

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

**C.R.P(PD)No.3515 of 2011
and
M.P.No.1 of 2011**

1.A.Suresh Kumar
2.P.Appasami

...Petitioners

Versus

1.M.Indirani
2.S.Yasodha
3.Puniyavathi
4.M.Elumalai
5.M.Rajagopal
6.M.Jayakumar
7.M.Viswanathan
8.M.Manibalan
9.Selvanayagi
10.Tmt.Vellachi
11.P.Sundaram
12.Smt.Poomathy
13.P.Kannan
14.C.Govindarajan
15.Smt.Vijaya
16.Selvam
17.Ganthi
18.Sethu
19.Srinivasan

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order made in I.A.No.94 of 2009 in O.S.No.124 of 2007 dated 03.08.2009 on the file of Additional District Court/Fast Track Court No.II, Salem by allowing this Civil Revision Petition.

For Petitioners : Ms.M.Srividhya

For Respondents - 1 & 2 : Mr.D.Shivakumar

Respondent - 3 : Mr.T.Sezhian

Respondents - 4 to 8
& 10 : No Appearance

Respondents - 9,
11 to 15, 17 to 19 : Not ready in notice

Respondent - 16 : Mr.R.Nalliyappan

ORDER

This Civil Revision Petition is filed challenging the order passed by the learned Additional District Judge, Fast Track Court No.II, Salem in I.A.No.94 of 2009 in O.S.No.124 of 2007 dated 03.08.2009, in and by which the learned Judge had dismissed the Application filed by the defendants 7 & 8 to implead the respondents 10 to 19 herein as the defendants in O.S.No.124 of 2007. The respondents 1 to 3 herein had filed a suit for partition and subsequently, plaintiffs 1 & 2 got themselves transposed as defendants 9 & 10 in the suit. Pending the suit, defendants 7 & 8 have come forward with the Application which is the subject matter of this Revision. In Paragraph No.6 of the affidavit filed in support of the

impugned Application, the revision petitioners had stated as follows:

"6. The purchasers of the house sites sale agreement holders, power Agents who have paid the entire sale price are all absolutely necessary and proper parties to the suit. Besides house site nos. 1 and 2 were taken by 2nd defendant M.Rajagopal. And site No.3 was taken by M.Manibalan who is the son in law of 3rd respondent/3rd plaintiff. Likewise the site No.4 was taken by M.Jayakumaran and the site No.5 was taken by Viswanathan. The site No.6 was taken by M.Elumalai. In the site No.4 M.Jayakumar 3rd defendant put up a construction of a terraced house at the cost of 20 lakhs. In site No.5 M.Viswanathan has started a house construction. The defendants have also sold lands to 1.Tmt.Vijaya wife of Appusamy (2) Kannan son of Periyasamy (3) Selvan and (4) Gandhi. The rough plan filed along with this petition may be read as part of this affidavit."

2. The proposed respondents had filed a counter affidavit stating that they are neither proper nor necessary parties to the suit and that they have got into the possession of the property on the basis of the sale deed and constructions has also been put up. They had further contended that there was no cause of action against these respondents and if they are

impleaded the suit will be bad for mis-joinder of parties.

3. The learned District Judge, Fast Track Court No.II, Salem after hearing the submissions of the parties, proceeded to dismiss the Application in I.A.No.94 of 2009 on the ground that the revision petitioners who have filed the implead petition are only the Power Agents of defendants 1 to 5 and further, the plaintiff being the *dominus litus*, his choice of arraying the parties is exclusive.

4. Heard Ms.M.Srividhya, learned counsel for petitioners and Mr.D.Shivakumaran, learned counsel for respondents 1 & 2, Mr.T.Sezhian, learned counsel for third respondent and Mr.R.Nalliyappan, learned counsel for sixteenth respondent.

5. On hearing the submission and perusing the papers, I find that it is an axiomatic principle of law that the plaintiff is the *dominus litus* and he cannot be compelled to litigate against a person whom he does not choose to bring into the lis. In the instant case, the impugned Application is moved by

the Power Agents of defendants 1 to 5 and not by defendants 1 to 5 themselves. Therefore, I find no infirmity in the order of the learned Additional District Judge, Fast Track Court No.II, Salem.

6. In the result, this Civil Revision Petition is dismissed and the order passed by the learned Additional District Judge, Fast Track Court No.II, Salem in I.A.No.94 of 2009 in O.S.No.124 of 2007 dated 03.08.2009 is confirmed. Mr.Sezhian, learned counsel appearing on behalf of the third respondent would represent that the suit is in the stage of cross examination of the plaintiff witness. Therefore, the learned Additional District Judge, Fast Track Court No.II, Salem is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

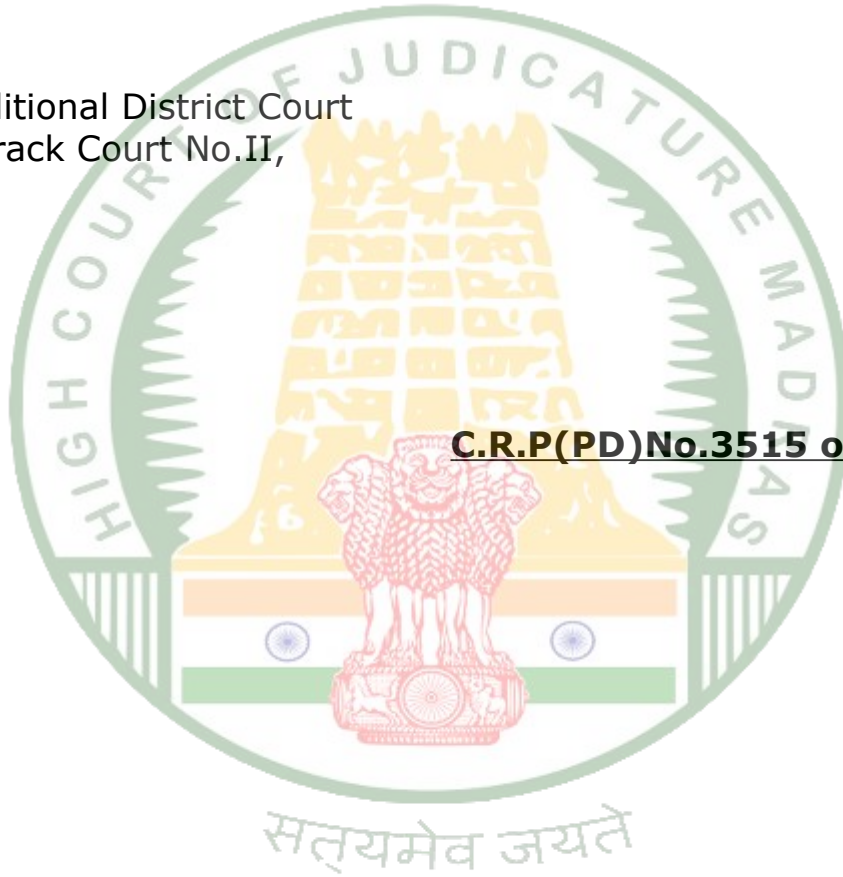
11.10.2018

mrr
Index: Yes/No

P.T.ASHA, J.,

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To
The Additional District Court
Fast Track Court No.II,
Salem.



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