

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM

**THE HON'BLE Ms. JUSTICE R.N.MANJULA**

C.R.P.(NPD).No.1662 of 2017

1.Mrs.Haseena Begum

2.J.Fathima Fariha (Minor)

represented by her Mother and  
natural Guardian, Mrs.Haseena Begum

(the 1<sup>st</sup> plaintiff herein)

...

Petitioners

Vs.

1.Mrs. Masthani

2.Mrs. Kareemunissa

...

Respondents

**PRAYER :** The Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the Order and decretal order dated 28.10.2015 on the file of the learned II Judge, City Civil Court at Chennai in I.A.No.9307/2015 in I.A.No.13205/2009 in O.S.No.2724/2005.

For Petitioners : M/S.Inamdar Ameenur Rahman

For Respondents : Mr.Sayeedain Mohameed

**ORDER**

*(Heard through video conferencing)*

This Civil Revision Petition has been filed against the Order dated 28.10.2015 of the learned II Assistant Judge, City Civil Court, Chennai passed in I.A.No.9307 of 2015 in I.A.No.1305/2009.

2. The Civil Revision Petitioners are the plaintiffs in the suit.

3. The suit was filed for partition and the suit was decreed and the quantum of share has also been arrived at. It seems that the problem has arisen while dividing the property by metes and bounds in accordance with the shares allotted in the Preliminary Decree. Despite the Final Decree has been passed after getting the report of the Advocate Commissioner, it is submitted by the revision petitioner that the portion marked as 'A' in the Commissioner's Report and as how suggested by the Commissioner has not been allotted to the share of the petitioners. By stating so, the Civil Revision Petitioners have filed a petition to amend the decree. The learned trial Judge dismissed the petition by stating that the demarcation of the property made by the Commissioner has been done in the absence of the respondents and without the help of a surveyor and it can not be mentioned in the decree as prayed by the Petitioners.

4. The learned counsel for the petitioners submitted that the respondents never co-operated in the proceedings and even during the visit of the commissioner and their absence is something wanton. Since it is observed by the learned trial Judge that the demarcation has not been done properly with the help of a surveyor, I feel it is desirable to remand the matter back to the trial

Court in order to demarcate the respective shares of the parties by the Commissioner with the help of a surveyor and in the presence of the respondents.

5. Accordingly this Civil Revision Petition is **allowed** and the order of the learned II Assistant Judge, City Civil Court, Chennai dated 28.10.2015 made in I.A.No.9307 of 2015 in I.A.No.1305/2009, is set aside and the matter is remanded back to the trial Court in order to reissue the commission warrant to the same Advocate Commissioner or if the same Commissioner is not available to any other new Advocate Commissioner, in order to visit the suit properties and effect the demarcation of the respective shares of the parties with the help of any Government surveyor or qualified surveyor and submit a report to the Court. After receiving the report the trial Court shall consider the petition to amend the decree afresh and pass suitable orders. The respondents should make use of this opportunity and make themselves available at the time when the Advocate Commissioner visits the property without causing any further delay. It is needless to point out that if the respondents did not co-operate they will be losing the valuable opportunity given to them. Since the matter is pending for long time, the learned trial Judge is directed to dispose the matter as expeditiously as possible and preferably within a period of three months from the date of receipt of copy of this order. Since the petitioner is sought the relief,

the expenses for getting the assistance of the Advocate Commissioner at the order of the Court would be borne by the petitioners themselves. No costs.

**30.07.2021**

Speaking/Non-speaking

Index : Yes/No

Internet : Yes/No

*jrs*



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To

1.The II Assistant Judge,  
City Civil Court, Chennai.

2.The Section Officer,  
V.R.Section,  
High Court, Madras.



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**R.N.MANJULA,J.**

*jrs*



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