

(2015) 06 KAR CK 0031
In the Karnataka High Court
Case No : R.F.A. No. 250/2009

Raheja Residency Apartment and Others	APPELLANT
Vs	
K. Raheja Development Corporation and Others	RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Citation : (2015) 06 KAR CK 0031

Hon'ble Judges : N. Kumar and B. Sreenivas Gowda, JJ.

Bench : Division Bench

Advocate : Aditya Sondhi, Senior Counsel for Karan Joseph, Advocate, for the Appellant; Udaya Holla Advocate Counsel for Santosh Gogi of Holla and Holla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This Regular First Appeal is preferred by the plaintiffs whose suit for declaration and injunction is dismissed by the trial Court.

2. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.

3. The plaintiffs are the societies registered under the provisions of the Karnataka Societies Registration Act, 1960. The members of the plaintiffs are the owners of the apartments constructed by defendant No. 1 which are generally known as "Raheja Residency" at Koramangala, Bangalore, on the property, which is more fully described in the schedule property which originally belongs to defendant No. 2. Defendant No. 1 has constructed 8 multistoried apartment blocks on the suit property which are shown as blocks A to H in the sanctioned plan granted by defendant No. 3 and each one of them is given a particular name which are mentioned in the plaint. Out of these blocks, blocks A to E and H have been completed and occupied. The owners of the apartments in each block have formed separate associations which are registered under the provisions of the Karnataka Societies Registration Act. Plaintiffs 2 to 7 are the apartment owners

association of blocks A to E and H respectively. Plaintiff No. 1 is a society which consists of the representatives from plaintiffs 2 to 7 and the said body functions as an Apex Body which takes care of the interests of all the apartment owners who have purchased the apartments in the apartment blocks which are constructed in the schedule property and which apartments are jointly known as Raheja Residency.

4. Defendant No. 1 who has put up the construction of the apartment complex over the suit property is not the registered owner of the said property. Defendant No. 1 is only holding an agreement of sale in its favour executed by defendant No. 2 who was the owner of the suit schedule property. Defendant No. 1 on the basis of the aforesaid agreement of sale in its favour has executed an agreement in favour of individual apartment owners under which defendant No. 1 has agreed to sell proportionate undivided share in the land in favour of each apartment owner and also the respective apartments to be constructed in the apartment blocks. Subsequently, the registered sale deeds have been executed in favour of apartment owners by defendant No. 2 through their Power of Attorney Holder and defendant No. 1 has also executed these sale deeds as vendor No. 2. In these documents it had been specifically agreed that the apartment owners in addition to having undivided interest in the land shall be entitled to the use and enjoyment of the common areas and the facilities which are provided in the suit schedule property along with the other apartment owners. It has also been agreed that that common areas which are forming part of the suit schedule property such as the land comprising of recreation of areas, internal/feeder access roads and railways shall be enjoyed in common by all the apartment owners. Though defendant No. 1 have a right to develop the common areas, any construction or development can be only in terms of the sanction plan with such modifications from time to time as may be permitted by the authorities concerned.

5. In the agreement it has specifically stated that the apartment owners along with the other owners are entitled to use and enjoy the common areas and the facilities. It is also stipulated that an association of apartment owners of said block shall be formed which shall represent and take care of the common interest of the concerned apartment owners of the said block. It is also specifically agreed that such association of apartment owners shall be formed for the purpose of managing the said developed property. Accordingly, after the completion of each block, association of apartment owners have been formed and plaintiff Nos. 2 to 7 are such associations of apartment owners in respect of blocks A to E and H which are now completed and occupied, and these associations are registered under the provisions of the Karnataka Societies Registration Act. All around the apartments, adjacent to the compound wall, a space of 8 to 10 feet has been left and the trees have been planted all round in this space with provision for people to even sit and relax. This space is separated from the boundary road running all round the apartments by small cement blocks which are placed continuously all round the road, with an intention to ensure that

the vehicles which are moving around do not cross into the aforesaid space meant for jogging track.

6. When the apartment owners were hoping that defendant No. 1 would develop the said area into a full fledged jogging track, to their shock and surprise they came to know in the month of July 2000 that defendant No. 1 is planning to form car parking spaces, in the area available between the compound wall and the internal feeder road, running parallel to the compound wall, which area was expected to be left free, for the formation of the jogging track and also in the space available between the apartment blocks. According to the sanction plan, car parking was to be provided only in the basement floor of the apartment block and no car parking is permitted in the sanctioned plans, in the area where defendant No. 1 is now planning to form car parking slots. The sanctioned plans do not disclose any surface car parking. However, subsequent plan which was issued on 8.9.1997 for the first time shows the parking slot not only in the area between the compound wall and the boundary roads running all around within the apartment complex, but also in the area that is available in between the apartments. On the basis of the said sanction plan, defendant No. 1 is starting and offering these car parking spaces to the persons who were interested in the apartments, which were being built in the same complex. These acts on the part of the defendant No. 1 are patently illegal and the same is in violation of sanctioned plans issued by defendant No. 3 and is in violation of the zonal regulations and the building byelaws and the same has the effect of violating the rights of apartment owners in the land on which the apartments are built and also their rights in respect of the common areas. Plaintiffs 2 to 4 and 7 filed W.P. Nos. 27620 and 27985-27988/2000 before this Court challenging the action of defendant No. 1 and for a direction to defendant No. 3 to reject the proposal of forming the car parking slots adjacent to the compound wall and in the other areas. This Court granted an interim order on 24.8.2000 restraining the defendant No. 1 from creating and transferring any car parking spaces. During the course of hearing it was felt that the Writ Petition involved serious questions of law and fact and, therefore, the Writ Petitions were withdrawn by plaintiffs 2 to 4 and 7 with liberty to approach the competent Civil Court.

7. After disposal of the Writ Petition, defendant No.1. was trying to take undue advantage of the disposal of the Writ Petitions and was trying to offer the car parking slot to be formed by defendant No. 1 to the prospective purchasers. A notice was sent to defendant Nos. 1 and 2 on behalf of plaintiffs 2 to 4 calling upon them to refrain from carrying on any such activities. Defendant Nos. 1 and 2 sent a reply making false claims. Therefore, the plaintiffs were constrained to file a suit for a declaration that defendant Nos. 1 and 2 have no right to form and transfer any parking place on the land between the compound wall and the boundary roads and any other areas located in the schedule property and for a decree of permanent injunction and for a declaration that the sanction plan dated 8.9.1997 does not permit to form car parking slots or in the alternative to declare the said plan is illegal and for other consequential reliefs.

8. After service of summons, the defendants entered appearance. Defendant Nos. 1 and 2 have filed a common written statement. They contend that the plaintiffs do not have any power or authority to file the above suit either on behalf of the individual members who constitute these associations on in their own name. Under the agreement of sale and the sale deed executed in favour of the purchasers of apartments, the individual purchasers themselves do not have any right to claim the kind of reliefs that the plaintiffs have claimed in the suit. The plaintiffs do not have privity of contract with these defendants. Therefore, they cannot file the suit.

9. Defendant No. 1 entered into an agreement dated 16.11.1988 with defendant No. 2-M/s. John Fowler India Limited, whereunder defendant No. 1 acquired the right to develop 3,55,490 Sq. Ft. of land situated in Sy. Nos. 21, 22, 42 and 52 of Jakkasandra Village, Koramangala, Bangalore, which subsequently came within the limits of Corporation City of Bangalore, Koramangala, Bangalore. Defendant Nos. 1 and 2 sold the undivided shares in different portions of the schedule property to the purchasers of apartments in various blocks of apartments constructed on the schedule property to the extent and in the portions of the schedule property as indicated in the sale deeds executed in favour of purchasers. The members of the plaintiffs are the purchasers of apartments situated in various blocks in the schedule property, which they purchased during the time when the property prices were ruling high. The prices have over a period declined and the plaintiffs were harbouring a grouse against the defendants. Though the project envisages generous facilities for purchasers, the plaintiffs have been trying to secure even more though not provided in the contract or the scheme of development, at the expense of the defendants. In pursuance of the scheme of development of the schedule property into a residential apartment complex, the purchasers of the apartments entered into agreements for the purchase of apartments in the complex, namely "Raheja Residency". All the purchasers of apartments were personally aware at the time of entering into the said agreement of sale that the scheme of development of the schedule property involved, inter alia, conveyance of undivided share only in that portion of the schedule property which is covered by the plinth area of apartment building block where the purchaser has purchased his/her apartment and not in the rest of the area of the schedule property. The various recitals and the clauses in the agreement of sale specifically confer the right to form car park areas in the open spaces of the schedule property.

10. It is evident from a perusal of a clause in the agreement that the purchasers do not have any manner of right, title or interest in the schedule property except in respect of the apartment and the proportionate undivided share in the plinth area of the building in which the apartment is situated and/or the car parking space purchased by the purchaser. All the purchasers are personally aware that all other open spaces, unsold apartments and all other spaces shall remain the property of defendant No. 1 until the entire land remaining after utilisation as per the terms of the said agreement of sale and development agreement is

conveyed. Subsequently, in terms of agreement of sale, the defendants executed sale deeds in favour of the purchasers of apartments, conveying undivided share and interest in portions of the schedule property over which their apartment building is built. The sale deed also specifically stipulates that what is sold in favour of the purchaser is a specified apartment in a specified building block along with undivided share in the land covered by the plinth area of the building in which the purchaser has purchased the apartment. The various recitals and the covenants of the sale deeds specifically reserve in favour of defendant No. 1 the right to form car park areas in the open spaces of the schedule property. Every purchaser has specifically agreed and covenanted with regard to the right of defendant No. 1 to provide car parking spaces in the open areas of the schedule property without any obstruction from any of the purchasers including the members of the plaintiff associations. The defendants have traversed all the allegations in the plaint and has denied the same. They specifically contend that agreement clearly stipulates that the purchasers shall have right, title and interest only in the apartment purchased by them and the proportionate undivided share in the plinth area of the building in which the apartment is situated and that the purchasers shall have no right, title or interest in any other areas of the suit schedule property. The averment that it has also been agreed that the common areas which are forming part of the suit schedule property such as the land comprising of recreational areas, internal/feeder access roads, and pathways shall be enjoyed in common by all the apartment owners may be true. But the agreements clearly define the term "common areas" and the car parking spaces do not come within the purview of common areas. The averment that though defendant No. 1 have a right to develop common areas, any construction or development can be only in terms of the sanctioned plan with such modification from time to time as may be permitted by the authorities concerned is false in that car park areas in the open spaces can be formed as per the laws and rules and regulations and no sanction is required for forming the car spaces in the open spaces. Therefore they sought for dismissal of the suit.

11. Defendant No. 3 also filed separate written statement reiterating all the allegations made in the written statement of the defendant Nos. 1 and 2. However, they contended that if this court come to the conclusion that defendant Nos. 1 and 2 have put up unauthorized construction in the suit schedule property by deviating the sanctioned plan, it would take appropriate steps against defendant Nos. 1 and 2 as provided under law for bringing the construction in par with the sanctioned plan. Therefore, they sought for dismissal of the suit.

12. On the aforesaid pleading, the Trial Court framed the following issues:

"1. Whether the plaintiffs prove, that the defendant No. 1 and 2 have no right to call and transfer any party places on the land between compound wall and boundary roads and in other common areas located in the schedule property?

2. Whether the plaintiffs further prove, that the defendant No. 1 and 2 are attempting to form the car parking slots in the suit schedule property that to in

between compound wall boundary road and the common area thus causing interference in its enjoyment?

3. If so, whether plaintiffs are entitled to have a relief of perpetual injunction against the defendants?

4. Whether the plaintiffs further prove, that the sanction plan dated 08.09.1997 issued by defendant No. 3 is only in respect of block No. H?

5. Whether the plaintiffs further proves, that the licence plan No. 238-92-92 dated 26.11.2001 is illegal and contrary to the building bye-laws Zonal regulations applicable to group housing an high rise building?

6. Whether the plaintiff's further prove, that the defendant No. 3 having colluded with defendant No. 1 and 2 is in a hurry to grant permission for car parking space?

7. If so, whether plaintiffs are entitled to have a relief of perpetual injunction against the defendant No. 3 also?

8. Whether the defendants prove, that the suit now brought in the present form by the plaintiff is not maintainable?

9. To what order and decree?"

13. The plaintiffs in order to substantiate their claim examined one V.S. Biju, Power of Attorney Holder of the plaintiffs' association as PW. 1 and produced 46 documents which are marked as Exs.P1 to P46. On behalf of defendants, one Raj Menda is examined as DW.1 and they also produced 6 documents which are marked as Exs.D1 to D6. The Trial Court on appreciation of the aforesaid oral and documentary evidence on record held that the plaintiffs have failed to prove that defendant Nos. 1 and 2 have no right to call and transfer any party places on the land between compound wall and boundary roads and in other common areas located in the schedule property. The plaintiffs have failed to establish their right to have a relief of perpetual injunction against the defendants. The plaintiffs have proved that the sanction plan dated 08.09.1997 issued by defendant No. 3 is only in respect of Block No. -H. However, the plaintiffs have failed to prove that the licence plan No. 238-92-92 dated 26.11.2001 is illegal and contrary to the building bye-laws and Zonal regulations applicable to group housing an high rise building. The plaintiffs have failed to prove that defendant No. 3 having colluded with defendant Nos. 1 and 2 is in a hurry to grant permission for car parking space. The plaintiffs suit is not maintainable and plaintiffs are not entitled to the relief of perpetual injunction and accordingly the suit of the plaintiffs was dismissed.

14. Aggrieved by the said judgment and decree, the plaintiffs are in appeal.

15. The learned Senior counsel appearing for the plaintiffs-appellants assailing the impugned judgment and decree of the Trial Court contended that as per the scheme propounded by defendant Nos. 1 and 2 and as per the sanctioned plan,

building bye-laws Zonal Regulations and the terms of the agreement of sale under the sale deeds entered in favour of each of the purchasers, the members of the plaintiffs are entitled to enjoy the open space left all around the blocks for the purpose of jogging and also for the purpose of movements. As per the sanctioned plan parking in the basement floor under parking slot could be permitted in the surface area by a modification in the plan. If the parking is permitted in the surface area it is illegal and contrary to law. Therefore, the defendants taking advantage of the said modified plan have no right to put up parking slots in the surface area. Thus, depriving members of plaintiffs' association right to use it as common area. The Trial Court has not properly appreciated the facts of the case and committed a serious error in dismissing the suit of the plaintiffs.

16. In support of the contentions he relied upon the Building Regulations bye-laws framed by the Corporation. the National Building Code of India, 1983 and also permission granted by the Karnataka State Fire Service and contended that the plaintiffs in the interest of its members have a right to prevent the defendants from forming the parking space in the surface area and transferring the same in favour of intending purchaser. As the right is not disputed, the suit for injunction is maintainable. Similarly they are also entitled to negative declaration as sought for. In support of his contention he relied upon the judgments of various Courts.

17. Per contra, learned Senior Counsel appearing for defendant Nos. 1 and 2 submitted that the right of each of the purchaser is to be found from the agreement of sale and the registered sale deed. It specifically provides that what is sold is a apartment area and the land within the plinth area where the apartment is constructed. What is common area to which said purchasers are entitled is also stipulated. No right is conferred to these purchasers in the said area in the entire site where the car parking is now sought to be provided. Therefore, when the purchasers have no right in the surface area, they cannot seek a negative declaration as sought to be done. Similarly, when on the face of it they have no right and when the right is sufficiently denied before filing of the suit for seeking declaration, they cannot maintain a suit for injunction. Therefore, suit is not maintainable. The plaintiffs have no locus-standi to maintain suit and even on merits the plaintiffs have not made out any right which has been infringed which they are seeking to enforce in the appeal and therefore, he submitted that there is no merit in the suit. The Trial Court rightly dismissed the suit of the plaintiffs.

18. In the light of the aforesaid facts and rival contentions, the points that arise for our consideration in this appeal are as under:

"1) Whether the plaintiffs prove their right in the land between the compound wall and the boundary roads where the parking place are sought to be made out by defendant Nos. 1 and 2 so as to seek a negative declaration to the effect that defendant Nos. 1 and 2 have no right to form and transfer any parking place in

the said land?

2) Whether the plaintiffs are entitled to a relief of injunction without seeking relief of declaration?

3) Whether the plaintiffs are entitled to any relief?"

POINT No. 1.

19. From the material on record it is clear that the plaintiffs before the Court are Co-operative Societies. They have no manner of right, title or interest either in the schedule property or in any apartments or in any parking space or in any portion of the property which is the subject matter of the suit. It is the members of the societies who have purchased the apartments and a car parking space. The agreement of sale and the sale deed which is the document of title of those purchasers specifically provide the property which is conveyed to them as well as common rights to which they are entitled to. Therefore, in order to decide rights of those purchasers, it is necessary to look into the terms of the agreement of sale as well as sale deeds. It is not in dispute between the parties that the agreement of the sale and all the sale deeds executed by the defendants in favour of the various purchasers is one and the same except the change in the number of apartments, the measurements of the property which is sold and the floor in which it is situated. Therefore, it is sufficient if we extract from one such agreement of the property which is the subject matter of sale. Ex. D3 is one such agreement executed by defendant No. 1 in favour of one such purchaser by name Lt. Gen. R. Mohan which is dated 14.07.1997.

20. The First Schedule to the said agreement consists of the entire plot of land measuring 3,55,490 Sq. Ft. The Second Schedule in the agreement refers to all that piece and parcel of land being plinth area on which the Building Block No. "C" i.e., "Maple" is under construction and measuring approximately 2155.06 Sq. Mt with specific boundaries.

21. For the purpose of convenience Second Schedule is extracted hereunder:--

"Second Schedule

All that piece and parcel of land, being Plinth area, on which Building Block No. C, i.e., "MAPLE" is under construction, measuring approximately 2155.06 Sq. Mtrs. Bounded as follows:

EAST BY: Internal feeder road.

WEST BY: Block "D", common recreation area & partially by block "H".

NORTH BY: Internal feeder Road & Block "B"

SOUTH BY: Internal Feeder Road.

Claus-O of the said agreement of sale provides that the Prospective Purchaser has expressed his/her/its intention/interest (vide Letter of Intent dated_____) to

acquire/in acquiring ownership rights in respect of residential apartment No/s. 708 to be located on the SEVENTH Floor/s of the said Building Block No. "C" i.e., "Maple" as also the exclusive right of use of NIL Nos. car parking space/s in the Basement/compound adjacent to the building."

22. Clause - 18 of the agreement stipulates that the Prospective Purchaser shall have no claim whatsoever except in respect of the particular Apartment/Car Parking space hereby agreed to be acquired/allotted. All other open spaces unallocated Apartment/s and other spaces, etc., will remain the property of the LAND HOLDER/DEVELOPERS as the case may be, until the entire land is conveyed.

23. Clause - 32 of the agreement stipulates that so long as the area of the said Apartment (agreed to be acquired by the Prospective Purchaser is not altered and the amenities set out in the Annexure "4" hereunder written are not altered, the LAND HOLDER and the DEVELOPERS shall be at liberty and are hereby permitted to make variations in the layout/elevation of the property and/or of the building including relocating the open spaces/all structures/buildings/garden spaces/Car Parking Spaces and/or varying the location of the access to the said building, as the exigencies of the situation and the circumstances of the case may require. The Prospective Purchaser expressly hereby consents to all such variations.

24. Clause - 36 of the agreement stipulates as under:

"As clarified above the interest which the Prospective Purchaser is to have is limited only to the said land described in the Second Schedule hereunder written. In these circumstances, the undermentioned terms and conditions have also been mutually agreed by and between the Parties hereto as essential and integral terms and conditions of this Agreement.

a) The common areas forming part of the First Schedule Property, namely, land comprising of the recreational areas, internal/feeder access roads and drive ways shall be enjoyed commonly by all the apartment owners at "RAHEJA RESIDENCY".

b) The LAND HOLDER/DEVELOPERS shall be entitled to develop such common areas as they may in their discretion, from time to time decide without any hindrance from the Prospective Purchasers.

c) The LAND HOLDER/DEVELOPERS shall also be entitled to construct and develop the First Schedule Property in terms of the sanctioned plan with such modifications from time to time as may be approved by the authorities, without any hindrance of whatsoever nature from the Prospective Purchaser.

d) The Prospective Purchaser is aware that the exclusive right of use of car parking space in the Ground Floor or in the basement will be allotted by the LAND HOLDER/DEVELOPER to the various Apartment Owners and that the right of use so allotted shall vest solely in the respective Apartment Owner to whom it is allotted, notwithstanding that the reserved car parking space forms part of

the common area. The Prospective Purchaser shall have no objection to such right of use being allotted. It is also further clearly understood and agreed by and between the Parties hereto that the LAND HOLDER/DEVELOPER may similarly be allotting the exclusive right of use of terrace areas/gardens on the Ground Floor to various Apartment Owners and the Prospective Purchaser shall have no objection to the same."

25. A site plan is annexed to the said agreement which shows the allocation of various Blocks constructed in "Raheja Residency".

Further it is stated as under:

"AND WHEREAS this Deed of sale is limited and restricted to the said undivided share, right, title and interest in the Second Schedule Property, which the VENDOR No. 2 had agreed to get conveyed by the VENDOR No. 1 in favour of the PURCHASER and the Third Schedule Apartment/s to be conveyed by the VENDOR No. 2 themselves in favour of the PURCHASER."

26. Thereafter, clause 1(a) which is relevant reads as under:

"(a) The PURCHASER has paid the aforesaid total sale price and consideration of Rs. 3,42,500/- (Rupees Three lakhs forty two thousand five hundred only) stated above in the VENDOR No. 2 (which is inclusive of the said apportioned price of Rs. 1,11,437/- (Rupees One Lakh eleven thousand four hundred and thirty seven only) received by the VENDOR No. 1 from VENDOR No. 2) in respect of the undivided 1.00% share, right, title and interest in the Second Schedule Property which amounts the VENDOR No. 1 and the VENDOR No. 2 respectively hereby acknowledge having received in full and final settlement."

27. Further, it is stated that: For the apportioned consideration mentioned in Clause 1(a), the VENDOR No. 1 hereby grants, transfers and conveys UNTO and IN FAVOUR OF THE PURCHASER by way of ABSOLUTE SALE, an undivided 1.00% share, right, title and interest in the land more particularly described in the Second Schedule hereunder and for the consideration mentioned in Clause 1(b) the VENDOR No. 2 hereby grants, transfers and conveys UNTO and IN FAVOUR OF THE PURCHASER by way of absolute sale on ownership basis, Apartment No. 512 on the fifth floor, having a saleable area of 1370 Sq.Ft. in Block H i.e., HAZEL and exclusive right of use of reserved car parking space No./s NIL in the basement/ground floor in the building of "RAHEJA RESIDENCY" more-fully described in the Third Schedule hereto, free from all encumbrances etc. The Second Schedule referred to in the sale deed reads as under:

"All that piece and parcel of land, being plinth area, on which Building Block H i.e., "HAZEL" is constructed, ad measuring approximately 1490.77 Sq. Mtrs. Bounded as follows:

EAST BY : Internal Feeder Road & partially By Block "C"

WEST BY : Internal Feeder Road & partially By Block "E" & partially by Block "F".

NORTH BY: Internal Feeder Road & common Recreation area.

SOUTH BY : Internal Feeder Road & Common Recreation area."

28. From the aforesaid terms of the agreement of sale and the sale deed, it is clear that in the first schedule, the entire plot of land is described. In the second schedule, the apartment which is the subject matter of sale is clearly described along with the undivided interest in the land, which is sought to be transferred as is clear from the wordings. Insofar as the undivided interest in land is concerned, what is transferred is, all that piece and parcel of land being plinth area, which building block is constructed and the measurement of the said block is given and the percentage in that block is also given. Therefore, the schedule makes it clear that the purchasers are not given any undivided interest in the first schedule, which is the land on which the Group Housing is developed. What is conveyed is, the apartment and the land falling within the plinth area which works out to 1.00% in the area where each block is constructed. Wherever apart from the apartment, the purchasers opted to purchase a parking space, that is mentioned in the third schedule. As is clear from the Third schedule, such a parking space may be in the Basement floor or in the compound adjacent to the aforesaid building.

The argument was that, in the sanctioned plan granted by the Corporation for the entire plot, all lands where several blocks were constructed having regard to the number of floors constructed, permission from the Karnataka Fire Force service is mandatory. The said permission granted by the authority makes it clear that an area of equal to 9 meters have to be left to enable the Fire Engine to move without any obstruction in case of any fire accident. Therefore, in that area, the respondents cannot earmark any parking space/less convey the same. On the contrary, their specific case is respondents had promised that they would lay a jogging track. Now the respondents are trying to utilize that space for marking parking space and they are trying to convey the same to the purchasers, which is wholly illegal. That is precisely what they want the Court to prevent. The said permission granted by the Karnataka State Fire Service, which is marked in the case as Ex. D4 is relied on to buttress their argument. The relevant portion in the said permission reads as under:

"Parking shall be restricted to the basement only. However in the available open space which is more than 9 m. the parking of the vehicles shall be allowed on the periphery of the courtyard keeping atleast 5 m. wide space from the building free from any obstruction. The parking area shall not be enclosed by walls."

29. Therefore, for grant of permission from the authority, the builder has to leave 9 m. set back around the building. However, when such 9 m. is left, he is prohibited from using the said space either for parking or from putting up any construction. However, beyond the 5 m. from the building, the said open space should be used for parking. The only restriction is, no construction shall be made in that area enclosing the same by walls in that 4 m. space. Therefore, the

argument that in the open space left around the building in the 9 m. area, the respondents cannot utilize the open space for parking, is unsustainable.

30. It was next contended that open space of 9 mtrs. is a common area in which the purchasers have a right and therefore, the respondents cannot use that area for parking space, much less conveying the same to the purchasers. In the agreement what are the common areas is clearly defined. It reads as under:

"The common areas forming part of the First Schedule Property namely, land comprising of "recreational areas", internal/feeder access roads and driving ways shall be enjoyed commonly by all the apartments owners at "RAHEJA RESIDENCY".

31. The first schedule property consists of the entire extent of land. So no right is conferred on these purchasers in the entire first schedule property. The right is conferred on the purchasers only in recreational areas, internal/feeder access roads and drive ways and in the rest of the schedule property, they have no right. This 9 feet area, which is left around the building is not a recreational area, it is not an internal or feeder access road and the drive way. Therefore, the purchasers have no right whatsoever in that area.

32. In fact the agreement makes it expressly clear that the interest of the Prospective purchaser is to be limited only to the second schedule mentioned in the sale deed. In fact the agreement also confers a right of the land owners and Developers in the common area. It provides that the Land holders/Developers shall be entitled to develop such common areas as they may, in their discretion, from time to time decide without any hindrance from the Prospective Purchasers. Clause (c) provides that the Land Holder/Developers shall also be entitled to construct and develop the First Schedule Property in terms of the sanctioned plan with such modifications from time to time as may be approved by the authorities, without any hindrance of whatsoever nature from the Prospective Purchaser. Clause (d) declares that the Prospective Purchaser is aware that the exclusive right of use of car parking space in the Ground Floor or in the basement will be allotted by the Land Holder/Developer to the various Apartment Owners and the right of use so allotted shall vest solely in the respective Apartment Owner to whom it is allotted, notwithstanding that the reserved car parking space forms part of the common area. The Prospective Purchaser shall have no objection to such right of use being allotted. It is also clearly understood and agreed between the parties thereto that the Land Holder/Developer may similarly be allotting the exclusive right of use of terrace areas/gardens on the Ground Floor to various Apartment Owners and the Prospective Purchasers shall have no objection to the same. Further, it is stated at Clause 18 that the Prospective Purchaser shall have no claim whatsoever except in respect of the particular Apartment/Car Parking space agreed to be acquired/allotted and it is exclusively made clear that all other open spaces unallocated Apartments and other spaces, etc., will remain the property of the Land Holder/Developers as the case may be, until the entire land is conveyed.

33. The appellants have not disputed these terms in the agreement as well as the sale deed. Purchasers are bound by the terms of this agreement. When in categorical terms the agreement and the sale deed stipulate what is the property conveyed to the purchaser, what is the common area in which the purchaser has a right and that the Builder or Developer has absolute right in every open areas excluding the area conveyed, the claim now sought to be made on behalf of the purchasers is without any basis. Neither the appellants nor the members of the appellants, who are the purchasers, have any right whatsoever in the open space left, as no portion of it is conveyed to the purchasers.

34. Insofar as the argument that even if it is not conveyed, as that area forms part of the sanctioned plan and the Building By-laws and the Building Regulations do not provide for forming Car Parking in the open space in the ground floor is concerned, it is without any substance. In the original plan, no doubt the car parking space was not specified. Subsequently, an application was filed for modification of the sanctioned plan because in law, the Developers were entitled to have car parking space in the ground floor area. In the area which is earmarked around the building, permission is granted, which is in accordance with law and therefore, the claim put forth by the plaintiffs lacks merit and is without any substance. Therefore, the Trial Court was justified in dismissing the suit of the plaintiffs. On appreciation of the facts and relying on the undisputed documents in the case, we are of the view that the plaintiffs have no right to the property to which they are claiming. We feel it unnecessary to go into the question as to whether the plaintiff is entitled to a negative declaration; Whether the plaintiff is entitled to a relief of injunction without seeking for declaration and also whether the modified plan requires to be set-aside as it is not in accordance with law. Even otherwise, the judgments relied upon by both the parties show as a rule that plaintiff cannot seek a negative declaration to the effect that the defendant has no right to the property. However, in a given case, if the plaintiffs right is not in dispute and if the plaintiff sets out his right in the plaint schedule property, which is not seriously disputed and if the defendant is trying to create a doubt of his title, then it is possible for the plaintiff to seek a negative declaration to protect his rights. Similarly, if the plaintiffs title to the property is not in dispute and if the title is clearly set out in the plaint, merely because a defendant in the written statement denies the title, it is not obligatory for the plaintiff to seek a declaration and then injunction. That is the sum and substance of what the decision on which reliance is placed. In the instant case, as set out above, the plaintiff has not pleaded that they have any right in the open space around the building. On the contrary, the terms in the agreement of sale and the sale deed clearly stipulates what is the property, which is conveyed to the plaintiff. No portion of this all round vacant space is conveyed to the plaintiff. The common area is also clearly defined. The said open space is not a common area as described in the agreement of sale and the sale deed. That is the reason why a negative declaration is sought saying defendant shall not form car parking space. He shall not alienate property as it is contrary to the building bye-laws

sanctioned plan and National Building Code, 1983. When the plaintiff has no right, his right is not even pleaded and the defendant's action is strictly in accordance with law, the question of granting any other reliefs sought for by the plaintiffs in the plaint do not arise. Therefore, the Trial Court was justified in dismissing the suit. The judgment and decree passed by the Trial Court is based on legal evidence and is in accordance with law and do not suffer from any legal infirmity, which calls for interference. In that view of the matter, we pass the following order:

Appeal is dismissed. No costs.