

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**
PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Tuesday, the 16th Day of April 2024

E.A. No. 9/2023

-in-

E.P. No. 354/2022

-in-

O.S.No. No. 168/2021

1. Chandra

2. Vasanthi

3. Dhanapackiam

4. Nirmala

5. Kasthuri

... Petitioners / Plaintiffs

-Vs-

Soundarapandi

... Respondent / Defendant

This petition came on 16.04.2024 before this court for final hearing in the presence of Thiru. S. Harihara Ramachandran, Advocate for the petitioners. Tvl. N. Rajamani, P.Ambika, Advocates for respondent and on perusal of records this Court delivers the following :

ORDER

Petition filed by the Petitioners/Decree Holders u/s. 151 of Code of Civil Procedure, 1908 (herein after referred as C.P.C) not to record the

delivery dated 06.07.2023 and order redelivery as per the decree and petition.

2. Contention of the Petitioners:

The petitioners are the decree holders and they have obtained a decree for specific performance against respondent / defendant in the suit filed by late. Varatharajan. After obtaining the decree, E.P. was filed for execution of sale deed and the same was allowed and sale deed was executed. Thereafter, these petitioners have filed the E.P. in 354/2022 for delivery of property under the said sale deed. This respondent has filed counter and after enquiry the court had ordered delivery of the said property as per the sale deed. Accordingly, delivery warrant was issued, and since there was resistance by the judgment debtor, Police protection and surveyor help was ordered by this court. Thereafter, on 06.07.2023, the court Amin had gone to take delivery of the property. But, at that time, even though the Advocates for the petitioners were present they were not permitted to enter into the suit property and the Amin along with other officials had measured the suit property and delivered only the vacant site excluding the house claiming that the said house does not comprise in suit survey number. The Amin has decided that it is sufficient to deliver the vacant site in S.No.560/3 without consulting or informing the decree holders. He had obtained signatures of the decree holder in some written papers without informing about the contents. Later, the petitioners

came to know that the R.C.C. house included in the sale agreement, suit, decree, sale deed and the delivery warrant was not handed over to the decree holders. If the court Amin had any doubts regarding the delivery of the said house, which is said to be in another survey number, he ought to have sought clarifications from the court and should not have delivered the vacant site alone. Hence, the delivery recorded by the court Amin in respect of the vacant site alone shall not be recorded and the petitioners pray to order redelivery of the entire property as described in the warrant.

3. Contention of the Respondent:

The respondent has filed counter stating that the suit itself was not maintainable and the sale agreement was executed only as a security for the loan obtained from late. Varatharajan. These petitioners have obtained decree based on a false sale agreement and has obtained sale deed through court. These petitioners have falsely included the RCC house also as if it is situated without S.No.560/3 in sale agreement dated 20.01.2012. There is no such house in the said survey number. The house is in S.No.560/2 and hence the suit decree or the sale deed will not bind the house. The S.No. 560/3 comprises only a vacant site. However, this respondent is ready to repay the sale amount. These petitioners have filed caveat before the Hon'ble High Court preventing him from obtaining any orders against the order of delivery

passed in E.P. The delivery effected by the court Amin is proper and the S.No.560/3 extending 43 cents has been properly handed over to the decree holders. Since, there is no right of pathway to the said property, the decree holders have claimed right over the house situate in the different S.No.560/2. The said house was given to the respondent's mother as life estate and these petitioners are attempting to grab the said house. The suit property was only 43 cents comprised in S.No. 560/3 and hence the delivery of the said property is proper. This respondent never prevented the handing over of the property and he is ready to repay Rs.15,00,000/-payable to the decree holders. Hence, the petition is not maintainable and it has to be dismissed.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**

5. Heard both sides.

6. **Answer to Point :**

This Court called for report from the Central Nazir regarding the averments made by the petitioners about the improper delivery and Central Nazir has filed detailed report. This court after hearing both sides elaborately and also going through the detailed report filed by the Central Nazir finds that the Amin had effected delivery only in respect of the vacant site in

S.No.560/3. His contention after measuring the property with the help of Surveyor and VAO is that the R.C.C house does not comprise within the said S.No.560/3, but it is within a separate S.No. 560/2A1A. Hence, he thought it fit not to deliver the said house and to deliver only the vacant site against the delivery warrant which includes the house also. From the perusal of the delivery warrant, it is found that the court Amin has mentioned that the said house is about 10m away from the suit survey number and that it is not included in the said property.

7. This court finds from the sale deed executed by the court in respect of the decree for specific performance, the execution petition filed by the decree holder and also the delivery warrant issued to the court Amin, that the suit property is an extent of 43 cents comprised in S.No.560/3 including a R.C.C. house with all its appendages extending 610 sq.ft and having electricity in S.C.No.258. Specific boundaries are also given for the said total extent of 43 cents. When there is a mention of a R.C.C. house specifically within the description of property and also in the delivery of warrant, the Amin could not exclude the said house under the premise that it does not fall within the particular survey number. No doubt, it can be true that the said house falls within another survey number. But, if the Amin had any doubt regarding the description of property, he ought to have returned the warrant mentioning the

same and seeking clarification from the court. He cannot unilaterally decide to execute the said warrant by excluding the house which is specifically described and included in the decree as well as the delivery warrant.

8. It is equally important to note that the objection raised by the respondent that the sale agreement was only for security and other aspects cannot be accepted for the simple reason that this respondent did not raise their objection in the suit or the earlier execution petition but remained exparte. It is too late for him to now claim that the description of house has been wrongly included in the sale agreement dated 20.01.2012. Having executed the sale agreement in respect of 43 cents including the R.C.C house, he cannot now claim that the said house is not included in the said sale agreement. However, it may be true that the said house does not fall within S.No. 560/3 and it situates in a different survey number that could be taken care of by appropriate proceedings by the decree holder. Whether the said house was intended to be sold or not cannot be now decided by the executing court when there is a specific decree including the house also. It is pertinent to note that when there is some discrepancy in respect of a subject matter of the delivery matter, the duty of the court Amin is to return the warrant noting down the discrepancy and seeking clarifications from the court so that corrective measures can be taken and proper instructions could be given to the Amin to

execute the warrant. But, in the present case, the court Amin has over stepped in his responsibility and has unilaterally delivered the vacant site alone when the house has been included in the delivery warrant which is highly deplorable and improper. Therefore, the delivery effected by the court Amin in this case is against the decree and the delivery warrant and it cannot be recorded. However, this court restrains itself from going into further consideration about the difference in survey numbers and the extent which is bound by the decree and it is left open to the parties to take appropriate steps to get appropriate relief as advised.

9. Hence, it is held that the delivery effected by the court Amin in this case is incomplete, improper and it cannot be recorded. This point is decided accordingly.

In the result, this petition is allowed and the delivery effected by the court Amin is set aside and redelivery is ordered and the parties are at liberty to take appropriate steps to clarify the discrepancy in survey number.

Dictated to Steno Typist, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 16th day of April 2024.

Additional District Judge,
Dindigul.