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A.S.No.838 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.838 of 2012
and M.P.No.1 of 2012

K.Perumal Samy Rishi, @ E.V.Perumal Sami Reddy ...Appellant/ Plaintiff

-Vs-

- 1.A.N.Lakshmipathy
- 2.A.N.Bala Murugan
- 3.A.N.Gnanasekaran
- 4.A.N.Chandrasekaran
- 5.A.N.Loganayaki
- 6.A.N.Somasundaram
- 7.A.N.Suresh Kumar
- 8.A.N.Ponnurangam
- 9.Ponnammal @ Vanathy Kannan
- 10.Saravana Foundation Ltd.,
No.15 New Giri Road, T.Nagar,
Chennai 600 017.
- 11.R.K.P.Builders and Promoters,
Rep. by its Sole Proprietor R.Palani,
Plot No. 1510, T.S.Krishna Nagar,
Mugappiar East,
Chennai – 600 037.

...Respondents/Defendants



A.S.No.838 of 2012

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Prayer:- Appeal Suit filed under Section 96 r/w Order 41 Rule 1 and 2 of C.P.C., against the judgment and decree dated 03.02.2012 made in O.S.No.79 of 2006 passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee.

For Appellant	: Mr.R.Yashod Vardhan Senior Advocate assisted by Mr.R.Murali
For R1 to R9	: No appearance
For R10	: Mr.K.V.Babu for Mrs.K.R.B.Dhaaranee
For R11	: Mr.Ralph V.Manohar

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

The plaintiff in the suit in O.S.No.79 of 2006 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee, is the appellant in the above appeal.

2.The appellant filed the suit in O.S.No.79 of 2006 for specific performance of an Agreement of Sale dated 10.01.2005 executed by defendants 1 to 9, along with one Chokkubai, who is the wife of late Sri.A.S.Nagarathnam



A.S.No.838 of 2012

and mother of defendants 1 to 7.
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3.The suit property was originally owned by two brothers, namely, Mr.A.S.Nagarathnam and Mr.A.S.Ponnurangam. Mr.A.S.Nagarathnam died, leaving behind his wife Tmt.Chokkubai Ammal and his children, i.e. defendants 1 to 7. It is the case of plaintiff, that Thiru.A.S.Ponnurangam, the 8th defendant representing the family agreed to sell the suit properties at the rate of Rs.37,000/- per cent and received a sum of Rs.1 lakh as advance. 8th defendant was appointed as Power of Attorney Agent of defendants 1 to 7, 9th defendant and mother of defendants 1 to 7 by a registered Power of Attorney Deed dated 15.11.2004. Later Mr.A.S.Ponnurangam for himself and on behalf of defendants 1 to 7 and 9 and mother of defendants 1 to 7 executed a Sale Agreement in favour of the plaintiff on 10.01.2005. As per the Sale Agreement, the sale consideration was fixed at Rs.38,000/- per cent and the total sale consideration for an extent of 2 acres and 20 cents (suit property) was arrived at Rs.83,60,000/-. On the date of the Agreement, the 8th defendant received a sum of Rs.17,00,000/- as advance including the sum of Rs.1 lakh received as advance.



A.S.No.838 of 2012

WEB COPY

4.It is the case of plaintiff that he agreed to purchase the suit property in order to develop the land as a layout and sell the suit property as house site plots. It is stated that the plaintiff who was doing real estate business, obtained a Power of Attorney Deed dated 19.01.2005 under Ex.A4 from defendants 1 to 9 and one Tmt.Chokkubai Ammal, the wife of Mr.A.S.Nagarathnam and mother of defendants 1 to 7. As per the Agreement, the plaintiff was supposed to complete the sale by the end of April, 2005. However, it is admitted that Tmt.Chokkubai Ammal died on 26.04.2005. Thereafter, on 28.04.2005, the plaintiff paid Rs.1,00,000/- to the 4th defendant, who is the son of Tmt.Chokkubai Ammal by way of further advance amount. Admittedly the plaintiff failed to pay the balance consideration on or before 30.04.2005. It is stated by the plaintiff that the defendants failed to provide the legal heirship certificate and other documents so as to enable the plaintiff to proceed with the development of the land as a layout as it was conceived at the time of the Agreement. The 8th defendant issued a notice under Ex.A5 dated 23.06.2005, complaining that the plaintiff who had agreed to complete the transaction on or before 30.04.2005 failed to pay the balance. By this notice, the plaintiff was called upon to complete the transaction on or before 30.06.2005 by paying the



A.S.No.838 of 2012

WEB COPY

entire balance amount and arrange for registration of Sale Deed so as to complete the sale transaction failing which he will be at liberty to cancel the Agreement. Thereafter, on 28.06.2005, the plaintiff issued a reply notice to the 8th defendant under Ex.A6, asking for verification of documents, Power of Attorney and other documents relating to the title in order to obtain sanction from CMDA. Later it is admitted that defendants 1 to 9 executed a Sale Deed on 21.07.2006 in favour of defendants 10 and 11. Thereafter on 22.08.2006, the plaintiff filed the suit for specific performance, alleging that defendants 10 and 11 are not bona fide purchasers.

5.The suit was resisted by the defendants pointing out that the plaintiff was never ready and willing to perform his part of the contract by paying the balance of sale consideration on or before 30.04.2005 as agreed under the Suit Agreement Ex.A3. Though execution of the Suit Agreement under Ex.A3 dated 10.01.2005 is admitted, the defendants raised several grounds. One of the main grounds raised in the written statement is that the plaintiff was never ready and willing to perform his part of the contract and hence not entitled to the equitable relief for specific performance. It is specifically stated in the written statement that after the death of Tmt.Chokkubai Ammal on 29.04.2005, as required by



A.S.No.838 of 2012

the plaintiff, the defendants obtained a death certificate and legal heirship certificate for verification of documents and after receiving the records, the plaintiff did not come forward to pay the balance as agreed. Though the plaintiff was permitted to develop the suit property, he relied on the terms of the Agreement and contended before the Trial Court that possession was handed over to him pursuant to the Agreement. The plaintiff also pleaded protection under Section 53-A of the Transfer of Property Act. However, in the written statement a specific stand was taken disputing the averments and the defendants contended that physical possession was never handed over to the plaintiff.

6.The Trial Court after recording the pleadings, framed the following issues :

- i. *Whether the time is the essence of contract ?*
- ii. *Whether the plaintiff is ready to perform his contract ?*
- iii. *Whether the plaintiff is in possession of the suit property ?*
- iv. *Whether the plaintiff is entitled for specific performance as prayed for the plaint ?*
- v. *Whether the plaintiff is entitled for permanent injunction to restraining the defendants and their men from interfering in any manner with the plaintiff's possession and enjoyment of the suit*



A.S.No.838 of 2012

property ?

vi. Whether the plaintiff is entitled for cost ?

vii. To what relief the plaintiff is entitled ?

7. Before the Trial Court, the Power of Attorney of plaintiff was examined as P.W.1. Exs.A1 to A12 were marked on the side of plaintiff. The 8th defendant was examined as D.W.1., and the proprietor of the 11th defendant was examined as D.W.2. Exs.B1 to B26 were marked on the side of defendants.

8. The Trial Court held that time is not the essence of the contract because the defendants have come forward to extend the time till 30.06.2005. However, the Trial Court found that the plaintiff was not ready and willing to perform his part of the contract in terms of the Agreement under Ex.A3. A specific issue was framed, whether the plaintiff was in possession of the property. The Trial Court found that the plaintiff was in possession of the property as per the Agreement, to enable the plaintiff to convert the suit property into house site plots. However, the plaintiff was granted specific performance in respect of an extent of 47.37 cents of the total suit property, taking into account the money paid by the plaintiff under Suit Agreement Ex.A3. Challenging the judgment and decree of the Trial Court dismissing the suit in respect of remaining extent



A.S.No.838 of 2012

of the suit property the above appeal is preferred.

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9.The learned senior counsel appearing for the appellant strenuously argued that the Trial Court having held that time is not the essence of the contract, erroneously found that the plaintiff is not ready and willing to perform his part of the contract, as the plaintiff did not pay the balance on or before 30.04.2005 as per the Sale Agreement under Ex.A3. The learned senior counsel then pointed out that the appellant paid a substantial amount of Rs.18,00,000/- as advance and that he was always ready and willing to perform his part of the contract by paying the balance of the sale consideration. Since the Agreement enabled the plaintiff to develop the land simultaneously, the learned senior counsel pointed out that the delay was caused by the death of Tmt.Chokkubai Ammal. Pointing out that the plaintiff could not move forward towards land development as agreed and contemplated at the time of entering into a Sale Agreement under Ex.A3 it is submitted that the plaintiff was handicapped in view of the death of one of the vendors. The learned senior counsel also pointed out that the Sale Agreement itself was entered into between the parties through the Power of Attorney Deed. It is stated that appellant/plaintiff was unable to complete the project due to the death of Tmt.Chokkubai Ammal, the wife of



A.S.No.838 of 2012

WEB COPY

Mr.A.S.Nagarathnam. The learned senior counsel then submitted that since the plaintiff has purchased the suit property, he is entitled to ask for the legal heirship certificate, death certificate and other documents. The learned senior counsel further submitted that the Trial Court ought to have granted a decree for specific performance in respect of the entire suit property. The learned senior counsel pointed out that the defendants had not filed any cross appeal as against the finding of the Trial Court and therefore, on the finding of the Trial Court, the plaintiff is entitled to a decree as prayed for.

10.***Per contra***, the learned counsel appearing for the 10th respondent who is the subsequent purchaser, submitted that the Trial Court has rightly held that the plaintiff was not ready and willing to perform his part of the contract as per the Sale Agreement under Ex.A3. The learned counsel referred to the pleadings and evidence adduced on either side to sustain the finding of the Trial Court holding that the plaintiff is not ready and willing to perform his part of the contract. Though the Trial Court found that time is not the essence of the contract, it is submitted that the reasoning of the Trial Court on the issue is not proper, despite no cross appeal is filed by the defendants as against that portion of the decree which was on the basis that time is not the essence of the contract.



A.S.No.838 of 2012

Since, the Trial Court has given a finding that the plaintiff is not ready and willing to perform his part of the contract and declined to grant relief in respect of the entire suit property as per the agreement under Ex.A3, learned counsel submitted that it is open to them to urge all the points to sustain the judgment.

11.Having regard to the submissions of the learned counsels appearing on either side and the specific pleadings, evidence and issues framed by Trial Court, this Court finds that the following points are to be determined in this Appeal:-

- (a) Whether the plaintiff is ready and willing to perform his part of the contract in terms of the Sale Agreement under Ex.A3 dated 10.01.2005
- (b) whether the plaintiff is entitled to the discretionary relief for specific performance?

Points (a) and (b)

12.It is to be noted that the Agreement of Sale under Ex.A3, specifies the time before which the entire sale consideration should be paid. Pursuant to Sale



A.S.No.838 of 2012

WEB COPY

Agreement under Ex.A3, the plaintiff agreed to pay the entire balance on or before 30.04.2005 under clause (4) of the Sale Agreement. It is relevant to extract clauses (4), (6) and (8):-

4. மேற்படி நிலங்களின் கிரையப்பத்திரங்களை முதல் பார்ட்டி இவைகளுக்குண்டான முழு கிரையத்தை முழுவதுமாக இரண்டாம் பார்ட்டியின் பவர் ஏஜெண்டிடம் சாட்சிகள் முன்னிலையில் கொடுக்கவும் கிரையப்பத்திரங்களை 2005ம் ஆண்டு ஏப்ரல் மாதம் 30 ந்தேதிக்குள் முடித்துக்கொள்ள வேண்டும் என்றும் பத்திரப்பதிவுக்கான கிரையத் தொகையை சார்பதிவாளர் அலுவலகத்தில் வங்கி டிராப்ட் ஆக கொடுக்க வேண்டும். பத்திரப்பதிவுக்கான நிலமதிப்பு குறித்து செண்ட் கணக்கில் பதிவு செய்வது அவர்களின் செலவிலேயே பத்திரம் கிரையம், பத்திரப்பதிவு மற்றும் இதர செலவுகள் முதல் பார்ட்டியின் பொறுப்பாகும்.

6.மேலும் 2வது பார்ட்டி/பார்ட்டிகள் விக்கிரைய தொகையை பெற்றுக்கொண்டு, 1வது பார்ட்டி/பார்ட்டிகள் கோரும் நபர்களுக்கோ அல்லது 1வது பார்ட்டியின்/பார்ட்டிகளின் பெயரிலோ கிரையம் செய்து கொடுக்க 2வது பார்ட்டி/பார்ட்டிகள் சம்மதிக்கிறார்கள். தவறும் பட்சத்தில் 1வது



A.S.No.838 of 2012

WEB COPY

பார்ட்டி/பார்ட்டிகள் சட்டப்படி நிலத்துக்கான தொகையை அரசு வங்கியில் செலுத்தி நிலத்தை கிரையம் செய்து கொள்ள உரிமை உண்டு. 1வது பார்ட்டி/பார்ட்டிகள் நிலத்துக்கான தொகையை கொடுக்காமல் காலம் கடத்தினால் சட்டப்படியான நடவடிக்கை எடுக்க 2வது பார்ட்டிக்கு/பார்ட்டிகளுக்கு உரிமை உண்டு.

8.கீழே ஷெட்யூலில் கண்ட நிலத்தை 1வது பார்ட்டி/பார்ட்டிகள் தன் சொந்த செலவில் வீட்டு மனைகளாக பிரிவு செய்து, தாங்கள் பெயர் வைக்கவும், விளம்பரம் செய்யவும், மனையின் விற்பனை தொகையினை நிர்ணயிக்கவும், மேலும் அவ்வாறு இயலாமல் போனால் சிறிய பாகங்களாக விற்பனை தொகையினை நிர்ணயிக்கவும், முன் பணத் தொகையினை பெறவும், அவ்வாறு பெற்ற தொகைகளுக்கு ரசீதுகள் வழங்கவும், அல்லது அக்கிரிமெண்ட் கொடுக்கவும், 1வது பார்ட்டிக்கு/பார்ட்டிகளுக்கு 2வது பார்ட்டி/பார்ட்டிகள் உரிமை அளித்து ஒப்புதல் அளிக்கிறார்கள். மேல் கண்டவைகளுக்கு ஒப்புதல் அளித்தாலும், 1வது பார்ட்டி/பார்ட்டிகள் 2வது பார்ட்டியிடம்/பார்ட்டிகளிடம் செய்து கொண்ட அக்கிரிமெண்டில் கண்டுள்ள மொத்த கிரைய தொகையில் 2வது பார்ட்டி/பார்ட்டிகளுக்கு சேரவேண்டிய பணத்தை 1வது பார்ட்டி/பார்ட்டிகள், 2வது பார்ட்டிக்கு/பார்ட்டிகளுக்கு கொடுத்துவிட்டு, கொடுத்த பணத்திற்கு தகுந்த



A.S.No.838 of 2012

WEB COPY

நிலத்தை கிரையமோ, பவர் ஆப் அட்டார்னியோ
பெற 1வது பார்ட்டிக்கு/பார்ட்டிகளுக்கு வழங்க 2வது
பார்ட்டி/பார்ட்டிகள் சம்மதிக்கிறார்கள்.

As per the Sale Agreement under Ex.A3, the suit property has an extent of 2 acres and 20 cents and is located in a prime locality in Ambattur Taluk, Tiruvallur District. The plaintiff obtained a general Power of Attorney Deed under Ex.A4 dated 19.01.2005. As per the general Power of Attorney Deed, the plaintiff was authorised to develop the land as a layout and he had full authority from the defendants' not only to develop the land but also to enter into Agreement and receive advance etc., in respect of parcels of land or house site plots. The terms of the Sale Agreement under Ex.A3 refers to the payment of the balance on or before 30.04.2005 and the payment of the balance is not subject to any other clauses in the Agreement. From the sequence of performance as agreed under Ex.A3, it is seen that the parties contemplated the sale of plots well before the last date specified in the Agreement for payment of balance. The terms of Agreement cannot be construed to mean that the payment of balance is subject to the plaintiff's actual development of land as the Agreement specifically refers to completion of sale by 30.04.2005. Since the defendants have issued a notice under Ex.A5 dated 23.06.2005 calling upon the



A.S.No.838 of 2012

WEB COPY

plaintiff to complete the transaction on or before 30.06.2005, the Trial Court held that time is not the essence of the contract. However, the notice under Ex.A5 refers to the request of plaintiff to extend time till 15.06.2005. It was then the plaintiff was called upon to pay balance before 30.06.2005. Merely because an extension was given at the request of plaintiff, the stipulation regarding time cannot be ignored, especially when the defendants warned that the Agreement would be cancelled if not performed within the extended time. Therefore, it cannot be disputed that time was made the essence of the contract, as evidenced by the subsequent notice issued by the defendants on 23.06.2005. Since the plaintiff was required to pay the balance sale consideration of Rs.65,60,000/- on or before 30.04.2005 as per agreement and it is admitted that the plaintiff failed to pay the balance sale consideration instead came with a reply notice under Ex.A6 dated 28.06.2005. In the reply notice, the plaintiff refers to another Agreement and has expressed in unambiguous terms that they are not willing. The relevant portion of reply notice is extracted below:

As per the token advance agreement we had agreed to purchase 3.39 acres on the assurance and promise that you would bring all the owners into completing the transaction for the said total extent. Now we strangely find from your letter that you have split up the



WEB COPY



A.S.No.838 of 2012

transaction, which was not at all the intention on either side. Therefore, we wish to state that we are interested, right from the beginning, only to complete the sale for the entire extent of 3.39 acres agreed upon all at the same time. But nevertheless, we are not disinclined to complete the sale in relation to each of the sale agreement separately provided you furnish a copy of the vital document, namely, copy of judgment in O.S.No.10/88, which is not forthcoming from your side. It is solely for the above reason we are prevented from proceeding further and therefore as undertaken by you, you are requested to take immediate steps at least now to place the said document in our hands for obtaining legal opinion and further completion of the transaction. On our side we are always ready and willing to pay the balance sale consideration at any time, however, subject to title free from any defect.

We greatly regret to find from your letter that you have made false allegation as if we have been delaying the completion of the sale. You cannot reasonably expect us to proceed with the transaction in a blindfolded manner even though we are possessed of sufficient funds to complete the sale at any time. You know very well that only the buyer has to take all precautions regarding



A.S.No.838 of 2012

verification of title as advised by our lawyer. Moreover one of the party Chokubai had died and as such the Power of Attorney dated 19.01.2005 has become defective and our request in that regard for a fresh Power of Attorney made to you several times is not being complied with for reasons best known to you. Even you have obtained name transfer in the revenue records after the death of Chokubai. The production of all documents relating to title is mandatory for obtaining sanction from CMDA which fact has also been duly informed to you.

Please note that with all the lapses on your side, your threat to cancelling the sale agreement for sale is not proper and is uncalled for. Unless you extend your cooperation in providing us with all the documents mentioned above, we would not be in a position to obtain early sanction for lay out and especially when the idea behind our purchase was for real estate purposes.

Therefore we request you to hand over the copy of the judgment in O.S.No.169/86, 10/88 revenue records such as patta, chitta, adangal transferred in the name of all the legal heirs of Chokubai immediately so as to enable us to complete the sale at the earliest. Further you are also informed that in exercise of the Power of Attorney executed in our favour and as per the terms contained in the said power we have entered into a



WEB COPY



A.S.No.838 of 2012

further registered agreement with a third party who is insisting for the requisite documents and records essential for obtaining sanction for promoting the property. Therefore any misadventurous or speculative act of cancellation of the agreement or otherwise would only complicate the matter.”

The plaintiff in the reply comes forward with another Agreement and require the defendants to produce documents of title, judgments, revenue records etc., indicating that they are not ready to perform their part of agreement under Ex.A3. Contrary to the pleadings in the plaint, the plaintiff set up another Agreement with different terms and expressed his willingness subject to production of records.

13.This Court is unable to find any error in the finding of the Trial Court that the plaintiff is not ready and willing to perform his part of the contract. It is seen that the plaintiff stated in the reply notice that there was a dispute with regard to the title of the suit property, which is the subject matter of the Agreement and the defendants have not come forward to clear the doubt. However, the plaintiff not only asked for details of certain civil proceedings and copy of the judgment and decree in O.S.No.10 of 1998 but also pointed out that



A.S.No.838 of 2012

WEB COPY

the plaintiff was unable to verify the title of the suit property as advised by his lawyer. Further pointing out that the death of one of the parties, namely, Tmt.Chokkubai Ammal who died on 29.04.2005, the plaintiff came forward with the case that the title of defendants became defective unless fresh Power of Attorney is executed and the revenue records are altered. Therefore, the plaintiff expressed in unequivocal person that he cannot do anything further without the title being verified by the production of necessary documents. Though the plaintiff has taken such a stand, unfortunately, the learned senior counsel appearing for the appellant is unable to explain the conduct of the plaintiff in the reply notice.

14.It is admitted that Tmt.Chokkubai Ammal, who is none other than the wife of Mr.A.S.Nagarathnam, one of the two brothers, along with her children succeeded to one half share in the suit property. Since Mr.A.S.Nagarathnam died, all the legal heirs namely the wife and children of Mr.A.S.Nagarathnam were parties to the Sale Agreement. Tmt.Chokkubai Ammal died leaving behind her own children who are also parties to the Sale Agreement. On account of the death of Tmt.Chokkubai Ammal, her right has devolved on her children who are defendants 1 to 7. In such circumstances, it is seen that the suit Agreement is



A.S.No.838 of 2012

not affected by the death of Tmt.Chokkubai Ammal and the plaintiff was in a position to proceed further with the development without any further document.

15.Strangely even in the reply notice to the defendants, the plaintiff has not refused the specific averment or allegation in the notice which reads as follows:

“Originally you have agreed to complete the entire transaction positively before 30.04.2005 later you wanted to extend the time by 15.06.2005 for various reasons. Now you are very silent in executing the registered Sale Deeds by paying the balance sale consideration namely Rs.65,60,000/- You are aware for the above said purpose I met you along with the legal heirs and co-owners of the property on many occasions at your office for which you're not finding a proper or reasonable assurance or reply except indicating that you are having financial difficulty to complete the transaction”

When a specific allegation is made that the 8th defendant came along with his legal heir and other co-owners of the property on many occasions to the office of the plaintiff and were ready to complete the transaction, the plaintiff gave no explanation in his reply notice under Ex.A6 dated 28.06.2005.



A.S.No.838 of 2012

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16.The learned senior counsel is unable to demonstrate before this Court to show how the plaintiff has proved his readiness and willingness. From the peculiar stand taken by the plaintiff in the reply notice under Ex.A6 and the conduct of the appellant/plaintiff, the Trial Court had no option but to hold that the plaintiff is not ready and willing to perform his part of the contract. This Court has no reason to disregard the finding of the Trial Court. The plaintiff having taken a stand in the reply notice, contrary to the terms of the Agreement filed the suit for specific performance with unclean hands and hence he is not entitled to the equitable relief of specific performance. It is fortunate for the plaintiff to get a decree at least for the money which he had paid as an advance under the Sale Agreement Ex.A3. It is not in dispute that the Trial Court has granted a decree for specific performance in respect of a portion of the suit property corresponding to the value which the plaintiff had paid under Ex.A3. Even though the plaintiff does not deserve a decree without showing his readiness and willingness, this Court cannot modify the judgment and decree of the Trial Court as there is no cross appeal, or independent appeal filed by the defendants as against the decree. The judgment and decree of the Trial Court is confirmed.



A.S.No.838 of 2012

WEB COPY

17.In the result, the appeal suit stands dismissed with costs.

Consequently, miscellaneous petition is closed.

[SSSRJ] [AANJ]
25.01.2023

cda

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

S.S.SUNDAR, J.,



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A.S.No.838 of 2012

AND

A.A.NAKKIRAN, J.,

cda

To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.I, Poonamallee.
- 2.Saravana Foundation Ltd.,
No.15 New Giri Road, T.Nagar,
Chennai 600 017.
- 3.R.Palani,
Sole Proprietor,
R.K.P.Builders and Promoters,
Plot No. 1510, T.S.Krishna Nagar,
Mugappiar East,
Chennai – 600 037.
- 4.The Section Officer, VR Records,
High Court, Chennai.

A.S.No.838 of 2012

25.01.2023