A.No.2906 of 2019
in CS.No.251 of 2016

K.KALYANASUNDARAM.,J

This application has been filed seeking permission to create mortgage over the property comprised in Survey No.253/2B1C, T.S.No.20 in Vellagoundanpalayam Village, Dharmapuri District.

2. According to the applicant / 31st defendant, he purchased item No.3 of the suit schedule property, vide 5 sale deeds in the months of May and June 2002. It is further stated that the applicant was operating a theatre under the name and style of "DNC". The theatre was established many years ago and it has become out-dated and hence, the applicant decided to demolish the superstructure to construct a multi-complex theatre. The estimated cost of the entire development is around Rs.19 crores, which would be by investing his own money and by availing loan from the Indian Bank.

3. An additional affidavit dated 27.09.2019 has been filed by the applicant giving details about the market value of the property, cost of the project to develop the property into multiplex and other details viz., planning

permission and No Objection obtained from the concerned authorities and the projected income from the multi complex theatre.

4. The learned counsel for the applicant would submit that the suit has been filed for partition and the applicant, who has been arrayed as 31st defendant in the suit, purchased the property in the year 2002. Since the theatre is in a dilapidated condition and it is out-dated, the applicant has decided to develop the property by constructing a multi complex theatre.

5. The learned counsel would further state that the applicant has given undertaking in the affidavit that he will not claim any equity by reason of the development made in the property and he will discharge the dues under the mortgage over the property out of his own source.

6. The learned counsel for the first respondent / plaintiff opposed the application by contending that in the affidavit filed along with the application, the petitioner has stated that the project cost would be Rs.19 crores, but in the additional affidavit, it has been estimated as Rs.37 crores. It is further submitted that the applicant has not furnished copy of the planning permission obtained from the authorities and if there is any unauthorized construction, it will be demolished by the authorities. It is further submitted

that the discrepancy made in the original affidavit and the additional affidavit has not been properly explained by the applicant.

7. It is the contention of the learned counsel for the tenth respondent / tenth defendant that the other defendants have alienated the suit property, and if item 3 of the suit property is alienated, the valuable right of the tenth defendant would be prejudiced. He further added that if any development is made in the item 3 of the suit property, it will diminish its value and hence this application is to be dismissed.

8. The learned counsel for the other defendants have no objection for allowing this application.

9. In the case on hand, it is not disputed that the applicant purchased the property in the year 2002, wherein, the theatre was being run by the applicant. According to the applicant, the theatre has to be demolished and for better utility a new multi complex theatre has to be constructed. The learned counsel for the applicant would submit that out of Rs.35 crores, the applicant is investing Rs.15 crores and the balance Rs.20 crores by availing loan from the Indian Bank. In the additional affidavit filed in support of the

application, the project cost and other details have been given.

10. Considering the submissions made by the learned counsels on either side and the averments made in the affidavit and additional affidavit filed in support of the application, this application is allowed. However, it is made clear that the applicant shall not claim any equity in future. The learned counsel for the applicant undertakes to inform the lending Bank about the pendency of the suit.

31.10.2019

pvs

K.KALYANASUNDARAM.,J

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