



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2017
(Reserved on 14.03.2017)

WEB COPY

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (NPD) (MD) No.507 of 2017

R.Venkatachalam

... Petitioner/Petitioner/Plaintiff

vs.

- 1) Tmt. Kullammal (Died)
- 2) P. Subbakkudamban
- 3) P. Rasu
- 4) P. Ponrasu
- 5) P. Karuthakannu
- 6) P. Chinnaasamy (Died)

... Respondents/Respondents/Respondents

Prayer:- Civil Revision Petition filed the under Article 227 of Constitution of India, against the fair and decreetal order in E.P.No.77/2012 in O.S.No.778/1984 dated 01.12.2016 passed by the learned Principal District Munsif, Dindigul District and direct him to restore E.P.No.77/2012 in O.S.No.778/1984 and further order him to deliver the E.P. proerty to the plaintiff/petitioner as per four boundaries.

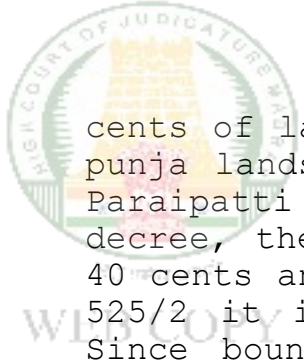
For Petitioner : Mr.T.S.R.Venkataramana

ORDER

The revision petitioner is the decree holder in the suit for specific performance based on the sale agreement dated 22.04.1983 with the defendant.

2.The suit is in respect of 4 items of properties. The Trial Court in O.S.No.778/84 as well the first appellate court in A.S.No.105/93 have held in favour of the revision petitioner. Consequent to the decree of specific performance, sale deed has been executed by the Additional District Munsif, Dindigul in E.P.No.10/98 on 19.04.2001. Thereafter, the revision petitioner has filed execution petition for delivery of possession in E.P.No.268/2002.

3.Delivery of items 1 to 3 were recorded on 18.03.2008. In respect of 4th item of property, execution petition was closed since the survey number of the property was not in consonance with the four boundaries. The revision petitioner has filed the subsequent execution petition in E.P.No.77/2012, wherein the description of the property, he has stated that the property to be delivered is 40



cents of land in S.No.524/13 in Periyakottai Village bounded by the punja lands of Nagammal-South, Rengasamy-West, Ayyarmalar-North and Paraipatti Road-East. As a note, he has stated that though in the decree, the extent of the land is mentioned as 64 cents it is only 40 cents and though the survey number in the decree is mentioned as 525/2 it is in fact S.No.524/13. The four boundaries are same. Since boundaries prevail over the extent and survey number, the property shown in the schedule of the petitioner has to be delivered.

4.After notice to the judgment debtor, the court below dismissed the Execution Petition. It accepted the principle, boundary will prevail over the extent and survey number, and pointed out that the execution court is only to execute what is found in the decree and if in any discrepancies found in the survey number or extent, it is for the decree holder to get the decree amended by the Court which passed the decree. Therefore, for the said reason, the court below dismissed the execution petition.

5.Aggrieved by the order of the execution court dismissing the E.P. for the reasons stated above, the revision petition is filed on the following grounds:-

(1)Wrong mentioning of S.No.525/2 instead of 524/13 is a curable error and it can be corrected at any time.

(2)The Amin failed to discharge his duty in this case correctly. If he has found out mentioning of S.No.525/5 is wrong and belongs to somebody else, with the help of VAO, he should have located the four boundaries mentioned in the decree and executed the decree. He committed a mistake in his duty.

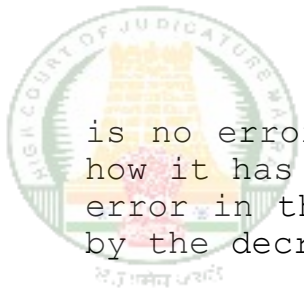
(3)The District Munsif should have directed the Amin to locate the property by boundary more particularly when the E.P mentioned the correct S.No.524/13. The District Munsif need not act on S.No.524/13 but he should certainly act on the four boundaries given in the decree and E.P.

6.The learned counsel for the revision petitioner citing the judgments of Pricy Council, Supreme Court and High Court of Madras emphasised that when there is a dispute in survey number and extent, the property should be identified by the four boundaries. The Trial Court has erred in not exercising judicial discipline while considering the E.P.

7.The fallacy in the above submission of the revision petitioner is two fold.

First, the Trial Court has not disagreed with the proposition of law put forth by the decree holder. The Trial Court has rightly pointed out that when there is discrepancy in survey number and extent, it is for the decree holder to get it amended and then proceed with execution.

8.Secondly, it is contended that the wrong mentioning of survey number is curable defect and it can be corrected at any time. There



is no error in such submission, but who has to cure the defect and how it has to be corrected is the real point for consideration. The error in the decree is to be cured by judicial intervention and not by the decree holder at his will.

9. For the question, can the decree holder correct the error in decree by a self declaration that he has purchased 40 cents of property bearing survey number 524/13, but got a decree wrongly furnishing the extent as 64 cents in survey number 525/2 and thereafter seek delivery of 40 cents of land in S.No.524/13, the answer by the Court will be an emphatic No and nothing else.

10. The execution petition arise out of the specific performance suit and the Court has executed sale deed in favour of the revision petitioner based on the details furnished by the plaintiff/revision petitioner in the schedule of the plaint. The decree is drafted based on the details found in the plaint schedule. If there is really any error in the description of the property, the decree holder ought to have pleaded before the Court which passed the decree as to how the error crept and why it should be amended.

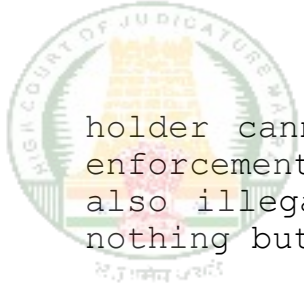
11. The proposition of law canvassed before the execution court ought to have been canvassed before the court which passed the decree. Instead of resorting to the above said procedure established in law, the revision petitioner has made an attempt to get delivery of a property which does not tally with the description in the decree.

12. Under Order 21 Rule 11(2)(j)(i) CPC every application for the execution of a decree shall contain the mode in which the assistance of the court is required. One such mode is for delivery of property specifically decreed. As on date, the property specifically decreed is 64 cents of land in S.No.525/2.

13. When the Amin visited the above mentioned property on 03.12.2004 to effect delivery, he has found with the assistance of the Village Administrative Officer that the above property is bounded by the properties of Venkataramam Vagaiara - North, R.Lakshmi - South, V.Rangasamy - East, and Alagar A.Alagumalai - West. Hence, Amin has rightly returned the delivery warrant on 03.12.2004 since the description found in the delivery warrant did not tally with property on the field. Whereas, the description and the boundaries given in the execution petition is as under:-

"40 cents of land in S.No.524/13 in Periyakottai Village bounded by the punja lands of Nagammal-South, Rengasamy-West, Ayyarmalar-North and Paraipatti Road-East."

14. The attempt of the revision petitioner is to get delivery of a property which is entirely different from the property described in the decree not only in extent, and survey number but also 4 boundaries as noted above. Amendment to decree is the judicial function of the court which has passed the decree. The decree



holder cannot on his own alter the survey number, extent and seek enforcement of it, which is not only impermissible under law, but also illegal. Such an attempt made by the revision petitioner is nothing but a fraud on the Court.

15. For the abovesaid reasons, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Dindigul.

+ 1 CC TO Mr.T.S.R.VENKATRAMANA, ADVOCATE IN SR No. 15605

NBI

TE/MR : 24/03/2017 : 4P/3C

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