of Rs. 15,000 per ground, which will be adjusted towards

the cost of the plot if one is ultimately allotted to the applicants. Otherwise, the deposit will be refunded together with interest at 9%.

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11. If it is decided to sell the plots in public auction, it may not be necessary to fix any price in advance. If any other method is decided on, the price will be fixed taking into account the market values, but ignoring the abnormal prices paid by real estate speculators. The price will not in any case be less than Rs. 50,000 per ground. The price for the individual plots will be fixed taking into account their advantageous, situation and other factors.

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19. Under Ex.P-8 circular dated 26.5.1988 issued by the first defendant, the applicants for plots, including the plaintiffs, were informed that the 7th defendant Corporation was insisting for payment in advance of the improvement charges; the amount has to be collected immediately for getting approval of the lay out. The applicants were requested to contribute Rs. 35,000 each to make up Rs. 8.00 lakhs demanded by the Corporation towards improvement charges; the sum of Rs. 35,000 would be counted together with the initial deposit already made by them against the price payable for the plots. The minimum price Rs. 1.50 lakhs per plot has been suggested.

20. The plaintiffs and other applicants applied for allotment of plots, and acted on the basis of Ex.P-2, and gave further deposit amount as per Ex.P-8. The defendants 1 to 6 took a common stand as against all the applicants in denying to sell the plots. Thus as observed by the learned single Judge the plaintiffs and other applicants had common interest and common grievance. The plaintiffs also took permission to prosecute the suit in a representative capacity from the court by the Order dated 3.5.1989 after due publication as required under Order 1, Rule 8. Explanation to Order 1, Rule 8 reads :

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 persons on whose behalf or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

21. The Apex Court in the case of The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy, , dealing with similar case, has explained the scope of Order 1, Rule 8, C.RC. in paragraphs 7 and 9 as follows :

7. On the question of maintainability of one suit in a representative capacity under Order 1, Rule 8 of the Code of Civil Procedure, it has been contended that since the injury complained of is in regard to demand of money and that too by a separate demand against each of the allottees, giving rise to different causes of action, the Rule 1 has no application. The learned Counsel proceeded to say that it is not known whether each of the allottees in Ashok Nagar had been even served with an additional demand before the suit was filed; and further

emphasised that those who had been so served are interested in defeating only the demand individually referable to each of them. Each one of them is not interested in what happens to the others. It is, therefore, suggested that only such of the allottees who have already been served with additional demands are entitled to maintain an action in court, and they also should do it by filing separate suits. We do not find any merit in the argument. The provisions of Order 1, Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. In *Kodia Goundar and Another Vs. Velandi Goundar and Others*, , a Full Bench of the Madras High Court observed that on the plain language of Order 1, Rule 8, the principal requirement to bring a suit within that Rule is the sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted. The court, while considering whether leave under the Rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the Rule. The object for which this provision is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment. There are no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction as the present one.

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9. It is true that each of the allottees is interested individually in fighting but the demand separately made or going to be made on him and, thus, separate causes of action arise in the case, but, that does not make Order 1, Rule 8 inapplicable. Earlier there was some doubt about the Rule covering such a case which now stands clarified by the Explanation introduced by the CPC (Amendment) Act, 1976, which reads as follows :

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 persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

The objects and reasons for the amendment were stated below :

Objects and reasons : Clause 55, Sub-clause (iv) - Rule 8 of O.1 deals with representative suits. Under this rule, where there are numerous persons having the same interest in one suit, one or more of them may, with the permission of the court, sue or be sued, on behalf of all of them. The rule has created a doubt as to whether the party representing others should have the same cause of

action as the persons represented by him. The rule is being substituted by a new rule and an explanation is being added to clarify that such persons need not have the same cause of action." There is, therefore, no doubt that the person who may be represented in a suit under Order 1, Rule 8 need not have the same cause of action. The trial court in the present case was right in permitting the respondent to sue on behalf of all the allottees of Ashok Nagar. We, therefore, do not find any merit in this appeal which is dismissed with costs. Before closing, however, we would like to point out that the plaintiff has represented only those in the low income group in Ashok nagar who will be governed by this judgment, and nothing what has been said or decided in this case is applicable to any other group or colony.

Thus having regard to the facts of the case on hand, and applying the decision of the Apex Court aforementioned, we have no hesitation to hold that the suit filed by the plaintiffs under Order 1, Rule 8 in a representative capacity, as rightly held by the learned single Judge, was maintainable.

22. Re. Point No. 2 : There is no dispute that applications were invited for allotment of plots from intending purchasers as per Ex.P-2 issued by the first defendant. The plaintiffs and other applicants applied for such allotment, and paid initial deposit amount of Rs, 15,000 each as required. Further plaintiffs 1 and 2 and other applicants deposited a further sum of Rs. 35,000 each and the plaintiff No. 3 deposited a sum of Rs. 25,000 pursuant to the circular Ex.P-8 issued by first defendant. Having made applications for purchase of plots in 1982, the plaintiffs and other applicants mentioned in the plaint were all along waiting, and further deposited the amount as aforementioned in 1988 pursuant to Ex.P-8. P.W.1 Raman (plaintiff No. 3) has in his evidence clearly explained the case of the plaintiffs and supported the same.

23. In Ex.P-2, it is clearly stated that a lay out is prepared for 20 grounds of land, consisting of 16 plots, the lay out is available for inspection of intending applicants, with a view to prevent cornering of the plots by real estate speculators it was proposed to call for the applications, with a view to select only bona fide persons in need of house site and to allot plots to them; the allotment of plots will be done by casting of lots or by public auction or in such other manner as may be decided by the Board of Trustees; and that it is proposed to collect from the applicants, without any commitment by the Board of trustees, to allot any plots to the applicants, a deposit of Rs. 15,000 per ground which would be adjusted towards the cost of the plot if a plot is ultimately allotted to the applicants.

24. In Ex.P-8, the applicants were requested to contribute Rs. 35,000 each to make up Rs. 8.00 lakhs demanded by the Corporation towards the improvement charges. It is also stated that such of the applicants who failed to pay Rs. 35,000 each would be taken as not interested in getting a plot. Although the plaintiffs and other applicants mentioned in the plaint, as already stated above, paid the initial deposit of Rs. 15,000 pursuant to Ex.P-2, and paid Rs. 35,000 each as

required under Ex.P-8, they were later told that defendants 1 to 6 have given up the idea of selling the plots.

25. As held by the learned single Judge, the plaintiffs and other applicants did act on the basis of Exs.P-2 and P-8. Defendants 1 to 6 having collected money, did not pay the improvement charges to the 7th defendant. The learned single Judge has also found on facts, in the light of evidence, that the improvement charges claimed by the Corporation was not exorbitant which ground was made the basis by the defendants 1 to 6 to give up the sale of plots.

26. The learned single Judge, referring to the following cases, viz., Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., and Tapti Oil Industries v. State of Maharashtra AIR 1984 Bom. 16, held that the plaintiffs and other applicants acted on the basis of Ex.P-2 and parted with money, waited for several years for allotment of plots and therefore injustice would be caused in case defendants 1 to 6 were allowed to go back. The learned Judge took a view that the principles of promissory estoppel were applicable to the facts and circumstances of the present case, and that defendants 1 to 6 were estopped from contending that the plaintiffs had no rights.

27. The learned single Judge was also of the opinion that decree for mandatory injunction could be issued to prevent the breach of an obligation and compel performance of certain acts which could be enforced by court. According to the learned Judge, defendants 1 to 6 could be compelled to perform their obligation arising under Ex.P-2. Further, even looking to Ex.P-8, defendants 1 to 6 could be compelled to perform their obligation. We have no good or valid reason to differ from this finding of the learned single Judge having regard to the materials placed on record and in the light of the facts and circumstances of the case.

28. We are unable to agree with the submission of the learned senior counsel for the appellants-defendants 1 to 6 that in Order to apply the principle of promissory estoppel each individual applicant has to prove his case as to how he acted to the detriment of his interest on the promise made by defendants 1 to 6, for the simple reason that the transactions were not in respect of each individual. All of them acted under Exs.P-2 and P-8, and the transactions were identical and they had common interest and the common grievance. Similarly it is difficult to accept the submission of the learned senior counsel for the defendants 1 to 6 that the plaintiff and other applicants had not acquired any enforceable rights.

29. Re, Point No. 3 : As is clear from the records and evidence, due to the passage of time, many of the applicants who had applied for allotment of plots pursuant to Ex.P-2, withdrew their applications. The applicants who remained were only the plaintiffs and other applicants mentioned in the plaint. If others had withdrawn, obviously-as per Ex.P-2 public auction is to be held for sale of plots among the remaining applicants. Minimum price of 1.50 Lakhs rupees was suggested per plot as can be seen from Ex.P-8. Hence, the learned single Judge was right in granting the decree as prayed for. During the course of arguments,

we are told that the plaintiffs and the other applicants mentioned in the plaint had paid price even at a higher rate in Order to get sale deeds, auction was held in respect of the plots among the plaintiffs and the other applicants mentioned in the plaint, and even sale deeds were executed subject to the decision in the appeal.

30. One more contention to be noticed is that under Ex.P-2, as per clause (9) there was no commitment to allot any plots to the applicants. On reading Ex.P-2 in its entirety along with Ex.P-8, it becomes clear that there was no commitment of the Board of Trustees to allot plots to all those who would apply, inasmuch as there were only 16 plots, and if there were more applicants, then there could be no commitment to allot plots to all the applicants. Those to whom, plots could not be allotted were entitled for refund of the deposit with interest at 9% per annum. This did not mean that there was no commitment to allot and sell the plots to anybody, and that the defendants could go back, and totally give up sale of plots, particularly having regard to the further commitment made in Ex.P-8, and having collected further sum of Rs. 35,000 each from the plaintiffs and other applicants."

31. One more contention urged by the learned senior counsel for the appellants-defendants is that the learned single Judge was not right in holding that the Order passed by the competent authority under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976 was ab initio void. The learned Judge has in paragraph 33 of the judgment noticed that D.W.1 in his evidence has stated that they have filed an appeal against the Order of the competent authority Ex.D-7 and that the Order passed by the competent authority was incorrect as there was no vacant land, and that the said Act had no application to the land in question. The learned Judge has also noticed that, if the defendants 1 to 6 had not taken proper action to defend their case before the competent authority, the plaintiffs should not be penalised. Anyway when the appeal is pending before the competent authority, we do not think it necessary for us to express on that question one way or the other. But on that account alone, it is not possible to hold that the decree could not be granted in favour of the plaintiffs.

32. In the result, for the reasons stated we find no merit in the appeal. Hence, it is dismissed, but with no Order as to costs.