



C.R.P. No.3767 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 12.11.2024

Pronounced on : 19.03.2025

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P. No.3767 of 2022

and

C.M.P. Nos.19676 of 2023 and 19872 of 2022

1.M.K.R.Mohan

2.M.Geetha

... Petitioners / Petitioners / Plaintiffs

Vs.

1.K.Sivanandham

2.K.Seshachalam

3.S.Jayalakshmi

4.Aparna Constructions,
Represented by its Proprietrix,
Padma Gopikrishnan,
No.78A, TTK Road, Alwarpet,
Chennai-600018.

5.B.J.Hansa

... Respondents / Respondents /
Defendants 1 to 5

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 12.10.2022 in I.A.No.7718 of 2017 in O.S.No.3150 of 2017 on the file of the learned XI Assistant City



C.R.P. No.3767 of 2022

Civil Judge, Chennai and allow the revision petition.

WEB COPY

For Petitioners : Mr.S.Sundar Narayan

For R1 to R3 : Mr.Na.Malai Saravanan

For R4 and R5 : Exparte

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to set aside the order dated 12.10.2022 passed by the learned XI Assistant City Civil Judge, Chennai in I.A.No.7718 of 2017 in O.S.No.3150 of 2017.

2. The petitioners filed a suit in O.S.No.3150 of 2017 before the City Civil Court, Chennai against the respondents/defendants for the following reliefs:

- a) For a declaration that the plaintiffs are entitled to an additional 300 sq.ft of super built-up area, more fully described in Schedule "C" of the property.
- b) For a mandatory injunction directing the first defendant to remove the store room located at the terrace, marked as CDEF, as per the sketch annexed to the Schedule of the plaint.
- c) For a mandatory injunction directing the first and fourth



WEB COPY



C.R.P. No.3767 of 2022

defendants to earmark an additional 300 sq.ft of super built-up area, more fully described in Schedule "C" of the property, or in the alternative, to pass a decree directing the first and fourth defendants to jointly and severally pay suitable compensation to the plaintiffs, as determined by the Court after an enquiry conducted by the appointment of an Advocate-Commissioner in respect of the Schedule "A" property, with interest at 12% per annum from the date of filing of the plaint until realization of the said sum.

- d) For a permanent injunction restraining the first, second and third defendants, and their agents, from holding any meetings of the Apartment Association under the name "Ramana Flat Owners' Association" or any other name, comprising the owners of the respective apartments on the Schedule "A" property.

3. Along with the suit, the petitioners/plaintiffs filed I.A.No.7718 of 2017 under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of an Advocate-Commissioner with the help of a Registered Surveyor to measure the undivided share and super built-up area of all the owners of the respective flats in Schedule 'A' property including the common area available and file a report before the Court. The learned XI Assistant City Civil Judge, after hearing both side parties, dismissed the said I.A.No.7718 of 2017 *vide* the impugned order.



C.R.P. No.3767 of 2022

WEB COPY 4. Mr.Sundar Narayan, the learned counsel for the petitioners/plaintiffs, submitted that the petitioners/plaintiffs, who are husband and wife and joint purchasers, are currently enjoying a lesser measurement of the flat than what they had purchased; that the common areas around the building and on the terrace were to be treated as common by all the owners, with access granted to all, but unfortunately, this was not the case; that in October 2015, the first defendant commenced construction of a storage room on the terrace, specifically in the portion above the ceiling of the first floor flat on the western side, using the staircase inside the first floor of the flat, without the knowledge of the petitioners/plaintiffs; and that the storage room was later improved and fully constructed, measuring approximately 10 x 10 feet, and was used for housing the household articles of the first respondent; and that in May 2015, the Corporation of Chennai took measurements of the floor area of the respective apartments in Schedule A and thereafter uploaded the details onto their website as follows:

Owner	Ground Floor	First Floor	II Floor	Total built-up	%	Total %
Plaintiff 1 & 2		400	450 (Mezzanine)	850	24%	46%
Defendant 2 & 3	350	450	0	800	22%	
Defendant 1	0	905	100	1005	29%	54%



C.R.P. No.3767 of 2022

Defendant 1	869	0	0	869	25%	
-------------	-----	---	---	-----	-----	--

WEB COPY

5. The learned counsel for the Petitioners/Plaintiffs submitted that the Petitioners were assured 30% of the undivided share, while the 2nd and 3rd Respondents were allotted 25% of the undivided share along with the corresponding super built-up area, representing the share of the original owner. On the other hand, the 1st Respondent, who is the subsequent purchaser from the 6th to 8th Defendants, has obtained 45% of the undivided share and the corresponding super built-up area, representing the share of the nominee of the builder, as detailed below:

	Floor	Super Built up Area	%	Undivided	%	Total %
Plaintiff 1 & 2	1-B	1150	30%	1345/4445	30%	55%
Defendant 2 & 3	G-B	970	25%	1100/4445	25%	
Defendant 1	1-A	905	23%	905/4445	20%	45%
Defendant 1	G-A	869	22%	1095/4445	25%	
		Total=3894		Total=4445		

6. The learned counsel further submitted that as per sale deeds dated 02.11.2011, the 6th and 7th defendants only conveyed 908 sq.ft. However, the 8th defendant has conveyed 9 built-up area of 1095 sq.ft. to the 1st defendant. Though he had originally received 869 sq.ft from builder, the 8th defendant



C.R.P. No.3767 of 2022

WEB.COM

could not have conveyed a greater extent than what was originally conveyed to him. Further, the measurements conducted by the Corporation of Chennai reveal that 54% of the undivided share and corresponding built-up area has been conveyed to the 1st respondent, thereby reducing the undivided share of the petitioners and the 2nd and 3rd respondents to 46%. Additionally, the 1st respondent has occupied 100 sq. ft. on the terrace, which was not allotted to him either under the sale deeds or the agreements of construction entered into by his vendor with the 5th respondent (the owner). As a result, the 1st respondent now holds 905 sq. ft. on the First Floor, 100 sq. ft. on the terrace (unauthorized) totally 1,005 sq. ft. apart from 1095 sq.ft on the Ground Floor. Although the 1st respondent is entitled to only 869 sq. ft. as per the sale deed, he has unlawfully secured additional built-up area, which is contrary to the tenor of the sale deeds and agreements of construction. Consequently, the petitioners have been fraudulently deprived of their rightful undivided share and corresponding super built-up area.

7. Mr.Na.Malai Saravanan, the learned counsel appearing for the 1st to 3rd respondents submitted that if the plaintiffs feel that the plaintiffs have lesser extent that they purchased, they are entitled to file a petition to measure their property alone. Plaintiffs cannot seek for appointment of Advocate-



C.R.P. No.3767 of 2022

Commissioner to measure all the flats. The Trial Court, after considering the entire materials and evidences, rightly dismissed the petition. There is no irregularity or illegality in the order of the Trial Court. Accordingly, he prayed to dismiss the Civil Revision Petition.

8. This Court has considered both side submissions and perused all the materials available on record.

9. Order XXVI Rule 9 of the Code of Civil Procedure (CPC) empowers the Courts to appoint an Advocate-Commissioner for local investigations to clarify matters in dispute, such as the physical features of a property (boundary disputes, encroachments, structural issues), and to clarify ambiguities in property descriptions. The Advocate-Commissioner' report would assist the Court in understanding the on-site situation.

10. As far as flats are concerned, an Advocate-Commissioner can provide valuable on-site observations regarding alleged unauthorized alterations, encroachments into common areas, and damage to structures. However, it is clear that the appointment of an Advocate-Commissioner should be for the purpose of clarifying factual situations and not for gathering



C.R.P. No.3767 of 2022

evidence for one of the parties.

WEB COPY

11. According to the plaintiffs, they are enjoying the properties to a lesser extent than what they had purchased. Hence, this Court is of the view that if the Advocate-Commissioner is appointed for the petition mentioned purposes, no prejudice would be caused to the defendants. On the other hand, Advocate-Commissioner's report will be helpful to decide the dispute between the parties.

12. Hence, the impugned order dated 12.10.2022, passed by the learned XI Assistant City Civil Judge, Chennai, in I.A. No.7718 of 2017 in O.S.No.3150 of 2017, is set aside. The Trial Court shall appoint an Advocate-Commissioner to the petition mentioned purposes within 10 days from the date of receipt of the copy of this order.

13. The Advocate-Commissioner shall inspect the suit properties along with a qualified surveyor, measure the undivided share and super built-up area of all the owners of the respective flats in Schedule 'A' Properties, including the common areas, and file a report before the Trial Court within 3 months



C.R.P. No.3767 of 2022

from the date of appointment.

WEB COPY

14. Both parties are directed to co-operate with the Advocate-Commissioner to ensure the completion of his task in a speedy manner.

15. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

(RSVJ)
19.03.2025

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

jen/pal

To

The XI Assistant City Civil Judge,
Chennai.



WEB COPY



C.R.P. No.3767 of 2022

R.SAKTHIVEL, J.,

jen/pal

Order made in
C.R.P. No.3767 of 2022

19.03.2025