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A.NO.4848 OF 2023 IN C.S.NO.115 OF 2020

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N.SATHISH KUMAR, J.

This application has been filed by the applicant / third party to implead them as one of the defendants in the above Suit.

2. The Suit has been filed by the plaintiffs / respondents 1 and 2 for recovery of money of Rs.5,50,00,000/- (Rupees Five Crores Fifty Lakhs Only) from the defendants.

3. It is the case of the plaintiffs that the aforesaid amount has been paid as advance for purchase of Suit schedule properties, for which the defendants had already entered into an agreement with the applicant / third party. The plaintiffs have filed the above Suit for recovery of the advance amount. When the applicant / third party attempted to execute the sale, they came to know that a Suit has been filed by the plaintiffs and an application has been taken out before this Court in O.A.No.156 of 2020 praying for a permanent injunction forbearing the respondents 3 and 4 / defendants from alienating the Suit schedule properties. This Court has granted an interim injunction on 10.03.2020 restraining the respondents 3 and 4, namely the



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defendants, from making any alienation of the Suit schedule properties. Now, it appears that the very next day viz., on 11.03.2020, a Sale Deed was executed in favour of the applicant in respect of the Suit schedule properties. According to the proposed applicant, they have paid a sum of Rs.23,11,00,000/- (Rupees Twenty Three Crores Eleven Lakhs Only).

4. According to the learned Senior Counsel appearing for the applicant, though the document has been registered, in view of the order passed by this Court, the same has not been released by the authorities. Therefore, according to the learned Senior Counsel, his right has to be protected since he is the *bonafide* purchaser of the Suit schedule properties. It is also brought to the notice of this Court by the learned Senior Counsel that the defendants have already executed a registered Sale Agreement with the applicant in the year 23.01.2019 and public notice has also been given.

5. Be that as it may, the defendants remained *exparte* and have not chosen to appear before this Court either in person or through counsel. The same makes it very clear that knowing very well the pendency of the Suit and already an *exparte* decree has been passed against them, which has been set aside later, the defendants were conveniently remained absent even now.



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In such view of the matter, in order to protect the interest of the applicant / *bonafide* purchaser, though it appears that the sale is made after the interim order passed by this Court, the learned Senior Counsel for the applicant submits that the document may be released by creating charge over the property.

6. As the defendants have merely played fraud on the Court and remains spectator outside the proceedings, this Court is inclined to protect the interest of both sides. Accordingly, let there be charge over the Suit schedule properties and the same shall go with the properties.

7. In such view of the matter, now, the application filed for impleading the applicant as third party to the Suit is not necessary since it is simply a Suit for recovery of money against the defendants. However, as undertaken by the learned Senior Counsel for the applicant before this Court, the charge will be automatically created in respect of the Suit schedule properties and it is also made clear that the impleading applicant cannot alienate or encumber of the Suit schedule properties till the main Suit itself is disposed of.



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8. In view of the order passed above, the Sub Registrar, Office of the Sub Registrar, Kundrathur, is directed to release the document in favour of the applicant. The Sub Registrar, Kundrathur is also directed to make an entry as to the charge created before releasing the document.

9. This application is disposed of with the above observation and direction.

10. Post the Suit before the Additional Master – I on 17.10.2023 for recording evidence.

13.10.2023

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