

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2020

Pronounced on : 11.05.2020

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.Nos.357 and 653 of 2015

O.P.No.357 of 2015:

- 1.Vasanthi Suresh
- 2.Abhilasha A.J
- 3.Aadarsh Ignatius

...Petitioners

-V-

- 1.Jayachitra Sahaya Josephine
- 2.Anto Dev Prakash
- 3.The Hon'ble Mr. Justice M. Vijayaraghavan,
Retired Judge,
Madras High Court Sole Arbitrator,
Old No.88, New No.36,
Aravamudha Garden Street,
Egmore,
Chennai – 600 008.

...Respondents

O.P.No.653 of 2015:

Anto Dev Prakash

...Petitioner

-v-

- 1.Jayachitra Sahaya Josephine
- 2.Vasanthi Suresh
- 3.Abhilasha A.J.
- 4.Aadarsh Ignatius

5.The Hon'ble Mr. Justice M. Vijayaraghavan,
Retired Judge,
Madras High Court Sole Arbitrator,
Door New No.2, (Old No.15),
Dr.T.V. Naidu Road, Abirami Foliage,
2B, II Floor, Chetpet, Srinivasa Nagar,
Chennai – 600 031.

...Respondents

Prayer in O.P.No.357 of 2015: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to call for the records relating to the Award dated 21.01.2015 and the Additional Award dated 30.01.2015 in Arbitration No.1 of 2014 on the file of the 3rd respondent/sole arbitrator and set aside the same.

Prayer in O.P.No.653 of 2015: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Award dated 21.01.2015 and the Additional Award dated 30.01.2015 passed by the 5th respondent.

For petitioners : Mr.Ajay Kumar Gnanam
in O.P.No.653 of 2015

Mr.S. Mahimai Raj
In O.P.No.357 of 2015

For Respondents : Mr.P.V. Balasubramanian
for R1 in both petitions

Mr.S.Mahimai Raj for R2 to R4
in O.P.No.653 of 2015

Mr.Ajay Kumar Gnanam
for R2 in O.P.No.357 of 2015

COMMON ORDER

O.P.No.357 of 2015 has been filed by the respondents 1 to 3 before the Arbitral Tribunal and O.P.No.653 of 2015 has been filed by the 4th respondent.

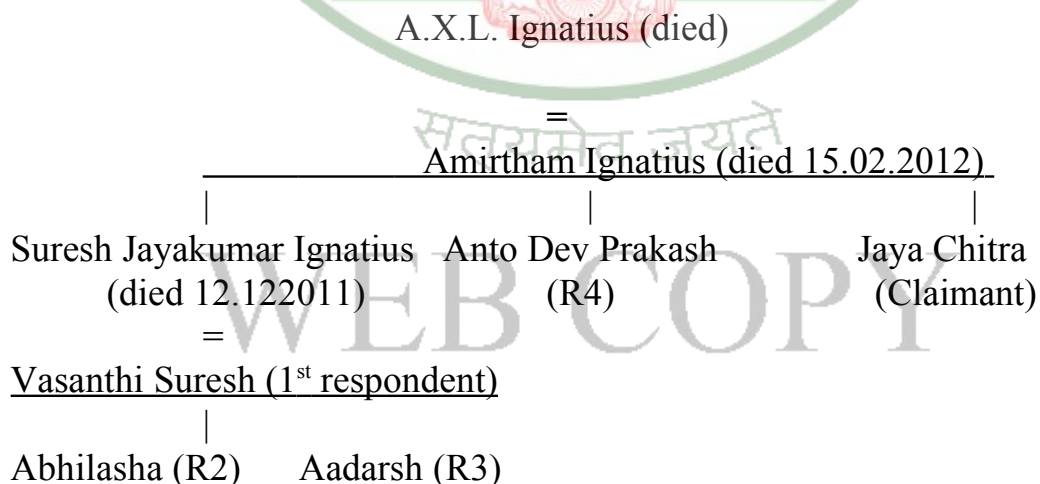
The brief facts culminating in the filing of the above referred petition under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the 1996 Act) is hereinbelow narrated:

2.The parties are assigned the same litigative status as before the Arbitral Tribunal.

3.Claimant's case before the Arbitral Tribunal:

(a)The claimant has invoked the Arbitral proceedings seeking a Partition and separate possession of her 1/3rd share in Item Nos.1, 2 and 3 properties as per the Agreement of Family Arrangement dated 04.01.2012, directing the respondents 1 to 3 to pay a sum of Rs.30,000/- per month from 01.05.2012 till date of handing over possession of the 1st Item of the property. Item No.1 is a house property in K.K. Nagar and the 2nd Item is a house at Tuticorin. The 3rd Item of the Schedule are the movables.

(b)The properties in question admittedly belonged to one A.X.L. Ignatius (hereinafter called as Ignatius) whose genealogy is hereinbelow captured.



(c)It is the case of the claimant that her father had purchased the 1st Item of the property out of his self earning. As regards Item No.2, the same was bequeathed to the claimant's father by his father. It is also the case of the claimant that the said Ignatius had purchased shares and deposited amounts in Banks, etc., These movables have been described in Item No.3.

(d)The claimant would contend that her father had executed a Will on 22.01.1993 and registered the same on the file of the SRO, Virugambakkam. As per the recitals of the Will, the properties were to be shared equally by wife and the children. The eldest son Suresh was named the Executor of this Will. The mother had a life interest in both the properties.

(e)The claimant would further submit that on 01.01.2005, her father had died due to prostate cancer. The claimant after her marriage was originally living at New Delhi and thereafter, moved to Hyderabad. After

the father's demise the sons did not come forward to take care of their mother and the mother was made to fend for herself.

(f) Whiles, on 25.12.2008, the 4th respondent had forwarded a copy of the Will of Late Ignatius and requested the mother to effect the partition as per the Will. The two sons of Ignatius were apparently not happy with the mother retaining a life interest. Since the mother had not acceded to their request the demand for Partition was put on the back burner. Meanwhile, since the sons, particularly, the eldest one, was not taking care of the mother, the claimant had taken her mother with her.

(g) All of a sudden, on 21.12.2011, the eldest son Suresh Jayakumar passed away leaving behind him surviving his mother Amirtham and respondents 1 to 3, his wife and children. On the very next day, there was a discussion on how to Partition the property. The 4th respondent who was in a hurry to return to the U.K. was insisting on the discussion and similar was the case of the respondents 1 to 3. Initially, the respondents insisted on the Partition as per the Will giving a total go by to the arrangement

originally suggested by them to their mother. Finally, after a great delay of negotiations on both sides an arrangement was agreed upon terms of where were as follows:

“a.The Item Nos.2 and 3 would go to the share of the mother.

b.Item No.1 was to be shared equally by the legal heirs of Suresh, the 1st respondent and the claimant and the Partition of this Item was to be effected after the life time of their mother.

c.The mother Amirtham was to give up all her rights to the movable and immovable properties of her deceased son Suresh Jayakumar.”

(h)Thereafter, the parties one again met on 23.12.2011 and the proposal was firmed up and the parties agreed to reduce this arrangement into writing. They had also agreed that the rights devolved under the Will shall be given up. It was further agreed that the claimant would execute

the agreement on behalf of their mother as the mother who was living at Hyderabad along with the claimant was unable to travel to Chennai.

(i)The claimant would submit that on 02.01.2012, the copy of the family arrangement was circulated. The drafts were taken by the respondents for getting it whetted by their counsels. On 03.01.2012, the corrections and alterations were circulated and ultimately, on 04.01.2012, the family agreement was signed with each getting a share. The respondents 1 to 3 who were unlawfully occupying the Item No.1 was permitted to continue till 30.04.2012 and on 01.05.2012, they had undertaken to vacate and hand over possession to the mother. At no point of time was any person coerced into agreeing to the above Settlement.

(j)On 15.02.2012, Amirtham, the mother of the claimant died. The 4th respondent who had attended her obsequies had promised to revert shortly. However, when the claimant had contacted him, the 4th respondent asked her to co-ordinate with his father-in-law. Thereafter, there was no response. This constrained the claimant to issue a Legal

Notice dated 19.05.2012 invoking the arbitration clause. A reply was received on 27.06.2012 from the respondents denying the Agreement and that they were coerced into signing the Agreement by suppressing the Will. The claimant issued a suitable rejoinder dated 14.08.2012.

(k)As steps were being taken to alienate the Item No.1 the claimant had moved an application under Section 9 of the Act and on 05.09.2012 had obtained an *ex parte* interim order restraining the respondents from alienating the property. After entering appearance, an undertaking was given and recording the same, the application was closed. Thereafter, the claimant had filed an application under Section 11 of the Act for appointing an Arbitrator as there was no consensus between the parties. By order dated 04.02.2014, the Arbitrator had been appointed and thereafter, the Claim Statement was filed.

4.Counter Statement of the respondents:

(a)Though the Section 34 petition has been filed separately by the respondents 1 to 3 and the 4th respondent, however, a joint Counter

Statement had been filed. The respondents would contend that Late Ignatius had executed a Will on 22.01.1993 and on his death of 01.01.2005, the Will had come into force. As per the Will, his wife was given a life interest in Item Nos.1 and 2 and Item No.1 was to go to the sons and Item No.2 to the claimant. They would further contend that they were unaware about the said Will as the claimant and Amirtham, the mother had removed all the documents from the locker which included the Will.

(b) They would further contend that within 15 days of the death of Suresh Jayakumar, the husband of the 1st respondent and father of the respondents 2 and 3, upon the insistence of the claimant, the Family Arrangement came into existence. The claimant had got this Agreement executed by deceit and subterfuge as the existence of the Will was totally suppressed. The respondents would contend that the recitals in the Family Arrangement that Ignatius had died intestate and the further recitals regarding waiver of rights under the Will all go to show the malafide intent of the claimant.

(c)The respondents had further contended that the validity of a Will cannot be considered by an Arbitrator and further, the relief claimed by the claimant cannot be granted as she had not asked for a Partition. The respondents therefore sought for a dismissal of this claim.

5.Rejoinder of the claimant:

The allegations that the respondents were in the dark about the Will of Late Ignatius is an absolutely false statement. In the month of July, 2008, the husband of the 1st respondent Suresh had demanded Partition as per the Will when they realised that the mother had a life interest in the properties. That apart, by an E-mail dated 25.12.2008, the 4th respondent had sent a scanned copy of the certified copy of the Will and therefore, even as early as in the month of July 2008 or latest by 25.12.2008, the respondents were aware about the Will. Therefore, the allegation of coercion, etc., are made with an intent to wriggle out from the obligation to proceed further with the family arrangement Agreement dated 04.01.2012.

6.Arbitral Tribunal:

(a)The learned Arbitrator on a perusal of the claim statement, defense statement, rejoinder, records and hearing the counsels on either side, had framed the following issues:

“1.Whether the Memorandum of Family Arrangement dated 04.01.2012 was signed by Respondents 1-4 herein despite being aware of the Will of Mr.A.X.L. Ignatius dated 22.01.1993 and its contents?

2.Whether the claimant immediately within 15 days of the death of Late Suresh Kumar Ignatius had played fraud on the respondents by concealing the original Will and coerced them into signing a family settlement agreement dated 04.01.2012?

3.Whether the Memorandum of Family Arrangement dated 04.01.2012 was signed by Respondents 1-4 herein voluntarily after being aware of the Will of Mr.A.X.L. Ignatius dated 22.01.1993 and its contents?

4. Whether the Agreement dated 04.01.2012 is valid and binding on all the parties?

5. Whether the Arbitrator has got jurisdiction to decide the issue arising from the reference?

6. To what reliefs?"

(b) The claimant besides herself had examined two others witnesses and marked Ex.C1 to Ex.C.38. The respondents on their side had examined two witnesses and marked Ex.D1 to Ex.D3.

(c) The learned Arbitrator on a perusal of the evidence both oral and documentary and on hearing the submissions of both the parties had passed an Award on 21.01.2015 in favour of the claimant dividing the properties into three parts and allotting one share to the claimant. As the learned Arbitrator had omitted to include the three items of the properties in the schedule, the learned Arbitrator had *suo motu* corrected the Award to include the schedule and passed an Additional Award dated 30.01.2015.

It is challenging these Awards that the respondents have filed the Section 34 petitions as set out in Paragraph 1 supra.

7.Submissions:

The counsels appearing for both the petitioners have made similar submissions which is extracted hereinbelow:

(a)The claimant had suppressed the existence of the Will and coerced the respondents into signing the Family Arrangement Agreement.

(b)As undue influence and fraud had been exercised the Family Agreement was null and void.

(c)The respondents were in the dark about the existence of the Will and therefore on this ground also the Family Agreement has to fail since the Will of the Testator would prevail especially in the light of the fraud and coercion exercised by the claimant.

(d)The claimant had taken advantage of the vulnerability of the respondents 1 to 3 to force them into signing the Agreement within days of Suresh Jayakumar dying.

(e)The question of waiver of rights under the Will would arise only

if the respondents were aware about the Will. Since they were unaware about the existence of the Will the question of waiver would not arise.

(f)The Family Arrangement cannot be looked into as it is a document in *praesenti* requiring compulsory registration.

(g)Arbitrator has exceeded the scope of reference which is to adjudicated only in terms of the Family Arrangement.

(h)While marking the E-mails the learned Arbitrator has given a go by to the provisions of Section 65 A of the Evidence Act.

(i)Award given under different stamp papers to the parties.

(j)The learned Arbitrator has passed two Awards.

(k)There was no enquiry regarding movables.

They had relied on the following Judgments:

(1)A.C. Lakshmipathy and another v. A.M. Chakrapani Reddiar and others [(2001) 1 M.L.J.1]

(2)Bhaurao Dagdu Paralkar v. State Bank of Maharashtra and others [(2005) 7 Supreme Court Cases 605]

***(3)Tarsem Singh v. Sukhminder Singh [(1998) 3
Supreme Court Cases 471]***

***(4)Shashikala Devi v. Central Bank of India and
others (2014) 16 Supreme Court Cases 260***

8.Per contra, the learned counsel for the petitioner would contend that Ex.C3 series C4 to C33 would go to prove that the respondents were aware about the Will even in the year 2008. Since the mother had a life interest they had wanted a Partition which was turned down by their late mother. He further contended that the allegations that the claimant and her mother had removed all the movables from the locker is absurd especially on the face of the evidence of the 1st respondent as DW1. DW1, in her cross examination had stated that in the year 2005, her husband had informed her that the documents had been removed by the claimant and her mother, however, till his death in 2011, he had not taken any steps to recover the same. He would further contend that the Family Arrangement was not signed overnight but that it had gone back and forth and discussions which started on 22.12.2011 had culminated into the Family

Arrangement Agreement only on 04.01.2012 that too after the draft had been vetted by the respondents counsel. He would therefore contend that the Award requires no interference and no ground contemplated under Section 34 has been made out.

9.Discussion:

The respondents have challenged the Award on the ground that

(a)Late Ignatius had executed a Will and therefore, the succession has to be only on the basis of the Will.

(b)The Will came into existence on 01.01.2005 on the date of death of Late Ignatius.

(c)The Family Arrangement proceeds on the footing that Late Ignatius died intestate.

(d)The respondents were in the dark about the Will.

(e)The Family Agreement is a document in praesenti requiring registration and being an unregistered one no rights would flow therefrom.

10. Each of these issues have been analyzed in great detail by the learned Arbitrator with the evidence on record and he has come to the conclusion that the respondents being fully aware about the existence of the Will had decided to waive their rights under the Will and partition the property as per the Family Agreement dated 04.01.2012. This Court cannot re-appreciate the evidence under Section 34 of the Act, especially, when the respondents have not made out any case to show that the Award suffers from a perversity or a patent illegality or is against public policy. Ex.C3, Ex.C33 and Ex.C4 would clearly prove the knowledge of the respondents about the Will as early as in the year 2008 itself. The Family Agreement Ex.C10 series was not executed overnight but is the result of deliberations and discussions spread over two weeks. The evidence of C.W2, C.W3 and D.W2 would prove the same. The Family Arrangement does not contemplate division under the said documents but contemplates execution of further documents to give effect to the arrangement. Therefore, the argument that the document is one in *praesenti* fails. The Judgments relied on by the respondents does not apply to the facts of the

instant case. Though the Award dated 30.01.2015 is termed an Additional Award, it is nothing but a correction of the earlier Award dated 21.01.2015 by including the schedule which was omitted in the Original Award.

In fine, O.P.Nos.357 and 653 of 2015 stand dismissed and the Award dated 21.01.2015 and the Additional Award dated 30.01.2015 are confirmed.

11.05.2020

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P.T. ASHA. J.

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Pre-delivery orders in
O.P.Nos.357 and 653 of 2015

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