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CRP.No.1096 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :27.02.2026

PRONOUNCED ON :09.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1096 of 2026
and CMP.No.5723 of 2026

1.Shakila Shareef
2.Niyamathulla Shareef

Vs.

... Petitioners

1.K.Shabeena Shareef
2.Farhan Shareef (minor)
3.Adaan Shareef (minor)

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 04.11.2025 in I.A.No.14 of 2024 in O.S.No.603 of 2020 on the file of the Court of V Additional District Judge, City Civil Judge, Chennai.

For Petitioners : M/s.R.Thenamirtha Shyamala

ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Judge appointing Advocate Commissioner to suggest modes of Division as per the preliminary decree for partition.



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2. The respondents/plaintiffs filed a suit for partition and a preliminary decree for partition was passed declaring 1/16th share to first plaintiff and 7/8th share to each of the plaintiffs 2 and 3.

3. Pursuant to the preliminary decree passed by the trial Court, the plaintiffs filed instant application seeking appointment of Advocate Commissioner to divide the property as per the preliminary decree. The trial Court by the impugned order appointed an Advocate Commissioner to suggest the mode of division as per the preliminary decree. Aggrieved by the said order, the petitioners/defendants have come before this Court.

4. The learned counsel appearing for the petitioners would vehemently contend that petition for appointment of Advocate Commissioner filed by the respondents without filing a petition for passing of final decree is untenable in law.



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5. The learned counsel further submits that any order passed in a petition for appointment of Advocate Commissioner to divide the property can only be challenged by way of revision and in the absence of final decree by the trial Court based on the application made by the party to the preliminary decree for partition, the right of filing appeal against the final decree, available to the petitioners, will get deprived.

6. In the light of the submission made by the learned counsel appearing for the petitioners, the main question to be decided in this revision is whether petition filed by the plaintiff seeking appointment of Advocate Commissioner to divide the property, as per the preliminary decree is maintainable without a separate application for passing of final decree.

7. The practice of passing two decrees in the name of preliminary decree and final decree in partition suit and the inconvenience caused by such practice had been extensively considered by the Apex Court in ***Shub Karan Bubna @ Shub Karan Prasad Bub vs Sita Saran Bubna & Ors*** reported in ***(2009) 9 SCC 689***.



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8. The Apex Court in the above mentioned decision, after expressing a need for doing away the practice of passing two decrees in the partition suit, ultimately observed as follows:

“31. Insofar as final decree proceedings are concerned, we see no reason for even legislative intervention. As the provisions of the Code stand at present, initiation of final decree proceedings does not depend upon an application for final decree for initiation (unless the local amendments require the same). As noticed above, the Code does not contemplate filing an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution.” (emphasis supplied by this Court)

Therefore, it is clear that partition suit is a continuous one till the passing of final decree and no separate application by the litigant is necessary to initiate final decree proceedings and it is the duty of the Court to continue the proceeding till the passing of final decree.



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9. The above view of the Apex Court was re-affirmed in a subsequent decision of the Apex Court in ***Kattukandi Edathil Krishnan and others Vs. Kattakandi Edathil Valsan and others*** reported in (2022) 16 SCC 71, wherein the Apex Court observed as follows:

“ 35. We are of the view that once a preliminary decree is passed by the trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the trial Court has to list the matter for taking steps under *Order XX Rule 18 of the CPC*. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the party concerned to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under *Order XX Rule 18 of the CPC* soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.”

10. The observation of the Apex Court in the above two decisions would make it clear, after passing of the preliminary decree, Court has to fix



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a date and continue with the final decree proceedings. Therefore, there is no need to file a separate application for passing of final decree. The only difficulty for the Court would be drawing up a final decree. For the purpose of drawing up final decree, the person in whose favour final decree is passed is required to deposit required stamp papers. If the person in whose favour final decree is passed, failed to deposit required stamp papers, then the Court may not be in a position to engross final decree in stamp papers. The same problem will be encountered even if a separate application for passing of final decree is filed by one of the litigants. Even in such cases, where separate application is filed by one of the litigants and final decree is passed by the Court on the basis of the application, if thereafter, the applicant has failed to supply the stamp papers, Court may not be in a position to engross the final decree in the stamp papers. Therefore, in the light of the law settled by the Apex Court in the above mentioned cases, it is clear, there is no need for filing of separate application for passing of final decree. Hence, the said objection raised by the learned counsel for the petitioners is not appealable to this Court.



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11. In the case on hand, the respondents/plaintiffs filed an application seeking appointment of Advocate Commissioner to divide the property and allot the shares as per the preliminary decree. Of course, allotment of shares cannot be done by the Advocate Commissioner, he can only suggest the mode of division after conducting local inspection and it is for the Court to allot the shares by passing final decree. In the case on hand, based on the application filed by the petitioner seeking appointment of Advocate Commissioner to divide the property pursuant to the preliminary decree, the trial Court by impugned order appointed an Advocate Commissioner to suggest the allotment of shares as per the preliminary decree.

12. I do not find any irregularity or illegality in the above said order. After filing of report by the Advocate Commissioner, the trial Court has to consider the suggestion given by the Advocate Commissioner, after giving opportunities to all the parties shall pass final decree. If any final decree is passed by the trial Court and the petitioners are aggrieved by the said final decree, they are entitled to challenge the same by way of appeal. Therefore, the submission made by the learned counsel for the petitioners that



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appointing an Advocate Commissioner without the formal application for passing of final decree would result in depriving the right of appeal against the final decree is also not acceptable to this Court.

13. In the light of the discussion made earlier, both the submissions made by the learned counsel for the petitioners are rejected and the Civil Revision Petition stands dismissed with the clarification that in the event of passing of final decree, the petitioners or any other party aggrieved by such final decree are entitled to exercise their right of appeal as available under Section 96 of Code of Civil Procedure. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2026

Index : Yes
Speaking order: Yes
Neutral Citation: Yes
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To

The V Additional District Judge,
City Civil Judge, Chennai.



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S.SOUNTHAR, J.

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Pre-delivery order made in
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