

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM:

THE HONOURABLE Mr. JUSTICE **M. SATHYANARAYANAN**

C.S.No.710 of 2002

1. PR.Palaniappan
 2. PR.Veerappan
 3. RM.Visalakshi
 4. RM.Periyakaruppan
 5. RM.Meyyammai (Minor)
 6. PR.Algappan
- ... Plaintiffs

[Defendants 3 to 6 transposed as plaintiffs 3 to 6 as per order dated 15.07.2009 in A.No.3092 of 2009 in C.S.No.710 of 2002]

Vs.

1. CT.C.Nachiappa Chettiar
 2. T.R.Rathineswaran
 3. RM.Visalakshi
 4. RM.Periyakaruppan
 5. RM.Meyyammai (Minor)
 6. PR.Algappan
 7. Dhanalakshmi Impex Pvt Ltd.,
Rep. by its Managing Director,
H.Vimala
 8. SKV Import and Export,
rep. by its Proprietor,
S.Vairavasundaram.
 9. R.Rajam
 10. M/s.Om Shakthy Agencies (Madras) Pvt. Ltd.,
No.1, Jawaharlal Nehru Road,
Ekattuthangal, Chennai
- ... Defendants

[Defendants 7 to 10 impleaded as per order dated 23.04.2008 in Applications 7533/07, 1162/04, 472/04 and O.A.No.709/02 in C.S.No.710/02]

For Plaintiffs : Mr.P.L.Narayanan

For Defendants : D1-set exparte

Mr.P.Subba Reddy (for D2)
for Mr.J.D.Srikanth Varma

D3 to D6 are transposed as P3 to P6

Mrs.Kaviya Nathan (for D7 to D9)
for M/s.Nathan Asso.

D10 - set exparte

J U D G M E N T

The plaintiffs would aver as follows:

The plaintiffs 1, 2 and 6 are sons of late RM. PR.Periyakaruppan Chettiar. The plaintiffs 3, 4 and 5 are the widow, son and daughter of the deceased son viz., PR.Ramasamy. They would aver that RM. PR.Periyakaruppan Chettiar purchased a large extent of land measuring about 10 grounds 1600 sq.ft., at Kumaran Colony, 2nd Street, Saligramam Village, Chennai from one K.M.Lakshmanan on 08.12.1960 by a registered sale deed bearing Doc.No.4177 of 1960 on the file of the Sub Registrar, T.Nagar [Ex.P1] and claims that since the purchase of the property, he was in possession and enjoyment until his demise on 10.04.1986 and thereafter, the plaintiffs are in continuous enjoyment and they also posted a watchman to guard the land.

property belonged to the mother of the plaintiffs 1, 2 and 6 viz., PR.Meyyammai Achi, who died on 08.07.1995 and she owned about 6 grounds and the said property was purchased by means of a registered sale deed bearing Document No.547 of 1961 dated 25.02.1961, registered on the file of the Sub Registrar, T.Nagar, executed by K.M.Lakhsmanan [Ex.P2].

3. The plaintiffs 1, 2 and 6 representing the cause of plaintiffs 3, 4 and 5 would also further aver that during the life time of their parents, the said lands were proceeded under the Urban Land Ceiling Act and aggrieved by the same, they filed W.P.Nos.1846 of 1995, 4840 of 1995, 9635 of 1995 and 1367 of 1995 and after the constitution of Tamilnadu Land Reforms Special Appellate Tribunal, the said writ petitions were transferred and the tribunal allowed all the petitions, vide order dated 10.01.2000, in view of the fact that they are in possession.

4. The original statement of the total vacant land held by their father RM. PR. Periyakaruppan Chettiar and their mother Pr.Meyyammai Achi in Form-I, dated 20.10.1976 [Ex.P3], as well as the Original Form-III, draft statement prepared by the competent authority dated 19.01.1977 shows that they are having title [Ex.P4]. The

mother of the plaintiffs 1, 2 and 6 also approached the Assistant Commissioner of Urban Land Tax, Madras for

fixation of market value and an order dated 25.04.1988 came to be passed [Ex.P5]. The plaintiffs would further aver that they have filed voluminous documents to prove their right, title and possession in the form of documents [Exs.P6 to P20].

5. The plaintiffs would further state that on 14.07.1997, the 1st plaintiff along with plaintiffs 3 to 5, who are the legal heirs of late PR.Ramasamy and plaintiffs 2 and 6, arrived at an oral partition as regards division of the above said property and accordingly, the 1st plaintiff was allotted 1/6th share in the larger extent of land bearing Plot Nos.49 and 50 measuring about 6400 sq.ft. The 2nd plaintiff was allotted 1/6th share in the larger extent of land bearing Plot Nos.47 and 48 measuring about 6400 sq.ft. The Plaintiffs 3 to 5 were allotted 1/6th share in the larger extent of land bearing Plot Nos.57 and 58 and the 6th plaintiff was allotted 1/6th share in the larger extent of land bearing Plot Nos.55 and 56 and the original Memorandum of recordings of oral family arrangement dated 29.04.2002 is Ex.P20. Thereafter, they were also issued with pattas by the Tahsildar, Egmore-Nungambakkam Taluk dated 12.09.2000 [Ex.P22- series].

6. It is the specific case of the plaintiffs that the 2nd defendant viz., T.R.Rathineswaran, Son of R.K.Ramachandra Servar, residing at Old No.10, New No.23,

7th Cross Street, Shenoy Nagar, Chennai-30, in conspiracy with the 1st defendant C.T.C.Nachiappa Chettiar, residing at No.27, Vasuvil Street, Kottaiyur - 630 106, Sivagangai District, brought forth forged and false documents in respect of the suit property and in this regard, the 1st plaintiff has lodged a police complaint before the Deputy Commissioner of Police, Egmore, Chennai on 01.10.2002 [Ex.P23] and as no action was taken, the counsel appearing for them also issued a notice under Order IX Rule 16 of the CPC to the learned counsel appearing for the 1st defendant, to produce certified copy of the sale deed referred to in the counter affidavit in O.A.No.709 of 2002 [Ex.P25 series] and they also applied for encumbrance certificate [Ex.P26 series] and neither the name of the 1st defendant nor the name of the 2nd defendant reflects in the encumbrance certificate, relating to the suit property.

7. Plaintiffs would further state that though the suit properties is fenced by using barbed wires and name boards were also installed, the 2nd defendant, on 07.01.2003, made an attempt to trespass into the suit property and in this regard, a complaint dated 11.01.2003 was lodged before the Inspector of Police, Virugambakkam Police Station, Chennai [Ex.P27]. Once again, the 2nd defendant and his henchmen successfully trespassed into the suit property on 18.02.2003 and in this regard,

another police complaint dated 21.02.2003 was lodged to the Joint Commissioner of Police (Crimes), Office of the Commissioner of Police, Egmore, Chennai [Ex.P30] and no action has been taken and therefore, further representations have been sent to higher officials. [Ex.P31].

8. Contempt proceedings were also initiated against the 2nd defendant in Cont.P.No.166 of 2003 and during the cross examination of the 2nd defendant, important and undisputed facts came into existence i.e., the 2nd defendant has set up an impersonator namely, the 1st defendant, who is not at all known as C.T.C.Nachiappa Chettiar, but one Sivaramachandran, son of Chinnaiya of Chendurai Village near Natham, Dindugal District and they have fabricated very many documents and in the writ petition W.P.No.4651/2003 filed by the 1st plaintiff, the Tahsildar has confirmed that the defendants have forged the documents, vide his letter dated 13.03.2003 [Ex.P33] and the Village Administrative Officer of Kottaiyur Group, Karaikudi Taluk, has also issued a certificate dated 24.05.2003, stating that nobody in the name of Nachiappa Chettiyar, son of C.T.Chockalingam Chettiyar, lived in the said place [Ex.P34].

9. The plaintiffs would also state that the 2nd

defendant has breached the order passed by the Division

Bench of this Court, which resulted in filing of Contempt Proceedings in Cont.P.Nos.731 of 2008 and 583 of 2009 and the said proceedings are pending for adjudication, after setting aside the sale transaction effected by the 2nd defendant in favour of the third parties.

10. It is the specific case of the plaintiffs the the 2nd defendant by using the services of Sivaramachandaran, son of Chinnaiya, brought forth a fictitious registered General Power of Attorney dated 06.09.2001, executed in his favour allegedly by the impersonator CT.C.Nachiappa Chettiar (actually Sivaramachandran).The impersonator viz. Sivaramachandran, son of Chinnaiya of Natham Village died on 06.07.2005.

11. The plaintiffs would also state that they have been deprived of possession of 10 grounds and 1600 sq.ft., in the suit property and on renting it out to some third parties, they would have earned a higher rental amount.

12. The CBCID reports would also indicate the fact of impersonation done by the 2nd defendant using the services of Sivaramachandran as CT.C.Nachiappa Chettiar (Exs.P35 and 36). Hence, plaintiffs came forward to file

damages and other consequential reliefs.

13. Though, the 1st defendant was served with summons, he did not appear and therefore, he was called absent and set exparte on 09.07.2013. When the matter was listed on 01.12.2014 before this Court, the learned counsel appearing for the plaintiffs made a submission that Defendants 1 and 10 were set exparte on 09.07.2013 and 10.07.2013, respectively and by placing reliance upon Order VI Rule 11 of Original Side Rules, the learned counsel for the plaintiffs prayed for a decree as against 1st defendant, who remained exparte and however, the learned Judge has taken note of the fact that PW1, was in the box and examination by defendant was going on, has directed the Registry to post the matter before the learned Additional Master-IV for further evidence and directed the learned Master to complete the trial on or before 23.12.2014.

14. The plaintiffs aggrieved by the said order filed an appeal in O.S.A.No.65 of 2015. When the said appeal was taken up, for disposal, there was no appearance on behalf of respondents 1 to 6, which included defendants 1 and 2. The Division Bench has disposed of the matter on 09.09.2015 and it is relevant to extract paragraph No.11 of the said judgment:

"11. The submission of the learned counsel for the appellants is that the rights, if any,

claimed by the second respondent are only through the first respondent. The first respondent did not file any written statement and has chosen to absent himself from the proceedings and has been proceeded exparte. Not only that, criminal cases have been registered on the basis of the documents alleged to have been executed in favour of the respondents, which have been found prima facie to be forged and fabricated. Even the registration particulars of the documents alleged to have been executed in favour of the father of the first respondent have not been given and as noticed, the learned counsel for the second respondent really conceded that there may not be any legal title"

15. Thereafter, the 2nd defendant filed M.P.No.1 of 2015 in OSA No.65 of 2015 for recalling the judgment dated 09.09.2015 on the grounds that though, the 2nd defendant, who was arrayed as the 2nd respondent in the OSA has entered appearance, the name of the counsel did not appear in the cause list. The First Bench of this Court, vide order dated 24.02.2016, after elaborate arguments, has passed the following order.

"After elaborate arguments, learned counsel for the petitioner seeks to withdraw the petition and states that whatever he has to urge, he will do so before the learned Single Judge, which would naturally be subject to any

*objections the respondents would have.
Endorsement is also mate.*

2. Petition stands dismissed as withdrawn."

16. Mr.P.L.Narayanan, learned counsel appearing for the plaintiffs has invited the attention of this Court to the proof affidavit of the 2nd plaintiff and Exs.P1 to P52 marked through him and would contend that the plaintiffs had substantiated and probabalised their case and would contend that though the 2nd defendant made an attempt to espouse the cause of the 1st defendant, he cannot do so for the reason that the 1st defendant was already set exparte on 09.07.2013 and so far he has not taken any steps to set aside the said exparte order and the 2nd defendant, being the Power of Attorney of the 1st defendant, cannot make any independent claim and he cannot also espouse his case by stepping into the shoes of the 1st defendant and oppose the claim of the plaintiffs. The learned counsel appearing for the plaintiffs has also drawn the attention of this Court to the judgment of this Court reported in 2001-2-L.W.-347 [**Muthulingam vs. Gangai Ammal**] and would contend that Order IX Rule 13 is in **para materia** with Order VI Rule 11 r/w Rule 2 of the original side rules and in the said judgment, it has been held that if aggrieved, the party

who was set *exparte*, alone can take out necessary application for setting aside the *exparte* decree and admittedly, in the case on hand, the 1st defendant did not take any step to set aside the *exparte* order passed and in the light of the overwhelming documentary evidence, the plaintiffs are entitled to get a decree as far as 1st defendant is concerned and prays for appropriate orders.

17. Per contra, Mr.Subba Reddy, learned counsel appearing for the 2nd defendant would contend that Exs.P1 and P2, documents of title said to be in favour of the plaintiffs are forged and fabricated and he would further contend that the suit properties are in Block No.2, whereas the properties dealt with by the 2nd defendant is located in Block No.6, which is altogether a different property and the plaintiffs by playing fraud wants to clandestinely get a decree against the 1st defendant. It is also contended by the learned counsel for the 2nd defendant that since the trial of the suit is in midway and the other defendants are contesting the suit, the suit may be permitted to proceed and reach its logical destination and at this juncture, this Court may not pass any decree against the 1st defendant and prays for rejection of the claim made by the plaintiffs.

18. This Court paid its best attention to the rival submissions and also perused the pleadings and oral and documentary evidence. The following issues arise for adjudication.

1. Whether RM.PR.Periyakaruppan Chettiar, father of the plaintiffs 1, 2 and 6 and PR.Meyyammai Achi, mother of the plaintiffs 1,2 and 6, were the owners of the suit properties under Exs.P1 and P2, registered sale deeds dated 08.12.1960 and 25.02.1961, respectively?

2. Whether, the 2nd defendant, who is the power agent of the 1st defendant can step into the shoes of the 1st defendant and project his case?

3. Whether, the plaintiffs are entitled to get a decree under Order VI Rule 11 r/w Rule 2 of Original Side Rules?

4. Whether, the plaintiffs are entitled to the decree against the 1st defendant in so far as prayer No.(a) is concerned?

5. To what other relief the plaintiffs are entitled to against the 1st defendant?

ISSUE NO.1:-

19. Under Exs.P1 & P2, registered sale deeds dated 08.12.1960 and 25.02.1961, one K.M.Lakshmanan had conveyed lands admeasuring to an extent of 10 Grounds and 1600 sq.ft in Plot Nos.47, 48, 49, 50, 55, 56, 57 and 58

Chettiar, father of the plaintiffs 1,2 and 7 and land admeasuring to an extent of 6 grounds in Plot Nos.51, 52, 53 and 54 in S.No.158 in Block No.2 of the Saligramam Village to PR.Meyyammai Achi, mother of the plaintiffs 1,2 and 6, respectively.

20. Subsequently, new Town Survey numbers as well as Block Numbers have been assigned and Ex.P3, Form-I, filed by the father of the plaintiffs 1, 2 and 6, would disclose that the statement under Tamil Nadu Urban Land (Ceiling & Regulation) Rules, 1976, in Form-I, has been filed with regard to total vacant land held by them and in Column No.4, there is a mention about the 6/7th share in T.S.Nos.21, 22 and 23, Block No.6, Plot Nos.47, 48, 49, 50, 51, 52, 53, 54, 56, 55, 57, 58 in Block No.6, Saligramam Village, Madras, Central Taluk, Madras District, admeasuring to an extent of 16 grounds and 1600 sq.ft.

21. Under Ex.P4, Form-III, in Section IX, there is a mention about T.S.No.21, 22, 23/1 and 23/2. Under Ex.P5, Assistant Commissioner of Urban Land Tax has fixed the market value in respect of Block No.6, T.S.No.23 and the said order has been communicated to the mother of the plaintiffs 1,2 and 6. Under Ex.P8, the father of the plaintiffs 1, 2 and 6, has also paid the tax in respect of R.S.Nos.21 and 22 for Fasli 1395 & 96. Under Exs.P11

and P12, Urban Land Tax has been paid by the father of the plaintiffs 1, 2 and 6 in respect of lands in R.S.No.21 & 22 in Block No.6, admeasuring 10 grounds and 1863 sq.ft., for Fasli 1402.

22. The mother of the plaintiffs 1, 2 and 6 prayed for exemption and in this regard, under Ex.P13, the authorised officer has sent a communication dated 13.01.1993, calling for certain particulars. Exs.P14 and P15, also would disclose that the Urban Land Tax has been paid by the father of the plaintiffs 1, 2 and 6.

23. Plaintiffs 3, 4 and 5 filed W.P.Nos.4840/1995, 9635/1994 and 1367/1995, to quash the notification along with respondent's final statement, which pertains to Urban Land Ceiling proceedings and on constitution of special tribunal, transferred and renumbered as TRP Nos.375/99, 444/99 and 445/99, respectively. The tribunal, vide individual orders dated 10.01.2000, Ex.P16-series, has recorded the fact that possession has not been taken over and in view of Section 4 of the Tamilnadu Urban Land (Ceiling and Regulation), Repeal Act, 1999, [Tamilnadu Act 20/99], all further proceedings shall be treated as abated.

24. The father of plaintiffs 1,2 and 6 has also paid the Urban Land Tax under Ex.P17, dated 09.06.2000 in respect of T.S.Nos.21, 22 and 23. The Assistant Commissioner, Urban Land Tax Act, has passed an order of

assessment under Ex.P18 in respect of the lands in Block No.6, re-survey T.S.No.23, imposing a penalty of Rs.100/- from Fasli 1402 to 1405. The same official under Ex.P20 dated 18.07.2000, has stated that the lands in Block No.6, T.S.Nos.21 and 22 are exempted from Urban Land Tax Act. Ex.P22-series are the extracts of the Town Survey Land Register and the names of the plaintiffs are found in respect of S.Nos.22/1, 22/2, 22/3 and 22/4 along with the copy of Survey Plans.

25. The 1st plaintiff, having found that the 2nd defendant has indulged in criminal activities by fabricating documents, has also lodged a complaint in Ex.P23 to the Deputy Commissioner of Police, Egmore, Chennai and the learned counsel appearing for them has also issued a notice under Ex.P25 series calling upon the learned counsel appearing for the 1st defendant to produce the certified copy of the sale deed and documents, under which he claims possession and according to the learned counsel for the plaintiffs, there was no response to the said communication.

26. Attention of this Court was also drawn to the encumbrance certificates marked as Ex.P26-series, wherein neither the name of the 1st defendant nor the name of the 2nd defendant found place. The contempt proceedings were also initiated against both the 1st defendant and also the 2nd defendant and oral evidence was taken before the

learned Master on 28.09.2005 and the 2nd defendant examined himself as RW1 and he would admit that the 1st respondent/defendant C.T.C.Nachiappa Chettiar, is the owner of the property and he is the registered power agent of the 1st respondent/defendant and Ex.R1, is the Original registered deed of Power of Attorney dated 06.09.2001, executed in his favour. He denied Sivaramachandran acted as C.T.C.Natchiappa Chettiar and he has took a stand that the 1st respondent/defendant only gave the power of attorney and at present he do not know the whereabouts of the 1st respondent/defendant.

27. The 2nd defendant, who was examined as RW1, has also admitted that he has not heard about the 1st defendant or seen him for about 2 1/2 years and also worried about the said person to whom he has given huge amount and is now absconding due to the threats from the petitioners/plaintiffs and and he has also taken personal efforts to trace him. He has subsequently sold a portion of the property to three other parties and they were subsequently arrayed as defendants in the present suit. He would further state that he took physical possession of the suit property on the date of execution of power of attorney on 06.09.2001.

Ex.P23, communication dated 13.03.2003, sent by the Tahsildar, Egmore-Nungambakkam Taluk, Chennai- 31 to the 2nd plaintiff, wherein, he has sought for certain particulars in pursuance to the directions given by this Court in W.P.No.4651/2003, in respect of T.S.No.17 etc., Block No.6 and its relevant to extract the said communication.

"As directed by the Honourable High Court in the order second cited the informations required by you are furnished as follows.

The Town Survey for a portion of the lands in Saligramam Village including the land in O.S.No.158 was completed in the year 1983 and after that the system of maintenance of village accounts discontinued. The land bearing old S.No.158 was included in Block No.6 and New T.S.No. assigned. Further, the extent of the Town survey fields are shown in metric system and not in acre and cents.

You have enclosed xerox copies of the following documents, stated to have been issued by this office.

1. Patta in Form No.11 for 59 cents in S.No.158/22 stated to have been issued by the Zonal Deputy Tahsildar on 27.2.2000.

2. Chitta extract for S.No.158 pt measuring H.2.24.13.5 sqm. stated to have been issued by the Zonal Deputy Tahsildar on

27.2.2000.

3. Adangal extract for S.No.6/22 Old S.No.158 pt stated to have been issued by the Zonal Deputy Tahsildar on 27.2.2000.

4. TSLR Extract issued by the Tahsildar E.N. Taluk for the lands in TS Nos.17, 18/2, 19, 21 and 22 Block No.6.

5. Patta in Form 11 for 59 cents in S.No.158/22 stated to have been issued by the Zonal Deputy Tahsildar on 12.4.2002.

6. Chitta Extract for S.No.158 pt Block No.6, measuring H.0.24.13.5.sqm. stated to have been issued by the Zonal Deputy Tahsildar on 12.4.2002.

All the Xerox copies (except Item No.4) produced by you are fabricated documents. The signatures in these documents did not tally with that of the Zonal Deputy Tahsildars who worked during the relevant periods. I, therefore request you to intimate the person who has given these documents for taking appropriate action.

It appears that the TSLR Extracts (Xerox copy) mentioned in Item No.4, above has been signed by my predecessor and it reflects the extract entries in the TSLR as on 28.3.02."

29. Under Ex.P35, Mr.A.Mary George, Inspector of Police, Crime Branch CID, Sivagangai District, has filed his affidavit in Cont.P.No.166 and 173 of 2003 initiated by the plaintiffs 1 and 2, wherein it is stated among

other things that Sivaramachandran, and Nachiappachettiyar are one and the same and Sivaramachandran S/o.Chinnaiah Chettiyar impersonated himself as Nachiyappa Chettiayar S/o.C.T.Chockalingam Chettiyar and made the said transaction and he alone executed the registered document in favour of the 2nd defendant and Sivaramachandran is no more and he died on 06.07.2005.

30. Similarly under Ex.P36, Mr.R.Jayaram, Inspector of Police, Crime Branch CID, Sivagangai District, has filed an affidavit in W.P.No.47616 of 2006 filed by the 2nd plaintiff, wherein it has been stated that the 2nd defendant arranged for registration of a Power of Attorney in his favour asking the said Sivaramachandran to sign as CT.C.Nachiappa Chettiar, after learning that the property belonged to Chettiar family and the 2nd defendant is the perpetrator of the offence of impersonation committed by Sivaramachandran and T.R.Rathineswaran, has also brought about various fictitious documents, such as death certificate of non-existent C.T.Chockalingam Chettiar, forged revenue documents etc., and has made money by effecting sale of the property to 3rd parties and Sivaramachandran at the behest of T.R.Rathineswaran, the 2nd defendant, has impersonated the fictitious character CT.C.Nachiappa

Chettiar.

31. Mr.K.M.Lakshmanan, who sold the properties in favour of the mother and father of plaintiffs 1, 2 and 6, was examined by the police and his statement under Section 161 Cr.P.C is Ex.P52, wherein he has stated about the conveyance of the suit property under Exs.P1 and P2.

32. In the considered opinion of this Court, the plaintiffs have established that their father and mother have purchased the suit properties under Exs.P1 and P2, which is also the subject matter of the Urban Land proceedings, wherein very many communications have been addressed to the father and mother of the plaintiffs and they also paid the land tax. Subsequently, the plaintiffs themselves got the pattas in their favour and having come to know that the 2nd defendant has indulged in criminal acts, has also lodged a complaint and during the course of investigation by CBCID of Chennai as well as Sivaganga, it came to light that the 2nd defendant with the help of Sivaramachandran, who acted to impersonate C.T.C.Nachiappa Chettiar, managed to get the power of attorney and transferred some portion of the property in favour of the 3rd parties, who are arrayed as other defendants. Therefore, Issue No.1 is answered in affirmative in favour of the plaintiffs.

ISSUE NO.2:-

33. This Court, while answering Issue No.1, has found from the documentary evidence that the 2nd defendant utilised the services of Sivaramachandran and made him to impersonate as 1st defendant viz., C.T.C.Nachiappa Chettiar and managed to execute the power of attorney, in his favour, based on which, he in-turn alienated some portion of the suit properties in favour of the third parties. Ex.P32 is the evidence of the 2nd defendant in Cont. Petition No.173 of 2003, wherein he has admitted that he does not know about the present whereabouts of his principal viz., the 1st defendant.

34. The defendants 7 to 9 had filed O.S.A.No.165 of 2014, challenging the order of dismissal dated 04.06.2014, made in A.No.2448 of 2014 in C.S.No.710 of 2002, which was taken out praying for examination of disputed documents viz., Ex.P1 - Original registered sale deed dated 08.12.1960, Ex.P2 - Original registered sale deed dated 20.02.1961 and Ex.P21 - Original deed of Family Arrangement dated 24.04.2002, more particularly with regard to signatures found in the said exhibits, age of the stamp papers and age of the ink in those documents by the Forensic Laboratory and to submit a report.

35. The said appeal was taken up for final disposal by the First Bench of this Court and the judgment was authored by one of us (MSNJ). The First Bench, taking into consideration the specific case of the plaintiffs, that the 7th respondent/1st defendant was set up by 8th respondent/2nd defendant T.R.Rathineswaran and a fictitious power of Attorney dated 06.09.2001 was executed in respect of the suit property, has observed in paragraph Nos.8 and 9 as follows:

"8. When this appeal was listed for admission on 13.08.2014, this Court has passed the following order:

"it is not disputed that the 8th respondent before us is an attorney or authorised representative of 7th respondent. The learned counsel for the appellant also appears for 8th respondent, who is stated to be available. Some doubt is raised on the very existence of the 7th respondent. To remove such doubt, let the 7th respondent remain present in the Court with some identity paper."

On behalf of the appellants/applicants, a memo dated 09.09.2014 was filed stating as follows:

"The respondents 7 and 9 remain exparte in the main suit in C.S.No.710 of 2002. Hence, the respondents 7 and 9

viz., CT.C.Nachiappan Chettiar and

M/s.Om Shakthy Agencies (Madras) Pvt. Ltd., are given-up in the above O.S.No.165 of 2014 and miscellaneous petition.

The memo may be received and appropriate suitable orders may be passed and thus render justice."

9. A perusal of the orders dated 13.08.2003 and 21.04.2006 made in Cont.P.Nos.166 and 173 of 2003 arising out of orders dated 10.10.2002 and 03.02.2003 respectively O.A.No.709 of 2002 in C.S.No.710/2002 (present suit), would disclose that the stand taken by the contesting respondents/plaintiffs that the 1st defendant namely Mr.C.T.C.Nachiappa Chettiar, appears to be fictitious person, was taken into consideration. The learned Judge has suspended the operation of the Registered Power of Attorney dated 06.09.2001, seem to have been executed by the 1st defendant, namely Mr.C.T.C.Nachiappa Chettiar, in favour of the 2nd defendant Mr.TR.Rathineswaran / 2nd respondent in the present application, until further orders and the Registry was also directed to communicate the order, so as to enable the Registrar of Assurances, Virgambakkam, Chennai to take necessary steps."

36. The said judgment, which formed part of the

in Ex.P32, *prima facie* establishes that the 1st defendant appears to be a fictitious person, whose services have been utilised by the 2nd defendant to get the abovesaid power of attorney and he in-turn conveyed some portion of the property in favour of some other defendants. Therefore, Issue No.2 is answered in affirmative in favour of the plaintiffs.

ISSUE NOS.3 & 4:-

37. It is the submission of Mr.Subba Reddy, learned counsel appearing for the 2nd defendant that since no separate application has been taken out by the plaintiffs seeking relief under Order VI Rule 11 read with Rule 2, the decree cannot be passed against the 1st defendant. In the considered opinion of the Court, the said contention lacks merits and consideration for the reason that the First Bench of this Court in the judgment dated 09.09.2015 made in OSA No.65/13 reported in **2015(5)**

CTC818: 2015-4- LW691 : (2015) 7MLJ834, in paragraph Nos.12 to 15, observed as follows:

"12. In the aforesaid peculiar circumstances, the question is whether a decree can at least be passed against the first respondent.

13. We do believe that the procedures are man-made procedures, as observed by the

Hon'ble Supreme Court. The very purpose of introduction of the aforesaid Rule is to facilitate passing of a decree against the defendant, who absents himself. This, however, does not imply that in every case, such a decree should be passed. But, it is a matter of discretion for the Court examining the facts and circumstances of the case.

14. We have sketched out the facts aforesaid to show how the first respondent / first defendant is continuing to absent himself from the proceedings and has not even disclosed his defence. The claim of the second respondent / second defendant, who now seems to have disappeared from the scene at least before this Court, is predicated on the title of the first respondent, which was now conceded to be not valid. In these circumstances, we see no reason why a decree is not capable of being passed under the provisions of Order VI Rule 11 provided that the requirements under which rules under Order VI including specifically Rule 2 are followed. It is towards this direction that the matter be now posted before this learned Single Judge, as the evidence of P.W.1 on behalf of plaintiffs is over and the learned counsel for the appellants states that there are only two formal witnesses, one being P.W.2, who is a police officer whose evidence is over and P.W.3, who is the Commissioner appointed by the Court, whose evidence is capable of being closed at this stage.

15. Original Side Appeal, accordingly, stands allowed, the impugned order is set aside and the matter be placed before the learned Single Judge on 06.10.2015. No costs."

38. In the light of the said observation, this Court is of the view that there need not be any separate application by the plaintiffs to invoke the jurisdiction of the Court under the above said provisions. That apart, it is not open to the 2nd defendant to espouse the cause of the 1st defendant as per the ratio laid down by this Court in 2001-2-L.W.-347 [**Muthulingam vs. Gangai Ammal**], wherein this Court has considered the scope of Order IX Rule 13 and in paragraph No.8, held as follows:

"8. ... On the very reading of the above Rule, it is clear that it is only the defendant in an action who can move an application under the provisions of law. Though the first defendant has interest in the suit, he is not entitled to invoke this Rule. In **Santosh v. Teja Singh** (AIR 1977 Delhi 110) a learned single Judge has held that even a person who is formally a party but against whom nothing is said in the operative portion of the decree or who has been expressly exempted from a decree cannot apply under this Rule to set aside an *exparte* decree. Where there is a specific provision for setting aside the *exparte* order / decree, at the instance of the

person concerned, as rightly contended, the first defendant has no locus standi to file a petition under Section 151 C.P.C., praying the Court to rectify the mistake of the order setting the third defendant exparte."

39. In the light of the facts and circumstances of the case, coupled with the ratio laid down by this Court, it is not open to the 2nd defendant to espouse the case of the 1st defendant by stepping into the shoes of the 1st defendant insofar as passing of the exparte decree. It is also very pertinent to note that this Court has also put a specific question to the learned counsel for the 2nd defendant as to whether, his alleged principal/1st defendant, is alive or not, the learned counsel for the 2nd defendant is unable to come out with any answer.

40. In the light of the documentary evidence as pointed out, the 1st defendant appears to be a fictitious person created by the 2nd defendant to suit his needs and criminal prosecution is also pending against the 2nd defendant in the Court and therefore, the plaintiffs are entitled to a decree by invoking the abovesaid provisions.

41. In the result, there shall be a judgment and decree for permanent injunction restraining the 1st defendant, his agents and servants any person every person claiming under him either directly or indirectly from in any way dealing with the suit properties more fully described in the Schedule hereunder or interfering with the plaintiffs use, occupation and enjoyment of the suit properties morefully described in the schedule hereunder.

42. In so far as prayer (b) is concerned, where the plaintiffs have prayed for mulcting the defendants 1 to 5 to jointly and severally pay damages, the same cannot be adjudicated at this stage.

43. In the result the suit is partly allowed. There shall be a judgment and decree for permanent injunction as against the 1st defendant alone, with cost of the suit payable by the 1st defendant.

List of Witnesses:

1. PW1 - PR.Veerappan
2. PW2 - S.Poomaran

List of Exhibits

<i>S.No</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1	Ex.P1	Certified copy of Sale deed executed by KM.Lakshmanan.	8/12/1960

S.No .	Exhibits	Description of Documents	Date
2	Ex.P2	Certified copy of Sale deed executed by KM.Lakshmanan.	20/2/1961
3	Ex.P3	Statement of the total vacant land held by plaintiff's father and mother furnished by plaintiff's father in Form-I.	29/10/1976
4	Ex.P4	Form-III draft statement.	19/1/1977
5	Ex.P5	Original order passed by the Assistant Commissioner Urban Land Tax, T.Nagar in C.No.11/Bk.6/Saligramam Village.	25/4/1988
6	Ex.P6	Original Letter along with challan counterfoil from plaintiff's mother to the Tahsildar, Egmore-Nungambakkam Taluk.	24/8/1989
7	Ex.P7	Original Letter from the Government Joint Secretary, Revenue Department to plaintiff's mother.	23/10/1989
8	Ex.P8	Original receipt in respect of payment of tax.	10/12/1988
9	Ex.P9	Original reply letter written by the plaintiff and signed by the plaintiff's mother to the Joint Secretary, Revenue Department.	1/11/1989
10	Ex.P10	Original letter from the Government Assistant Secretary, Revenue Department to plaintiff's mother.	26/3/1990
11	Ex.P11	Original Demand notice issued by Special Tahsildar (ULT), Egmore-Nungambakkam Taluk.	1/8/1991
12	Ex.P12	Challan and Urban land tax receipt.	8/10/1991
13	Ex.P13	Original Letter from the Competent Authority, Urban Land Ceiling, T.Nagar to plaintiff's mother.	13/1/1993
14	Ex.P14	Original Receipt in respect of payment of tax issued by Special Tahsildar (ULT).	2/2/1993

S.No	Exhibits	Description of Documents	Date
15	Ex.P15 Series (2 Nos.)	Receipts in respect of payment of tax.	7/6/1994
16	Ex.P16 Series (3 Nos.)	Original orders passed by the TamilNadu Land Reforms Special Appellate Tribunal, Chennai in TRP Nos.375/1999, 444/1999, 445/1999.	10/1/2000
17	Ex.P17	Original common Challan along with receipt in respect of payment of urban land tax issued by the Special Tahsildar (ULT).	9/6/2000
18	Ex.P18	Original Assessment order for the faslis from 1401 to 1405 passed by the Assistant Commissioner (ULT) in C.No.6/Bk.6/ Saligramam/91Act.	9/4/2001
19	Ex.P19	Original Assessment order for the faslis from 1401 to 1405 passed by the Assistant Commissioner (ULT) in C.No.6/Bk.6/ Saligramam/91Act.	12/4/2001
20	Ex.P20	Original Order passed by the Assistant Commissioner (ULT), T.Nagar in C.No.10/Bk.6/Sali/1975.	18/7/2002
21	Ex.P21	Original Memorandum of recordings of oral family arrangement.	29/4/2002
22	Ex.P22 Series (4 Nos.)	Pattas in the name of plaintiffs issued by the Tahsildar, Egmore-Nungambakkam Taluk.	---
23	Ex.P23	Original police complaint lodged by the 2 nd plaintiff with the Deputy Commissioner of Police, Egmore.	1/10/2002
24	Ex.P24	Original returned RPAD cover along with endorsement by the postal department.	---
25	Ex.P25 Series (2 Nos.)	Office copies (original) of notices issued by the plaintiff counsel under Order XI Rule 16 of C.P.C. to the counsel of the 1 st and 2 nd respondent.	16/12/2002

S.No .	Exhibits	Description of Documents	Date
26	Ex.P26 Series (4 Nos.)	Encumbrance certificates in respect of the suit property.	20/12/2002, 23/12/2002, 24/12/2002 and 3/1/2003
27	Ex.P27 Series (2 Nos.)	Police complaint lodged by the plaintiff's brother P.R.Periya Karuppan with the Inspector of Police, Virugambakkam Police Station.	11/1/2003
28	Ex.P28 Series (3 Nos.)	Photographs with negatives.	---
29	Ex.P29	Certified copy of Interim order in O.A. No.709 of 2002.	3/2/2003
30	Ex.P30	Police complaint lodged by the 2 nd plaintiff.	21/2/2003
31	Ex.P31	Telegram issued to Hon'ble Prime Minister Cell.	21/2/2003
32	Ex.P32	Certified copy of Deposition of 2 nd defendant.	28/9/2005
33	Ex.P33	Original letter from Tahsildar Egmore, Nungambakkam to the plaintiff.	13/3/2003
34	Ex.P34	Original certificate issued by VAO, Kottaiyur.	24/5/2003
35	Ex.P35	True copy of affidavit of Mary George, Inspector of Police, CBCID, Sivagangai.	22/7/2005
36	Ex.P36	True copy of affidavit of R.Jayaram, Inspector of Police, CBCID, Sivagangai.	17/5/2010
37	Ex.P37	Certified copy of order passed in Criminal O.P. No.32030 of 2005.	13/10/2009
38	Ex.P38	Xerox copy of the Will executed by VR.RM.PR.Periya Karuppan Chettiar.	5/1/1986
39	Ex.P39	Xerox copy of the Will executed by Meyammai Achi.	4/6/1990
40	Ex.P40	Xerox copy of the Will.	22/4/1995

S.No .	Exhibi ts	Description of Documents	Date
41	Ex.P41	Xerox copy of the death certificate.	---
42	Ex.P42	Xerox copy of the legal heirship certificate in respect of VR.RM.PR.Periya Karuppan chettiar.	18/8/1986
43	Ex.P43	Xerox copy of the death certificate.	---
44	Ex.P44	Xerox copy of the legal heirship certificate in respect of PR.Meyammai achi.	18/8/1995
45	Ex.P45	Xerox copy of the General Power of attorney executed by PR.Alagappan.	30/6/1999
46	Ex.P46	Xerox copy of the General Power of Attorney executed by PR.Narayanan.	---
47	Ex.P47	Xerox copy of the Document No.4159 of 1960.	7/12/1960
48	Ex.P48	True copy of final report in Crime No.768/2003.	12/11/2006
49	Ex.P49	True copy of statement of Vellaiappa Chettiar recorded on 25/8/2003 under Sec.161 of Cr.P.C.	---
50	Ex.P50	True copy of statement of Periya Karuppan Chettiar recorded on 19/10/2006 under Sec.161 of Cr.P.C.	---
51	Ex.P51	True copy of statement of B.Subramani, Tahsildar, Egmore recorded on 20/9/2004 under Sec.161 of Cr.P.C.	---
52	Ex.P52	True copy of statement of K.M.Lakshmanan recorded on 30/10/2006 under Sec.161 of Cr.P.C.	---
53	Ex.P53	True copy of statement of T.K.Hariharan, Sub Registrar, T.Nagar recorded on 19/12/2003 under Sec.161 of Cr.P.C.	---

S.No .	Exhibits	Description of Documents	Date
1	Ex.D1	Clean typed copy of Ex.P47 in the 2 nd defendant's typed set.	---

Schedule -1

All that piece of parcel of land situate in Saligramam Village, bearing Plot Nos.51, 52, 53 & 54, within the Sub-Registration District of Thyagarayanagar, Madras and in the Registration District of Madras-Chingleput the said Plots bearing Nos.51, 52, 53 and 54, Survey No.158, in Block No.2 and is of the extent of 6 grounds or thereabouts and is bounded on the

North by : Proposed 30 feet road;
 East by : Proposed 40 feet main road;
 South by : Proposed 30 feet road; and
 West by : Plot Nos.50 and 55

belonging to VR.RM.PR.Periyakaruppan.

[Amended as per order dated 30.12.2002 passed in Application No.4802/2002 and order dated 07.03.2003 passed in Application No.1187/2003]

सत्यमेव जयते
AND

All that piece of parcel of land situate in Saligramam Village, bearing Plot Nos.47, 48, 49, 50, 55, 56, 57 and 58, within the Sub-Registration District of Thyagarayanagar, Madras and in the Registration District of Madras-Chingleput the said Plots bearing Nos.47, 48, 49, 50, 55, 56, 57 and 58 Survey No.158, in Block No.2 and is of the extent of 10 grounds and 1600 sq.ft., or thereabouts and is bounded on the

North by : Proposed 30 feet road;

East by : Plot Nos.51 and 54
 South by : Proposed 30 feet road; and
 West by : Plot Nos.46 and 59

[Amended as per order dated 30.12.2002 passed in Application No.4802/2002 and order dated 07.03.2003 passed in Application No.1187/2003]

Schedule - II

Plot Nos.49, 50, 55, 56, 47, 48, 57 and 58 in the above Schedule-I property as shown in Pattas in C.A.No.1053 of 2002 standing in the names of the Plaintiffs and Defendants 3 to 6 appended to the Plaint as Annexure 1 to 4.

sd/.M.S.N.J

02.03.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/18.04.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.