A.Nos.1742 of 2019 in A.No.1423 of 2016
in C.S.No.1176 of 2008

PUSHPA SATHYANARAYANA, J.

The applicants in A.No.1742 of 2019, who are third parties to the suit, are the proposed auction purchasers. They instituted A.No.1742 of 2019 praying to confirm the auction sale dated 19.11.2018 made with respect to the third item of the suit property in their favour.

2. The facts, in a nutshell, run infra :

2.1. One Seethamma executed Trust Deeds dated 10.08.1944 and 24.08.1944 with three items of properties. She passed away during March 1949. Her husband and daughters filed C.S.No.409 of 1949 seeking declaration that the above said Trust Deeds are not valid and binding them, wherein, a compromise Scheme Decree was passed creating the first respondent trust vesting all the three properties with it and also agreeing to pay the rental income, after deducting ½ of the expenses to be incurred by the Trust, to the legal heirs/plaintiffs therein.

2.2. On 20.03.2007, the trustees passed a resolution to sell the instant suit properties for investment and to yield better income.

Subsequently, this suit was filed by the plaintiffs seeking a direction to the first defendant trust to sell those properties, divide the sale consideration into two and allot one moiety to the first respondent, while the remaining one moiety to the benefit of the legal heirs. Accordingly, a Memo of Compromise dated 18.11.2010 was entered into, based on which, this Court vide order dated 18.11.2010, while decreeing the suit, directed the Administrator General and Official Trustee of Tamil Nadu (in short "AGOT") to sell the properties in public auction instead of the first respondent trust doing so.

2.3. On 05.09.2011, the AGOT attempted to sell the properties, wherein, only one bid was received with respect to one of the properties, who had also later on, failed to comply with the bid condition, namely, paying the remaining bid amount on the ground of squatting of the properties by the tenants. It is pertinent to state that no bid was received for the subject property.

2.4. In the said circumstances, the plaintiffs filed A.No.1423 of 2016 seeking modification of clauses 1 and 2 of the decree permitting the sale of the schedule properties in favour of one Mr.K.K.Rajamanickam, who also failed to oblige his promise. Thus, the AGOT was directed to conduct a fresh public auction by utilising the EMD amount paid by the erstwhile successful bidders.

2.5. After effecting paper publication, public auction was conducted by the AGOT on 19.11.2018, in which, the applicants in A.No.1742 of 2019 alone submitted their bid for a sum of Rs.1.60 Crores for the subject property, i.e., the third item of the suit properties and thus, became the successful bidders.

2.6. In the said backdrop, the application in A.No.1742 of 2019 was filed by the bidders seeking the aforestated relief.

2.7. Though certain allegations were made by the parties that the upset price fixed by the AGOT was very low, when comparing the prevailing market price in the locality, the same went in vain, as the opportunity given to the plaintiffs to provide material to the prevalence of the higher market price was not availed of by the plaintiffs, whereas, it was proved beyond doubt that the upset price is a reasonable marked price.

2.8. Ultimately, the applicants herein were directed to make the remaining payment at the office of the AGOT within a period of 30 days of receipt of the said order, which was directed to be deposited by the AGOT in the suit account in a nationalized bank for a shorter period of one month and a report to that effect was directed to be filed by the AGOT.

2.9. Thus, this Court, after detailed examination of the issue, passed an order on 14.03.2019 holding that the upset price fixed by the AGOT is the highest upset price and the same cannot be improved further. This Court took note of the report dated 04.12.2018 filed by the AGOT in this regard.

3. Resisting the prayer made in A.No.1742 of 2019, the third respondent herein, who is the first defendant, filed a counter-affidavit. It is claimed by the third respondent that the Trustees were kept in dark all along by the legal heirs of Smt.Seethammal and their intention is only to ensure that the properties fetch fair prices, as they are struggling to engage themselves in the charitable activities, with which motto the original trustee Smt.Seethammal created the Trust. Since the trustees were not furnished with the updated status of the suit and the connected applications by the plaintiffs and their counsels, they could not contest the applications earlier. It is their claim that even as per the plaint averments, the properties could fetch nearly about two crores in the year 2008 and now after 11 years passed by, the third item of properties fetched only Rs.1.60 Crores, while all the three properties would collectively fetch at least Rs.9 Crores. Hence, they sought for dismissal of A.No.1742 of 2019.

4. Heard the learned counsels for the applicants/third parties, respondents 1 and 2/plaintiffs and the third respondent/first defendant.

5. A perusal of the proceedings in this application would go to show that this applications have been periodically adjourned at the instance of the first defendant/Trust to enable them to fetch a prospective buyer who would be ready to offer better sale price. However, till today, neither the plaintiffs nor the first defendant/Trust could bring a prospective buyer with more offer before this Court. Having given a long rope to the plaintiffs and the first defendant/Trust and considering the fact that the applicants in A.No.1742 of 2019 had already deposited the remaining amount, this applicant in A.No.1742 of 2019 deserves to be allowed.

6. For the foregoing reasons, A.No.1742 of 2019 is ordered as prayed for and the auction sale held on 19.11.2018, wherein, the applicants herein stood as the successful bidders, is confirmed in their favour. As a corollary, A.No.1423 of 2016 filed by the plaintiffs is dismissed.

04.10.2019

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