

APPLICATION NO.2415 OF 2016
IN C.S.NO.407 OF 2009

PUSHPA SATHYANARAYANA, J.

The above application is filed by the applicant to implead himself as third defendant in the above suit.

2.The plaintiff in the above suit had availed credit facilities with the second respondent - Bank, against which, two properties were offered by the Company as collateral securities. One of the properties is situated in Chennai and the other property, which is the suit schedule property is situated in Nilgiris. As the plaintiff defaulted in payment of the loan, the second respondent Bank brought the suit schedule property for auction sale on 04.10.2007. The third respondent, who was the highest bidder, was declared as the successful bidder and was issued a sale certificate for the suit schedule property on 15.10.2007.

3.Pending the suit, the plaintiff had also obtained an order of interim injunction restraining the second and third respondents herein from acting upon the sale certificate. However, the same was vacated on 17.08.2009. An appeal in O.S.A.No.262 of 2009 against the same was also dismissed by a

Division Bench of this Court on 17.11.2009, which was confirmed by the Honourable Supreme Court in SLP (C) No.326 of 2010 dated 18.01.2010.

4.The applicant has sought for impleadment in the suit, on the strength of the fact that the original title deeds of the suit property are with him. It is an admitted fact that the applicant had already filed a suit in O.S.No.984 of 2007 against the plaintiff for recovery of money.

5.The learned counsel appearing for the second respondent Bank would submit that the applicant has suppressed the fact that he had already challenged the sale of the suit property in SARFAESI proceedings unsuccessfully. The said fact had not been stated in the affidavit filed by the applicant. It is also specifically pointed out that the very same contentions now raised by the applicant was raised before the SARFAESI proceedings also. The second respondent Bank had pointed out that it was a valid mortgage and that the sale proceedings were in accordance with the SARFAESI Act and Rules. Hence, the applicant is seeking to implead himself at the behest of the plaintiff / borrower.

6.Even considering the case of the applicant on merits, admittedly he is not the owner of the property, excepting the fact that the documents of title in original are in his custody. The plaintiff was the owner of the property,

whose property was sold in auction. Though the counsel for the applicant was trying to impress upon the Court, by stating that it was only a portion of the property that was sold and challenged in the SARFAESI proceedings, it was pointed out by the counsel for the second respondent Bank that it is the entire property that was brought to sale and the challenge by the applicant in the SARFAESI proceedings was with respect to the entire property. Therefore, the applicant cannot have any indulgence for impleading himself in this suit, which is filed for challenging the auction sale.

7. From the above facts, it is clear that the applicant does not have any right or title in the suit property and he had not stated as to how he is necessary party to the suit. It is not his case that without his presence, no effective or complete adjudication could be made. Admittedly, no relief is claimed against him in the suit. Therefore, he may not be a necessary party. There is also no cause of action pleaded in the plaint against the proposed party and the outcome of the suit will not be binding on him. As the applicant has not given satisfying reasons for his impleadment and also in view of the above reasons, the application is dismissed. No costs.

09 / 08 / 2016

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