

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7278 OF 2017

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Nagnath Narsappa Kumbhar & Ors. ... Petitioners
V/s.
Annappa Genappa Kumbhar & Anr. ... Respondents

Mr. Anand S. Kulkarni for petitioners.

Mr. Saakshat Relekar for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 27, 2024

P.C.:

1. The Trial Court, by the impugned order, has rejected the petitioners' application filed under Order 1, Rule 8 of the Code of Civil Procedure, 1908 (CPC). This provision enables a party to institute a representative suit if the conditions stipulated therein are satisfied. The Trial Court, while rejecting the application, has observed that the petitioners failed to demonstrate a prima facie case to fulfill the requirements under this provision. The impugned order is challenged in this writ petition.

2. The learned Advocate for the petitioners drew attention to page 12 of the writ petition, highlighting that the sale deed dated

3rd May 1991 was executed in the name of the defendants. However, according to the petitioners, the consideration for the said property was paid by the petitioners/plaintiffs and their associates. Therefore, it was contended that the petitioners were entitled to file the suit on behalf of themselves and similarly situated individuals under the representative suit provision of Order 1, Rule 8 CPC.

3. Contrarily, the defendants asserted that the plaintiffs did not contribute towards the consideration amount for the sale deed and, hence, lacked the requisite standing to institute the suit in a representative capacity. The dispute revolves around whether the petitioners' claim suffices to meet the criteria of a representative action under Order 1, Rule 8 CPC.

4. Order 1, Rule 8 of the CPC is a special provision enabling one or more persons to file a suit on behalf of or for the benefit of numerous individuals who share the same interest in the subject matter of the dispute. The following prerequisites must be satisfied:

a. **Numerosity of Parties:** The parties for whom or against whom the suit is filed must form a distinct and identifiable

class.

b. **Common Interest:** The class of individuals must have a common or same interest in the suit.

c. **Court's Permission or Direction:** The filing of the representative suit must be preceded by the Court's permission or direction to institute it in such a capacity.

d. **Notice:** Sub-rule (2) of Rule 8 mandates issuance of public notice to all persons interested in the suit, thereby enabling them to either join or oppose the proceedings.

5. Reference may be made to the Supreme Court's judgment in *T. N. Housing Board v. T. N. Ganapathy* (1990 AIR 642), where it was held that the object of this provision is to facilitate adjudication of collective claims and avoid multiplicity of suits, provided the foundational requirements are met.

6. The petitioners contend that the consideration for the sale deed dated 3rd May 1991 was paid by them and their associates, forming an identifiable group sharing the same interest in the grievance. However, the Trial Court observed that the petitioners failed to substantiate their claim that they and their associates constituted a "class" within the meaning of Order 1, Rule 8 CPC.

The Trial Court further held that the petitioners could not establish that their interest and the interest of the plaintiffs aligned sufficiently to warrant the institution of a representative suit. In the absence of cogent evidence demonstrating a shared interest or permission from the Court to proceed under this provision, the Trial Court was justified in rejecting the application.

7. It is well-settled that representative actions under Order 1, Rule 8 CPC require strict compliance with the statutory conditions to ensure the rights of absent parties are adequately protected. The Trial Court's finding that the petitioners failed to satisfy these requirements is supported by the record and does not suffer from any legal infirmity.

8. Parties are at liberty to apply before the Trial Court for the expeditious hearing and disposal of the suit, in accordance with law. The writ petition is dismissed without costs.

(AMIT BORKAR, J.)