



A.No.3305 of 2024 in CS.No.735 of 2008

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K.KUMARESH BABU, J.

This application has been filed by the applicant/2nd plaintiff to implead M/s.Balaji & Co., Auctioneer as party/16th defendant in the above suit for the proper disposal of the case.

2. The learned counsel for the applicant would submit that the plaintiff had originally filed the suit for declaration, declaring the sale deed dated 18.09.2006 vide Doc.No.1986 of 2006 on the file of the Sub Registrar, Adyar executed by the first defendant in favour of the 9th defendant as null and void and non-est in the eye of law. He would submit that originally the property that was sold under the aforesaid sale deed belongs to the father of the plaintiffs and other legal heirs. The father of the plaintiff had mortgaged the property in favour of the first defendant and during subsistence of the mortgage, the father of the plaintiff died and thereafter a auction had been made by the first defendant through the proposed respondent. The said sale was without notice to all the legal heirs of the deceased father. He would submit that the plaintiff who are the daughters of the deceased mortgagee were not put on notice.

3. He would further contend that the Administrative Officer of the first



defendant office by name Mr.Sankaranarayanan was initially examined as DW1, during the course of cross examination, the said Mr.Sankaranarayanan attained the age of Superannuation and his examination in cross, was midway. However, the first defendant had filed an application to eschew the evidence of the said Mr.Sankaranarayanan and to receive an additional documents by stating that the office documents were not in their possession and they had to obtain the same from the auctioner/proposed respondent and thereafter proceeded to examine another Administrative Officer by name S.Malar, the said documents were obtained afresh and filed before this Court vide A.No.2957 and 2958 of 2021.

4. Since, those applications were filed indicating that all the records were with the proposed respondent and the auction had been conducted by the proposed respondent, it would have be a just and necessary party as they would be a person who would be able to answer the primary questions in respect to process of auction. Therefore, he would submit that for effective and complete adjudication of the dispute, it is necessary to implead the proposed respondent as party defendant to the suit.

5. Countering the arguments, the learned counsel for the first defendant



would submit that the present application is filed at the stage of trial only with an intention to drag on the proceedings. Further, the proposed party was only an agent of the first defendant to sell the property, by invoking mortgage right of the first defendant. Only after invocation of the mortgage, the proposed party was appointed as agent to sell the property. Therefore, they are not proper and necessary party for adjudicating the lis involved in the suit. Hence, he prayed for dismissing the application.

6. The learned counsel for the respondent 10 to 15/subsequent purchasers from the successful bidder in the auction would submit that recording of evidence is over and the case is ripe for arguments, at this stage, the present application had been filed seeking to delay the further proceedings. He would submit that the proposed respondents had acted only as an agent of the first defendant to sell the property through public auction, therefore, the proposed respondent is not a necessary and proper party. He would further submit that the applicant had also not taken any steps even to bring him as witness. Therefore, at this belated stage, the said application is filed without merits and is liable to be dismissed.

7. Heard the learned counsel for the applicant and the learned counsel for



the first respondent and the respondents 10 to 15 and perused the materials available on record.

8. Admittedly, one late Ponnusamy Naicker father of the Plaintiff had mortgaged the property with the first defendant. The first defendant had brought the property for sale, pursuant to the aforesaid mortgage and had engaged the service of the proposed respondent to sell the property through public auction and in the public auction, the property was sold to the 9th defendant and subsequently, the same was purchased by the respondents 10 to 15. The right to sell the mortgage had been invoked by the first defendant and only thereafter for selling the property, the service of the proposed respondent has been engaged by the first defendant, this is also an admitted fact. In deciding the lis, the proposed respondent may not be just, proper and necessary party, as the claim made by the plaintiff is that the sale made by the first defendant, pursuant to the mortgage was without notice to them.

9. For deciding the said fact, I am of the view that the proposed respondent may not be necessary party. For the allegation that there had been fraud in the sale of the property and that the property had been sold at a throw away price, even if the proposed respondent is made as party, no relief could be



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granted against them. To elucidate the said fact, it is not necessary to add them as defendant to the suit. By appropriate process, the proposed respondent can be summoned and examined as witness.

10. Therefore, I am of the view that the proposed respondent is neither a just and necessary party, therefore the application lacks merits and is liable to be dismissed.

11. In fine, the application is dismissed, however, with liberty to the applicant to take out appropriate steps, if he desires so, to examine the said proposed respondent as a witness. It is made clear that if the applicant desires so, such application shall be made not later than four weeks from today.

05.09.2024

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