

CASE NO.:
Appeal (crl.) 1959-60 of 2004

PETITIONER:
P. Varadarajulu

RESPONDENT:
Agricultural Produce Market Committee

DATE OF JUDGMENT: 01/04/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Civil) Nos. 23068-23069/2002)

ARIJIT PASAYAT, J.

Leave granted

A small matter which could have been sorted out at the trial court level has unnecessarily been dragged through the corridors of several courts. The challenge in the present appeal is to the order passed by a learned Single Judge of the Karnataka High Court which has been disposed of under Section 115 of the Code of Civil Procedure 1908 (in short the 'CPC'). The respondent is an Agricultural Produce Market Committee (hereinafter referred to as the 'Market Committee'). The appellant had filed a suit seeking direction for renewal of the licence in his favour and allotment of the vacant site. The same was the subject matter of dispute in OS No. 1015 of 1987 in the file of the Additional City Civil Judge, Bangalore. Decree passed in the said case reads as follows:

"It is ordered and decreed that the defendant is directed to allot a vacant site in between site No. 10-C and 11/2 situated at 2nd main of AMPC Yard to the plaintiff.

It is further decreed that the defendant is directed to renew the licence in favour of the plaintiff to carry on business.

It is further decreed that the defendant is further directed that if any building or maliges are constructed in vacant site in between sites 10-C and 11/2, the same shall be allotted to the plaintiff."

An application for execution was filed, and the Executing Court also took action against Market Committee for disobedience. The stand of the Market Committee before and /or subsequent to the decree, and in the execution proceedings was that the decree was not executable. It

appears that the High Court appointed an Advocate Commissioner to report about the physical position of the space between site nos. 10/C and 11/2. The High Court after receipt of the Advocate Commissioner's report and looking at the photographs found that the decree was not executable as in its view it refers to a space not in existence on account of the drainage on the spot. Accordingly the Civil Revision was allowed.

Learned counsel for the appellant submitted that after having lost not only in the suit but the subsequent applications filed before the Executing court, a frivolous and non-maintainable petition was filed before the High Court. Unfortunately, the High Court did not take note of the actual state of affairs and proceeded as if the decree was not executable. With reference to the sketch map annexed to the report of Advocate Commissioner, it was submitted that the space was still available and only on the ground that a drain existed, the High Court should not have interfered. It was submitted that if the space as directed in the decree is allowed even over the drain, the appellant is willing to accept it and he will ensure that there is no seepage of drain water and no inconvenience will be caused and no unhygienic condition shall be created. It is further submitted that if any unhygienic condition is created, then the appellant is willing to accept the alternative suggestion given by the Market Committee before the High Court regarding allotment of equally spacious area in nearby available area.

In response learned counsel for the Market Committee submitted that the High Court has rightly concluded that the decree was not executable as no space was available. It was submitted that if the appellant is allowed to put up any structure over the drain it would lead to insanitary conditions and rain water may overflow to the various shops.

We find that the basic issues have been lost sight by the High Court. The sketch map annexed to the report of the Advocate Commissioner shows that there is a drain which is of about two feet width and partially lies between site nos. 11/2 and 10/C, and that there exist sufficient space and extent of land, even excluding the drainage portion, for satisfying the decree. The High Court seems to have misread the report and misconstrued the physical features as disclosed by the report and plan submitted by the Commissioner.

We feel that the proper solution to the controversy will be to direct Market Committee to allot the space between site nos. 11/2 and 10/C which is vacant, in terms of the decree and if necessary it can even be over the drain as indicated in the sketch map appended to the Advocate Commissioner's report. The statement of learned counsel for the appellant regarding preventive steps to be taken to avoid seepage of drain water, and non-creation of unhygienic condition shall be incorporated in an undertaking along with the agreement expressed in such circumstances to accept alternative allotment as indicated above and it would be one of the conditions for the allotment, directed to be made.

Necessary action be taken within six weeks.

Appeals are allowed and accordingly finally

disposed of.

JUDIS