

Interim orders on I.A.No.I.

Ld. counsel for the appellant filed memo along with two documents ie., to say auction letter dated 28.09.2022 copy of extended agreement dated 01.06.2019.

Heard Sri GK advocate for the appellants on I.A No.I.

I.A.No.I is filed under Section 94e read with Section 151 of CPC.

At the out set itself it is relevant to make a mention that this provision of law provides for the Courts to pass necessary interlocutory orders in order to prevent the ends of justice from being defeated.

Being aggrieved by the orders of return of plaint in O.S.No. 10/2021 dated 26.08.2021 on the file of Ld. Sr. Civil Judge & JMFC., K.R. Pete, the Plaintiff has preferred present Miscellaneous appeal under order 43 Rule 1a of CPC.

Ld. counsel for the appellant would submit that the appellant has already preferred Writ Petition before the Hon'ble High Court of Karnataka in WP No. 19274/2022 and the Hon'ble High Court of Karnataka has pleased to dispose of the matter with a liberty to the appellant to approach proper Forum. In this regard a memo is filed.

In fact the trial Judge has directed the office to return the Plaint to the

Plaintiff with a liberty to approach appropriate Forum in accordance with law.

According to the appellant, this order of the trial Court do fall within the pervue of order 43 Rule 1a of CPC. In order to discard this submissions, there are no reasons before the Court.

In fact, the appellant herein being the plaintiff has filed the suit for the relief of specific performance of contract based on registered Sale agreement dated 26.09.2013 and extended agreement dated 01.06.2019. This fact is substantiated by the appellant by producing a copy of Sale agreement and extended agreement.

So, it is prima facie clear that the agreement of the appellant is much prior to the mortgage deed said to have executed by the 1st defendant in favour of the 2nd defendant on 29.04.2015.

It is submitted that the appellant has got preferential lien over the suit schedule property bearing Sy.No. 47/3 measuring 34 guntas by virtue of Sale agreement dated 26.09.2013 and extended agreement.

It is the contention of the appellant that the 2nd defendant Bank has scheduled public auction of the schedule property on 03.11.2022. In order to substantiate the same statutory notice dated 28.09.2022 is produced along with a memo.

It is contended that if public auction of the schedule property is conducted as scheduled, valuable of the right of the appellant will be defeated. There is force in this submission.

If notice on I.A.No.I is issued, very purpose of filing of the appeal will be defeated. So, as has been observed herein above, ends of justice warrants this Court to pass prohibitory interlocutory order for a limited period i.e, to say till the appearance of the respondents.

In the result, as a interim measure pending consideration of I.A.No.I, respondent No. 2 is hereby restrained from conducting any auction proceedings in respect of schedule property till next date.

Issue prohibitory order accordingly. Issue emergent notice on I.A No.I and notice on appeal to the respondents r/by 21.11.2022.

III ADJ, S.R.Patna
02.11.2022