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O.A.No.651 of 2023 in

C.S.No.132 of 2023

R.N.MANJULA,J.

This Original Application has been filed seeking ad-interim injunction restraining the 5th respondent, its men, agents, servants or any one claiming right either under or through it from in any manner alienating or encumbering the suit schedule mentioned property, pending disposal of the suit.

2. The suit has been filed for seeking the relief of declaration to declare the auction conducted on 18.08.2018 by the 4th defendant on behalf of the defendants 1 to 3 is vitiated by fraud and to declare it as null and void and for a further declaration that the sale deed executed and registered by the defendants 1 to 3 in favour of the 5th defendant who is the auction purchaser is null and void.

3. The applicant / plaintiff is said to have had some money transaction with the respondents 1 to 3 / defendants 1 to 3 and pursuant to which, she had also mortgaged the suit property in favour of them for Rs.2,10,00,000/-. However, the respondents 1 to 3 had brought the suit property for auction in view of the alleged default committed by the



applicant / plaintiff in re-paying the loan. The fourth respondent was appointed as an Auctioneer and he had conducted the auction, in which, the fifth respondent is declared to be a successful bidder in whose favour the sale deed has been executed subsequently.

4. Mr.K.V.Babu, learned counsel for the applicant / plaintiff submitted that the loan amount has been fully paid by the applicant / plaintiff; despite the same, the respondents 1 to 3 have brought the suit property in auction. It is further submitted that the suit filed by the applicant / plaintiff in C.S.No.536 of 2018 for redemption before this Court, had got transferred to the City Civil Court and got re-numbered as O.S.No.2196 of 2019 due to pecuniary jurisdiction.

4.1. It is further submitted by the learned counsel for the applicant that the auction itself is unlawful; despite the respondents valued the property for a sum of Rs.3,75,79,150/-, the auction is said to have got concluded for a sale price of Rs.1,40,00,000/- only; there is no upset price fixed for selling the property through auction; the respondents themselves have given a contradictory statement about the nature of the



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auction; while the 4th respondent states that the auction is a public auction, the respondents 1 to 3 have stated that it is a private auction; the auction has been conducted in contravention to Section 69 of the Transfer of Property Act; even before the full sale price was paid, the communication had been sent to the plaintiff that the property has been sold; even in the letter so sent by the 4th respondent dated 20.08.2018, it is stated that only 25% of the sale amount was paid; the auction is an eyewash just to grab the property of the applicant / plaintiff which has a very good market value; no proper publication has been given; though it is stated in the sale deed that the publication has been made in one issue of Tamil daily “Dinamani” and in one English daily “The New Indian Express”, they have not been produced; since the applicant / plaintiff has produced sufficient materials to show that the auction has been conducted fraudulently and the suit has been filed to declare the same as null and void, a temporary injunction restraining the 5th respondent from alienating and encumbering the suit property should be ordered.

5. Mr.Rahul K Jain, learned counsel for the respondents 1 to 3 submitted that the property was brought to auction sale by issuing notice



under Section 69 of Transfer of Property Act; the applicant / plaintiff without making any payment, sent a bald reply stating that she had paid all the money due; in fact, the applicant / plaintiff filed an affidavit of undertaking by admitting the liability and to pay the loan amount with interest in the proceedings in C.S.No.536 of 2018 (presently the same has been transferred to XX Additional City Civil Court, Chennai and renumbered as O.S.No.2196 of 2019); as agreed, the applicant / plaintiff did not repay the loan but simply filing various proceedings; since the undertaking given by the applicant / plaintiff was not honoured, by virtue of an order dated 18.12.2018 an order has been passed in O.A.No.742 of 2018 in C.S.No.536 of 2018 by permitting the respondents / defendants to confirm the auction sale held on 18.08.2018; the suit has been filed by the applicant / plaintiff just to drag the proceedings without any purpose; in fact, the 5th respondent have also filed a suit in C.S.No.509 of 2019 for recovery of possession from the applicant / plaintiff and also filed an original application in the said suit in O.A.No.1007 of 2019 to restrain the applicant / plaintiff from encumbering and alienating the suit property; hence this application should be dismissed.



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6. Both the applicant and the respondents have involved in several litigations. While the 5th respondent / 5th defendant has stated that the applicant / plaintiff did not honour her undertaking given to repay the loan amount along with interest or the assurance to find out a prosperous buyer, the applicant / plaintiff has stated that the 4th respondent had taken advantage of the inability on the part of the applicant / plaintiff and had fraudulently colluded with the other defendants and conducted illegal auction. It is submitted that the 5th respondent also filed a suit and obtained an order of injunction restraining the applicant / plaintiff from encumbering the suit property. It is the applicant / plaintiff who filed the suit alleging fraud on the part of the defendants, has to prove the said fact only during the exhaustive trial. Similarly, the entitlement of the 5th respondent / 5th defendant to recover the possession of the suit property in pursuant to his auction purchase can also be decided during the trial of the suit filed by him for recovery of possession.

7. In the meanwhile, if the property is encumbered or alienated or any third party interest is created, that would affect the interest of both the plaintiff and the defendants. So without going much into the merits of



the matter and by taking into consideration the mutual suits filed by both parties, I feel it is appropriate to allow the applicant / plaintiff to maintain status-quo to prevent both the parties from creating any encumbrance or third part interest. Only in view of the above limited reasons, I prefer to allow the petition. It is upto the respondents / defendants to file their written statement at the earliest and co-operate for early trial.

8. With these observations, this application is disposed.

22.09.2023

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