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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2021

(Reserved on 26.03.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)Nos.1797 to 1799 of 2019

and

connected miscellaneous petitions

1) S.Jegatheesan
2) J.Renuka
3) J.Muthurajan
4) J.Chenthilrajan
5) J.Subburajan ... Petitioners/Respondents in CRP.1797 & 1798/19

1) VVM Education Trust,
Through its Managing Trustee,
S.Jegatheesan
2) S.Jegatheesan
3) J.Muthurajan
4) J.Chenthilrajan
5) J.Subburajan ... Petitioners/Respondents in CRP.1799/2019

vs.

1) S.Vaikundarajan
2) V.Chandra Boopathy
3) V.Subramanian
4) V.Velmurugan
5) Karthiyayini
6) Smt.V.Subasaranya ... Respondents/Petitioners in all CRPs

Petitions filed under Article 227 of the Constitution of India, to strike off the proceedings in E.P.Nos.61, 62 and 63 of 2019 in ACP.No.1 of 2019 on the file of the learned Principal District Court, Tirunelveli.

(in all cases)

For P1 to 3 & P5 : Mr.V.Prakash, Senior Counsel
Mr.Sathish Parasaran, Senior Counsel
Mr.Issac Mohanlal, Senior Counsel for
Mr.R.Anand
For P4 : Mr.A.V.Arun
For R1 : Mr.V.Lakshmi Narayanan,
Senior Counsel for
Mr.K.Aravinth Bharathi



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For R2 : (*)**Mr.Murali Kumaran**, Senior Counsel
for Mr.M.Maharaja
For R3 & R5 : Mr.J.Kingslay Solamon
For R4 : Mr.V.Meenakshi Sundaram,
Senior Counsel for
Mr.N.Ga.Nataraj
For R6 : Mr.S.Elambharathi

COMMON ORDER

CRP.1797/19 has been filed to strike of the proceedings in E.P.No.61/2019 in ACP.No.1/2019 on the file of the learned Principal District Judge, Tirunelveli.

CRP.1798/19 has been filed to strike of the proceedings in E.P.No.62/2019 in ACP.No.1/2019 on the file of the learned Principal District Judge, Tirunelveli.

CRP.1799/2019 has been filed to strike off the proceedings in E.P.No.63 of 2019 in ACP.1/2009 on the file of the learned Principal District Judge, Tirunelveli.

2.Brief facts of the case are as follows:-

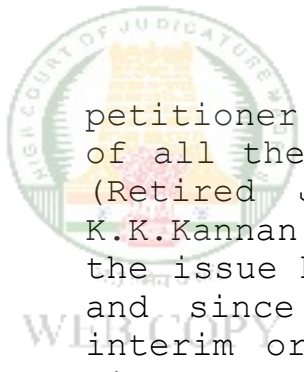
The 1st petitioner and the 1st respondent are brothers and the petitioners 2 to 5 are the wife and children of the 1st petitioner and the respondents 2 to 5 are the wife and children of the 1st respondent. Earlier, there was a dispute which existed between three brothers namely, the 1st petitioner and 1st respondent and their younger brother Thiru.S.Chandresan which led to arbitration proceedings resulting in a compromise award, where arbitration proceedings were presided over by Mr.Justice Shivraj Patil(Retired Judge of Supreme Court of India). In terms of the settlement, an award was passed on 13.07.2011. During the arbitration proceedings, the properties were divided into three shares namely, A, B and C schedules. B schedule was said to have been taken by Mr.Chandresan and A and C schedule properties were jointly managed by the 1st petitioner/Mr.Jegatheesan and family and the 1st respondent/Mr.Vaikundarajan and his family. The primary business of the family was separation of minerals from the raw beach sand. The family had several leases in the districts of Thoothukudi, Tirunelveli, Kanyakumari and in the State of Andhra Pradesh under the name and style of M/s.V.V.Minerals and the 1st petitioner herein was having financial control overall the firms and companies. They had been doing number of businesses and the family members were also inducted into the businesses subsequently. It is stated that the 1st respondent in the present petition has been acting as the Managing Director and Managing Partner of the companies and firms respectively. Apart from the flag ship, Vetrivel Minerals, the respondents also contributing their mite in V.V.Minerals (100% Export Oriented Unit), Edison Paints and Chemicals, V.V.Marine Products, Vijay Cements and



Vetrivel Marketing and Warehousing and Warehousing entities. After inducting the family members in the businesses, misunderstanding arose and the brothers 1st petitioner and the 1st respondent decided for partition by taking the aid of their step brother Mr.S.Ganesan and executed a Kaithadi бага pirivinai pathiram dated 31.12.2018 (hereinafter referred to as KBPP) and the properties were divided into A and C schedule properties. The understanding was that the present 1st petitioner S.Jegatheesan would divide the properties and the 1st respondent herein would choose among the two. Accordingly, the 1st respondent chose the C schedule properties. This was as per the practice in vogue in the business community of Tirunelveli. Thus, KBPP was the result of the mediation by the step brother Mr.S.Ganesan. Therefore, admittedly the properties were divided by the 1st petitioner herein. After the above partition, the petitioners sought to resile from the partition stating that the division is unequal and the same is vitiated by undue influence, coercion and misrepresentation. The petitioners also made attack against Mr.S.Ganesan who is the step brother of the 1st petitioner and the 1st respondent who assisted the partition. The petitioners and his family members initiated Arbitration proceedings before the High Court under Section 11 of the Arbitration and Conciliation Act in OP.Nos.372 to 374/2019, 380 to 382/2019 and 384/2019, and O.A.No.543/2019 under Section 9 of the Arbitration and Conciliation Act, which were rejected by an order of this Court dated 06.09.2019. In O.A.No.543/19 filed under Section 9 of the Arbitration and Conciliation Act, the same objections raised in the present CRPs were raised by the petitioners herein which was also dismissed.

3. Aggrieved by the order passed by this Court dated 06.09.2019 dismissing all the above OPs, the petitioners in the present revision petitions approached the Hon'ble Supreme Court in SLP (Civil)Nos.25250 of 2019 to 25256 of 2019 and after hearing of the matter, the Supreme Court has dismissed the SLPs on 21.10.2019 at the diary stage itself. All the issues raised in the petitions have been once again raised before the Supreme Court and the SLPs were dismissed. Thereafter, review applications have been filed before the Supreme Court with the condone delay petition and the delay was condoned and thereafter, the review applications in (C) Nos.1275 and 1281/2020 were dismissed on 09.06.2020. In fine, the orders passed by this Court in OP.Nos.372 to 374/2019, 380 to 382/2019 and 384/2019 and O.A.No.543/2019 dated 06.09.2019 became final. To implement the partition deed namely, KBPP, the respondents filed E.P.Nos.61 to 63 of 2019 and it is against the order of notice issued in the above E.Ps, the present revision petitions have been filed.

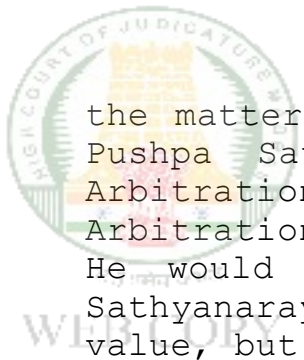
4. When the revision petitions were taken up for hearing without going into the merits of the case, considering that the 1st



petitioner and the 1st respondent were brothers, with the consent of all the parties, this Court appointed Mr. Justice Shivraj Patil (Retired Judge of the Hon'ble Supreme Court) and Mr. Justice K.K. Kannan (Retired Judge of this Court) as Mediators, to mediate the issue between the parties and granted an order of interim stay and since mediation was under progress, this Court made the interim order absolute. Various interim applications have been filed and the respondents herein has filed CMP.No.1988/2021 for appointment of a Receiver alleging that the petitioners are deliberately indulging in the act of waste, alienation and dismantling of the machineries found in the C schedule properties.

5. When the matter came up before me, since the petitioners and the respondents alleged against each others as to the act of waste, removal of machineries etc., without going into the merits, this Court suggested for appointment of Receiver to look into the affairs of the A schedule properties allotted to the petitioners which are in the control of the respondents and C schedule properties allotted to the respondents which are in the control of the petitioners till the completion of mediation, for which, the respondents agreed, and the petitioners did not agree and questioned the maintainability of the appointment of Receiver and therefore, this Court had no other go except to hear the entire matter on merits.

6. As stated earlier, numerous applications have been filed raising the grounds which are raised before the High Court and the Supreme Court which has already been rejected. The learned Senior Counsel Mr. V. Prakash would state that the conciliation award dated 02.01.2019 is vitiated by fraud and it is a fabricated document. He would argue that the appointment of Receiver cannot be made, as the same is contrary to the law laid down by the Kerala High Court in **K. Sandhya vs. K.K. Sivakumar and Krishnaswamy vs. Thangavelu reported in AIR 1955 Madras 430**. He would also state that the judgment of Justice Pushpa Sathyanarayana is *per incuriam* and therefore, it cannot be relied upon. He would further state that the partition document is inadmissible in evidence as it is unstamped and cannot be executed. The settlement agreement namely, KBPP is not a decree and therefore EP is not maintainable. The mode of appointment contemplated under Sections 61 to 74 namely, Part III of Arbitration and Conciliation Act, 1966 have not been followed and therefore, the settlement agreement cannot be executed and many other arguments had been placed by the learned Senior Counsel Mr. V. Prakash which has been countered by Mr. Lakshmi Narayanan, learned Senior counsel for the respondents. The learned Senior Counsel Mr. Lakshmi Narayanan would point out before this Court that all the issues raised by the petitioners have been raised before the High Court as well as the Supreme Court and would state that the petitioners could not re-litigate



the matter. He would further state that the judgment of Justice Pushpa Sathyanarayana is not only under Section 11 of the Arbitration and Conciliation Act, but also under Section 9 of the Arbitration and Conciliation Act which is a determining factor. He would further state that even assuming if Justice Pushpa Sathyanarayana's order is per incuriam, it has no precedential value, but it is binding on the parties.

7.Mr.V.Prakash, the learned Senior Counsel would state that the Supreme Court has given liberty by observing that the petitioners can work out their remedy in accordance with law which would entitle the petitioners to file these revision petitions.

8.Therefore, without going into the arguments and counter arguments made by the learned Senior Counsel for the petitioners as well as the respondents which has been already argued before the High Court and the Supreme Court, the only issue which the Court has to consider is whether the petitioners fall under the scope of working 'out the remedy in accordance with law' as observed by the Supreme Court while dismissing the SLP(Civil) Nos.25250 of 2019 to 25256 of 2019 in SLP(civil) Diary Nos.36699 of 2019. It will be useful to extract paragraphs 21 to 23 of the order of Justice Pushpa Sathyanarayana passed in OP.Nos.372 to 374/2019, 380 to 382/2019 and 384/2019 and O.A.No.543/2019:-

'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

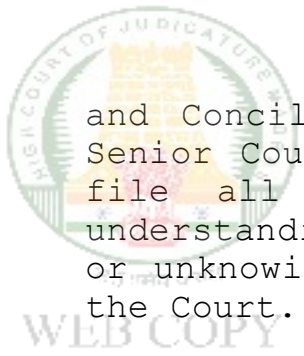


difficult to prove the same.

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.''

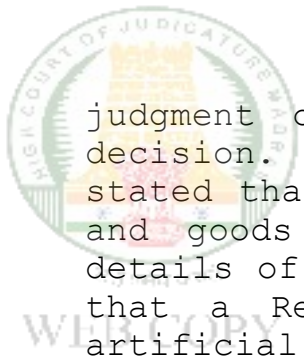
9. In view of the above findings, the learned Judge has stated that having admitted the execution, but pleaded undue influence and misrepresentation, the document is only voidable and if the document is voidable, it has to be set aside in the manner known to law before the civil court after trial and if it is an outcome of the conciliation, then it has to be treated as award and whether it requires registration of stamp duty or not can be agitated in a petition under Section 34 of the Arbitration and Conciliation Act and therefore, this Court had rejected all the applications, by which, the KBPP was held to be valid unless and until it is set aside in the manner known to law, against which appeal has been filed before the Supreme Court. The Supreme Court while dismissing the appeal has observed that the parties are at liberty to work out their remedy in accordance with law which means that though the petitioners have filed appeal against the order of Justice Pusha Sathyanarayana, the Supreme Court has given liberty of either filing a civil suit to set aside the KBPP in the manner known to law or it if it is considered as a conciliation award, to question the same under Section 34 of the Arbitration



and Conciliation Act and therefore the argument of the learned Senior Counsel that liberty has been given which enabled them to file all these petitions before this Court is the faulty understanding of the observations of the Supreme Court knowingly or unknowingly. If knowingly, it is a clear abuse of process of the Court.

10. Admittedly, through the judgment of the High Court and the Supreme Court, the KBPP is considered to be a valid document unless it is challenged in the manner known to law. Therefore, I need not go into any of the arguments advanced by the petitioners' counsel and the respondents' counsel. Everything has reached its finality. The revision petitions have been filed against the notice issued by the Executing Court. At the risk of repetition, even assuming as stated by the learned Senior Counsel for the revision petitioners, the order of Justice Pushpa Sathyanarayana is per incuriam, it is still binding on the parties except it cannot be cited as a precedent in some other proceeding. The petitioners have not come out with sufficient reason for not agitating the issue before the trial Court under Order 21 Rule 23 (2) of CPC read with Rules 143 and 146 of Civil Rules of Practice read with Section 47 of CPC to maintain the CRPs. There is no violation committed by the EP Court under Order 21 Rule 17 read with Rule 11(2) of CPC and Rule 142 of Civil Rules of Practice and therefore, for the above reasons also, the CRPs are not maintainable. In view of Order 21 of CPC read with Section 47 CPC being a complete code by itself, capable of addressing and deciding all the issues raised by the civil revision petitioners including that of the maintainability of the execution petition, the present exercise under Article 227 of the Constitution of India is barred. There is no any order passed by the Executing Court to challenge the same before this Court. As held by the Supreme Court in **Virudhunagar Hindu Nadargal Dharm Paribalana Sabai and others vs. Tuticorin Educational Society and others reported in (2019) 5 SCC 938**, when an alternative remedy is available under the Code of Civil Procedure, 1908, a revision under Article 227 of the Constitution is not maintainable. The revision petitioners cannot convert this Court into the trial Court and seek to let in evidence. The petitioners cannot let in any new evidence and cannot raise any new grounds before this Court.

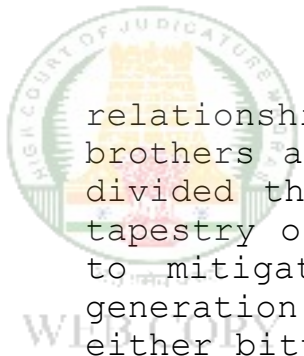
11. The learned counsel for the respondents would seek for appointment of Receiver alleging that the petitioners are encumbering the properties removing the machineries etc., for which, the learned Senior Counsel Mr.V.Sathish Parasaran vehemently opposed for the appointment of Receiver. Admittedly, the KBPP is considered to be a valid document unless it is challenged in the manner known to law. He would state that the



judgment of Justice Pushpa Sathyanarayana is not a conclusive decision. He would further state that though the respondents have stated that the revision petitioners are removing the machineries and goods from the companies, but had not given the precise details of the amount and machineries removed etc. He would state that a Receiver is sought even for the companies which are artificial legal entities and therefore, the remedy open to the respondents is only by way of oppression and mismanagement and not by way of execution. The learned Senior Counsel Mr.Sathish Parasaran would further state that the respondents ought to have moved the NCLT if the materials and stocks are moved from V.V Marine. Mr.Isaac Mohanlal, the learned Senior Counsel arguing for the petitioners would state that the appointment of Receiver will hinder the process of mediation. Mr.A.V.Arun adopted the arguments of Mr.V.Prakash. He would state the procedure followed under section 31 will have to be read with Section 74 as the award does not comply with the provisions of Section 31, and therefore, the conciliation award is not a decree and hence cannot be executed, as no stamps have been affixed under schedule I Class 12 of the Indian Stamp Act by which it has already been stated if it is so the petitioners can challenge the same only under section 13 of the Arbitration and Conciliation Act. Thus, all the counsels who appeared for the petitioners would reiterate the same arguments and the same grounds which was raised before the High Court and the Supreme Court and by Mr.V.Prakash.

12.For all the reasons stated above, particularly, paragraph 10, the present CRPs and all the petitions filed by the petitioners are not maintainable. This Court while admitting the revisions taking into consideration that the petitioners and the respondents are brothers thought it fit that if the matter is referred to mediation, there could be some amicable settlement and accordingly, the matter was referred to mediation and Mr.Justice Shivraj Patil(Retired Judge of the Hon'ble Supreme Court) and Mr.Justice K.K.Kannan(Retired Judge of this Court) were appointed as mediators and it is stated that the mediation is under process.

13.While dismissing all the civil revision petitions and the petitions filed by the petitioners, this Court also keeping in mind that there is a fundamental tie that binds the brothers urged for mediation. Especially, in these unpredictable times, it is imperative that we put aside differences and allegations, and think with a sound mind whether these ties that binds are mere formalities or have solid convictions. Yes, things do sour in any relationship and brotherhood is probably the most resilient of all. As any word said poorly, or action that hurt is immediately healed by the love of a brotherly solace, shoulder to support and hand to hold firm on to and therefore it is always good to look back and retrospect on how one can pick up the threads of their



relationship and start weaving it together with the intent as brothers and not strangers unto each other. The cracks that have divided the brother could be weaved as a tangible design in the tapestry of a new relationship. If the brothers do not reconcile to mitigate but arbitrate, the bridges become gaps and next generation after the other are certain to know of each other in either bitterness or strange acquaintances if any. We as a country are known to have traditional roots, there was a reason for joint families - to keep all siblings together under one purpose to care and nurture each and therefore, this Court feels that the mediation has to be continued for an amicable settlement between the parties.

14. In my opinion, to facilitate the mediation process, the appointment of Receiver is very much necessary. If allegations mount that both parties are trying to encumber the properties which had already been divided by KBPP, it would only add strain in the relationship of the 1st petitioner and the 1st respondent and therefore, the mediation would only be an empty formality. This Court is very conscious that the respondents alone have asked for appointment of Receiver for C schedule properties alone, but considering the allegations and counter allegations in the course of arguments, without commenting on the arguments of the petitioners' counsel and the respondents' counsel, this Court deems fit that the Receiver be appointed to look into the affairs in the A schedule properties which are allotted to the petitioners in possession of the respondents and C schedule properties which are allotted to the respondents and in possession of the petitioners.

15.(i) Therefore, in view of the discussions above, all the Civil Revision Petitions and all the Civil Miscellaneous Petitions filed by the petitioners are dismissed.

(ii) The mediation process will continue.

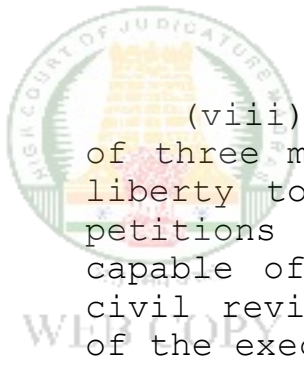
(iii) Mrs. Justice DR.S.VIMALA (Retired Judge of this Court) is appointed as Receiver to look into the overall administration of the properties found in the A schedule which is in possession of the respondents and C schedule which is in possession of the petitioners.

(iv) For the proper administration of the companies and the firms, the Receiver can take the aid of the Government machineries wherever necessary.

(v) Any expenses occurring in the process of the administration of the companies and firms will be borne by the parties.

(vi) Mr. Siddharthan and Mr. P. Samuel Gunasingh, Advocates, are appointed as Assistants to assist the Receiver in the administration of the companies and firms.

(vii) The proceedings in E.P.Nos.61, 62 and 63 of 2019 shall be kept in abeyance till the mediation process is over.



(viii)The mediation process shall be completed within a period of three months. If the mediation fails, the petitioners are at liberty to raise all the issues raised in the present revision petitions before the Executing Court as the Executing Court is capable of addressing and deciding all the issues raised by the civil revision petitioners including that of the maintainability of the execution petition.

(ix)The petitioners as well as the respondents shall jointly pay the monthly remuneration of Rs.7 Lakhs to the Receiver and a sum of Rs.1,00,000/- each to the Advocates who will assist the Receiver.

16.In view of the orders passed above, connected miscellaneous petitions are closed. No costs.

17.Registry is directed to mark a copy of this order to the Mediators, Receiver and Advocates who assist the Receiver.

Sd/-

Assistant Registrar

(*)Corrected as per letter dated 16.04.2021

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala

To

(*) to be substituted the order already despatched on 08.04.2021

The Principal District Judge,
Tirunelveli.

Copy to:

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<https://hcservices.ecourts.gov.in/hcservices/>



3. Mr. P. Samuel Gunasingh,
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+5 cc to M/S. ARAVINDHA BHARATHI, Advocate, SR No. 15513, 15514, 15515,
15516
+1cc to Mr. V. SUKUMAR, ADVOCATE, SR NO. 15439
+10cc to Mr. R. ANAND, ADVOCATE, SR NO. 15446

CRP (MD) Nos. 1797 to 1799 of 2019

DATED : 08.04.2021

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SRK (CO)
KK (08.04.2021) 11P 24C
TR (22.04.2021) 11P 24C