

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Friday, this the 13th day of June 2025

I.A.No. 5 of 2024

in

O.S. No. 194 of 2023

(CNR No. TNSA17-000263-2023)

Palaniappan

...Petitioner/2nd Defendant

-Vs-

1. Chinnathayee

2. Periyannan

3. Lakshmi

4. Govindan

5. Velliyangiri

...Respondents/Plaintiffs

This petition is heard on 11.06.2025 in the presence of Mrs. G.Malathi., B.A., B.L., the Learned counsel for the Petitioner/2nd Defendant and Mr. N.Saravanan, B.A., B.L., the Learned counsel for the Respondents/Plaintiffs. Enquiry heard and having stood over for my consideration till this day, this court delivered the following,

ORDER

Petition filed by the Petitioner/2nd Defendant to set aside the exparte order dated 09.11.2023 passed in the original suit.

1. Brief facts in the petition is as follows:

1.1. The petitioner is the 2nd defendant in the Original suit. The petitioner was served with summons in the original suit and the he himself along with the

3rd defendant had visited an advocate office and discussed the matter and he himself was also ready to give the fees to conduct the suit. But the 3rd defendant alone had engaged the counsel and had left the petitioner. He was under bonafide belief that the said counsel was also appeared for the petitioner. But in the last week, he came to know through some well wishers that this court had passed an exparte order as against him and on enquiry, he came to know that the 3rd defendant had not engaged any counsel and the matter was posted for exparte evidence. Hence, the petitioner had engaged another counsel and was filing this petition.

2. Brief facts in the Counter filed by respondents/plaintiffs is as follows:

2.1. The respondents/plaintiffs denied the averments made by the petitioner/2nd defendant in his affidavit. The petitioner had filed this petition without any cause of action and prima facie case. The petitioner had no valid defence to proceed with the case. The reason stated in the affidavit is also not an acceptable one. This petition is filed only to protract the proceedings. Hence, this petition is liable to be dismissed.

3. No oral and documentary evidence on either side.

4. Point For Consideration:-

(i) Whether the exparte order dated 09.11.2023 passed in original suit has to be set aside or not ?

5. Both side rival submissions with regard to their pleadings heard and perused the materials on record. This suit is filed by the respondents/plaintiffs as against the petitioner/2nd defendant and other defendants for the relief of

permanent injunction and to declare the sale deeds in favour of the defendants therein as null and void.

6. On perusal of the case records, it shows that both the court notice and the postal notice sent to the petitioner/2nd defendant herein in respect of the suit and the interlocutory petition were returned as such he had refused to receive the same. Such being the position, the contention of the petitioner/2nd defendant that he had received the summons and he himself along with the 3rd defendant had visited an advocate office and discussed the matter and he himself was also ready to give the fees to conduct the suit, but the 3rd defendant alone had engaged the counsel and had left the petitioner are all not having any considerable force.

7. The petitioner/2nd defendant herein had filed his written statement along with this petition. The 3rd defendant, who was set-exparte in the original suit had also filed an application to set-aside the exparte decree and the same was also allowed by this court and he had also filed his written statement. Therefore, the stage of the case is for framing issues. The claim of the respondents/plaintiffs with regard to the cancellation of the sale deeds in favour of the defendants has to be certainly adjudicated on considering the defence put forth by the defendants in their respective pleadings and evidence let in by either side. This court forms opinion that dismissing this petition would not advance the interest of justice to either side. At the same time, the delay caused to the respondents/plaintiffs had to certainly compensated by the manner known to law. Hence, in the interest of justice and considering the meritorious nature of the suit and to avoid multiplicity of proceedings, this court is inclined to allow this petition on cost.

In the result, this petition is allowed on payment of cost of Rs. 1,000/- to the respondents/plaintiff on or before 26.06.2025, if not, this petition stands dismissed. For compliance call on 27.06.2025.

This order is typed by me in my official laptop, corrected and pronounced by me in open court on this 13th day of June 2025.

**Sd./-Thiru.M.Selvam,
District Munsif,
Mettur**

Both side witnesses and documents: Nil

**Sd./-Thiru.M.Selvam,
District Munsif,
Mettur**