

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.No.864 of 1997

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JUDGMENT:

The appeal is preferred against rejection of plaint by Subordinate Judge, Peddapuram vide order dated 26.04.1996 in O.S.S.R.No.1864 of 1996.

The plaintiff/appellant filed the suit for specific performance of agreement of sale against D.1 to D.6 based on G.O.Ms.No.397 dated 05.05.1990. The trial Court having found that there is no cause of action for filing the suit against D.5 and D.6 rejected the plaint. Aggrieved by the order, the present appeal is preferred challenging the validity of the rejection order passed under Order VII Rule 11 of CPC on various grounds.

During hearing, it is brought to the notice of this Court, G.O.Ms.No.397 Revenue (Endts) dated 05.05.1990, which is basis for filing the suit was set aside by this Court in W.P.No.983 of 1996 dated 09.04.2001.

It is contended by the counsel for the plaintiff/appellant that the finding of the trial Court is erroneous for the reason that by the date of filing the suit the G.O. was in force.

A perusal of the plaint there was no agreement between plaintiff and D.5 which is sought to be enforced by filing a suit for specific performance under the provisions of Specific Relief Act. The counsel for the plaintiff contended that there is an oral agreement initially but after perusal of the plaint he admitted that basing on G.O., the relief of specific

performance was claimed. In the absence of any contract between the 5th defendant and the plaintiff, basing on G.O. the plaintiff is not entitled to claim any relief since there is no cause of action against the 5th defendant. According to Order VII Rule 11(a) where the plaint does not disclose any cause of action, the plaint shall be rejected.

Having regard to order setting aside the G.O.Ms.No.397 dated 05.05.1990 in W.P.No.983 of 1996 and considering the pleadings in the plaint I find that the plaint does not disclose any cause of action for claiming relief of specific performance against D.5 by the plaintiff/appellant and apart from that the G.O. was quashed by this Court vide order in W.P.No.983 of 1996. Hence, no cause survives as on today.

Hence, the appeal is dismissed confirming the order passed by the trial Court since I find no error in the judgment and decree rejecting the plaint. There shall be no order as to costs. Consequently, miscellaneous applications, if any, pending in this appeal, shall stand disposed of.

M.SATYANARAYANA MURTHY J,

23rd January, 2015

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