

(1956) 07 MP CK 0004

In the Madhya Pradesh High Court

Case No : Civil Revision No. 170 of 1955

Ganga Vishnu

APPELLANT

Vs

Nathulal and Others

RESPONDENT

Date of Decision : 24-07-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 8(1)
Supreme Court Rules, 1966 — Order 16 Rule 9

Citation : AIR 1957 MP 173

Hon'ble Judges : Dixit, J

Bench : Single Bench

Advocate : Khandekar, for the Appellant; Chhingalal Gupta, for the Respondent

Final Decision : Allowed

Judgement

Dixit, J.—The Plaintiff-Applicant in his capacity as Secretary of Agar Pargana Cloth Dealers Association has instituted a suit for the recovery of Rs. 900/- from the non-Applicants on the allegation that Rameshwar and Madanlal who were members of the Association took from the Association an advance of Rs. 30,000/- for the purchase of some cloth in Ujjain; that these two non-Applicants had returned to the Plaintiff Rs. 16,970/- in cash and also supplied cloth worth Rs. 12,230/3/9 and that they had failed to return the balance of the amount namely Rs. 799/10/3 or to supply any cloth of that amount and that, therefore an amount of Rs. 799/10/3 together with interest thereon was due from them.

The Plaintiff also made the non-Applicant Nathuram from whom the other non-Applicants had purchased cloth, a Defendant in the suit. After the institution of the suit the Plaintiff applied under Order 1 Rule 8 for leave to continue the suit on behalf of all members of the Association. Thereupon the learned trial Judge published a public notice in a newspaper calling upon interested persons to appear and to show cause why the leave prayed for should not be granted.

With the exception of the Defendants no one objected to the grant of leave. The

Defendants raised various objections. But the learned trial judge refused leave mainly on the ground that the procedure pertaining to representative suits is not applicable to actions of debt, money claims or to liability on contract or in tort. It is against this order of refusal of the lower Court that the present revision petition is directed.

2. The sole point for determination in this case is whether a representative suit under Order 1, Rule 8 can be instituted on behalf of an unincorporated Association for the recovery of a money claim. Order 1, Rule 8 (1) is as follows:

Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the Plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from 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. This rule embodies an exception to the general principle that all persons interested in a suit ought to be joined as parties to it so that the matters involved may be finally adjudicated upon and fresh litigations over the same matters may be avoided. The rule is enacted to avoid inconvenience and delay in the hearing of a suit where the parties are numerous but have the same interest in the suit. As was observed by Rangnekar J., in *Gurushiddappa Gurubasappa Bhusanur Vs. Gurushiddappa Chenavirappa Chetni*,

persons may be joined in a suit either on account of something personal, as for instance having either sold or bought goods, or like officers of a corporation as possessing certain knowledge, or because they are the owners or guardians of certain interests which the suit will affect. Upon the first ground they must be joined in their own person.

Upon the other grounds the proceedings can go with equal prospect of justice if the interests concerned are effectually and virtually protected. The absent parties in such cases appear by their representative or representatives; their interests are protected or claims enforced.

The essential condition for the applicability of Order 1 Rule 8 is that the parties must be numerous and there must be community of interest between them, that is to say, they must be persons having the same interest in the suit. If these conditions are satisfied, then there can be no ground for refusing leave to a person to sue in a representative capacity whatever may be the nature of the claim.

Here the Plaintiff Ganga Vishnu is not seeking to enforce a personal claim against the Defendants. He is suing in his capacity as Secretary of the Cloth Dealers Association, which is an unregistered body. It is clear from the allegations in the plaint that the money claim which the Plaintiff is seeking to enforce against the Defendants is one in which all the members of the Association have a common

interest. I am, therefore, unable to see why the Plaintiff cannot sue for the recovery of the amount as Secretary of the Association and on behalf of the other members of the Association.

3. Mr. Chhingalal Gupta learned Counsel for the non-Applicants relying on *Ratnaswami Nadar v. Prince of Arcot's Endowments*, Trichinopoly AIR 1938 Mad 755 (B) and *The Travancore National Bank Subsidiary Company Ltd. Vs. Tranabank Union*, a partnership firm consisting of the employees of the Travancore National and Quilon Bank Limited, now in liquidation and Another, , maintained that the procedure pertaining to representative suits was inapplicable to actions of debt, to money claims or to liability on contract or in tort.

I am unable to assent to such a wide and general proposition. In AIR 1938 Mad 753 (B), certain villagers were sued under Order 1, Rule 8 as representing all other villagers for the possession of certain lands and for mesne profits. The Plaintiff's claim was decreed by the trial Court. But in appeal the decree was confirmed except in so far as it related to the recovery of mesne profits.

The learned Judges of the Madras High Court while (sic) that there was (sic) community of interest amongst the Defendants to attract the provisions of Order 1, Rule 8, observed that the decree for mesne profits could not be granted against the Defendants sued in a representative capacity because the procedure prescribed under Order 1, Rule 8 did not apply to money claims or liabilities on contract or in tort.

The learned Judges relied on two English decisions in (sic) v. (sic), (1928) 1 KB 663 (D) and *Walker v. Sur* 1914 2 KB 930 (E). Both the English cases as well as the Madras case were cases, brought not by the Plaintiff's in a representative capacity but against the Defendants who were sought to be sued in a representative capacity and it was because of the (sic) in the execution of a money decree against one or more Defendants sued on behalf of themselves and others that it was held that there was no community of interest amongst the Defendants in so far as an action for the recovery of debts or a liability on contract or in tort was concerned and that, therefore, the procedure prescribed for a representative suit could not be utilized for instituting a suit against some persons on behalf of themselves and others for the recovery of debt.

In the English cases referred to above and in the Madras case the learned Judge nowhere said anything to suggest that the procedure pertaining to representative suits could not be availed of even by the Plaintiffs to bring a suit in a representative capacity for the recovery of a money claim. The considerations that influenced the learned Judges in the cases cited above in reaching the conclusion that the procedure pertaining to representative suits was not applicable to actions of debt have no relevancy to the case of representative action by the Plaintiffs.

The judgment in AIR 1943 Mad 5(sic)0 (C), adopted the reasoning in AIR 1938 Mad 755 (B). That was also a case not by the Plaintiff in a representative

capacity but against the Defendants in a representative capacity. All these cases are, therefore, distinguishable from the present case where the question is as to whether a representative suit on behalf of an unregistered association for the recovery of a money claim can be brought against certain named Defendants.

It must be noted that the cases referred to above were examined by the Madras High Court in *Arumugha Naicker and Others Vs. A. Kuppuswami Pillai*, and were not taken to mean as laying down that the provisions of Order 1, Rule 8 were not applicable to a suit by a Plaintiff in a representative capacity for the recovery of a debt or for rendition of accounts. In that case it was held that a representative action under Order 1, Rule 8 can be brought for rendition of accounts by certain members of an unregistered society on their own behalf and on behalf of the other members of the society.

Recently the English decisions referred to above and the decision in AIR 1938 Mad 755 (B), were reviewed by a Full Bench of the Madras High Court in *Kodia Goundar v. Velandi Goundar* (S) AIR 1955 Mad 281 (G). They were distinguished on grounds not different from what I have already stated. The learned Judges of the Madras High Court while explaining the object and scope of Order 1, Rule 8 observed:

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, and if that requirement is satisfied and provided the other condition as to notice is also satisfied, there is no reason why such a representative suit should not be allowed.

In deciding therefore whether leave has to be granted or in considering whether a suit already instituted under Order 1, Rule 8 is maintainable the principal consideration that should weigh with a Court is whether it is satisfied that there is sufficient community of interest as between the Plaintiff or the Defendants as the case may be to justify the adoption of the procedure provided under Order 1, Rule 8. The object for which this provision is enacted is really to facilitate the decision of questions in which a large body of persons are interested without recourse to the ordinary procedure.

In cases where the common right or interest of a community or members of an Association or large sections is involved there will be insuperable practical difficulty in the institution of suits under the ordinary procedure, where each individual has to maintain an action by a separate suit. To avoid numerous suits being filed for decision of a common question, Order 1, Rule 8 has come to be enacted.

The nature of the claim whether it is a suit for a declaration of a right, or an injunction or an action for money on contract or on tort is not every material in considering whether a suit could be filed under the simplified procedure of Order 1, R, 8.

But as already observed, it is the existence of a sufficient community of interest among the persons on whose behalf or against whom the suit is instituted that should be the governing factor in deciding as to whether the procedure provided under Order 1, Rule 8 could properly be adapted or not.

Whatever be the law in England, and the interpretation placed on the terms of Order 16, Rule 9 of the Supreme Court Rules by the judges there we consider that in India where right of communities to own property is recognised, it is necessary that Order 1, Rule 8, CPC should receive an interpretation to subserve the practical needs of the situation.

4. Learned Counsel for the non-Applicants was not able to refer me to any case where a suit filed in a representative character for the recovery of money or in respect of liability based on a contract or tort has been thrown out on the ground that it is not governed by Order 1, Rule 8. On the other hand there are numerous cases both English and Indian where the procedure of representative suits was followed in such suits. See *Marrs v. Thompson* (1902) 86 LT 759 (H); *Muhammadan Association, Meerut v. Bakshiram* ILR 6 All 284 (I); *Mahomed Nathubhai v. Husen* ILR 22 Bom 729 (J) and AIR 1940 129 (Oudh) Mulla in his commentary on CPC (12th Ed. Vol. I page 508) has also said that:

The secretary of a club or other association (sic) alone in respect of a matter in which that Association is interested even if he is authorised (sic) by a resolution of the members of the association. The suit must be brought by all the members of the Association or by the Secretary on his own behalf and on behalf of the other members under Order 1 Rule 8.

5. I am therefore, of the opinion that the learned trial judge was wrong in refusing to the Plaintiff leave to sue in a representative capacity. There is sufficient community of interest as between the Plaintiff and the other members of the Association so as to justify the grant of leave. I accordingly grant to the Plaintiff-Applicant leave to sue on his own behalf and on behalf of the other members of the Association.

The trial judge shall now issue a notice of the institution of the suit as required by Order 1, Rule 8 and then proceed with the trial of the suit in accordance with law.

6. The result is that this revision petition is accepted and the order dated 14th October 1955 of the Civil judge Second Class, Agar in so far as it is concerned with the refusal of the grant of leave is set aside. There will be no order as to costs of this petition.