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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.06.2025

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.723 of 2009

M/s.Jothi & Company
Rep. by its Partner Mr.Manoharan
Carrying on business at No.32,
Kandappa Chetty Street,
Chennai – 600 001.

...Appellant / 1st Respondent / Plaintiff

Vs.

1.M/s.General Commercial Agencies,
Rep. by its Partner S.M.Ahamed Kabeer,
2nd Floor, No.144/1,
Nungambakkam High Road,
Chennai – 600 034.

...1st Respondent/Appellant/1st Defendant

2.Udaya Kumar

...2nd Respondent / 2nd Respondent / 2nd Defendant

The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.323 of 2003 dated 19.03.2004 on the file of the V Additional City Civil Court, Chennai, reversing the judgment and decree made in O.S.No.3528 of 1999 dated 27.06.2003 on the file of the V Assistant Judge, City Civil Court, Chennai.



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For Appellant : Mr.A.C.Kumaragurubaran

For R2 : Mr.S.Suresh Kumar

JUDGMENT

The Second Appeal had been filed on 19.01.2009 and came up for an admission on 05.08.2009 and thereafter, it had been adjourned and had finally, on 25.08.2009 notice regarding admission to the respondent was directed. Till this date, the appeal has not yet been admitted.

2.The plaintiff is the appellant. The parties would be referred in the same nomenclature as in the plaint. The plaintiff is a Partnership Firm and a tenant under the 1st defendant in the ground floor of premises at No.31 Kandappa Chetty Street, George Town, Chennai – 600 001, on a monthly rent of Rs.1,850/-. It is contended by the plaintiff that the 1st defendant had however, recognized that the 2nd defendant as a tenant in the very same ground floor portion which was under the occupation of the plaintiff. Objecting to such recognition, the suit had been filed for declaration that the



plaintiff is the lawful tenant of the ground floor portion of No.31 Kandappa Chetty Street, George Town, Chennai – 600 001 and for vacant possession.

A further direction was sought for a declaration that the tenancy created between the 1st and 2nd defendants is illegal and for a mandatory injunction restraining the 1st defendant from collecting monthly rent from the 2nd defendant.

3.The suit in O.S.No.3528 of 1999 came up for consideration before the VI Assistant City Civil Court, Chennai and by a judgment dated 27.06.2003, the suit was decreed with costs. The 2nd defendant then filed A.S.No.323 of 2003 and the 1st defendant filed A.S.No.375 of 2003. Both the Appeal Suits came up for consideration before the V Additional City Civil Court, Chennai. By a common judgment dated 19.03.2004, the appeals were allowed. The Appellate Court held that the plaintiff had surrendered possession and that therefore, the plaintiff cannot maintain the suit any further and seek a declaration that the plaintiff is a lawful tenant. A finding was returned that the plaintiff was not in possession of the property. That is a specific finding on fact.



4.The suit had been purportedly filed that on the basis that the plaintiff was in occupation of the ground floor portion of the property at No.31 Kandappa Chetty Street, George Town, Chennai – 600 001. However even in the plaint, the plaintiff had admitted that the 1st defendant had entered into a tenancy agreement with the 2nd defendant and that the 1st defendant is collecting rents from the 2nd defendant. The plaintiff had also sought delivery of vacant possession of the suit property.

5.The learned counsel for the appellant, stated that on personal inspection of the premises, he was not able to locate the plaintiff firm which also evidently means that the plaintiff is not in possession any further in the premises.

6.Once the plaintiff is not in possession, a declaration that he is a tenant cannot be granted. The plaintiff, as a tenant, cannot question the right of the landlord to recognize the 2nd defendant as their lawful tenant. The reliefs sought in the suit are not maintainable. The judgment of the trial Court proceeded on perverse grounds, by holding that, since the plaintiff is a registered Partnership Firm, the plaintiff could maintain the suit and seek



declaration. But the primary issue is with respect to possession and one of the relief sought in the plaint is for recovery of possession. Once the plaintiff is not in possession, he cannot claim a declaration seeking recognition as a tenant.

7.The findings of the First Appellate Court are cogent, clear and precise. I find no reason to admit the Second Appeal. The Second Appeal is dismissed at the stage of admission, as no Substantial Question of Law arises for consideration. No costs.

05.06.2025

Index: Yes/No
Internet: Yes/No
smv

To

- 1.The V Additional City Civil Court, Chennai.
- 2.The VI Assistant City Civil Court, Chennai.
- 3.Section Officer,
VR Section,
Madras High Court.



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C.V.KARTHIKEYAN,J.

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