

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.Nos.372 to 374, 380 to 382 and 384 of 2019
and O.A.No.543 of 2019

O.P.No.372 of 2019 :

1. S.Jegatheesan
2. J.Renuka
3. J.Muthurajan
4. J.Chenthilrajan
5. J.Subburajan

.. Petitioners

Vs.

1. S.Vaikundarajan
2. V.Chandraboopathi
3. V.Subramanian
4. V.Velmurugan
5. V.Suba Saranya

.. Respondents

Prayer in O.P.No.372 of 2019 : Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint Justice Shivaraj V.Patil, retired Judge of the Hon'ble Supreme Court as the Sole Arbitrator to decide the disputes that have arisen between the petitioners and the respondents under the terms of the Partnership Deed dated 26.02.2009.

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For Petitioners in :
OP No.372/2019

Mr.T.V.Ramanujam, Senior Counsel
for Ms.Aparajitha Vishwanath

For Respondents :
in OP No.372/2019

Mr.AL.Somayaji, Senior Counsel
for Mr.V.Perumal for RR 1 and 2

Mr.V.Lakshminarayanan,
for M/s.Kingsly Soluman for RR 3 and 4

Mr.AR.L.Sundaresan, Senior Counsel
for Mr.S.Elambharathi for R5

COMMON ORDER

Since all these petitions and the application concerns the dispute among the same parties, they are taken up together for hearing and disposed of by means of this common order.

2. The first and second petitioners are husband and wife. The first and second respondents are husband and wife. The petitioners 3 to 5 and the respondents 3 to 5 are their respective children. The first petitioner and the first respondent are brothers. The background facts of the dispute among them leading to the filing of these petitions run infra :

2.1. The parties herein are partners of various partnership firms, such as Vetrivel Minerals, V.V.Mineral (EQU), V.V.Mineral, Edison Paints and Chemicals, V.V.Marine Products, Vijay Cements and Vetrivel Marketing and Warehousing (VVM Warehousing) which were formed

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under the respective partnership deeds dated 26.02.2009, 01.02.2012, 01.02.2012, 30.06.2011, 06.01.2014, 13.02.2014 and 26.02.2009 and have been engaged primarily in the business of manufacturing, mining and selling of beach sand minerals such as garnet, ilmenite etc. and other mineral products. The first respondent is the Managing Partner of those entirely family owned and operated partnerships firms. One another brother of the first petitioner and the first respondent S.Chandresan was also a partner of those firms and in 2009, he raised certain disputes which led to the appointment of Hon'ble Mr.Justice Shivaraj V.Patil, Judge (Retd.), Supreme Court of India, as the Arbitrator to decide the dispute. The parties arrived at a Compromise, the terms of the which were reduced in writing and filed before the learned Arbitrator, based on which an Award dated 13.07.2011 was passed.

2.2. Thereafter, the present partners were inducted in the firms. There were certain disputes arose among the partners also. Though the first respondent assured to sort out the disputes and placed some proposals, nothing was taken forward. According to the petitioners, the respondents were not transparent in their actions and the petitioners were kept in dark by them. During the year 2018, the petitioners came to know that there were statutory violations by the respondents and

the officials of the Income Tax Department conducted raids in their premises. In such backdrop, the petitioners sought for partition and division of all the firms equally between the parties.

2.3. Subsequently, the first respondent agreed to divide the properties and informed the petitioners that a "Kaithadi Partition Deed" dated 31.12.2018 (in short "Partition Deed") has been prepared by him. As the petitioners throughout believed the first respondent, they signed the Partition Deed without even reading it and there was no third party witness to the same and it was an unregistered document. When the petitioners studied the Partition Deed later, they realized that the properties were not divided equally and some of the properties purchased from and out of the funds of the firms in the names of the respondents did not find a place in the Partition Deed.

2.4. The first petitioner sent an email on 23.01.2019 unequivocally revoking the Partition Deed and called upon the first respondent to convene a meeting to divide the properties equally. The first respondent issued a reply notice dated 24.01.2019 alleging that the first petitioner had split the properties, handed over the schedules to the respondents and all the parties signed the Partition Deed agreeing and consenting the terms therein and also making counter allegations.

2.5. Since the first petitioner wanted to settle the issue amicably, he sent another email dated 05.02.2019 seeking for referring the matter to Hon'ble Mr.Justice Shivaraj V.Patil, Judge (Retd.), Supreme Court of India, to resolve the matter amicably, as the learned Judge earlier dealt with the issue as the learned Arbitrator. However, the first respondent via email dated 18.02.2019 replied that the Partition Deed is final and the same cannot be revisited raising some other allegations. The first petitioner issued a short reply dated 09.03.2019, which was responded to by the first respondent on 17.03.2019 with certain allegations. Thus, the petitioners issued notice dated 28.03.2019 through their counsel to the respondents calling upon their consent to the nomination of Hon'ble Mr.Justice Shivaraj V.Patil, Judge (Retd.), Supreme Court of India, as the Sole Arbitrator.

2.6. The respondents issued reply through their counsel dated 22.04.2019 stating that since the parties had agreed to conciliation done by one Mr.S.Ganesan, who is the step brother of the first petitioner and the first respondent, for division of the properties and businesses, upon which the Partition Deed was arrived at, the same is final and binding on them. Along with the said reply only, a report dated 02.01.2019 said to have been prepared by the so-called Conciliator under Section 74 of the Arbitration and Conciliation Act, 1996.

1996 (in short, "A & C Act") was attached. The respondents also dispatched another undated reply on 24.04.2019 through another counsel, which the petitioners received on 25.04.2019, reiterating the same facts.

2.7. Alleging that the 'conciliation proceedings' said to have been conducted by Mr.Ganesan is a cooked up story and the partnership deeds provides for resolving all disputes via arbitration, the petitioners sought for the above relief.

2.8. Pending the petitions, fearing that the aforesaid Partition Deed would be given effect to, which eventuality would cause immense prejudice and grave damage to the petitioners and the same cannot be compensated in monetary terms, the petitioners filed O.A.No.543 of 2019 seeking for an order of interim injunction restraining the respondents from giving effect to the "Kaithadi Partition Deed" dated 31.12.2018.

3. It is alleged that the petitioners avoiding the document titled as "Kaithadi Partition Deed" have sought for reference of the disputes to the Arbitral Tribunal. Mr.B.Kumar, learned Senior Counsel for the petitioners submitted that the allegation that the partnership deeds between the parties dissolved by virtue of the above said Partition

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Deed cannot be accepted as the said Partition Deed is not registered. Whether the said Partition Deed dated 31.12.2018 is called as "Partition Deed" or "Conciliation Deed", the same is not drafted in accordance with law, as it is stoutly denied by the petitioners that the Partition Deed, by no stretch of imagination can be called as "Conciliation Deed" as the very document does not have a single reference anywhere to the effect that the same came to be executed as a result of the conciliation proceedings that took place between the parties. It is further alleged that the so-called conciliation report dated 02.01.2019 was furnished to the petitioners only along with the reply notice dated 22.04.2019 and the petitioners were not even aware of the same till then. Hence, the said report is only created at the instance of the first respondent in order to deny the adjudication of the disputes between the parties and thus, the Partition Deed cannot be looked into and the disputes are yet to be resolved between the parties. As the parties are governed by the Partnership Deeds, which provide for arbitration, the reference is sought for appointment of an Arbitrator.

4. Learned Senior Counsel for the petitioners contended that after the amendment Act of 2015, Section 11(6A) of the A & C Act was

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given interpretation in the judgment of the Hon'ble Apex Court in **Duro Felguera V. Gangavaram Port Limited, (2017) 9 SCC 729** followed by **Garware Wall Ropes Limited V. Coastal Marine Constructions and Engineering Limited, (2019) SCC OnLine 515**, to the effect that only the presence of an arbitration clause has to be looked into by the Courts for the purpose of referring a dispute to the Arbitral Tribunal. As the Partition Deed does not contain an arbitration clause and the same is also not in accordance with the conciliation proceedings, it cannot be looked into and the disputes have to be resolved as per the arbitration clause contained in the partnership deeds. In support of this contention, learned Senior Counsel relied on the reply received from the respondent dated 22.04.2019, wherein, for the first time, it was stated that the Partition Deed has the same status and effect of an Arbitral Award and that the Conciliator had recorded facts and thereafter terminated the conciliation proceedings. It is contended that there was yet another reply received from the respondents through their counsel dated 24.04.2019, wherein also, it has been stated that while deciding to sever the partnership relationships, the Stepbrother of the first petitioner and the first respondent one Ganesan was requested to act as the Conciliator. Thereafter, the issues have been analysed threadbare by both

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sides and the Memorandum of Partition dated 31.12.2018 was entered into.

5. The said document dated 31.12.2018 was attacked contending that not even a single mandatory requirement as set out in Part III of the A & C Act had been fulfilled, i.e., no written request or acceptance for commencement of the conciliation proceedings - the petitioners never consented for appointment of any Conciliator ; there were no proposals or counter proposals, formulation of terms of possible settlement Agreement etc. were present ; and the Settlement Agreement not authenticated by the Conciliator, as the document *per se* does not even mention the factum of resolution. It is only THE report, which was produced subsequently along with the reply notice dated 22.04.2019, the role of Conciliator was stated. The petitioners denied and disputed the report of the Conciliator as the same is self-serving and concocted document. The petitioners also refused to accept that the said Partition can be elevated to an Award, as the Partition Deed is an invalidated document. The petitioners have sought for an order of injunction restraining the respondents from giving effect to the same and also to refer the existing disputes to an Arbitral Tribunal invoking the arbitration clause in the partnership deeds.

6. In response to the above, learned Senior Counsel appearing for the respondents 1 and 2 Mr.AL.Somayaji, contended that by virtue of the execution of the Partition Deed dated 31.12.2018, the disputes and differences between the parties have been settled and that the petitioners cannot invoke the arbitration clause that is existing in the partnership deeds.

7. Mr.V.Lakshminarayanan, learned counsel appearing for the third and fourth respondents contended that the conciliation is given a different status in family disputes, since they are done to ensure peace, harmony and goodwill amongst the family members and relied on **Ranganayakamma and Another v. K.S.Prakash (D) by LRs & Others, (2008) 15 SCC 673.**

8. Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of the fifth respondent pointed out that the Partition Deed was signed by all the parties. Even in any conciliation proceedings, the outcome would be the document and the said Partition Deed is only one such document. When admittedly, the parties have signed the said document on each of the pages, which run to 310 pages, Section 61 of

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the A & C Act is deemed to have been waived and the parties have arrived at a consensus. There could have been disputes among the parties, but after the execution of the Partition Deed, which was signed by all the parties concerned without any demur or protest, the parties are estopped from challenging the same. The allegation made in the affidavits attached to these petitions that the assets of the firms have not been divided equally and that the first respondent had taken advantage of his position as the elder brother is untenable. The averment that the petitioners were severely handicapped to verify the Partition Deed due to lack of time and availability of entire details of the assets owned by the firms and the group entities cannot be accepted as each of the parties have signed on each page of the document. The petitioners also have not produced any *prima facie* evidence on record in support of their contentions. In the absence of any material to show that there was a threat, coercion or compulsion by the respondents on the petitioners to sign the Partition Deed, the same is binding on the parties and has to be held as valid. When all the properties and the division thereon have been reduced to a document titled as Kaithadi Partition Deed, which does not contain an arbitration clause, the petitioners cannot invoke Section 9 or Section 11 of the A & C Act. Admittedly, the Partition Deed does not have any

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arbitration clause. Unless there is an arbitration agreement as contemplated under Section 7 of the A & C Act, the said provisions cannot be invoked.

9. The following questions arise for determination in these petitions :

(a) Whether the petitioners are entitled to invoke the arbitration clause in the partnership deeds when the same are superseded by the "Partition Deed" ? and

(b) Whether the applicants are entitled for injunction as prayed for ?

10. First of all, the parties have admitted the execution of the Partition Deed. If the same, according to them, is obtained by coercion, they should have filed a suit for declaration that the partition deed is bad for whatever reasons known to them. Besides the Partition Deed is written in Tamizh, which all the parties to the document could write, speak and read. Therefore, the question of misrepresentation, as alleged, does not arise. That apart, when it is not denied that the Partition Deed was executed with their knowledge and the signatures were obtained only on the document, the plea of fraud or

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misrepresentation cannot be entertained. Thus, when the Partition Deed is rightly executed by all, the same is valid and the question of cancellation of the same also does not arise.

11. Mr.Jenasenan, learned counsel appearing for the petitioners in O.P.Nos.373 and 384 of 2019 argued that the Partition Deed was executed by the petitioners pursuant to undue influences and advantage exercised by the first respondent, in his capacity as the elder brother. It is contended that the large number of papers were handed over at the time of execution and the petitioners were handicapped without access to the entire details of the properties owned and purchased out of the income from the firms. Hence, it was alleged that the division is inequal and inequitable.

12. The plea of fraud which is general and vague cannot be alleged without basis. According to the petitioners, they signed the document in good faith believing the representation made by the respondents. However, the nature of representation, what type of representation were made, etc., have not been stated. Admittedly, the parties were aware of the fact that what they were signing was a Partition Deed and admitted that they had put their signatures. The

family Partition itself is entered into to achieve peace and harmony in the family. The learned counsel for the third and fourth respondents Mr.Lakshminarayanan relied on the judgment of the Hon'ble Apex Court in **Hari Shankar Singhania (2) V. Gaur Hari Singhania, 2006 (4) SCC 658**, wherein, in paragraph 42 under the title "**Family arrangement/family settlement**", it has been held as follows :

"42. Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well-being of a family."

13. In the same judgment, it is discussed as to "why the dispute between the members of the family should be settled" and the same reads as follows :

"Conclusion: better late than never

67. We have already referred to the concept of family arrangement and settlement. The parties are members of three different groups and are leading business people. We, therefore, advise the parties instead of litigating in the court they may as well concentrate on their business and, at the same time, settle the disputes amicably which, in our opinion, is essential for maintaining peace and harmony in the family. Even though the parties with a good intention have entered into the deed of

dissolution and to divide the properties in equal measure in 1987, the attitude and conduct of the parties has changed, unfortunately in a different direction. Therefore, it is the duty of the court that such an arrangement and the terms thereof should be given effect to in letter and spirit. The appellants and the respondents are the members of the family descending from a common ancestor. At least now, they must sink their disputes and differences, settle and resolve their conflicting claims once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family."

14. If the Partition Deed document is accepted as a result of the conciliation proceedings and accepted as an award, the same can be assailed only in a proceedings initiated under Section 34 of the A & C Act. If it is not accepted as a conciliation award, the document still would retain its character as a Partition Deed. When admittedly the parties have consented to the document and if it is alleged that it was obtained by coercion and undue influence, the same has to be proved in the manner known to law by the petitioners. In the absence of any proof to substantiate such contention, it is not open to the petitioners to unilaterally cancel or revoke the same. If the document is not a conciliation agreement, then it would be family arrangement/partition. The intention of the Partition Deed was only to bring about harmony in the family resolving all the disputes and difference that existed by that

point of time. The person, who reconciled the disputes is the Stepbrother of the first petitioner and the first respondent, and he had adopted the practice in their community as a trade family and if one brother divided the properties, the other brother had the option of selecting the properties. Section 61(1) of the A & C Act says that save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, the said part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. In the present case, the parties having otherwise agreed as per their customs and practice in their community, it is not open to the petitioners to say that Section 61 was not complied with. The above act of the parties clearly goes to show that they have arrived at the consensus by waiving the procedure contemplated under Section 61(1) of the A & C Act and the subsequent provisions relating to Sections 62 to 74.

15. Reliance was placed on the judgment of the Hon'ble Apex Court in **Haresh Dayaram Thakur V. State of Maharashtra, 2000 (6) SCC 179**, wherein, it was held thus :

"19. From the statutory provisions noted above the position is manifest that a conciliator is a person who is to assist the

parties to settle the disputes between them amicably. For this purpose the conciliator is vested with wide powers to decide the procedure to be followed by him untrammelled by the procedural law like the Code of Civil Procedure or the Indian Evidence Act, 1872. When the parties are able to resolve the dispute between them by mutual agreement and it appears to the conciliator that there exists an element of settlement which may be acceptable to the parties he is to proceed in accordance with the procedure laid down in Section 73, formulate the terms of a settlement and make it over to the parties for their observations; and the ultimate step to be taken by a conciliator is to draw up a settlement in the light of the observations made by the parties to the terms formulated by him. The settlement takes shape only when the parties draw up the settlement agreement or request the conciliator to prepare the same and affix their signatures to it. Under sub-section (3) of Section 73 the settlement agreement signed by the parties is final and binding on the parties and persons claiming under them. It follows therefore that a successful conciliation proceeding comes to an end only when the settlement agreement signed by the parties comes into existence. It is such an agreement which has the status and effect of legal sanctity of an arbitral award under Section 74.

20. In the case in hand, as appears from the materials on record, no such procedure as prescribed under Part III of the Act has been followed by the conciliator. The conciliator appears to have held some meetings with the parties in which there was discussion and thereafter drew up the so-called settlement agreement by himself in secrecy and sent the same to the Court in a sealed cover. **Naturally the so-called settlement agreement drawn up by the conciliator does not bear the signatures of the parties.** As the impugned order shows, the said settlement

has been given a status higher than an arbitral award inasmuch as the Court has refused to even entertain any objection against the said settlement agreement reiterating the position that the settlement arrived at by the conciliator will be binding on the parties. The conciliator who is a former Judge of the High Court and the learned Judge who passed the impugned order failed to take note of the provisions of the Act and the clear distinction between an arbitration proceeding and a conciliation proceeding. The learned Judge in passing the impugned order failed to notice the apparent illegalities committed by the conciliator in drawing up the so-called settlement agreement, keeping it secret from the parties and sending it to the Court without obtaining their signatures on the same. The position is well settled that if the statute prescribes a procedure for doing a thing, a thing has to be done according to that procedure. Thus the order passed by the High Court confirming the settlement agreement received from the conciliator is wholly unsupportable."

16. In the case on hand, after arriving at the settlement, all the parties have signed the Partition Deed, which is not in dispute. It is apt to note that the Hon'ble Apex Court in **Mysore Cements Ltd. V. Svedala Barmac Ltd., 2003 (10) SCC 375**, held as follows :

"16. If the settlement agreement comes into existence under Section 73 satisfying the requirements stated therein, it gets the status and effect of an arbitral award on agreed terms on the substance of the dispute rendered by an Arbitral Tribunal under Section 30 of the Act. The submission that when there was substantial compliance with the requirements of Section 73, as in

the present case, when the parties have arrived at a settlement agreement like the parties before any civil court filing a compromise petition, there should be no impediment to take up execution based on such a compromise or agreement, cannot be accepted. Even a compromise petition signed by both the parties and filed in the court per se cannot be enforced resorting to execution proceedings unless such a compromise petition is accepted by the court and the court puts seal of approval for drawing a decree on the basis of compromise petition. In the present case, looking to the memorandum of conciliation proceedings and letter of comfort, it is true that parties have agreed to certain terms, but they cannot be straight away enforced by taking up execution proceedings. As rightly held by the High Court for the reasons stated in the impugned order on the basis of the letter of comfort execution proceedings could not be taken up under Section 36 of the Act. When the facts are disputed as to the satisfaction of the modification work and as to the breach of obligations even in relation to the modification work by either party, the High Court was right in passing the impugned order. It may be again stated here that at the end of the memorandum of conciliation proceedings, it is stated that the terms of conciliation settlement are agreed to and accepted by both the parties. Conciliators and both the parties also have signed the same but the procedure as indicated and various steps contemplated in Section 73 of the Act were not adhered to. This apart, as already stated above, in this memorandum neither are consequences for not completing the modification work stated nor is any amount of compensation fixed. In this case virtually letter of comfort is sought to be enforced. This letter of comfort, in our view, could not be accorded the status of settlement agreement to bring it within the meaning of Section 74 of the Act to treat it as

an arbitral award under Section 30 of the Act so as to enforce it under Section 36 of the Act. In the present case, the conciliation proceedings were not terminated but they were only adjourned. Under Section 76 of the Act, the proceedings shall be terminated as per clauses (a) to (d) of the said section. If there was settlement agreement under Section 73, conciliation proceedings would have been terminated under Section 76(a) of the Act. This is yet another pointer against the appellant's case. It is also not possible to agree with the submission that this memorandum of conciliation and the letter of comfort could be treated as interim award in the absence of any settlement agreement as already discussed above. It is not every agreement or arrangement between parties to the disputes, arrived at in whatever manner or form, during the pendency of conciliation proceedings that automatically acquires the status of a settlement agreement within the meaning of Section 73 of the Act so as to have the same status and effect as if it is an arbitral award, for being enforced as if it were a decree of the court. It is only that agreement which has been arrived at in conformity with the manner stipulated and form envisaged and got duly authenticated in accordance with Section 73 of the Act, alone can be assigned the status of a settlement agreement, within the meaning of and for effective purposes of the Act, and not otherwise. We find in spite of our careful scrutiny, serious deliberations and analysis of the materials on record, particularly the memorandum of conciliation proceedings and the letter of comfort, that either taken individually or even together — they or any one of them cannot legitimately claim to be entitled to or assigned the status of a settlement agreement within the meaning of Section 73, for purposes of the Act. In our view, they fall short of the essential legal prerequisites to be satisfied for being assigned any such

status, despite our endeavour to view them with a liberal approach in the background of the objects and purposes underlying conciliation, arbitration and alternative mode of settlement of disputes."

17. In a recent judgment in **Zenith Drugs and Allied Agencies Pvt. Ltd. V. Nicholas Piramal India Ltd., 2019 SCC OnLine SC 946**, the Hon'ble Supreme Court held that where there are allegations of fraud, the Civil court alone has to decide it and the said dispute cannot be referred to arbitration. It has been observed in the said judgment as follows :

"23. It is also pertinent to note that the respondent has challenged the compromise decree alleging that it has been obtained by inducement and fraud. In view of the allegations of fraud levelled by the respondent that the compromise decree is vitiated by fraud, the parties cannot be referred to arbitration. Observing that where there are allegations of fraud which are so complicated that it becomes absolutely essential that such complex issues can be decided only by the Civil Court on apprehension of the evidence adduced by the parties, in A. Ayyasamy v. A. Paramasivam (2016) 10 SCC 386, it was held as under:—

"25.It is only in those cases where the court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by the civil court on the appreciation of the voluminous evidence that needs to

be produced, the court can sidetrack the agreement by dismissing the application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself.....”.

24. Since the respondent has raised the plea that the compromise decree is vitiated by fraud, the merits of such a plea could be decided only by the Civil Court upon consideration of the evidence adduced by the parties.”

18. The contention qua the registration of the Partition Deed is concerned, it was pointed out that the same is not registered and hence, unenforceable. In response to the same, reliance in this regard was placed on the recent judgment of the Hon'ble Supreme Court in **Thulasidhara V. Narayanappa and others, (2019) 6 SCC 409**, wherein it has been as follows :

“9.3. Now so far as the finding recorded by the High Court that as the partition deed dated 23-4-1971 (Ext. D-4) was unregistered though required registration under the provisions of

the Registration Act and therefore the same is not admissible in evidence is concerned, it is required to be noted that as such Ext. D-4 can be said to be a Palupatti as has been described as Palupatti. Palupatti means list of properties partitioned. At the most, it can be said to be a family arrangement. Therefore, in the facts and circumstances of the case, the same was not required to be registered.

9.4. It is required to be noted that the deed dated 23-4-1971, under which the suit property had gone/devolved in favour of Krishnappa, was reduced in writing before the panchayat and panchas, and the same was signed by the village people/panchayat people and all the members of the family including even the plaintiff. Though the plaintiff disputed that the partition was not reduced in writing in the form of document Ext. D-4, on considering the entire evidence on record and even the deposition of the plaintiff (cross-examination), he has specifically admitted that the oral partition had taken place in the year 1971. He has also admitted that he has got the share which tallies with the document dated 23-4-1971 (Ext. D-4). Execution of the document/partition deed/Palupatta dated 23-4-1971 has been established and proved by examining different witnesses. The High Court has refused to look into the said document and/or consider document dated 23-4-1971 (Ext. D-4) solely on the ground that it requires registration and therefore as it is unregistered, the same cannot be looked into. However, as observed by this Court in *Kale* [*Kale v. Director of Consolidation*, (1976) 3 SCC 119] that such a family settlement, though not registered, would operate as a complete estoppel against the parties to such a family settlement. In the aforesaid decision, this Court considered its earlier decision in *S. Shanmugam Pillai v. K. Shanmugam Pillai* [*S. Shanmugam Pillai v. K. Shanmugam Pillai*, (1973) 2 SCC 312] in

which it was observed as under: (*S. Shanmugam Pillai case* [*S. Shanmugam Pillai v. K. Shanmugam Pillai*, (1973) 2 SCC 312])

"13. Equitable, principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

22. As observed by this Court in *T.V.R. Subbu Chetty's Family Charities case* [*T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar*, AIR 1961 SC 797], that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."

19. As discussed earlier, if the said Partition Deed is not result of any conciliation proceedings, then the document is a settlement of all the disputes and differences existing in the families as per the customs and practice prevailing in their community. If at all the same is to be challenged, the same can be done only before the Civil Court and not by invoking Section 11 or 9 of the A & C Act.

20. Reliance was placed on the judgment of the Hon'ble Apex Court in **Sukhrani v. Hari Shanker, AIR 1979 SC 1436**, wherein, relying upon the judgment in **Ratnam Chettiar v. S.M. Kuppuswami Chettiar, AIR 1976 SC 1**, it was held that even though there was no fraud, misrepresentation or undue influence, a partition could be reopened at the instance of a minor coparcener, despite the fact that his branch was represented by his father at the partition, if the partition was unfair or prejudicial to the interest of the minor. It was also held that the entire partition need not be reopened if the partition was unfair in regard to a distinct and separable part of the scheme of partition. In such an event the reopening of the partition could be suitably circumscribed.

21. From the above discussions, it is clear that there is no such dispute between the parties. If there is no dispute, the other questions will not arise. If there is a dispute, it is only with respect to the execution of the Kaithadi Partition. Admittedly, both the parties have consented to the Partition Deed. The document also satisfies all the requirements of a conciliation or even a partition. Therefore, what is now sought to be agitated is only the misrepresentation by the first respondent and the inequality of partition effected in the said document.

22. The only allegation is that the first respondent misrepresented and that the petitioners did not have time to verify the entire details of the Partition Deed. It is also not the case of the petitioners that they requested time to go through the Partition Deed and that they were refused the same. Non-availability of time and the length of the document would not constitute fraud or misrepresentation. Fraud has to be pleaded and proved. It must be proved that the first respondent made false representation to his knowledge. The level of proof required is much higher in these cases, as a mere ambiguous statement per se cannot make the allegation of the misrepresentation true. Unless knowledge is attributed to the person making misrepresentation, it is difficult to prove the same.

23. The next question that arises is whether the said Partition Deed is an award and if so, whether it requires registration, after affixing required stamp duty. If it is deemed to be a Partition Deed, which came to be executed by misrepresentation or undue influence, then the remedy for the petitioners is to go before the Civil Court. The Kaithadi Partition is the outcome of all the issues being settled in the family. Though the counsels could not explain the meaning of "Kaithadi", it only indicates that the partition is as per the custom

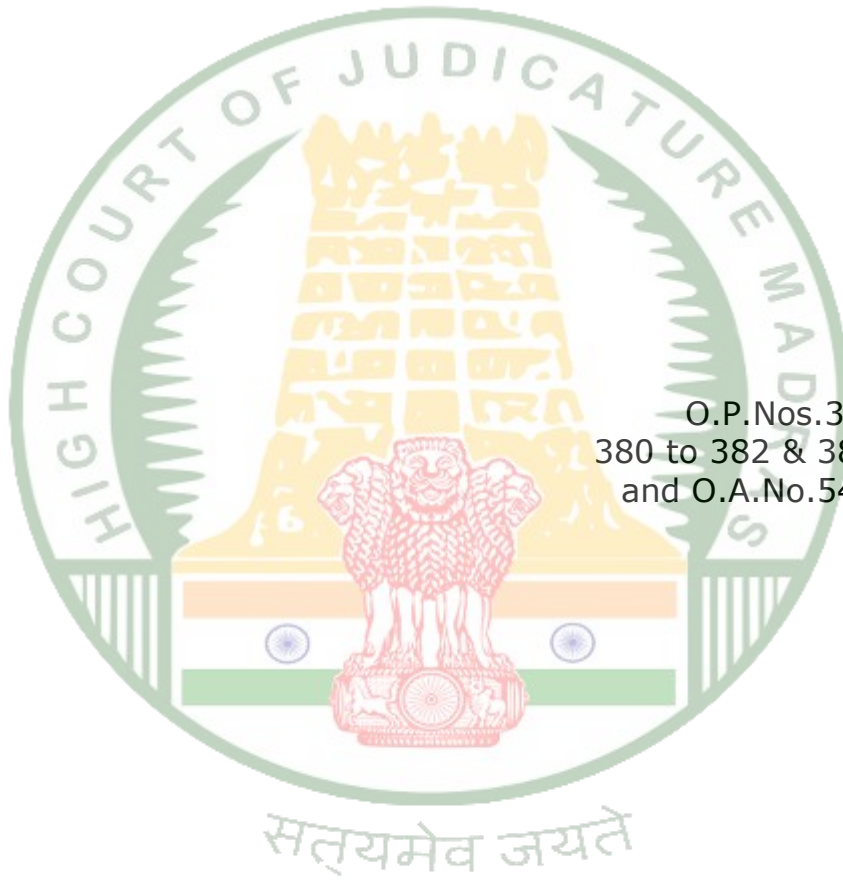
prevalent in the trading families of the area/community. Having admitted the execution, but pleaded undue influence and misrepresentation, the document is only voidable, which has to be set aside in a manner known to law before the civil court after trial. If it is an outcome of conciliation and that it is an award, whether it requires registration or stamp duty payable can be agitated in a petition filed under Section 34 of the A & C Act. Therefore, by no stretch of imagination, the petitioners can ask for reference to Arbitral Tribunal, when they are seeking to set aside the document, admittedly, signed by both the parties. Unless and until the document is set aside in the manner known to law, they cannot attack the validity or otherwise of the same in the present proceedings.

24. For all these reasons, all these petitions are dismissed. Consequently, O.A.No.543 of 2019 is also dismissed. The parties shall bear their own costs.

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Index : Yes / No
Internet : Yes
Speaking Order /
Non-speaking Order

PUSHPA SATHYANARAYANA, J.

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O.P.Nos.372 to 374,
380 to 382 & 384 of 2019
and O.A.No.543 of 2019

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