



A.S.(MD)Nos.252 and 253 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.12.2024

PRONOUNCED ON: 31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)Nos.252 and 253 of 2024

and

C.M.P.(MD)Nos.13274, 13275, 13276, 13334, 13335 and 13337 of 2024

A.S.(MD)No.252 of 2024:

1.J.Muthurajan

2.J.Subburajan

: Appellants/ Respondents 3 & 5/
Plaintiffs 3 & 5

Vs.

1.S.Vaikundarajan

: 1st Respondent/Petitioner/1st Defendant

2.S.Jegatheesan

3.J.Renuka

4.J.Chenthilrajan

5.M.Madhana

: Respondents 2 to 5/Respondents 1,2,4,6
/Plaintiffs 1, 2, 4, 6

6.V.Chandra Boopathy

7.V.Subramanian

8.V.Velmurugan

9.Karthiyayini



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10.V.Subasaranya

11.S.Ganesan

: Respondents 6 to 11/Respondents 7 to 12/
Defendants 2 to 7

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Fair and Decretal order dated 29.08.2024 made in I.A.No.5 of 2023 in O.S.No.72 of 2022, on the file of the Principal District Court at Tirunelveli.

For Appellants : Mr.S.Parthasarathy
Senior Counsel
for Mr.N.V.Prakash

For Respondents :Mr.V.Raghavachari
Senior Counsel
for Mr.J.Kingsly Soleman
R.1
: Mr.V.Prakash
Senior Counsel
for Mr.V.Janakiramulu
for R.2 to R.4

: Mr.R.Anand
for Mr.A.Muthupandian
for R.5
: Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.T.Arivukumar
for R.6

: Mr.V.Perumal
for R.7
:Mr.Sricharan Rangarajan
Senior Counsel
for Mr.J.Jeba Selvan Newman
for R.8



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: Mr.K.Subburanga Bharathi
for R.9

: Mr.Elambharathi
for R.10

: Mr.P.P.Alwin Balan
for R.11

A.S.(MD)No.253 of 2024:

1.S.Jegatheesan
2.J.Renuka
3.J.Chenthilrajan
4.M.Madhana

: Appellants 1 to 4 Respondents 1,2,4,6/
Plaintiffs 1,2,4,6

Vs.

1.S.Vaikundarajan

: 1st Respondent/Petitioner/1st Defendant

2.J.Muthurajan
3.J.Subburajan

: Respondents 2,3/Respondents 3,5
/Plaintiffs 3,5

4.Chandra Boopathy
5.V.Subramanian
6.V.Velmurugan
7.Karthiyayini
8.V.Subasaranya
9.S.Ganesan

: Respondents 4 to 9/Respondents 7 to 12/
Defendants 2 to 7

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Fair and Decretal order dated 29.08.2024 made in



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I.A.No.5 of 2023 in O.S.No.72 of 2022, on the file of the Principal District Court at Tirunelveli.

For Appellants : Mr.V.Prakash
Senior Counsel
for Mr.R.Ramakrishnan

For Respondents :Mr.V.Raghavachari
Senior Counsel
for Mr.J.Kingsly Soleman
R.1
Mr.T.R.Rajagopalan
Senior Counsel
for Mr.N.V.Prakash
for R.2 and R.3

: Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.T.Arivukumar
for R.4

: Mr.V.Perumal
for R.5
:Mr.Sricharan Rangarajan
Senior Counsel
for Mr.J.Jeba Selvan Newman
for R.6
: Mr.K.Subburanga Bharathi
for R.7

: Mr.Elambharathi
for R.8
: Mr.P.P.Alwin Balan
for R.9



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COMMON JUDGMENT

These appeals are directed against the order made in I.A.No.5 of 2023 in O.S.No.72 of 2022, dated 29.08.2024 rejecting the plaint.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the original suit.

3. The appellants in both appeals have filed a suit to declare that the conciliation proceedings of the seventh defendant culminating in the conciliation award dated 02.01.2019 propounded by the defendants is a fraudulent and fabricated document, void and illegal and not binding on the plaintiffs and to declare that the Kaithadi Baga Pirivinai Pathiram dated 31.12.2018 propounded by the defendants has no legal status and it is not binding on the plaintiffs as it is neither registered nor having sufficient stamp duty.

4. The relationship not in dispute is that the first plaintiff and the first defendant are brothers, that the second plaintiff is the wife and the



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plaintiffs 3 to 5 are the sons of the first plaintiff, that the sixth plaintiff is the wife of the third plaintiff, that the second defendant is the wife, and the defendants 8 and 9 are the sons and the 11th defendant is the daughter of the first defendant, that the fifth defendant is the wife of the third defendant and that the seventh defendant is the step-brother of the first defendant and the first plaintiff.

5. Pending suit, the first defendant filed a petition invoking Order 7 Rule 11 C.P.C., seeking to reject the plaint. The plaintiffs 1 to 6 as respondents 1 to 6 have filed their counter statement raising objections. The defendants 2 to 7 who are the respondents 7 to 12 have not filed any counter statement. During enquiry, the plaintiffs/respondents 1 to 6 have produced and exhibited 16 documents as Exs.R.1 to R.16. The learned Principal District Judge, after enquiry, passed the impugned order dated 29.08.2024 allowing the petition in I.A.No.5 of 2023 and thereby rejected the plaint. Aggrieved by the rejection of plaint, the plaintiffs 3 and 5 have filed an appeal in A.S.(MD)No.252 of 2024 and the remaining plaintiffs have filed another appeal in A.S.(MD)No.253 of 2024.



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6. Heard the learned Senior Counsel appearing for the appellants and the learned Senior Counsel and the learned Counsel appearing for the respondents and perused the materials available on record.

7. The facts not in dispute are :

(a) The first plaintiff, the first defendant, and their brother S.Chandresan were partners/directors in various family businesses, with the primary business involving the separation of minerals from raw beach sand. The family held several leases in the districts of Tuticorin, Tirunelveli, Kanyakumari, and in the state of Andhra Pradesh, operating under the name and style of M/s. V.V.Minerals. The family was also involved in V.V.Minerals (100% export-oriented unit), Edison Paints and Chemicals, V.V.Marine Products, Transworld Garnet India Pvt Ltd., Vijay Cements, and Vetrivel Marketing and Warehousing entities.

(b) The first defendant is the founder of the V.V.Minerals Group and serves as the Managing Director of the companies and Managing Partner of the firms. The first plaintiff was the then Joint Managing Director and overall financial controller of the firms and companies.



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(c) In 2009, the brothers' disputes came to a head, and S.Chandresan demanded partition. To settle the dispute, Mr. Justice Shivaraj V.Patil, a retired Judge of the Hon'ble Supreme Court, was appointed as the Arbitrator. During the arbitration, the parties reached a compromise, dividing the properties into three schedules: A, B, and C. S.Chandresan took the B schedule properties as his share, while the remaining A and C schedule properties were allotted jointly to the first plaintiff and the first defendant. An award was passed on 13.07.2011, reflecting this agreement. However, subsequent misunderstandings and disputes arose between the first plaintiff and the first defendant and their respective families. In 2018, the Income Tax Department conducted raids on the firms and entities of the first plaintiff and the first defendant, prompting the first plaintiff to express his intention to part ways with the family members and demand partition of the properties, firms, companies, and other connected entities.

8. The first defendant and his family have presented a case that, after the partition demanded by the first plaintiff, several well-wishers came forward to mediate and settle the disputes. At the request of the first plaintiff, and with the consent of the first defendant, the seventh



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defendant agreed to mediate and settle the matter. The seventh defendant was subsequently appointed as mediator. Following several rounds of discussions and negotiations, it was agreed that the first plaintiff would divide the properties, and the first defendant would select from the divided properties. The first defendant added the subsequently acquired properties, firms, and entities to the existing "A" and "C" schedules and offered them to the first plaintiff. The first defendant chose the "C" schedule properties. The result of the mediation and the consequent division is reflected in the Kaithadi Baga Pirivinai Pathiram, which was executed in accordance with the customary practice in the business community in Tirunelveli. All parties signed the settlement agreement dated 31.12.2018, in the presence of the seventh defendant. A Conciliation award was passed on 02.01.2019, recording the facts leading to the signing of the Kaithadi Baga Pirivinai Pathiram.

9. The first plaintiff and his family members, while acknowledging their signature on the Kaithadi Baga Privinai Pathiram (KBPP) dated 31.12.2018, contested its validity on the grounds of unjust and unequal partition, and lack of legal status due to non-registration and insufficient stamping. They also challenged the Conciliation Award dated



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02.01.2019, alleging it to be a fraudulent and fabricated document, and therefore, void and illegal.

10. The legal proceedings so far taken, which are undisputed, are as follows:

(a) The plaintiffs have filed petitions under Section 11 of the Arbitration and Conciliation Act 1996 seeking orders to appoint Justice C.Shivaraj V.Patil, retired Judge of the Hon'ble Supreme Court as the sole arbitrator to decide the disputes that have arisen between the first plaintiff's family and the first defendant's family in respect of 5 firms, in O.P.Nos.372, 373, 374, 381 and 382 of 2019 and also filed the application under Section 9 of the Arbitration and Conciliation Act in O.A.No.543 of 2019 seeking injunction restraining the defendants 1 to 6 from giving effect to Kaithadi Baga Privinai Pathiram, dated 31.12.2018. The Hon'ble Mrs.Justice Pushpa Sathyanarayana passed a common order dated 06.09.2019 dismissing all the original petitions filed under Section 11 of the Arbitration and Conciliation Act and O.A., filed under Section 9 of the Arbitration and Conciliation Act. Challenging the dismissal order, the plaintiffs have preferred Special Leave Petitions in S.L.P.(Civil) Nos. 25250 to 25256 of 2019 and the same came to be dismissed by the



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Hon'ble Supreme Court on 21.10.2019. The plaintiffs have filed review petitions in Review Petitions (Civil) Nos.1275 to 1281 of 2020 and the same came to be dismissed on 09.06.2020.

(b) In the meanwhile, the defendants 1 to 6 have laid execution petitions in E.P.Nos.61 to 63 of 2019, on the file of the Principal District Court, Tirunelveli for implementing the Conciliation award. The plaintiffs, challenging the very maintainability of the execution petitions and the executability of the award, have preferred Revisions C.R.P. (MD)Nos.1797 to 1799 of 2019 before this Court. The Hon'ble Mrs.Justice J.Nisha Banu passed a common order dated 08.04.2021 dismissing all the revisions and directed to continue the mediation process and also appointed the Hon'ble Dr.Justice S.Vimala, retired Judge of this Court as Receiver to look into the overall administration of the properties found "A" schedule, which is in possession of the defendants 1 to 6 and "C" schedule properties which is in possession of the plaintiffs. Challenging the dismissal of the revisions, the plaintiffs have preferred Special Leave Petitions in S.L.P.(Civil) Diary No.10412 of 2021 and the Hon'ble Supreme Court, vide order dated 04.05.2021 dismissed the Special Leave Petition and directed the Executing Court to



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decide the matter on its own merits, uninfluenced by the observations made in the common order in the revisions.

(c) After the dismissal of the Special Leave Petition, the plaintiffs have filed applications under Section 47 C.P.C., in E.A.Nos.2, 2 and 2 of 2021 in E.P.Nos.61 to 63 of 2019, challenging the Conciliation award dated 02.01.2019 and Kaithadi Baga Privinai Pathiram dated 31.12.2018 and sought for declaration that the alleged Conciliation award dated 02.01.2019 is not a decree and is inexecutable and for declaration that the alleged Kaithadi Baga Privinai Pathiram dated 31.12.2018 is not a settlement agreement within the meaning of the provisions of Part-III of the Arbitration and Conciliation Act 1996 and as such, the same is inexecutable.

(d) Pending the above Execution Applications filed under Section 47 C.P.C., the present suit came to be filed in O.S.No.72 of 2022, on the file of III Additional District Court, Tirunelveli to declare that the alleged Conciliation proceedings of the seventh defendant culminating in the conciliation award dated 02.01.2019 propounded by the defendants is a fraudulent and fabricated document, void and illegal and not binding on



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the plaintiffs and to declare that the Kaithadi Baga Pirivinai Pathiram dated 31.12.2018 executed by the defendants has no legal status and it is not binding on the plaintiffs as it is neither registered nor stamped sufficiently. Pending the above suit, the first defendant has filed the present application under Order 7 Rule 11 C.P.R., to reject the plaint and the same was taken on file in I.A.No.5 of 2023 on the file of III Additional District Court, Tirunelveli.

(e) Pending the above suit, the first plaintiff has filed three Transfer Petitions in Tr.C.M.P.(MD)Nos.301 to 303 of 2023 under Section 24 C.P.C., seeking orders to withdraw and transfer the Execution Petitions in E.P.Nos.61 to 63 of 2019 from the file of the Principal District Court, Tirunelveli to the Principal District Court, Madurai. The Hon'ble Justice C.Saravanan passed a common order dated 30.06.2023, dismissing the transfer petitions and directed the transfer of the suit in O.S.No.72 of 2022 from the file of III Additional District Court, Tirunelveli to the file of the Principal District Court, Tirunelveli to be tried along with E.P.Nos.61 to 63 of 2019 and to dispose of the above proceedings as expeditiously as possible, preferably within a period of 12 months from the date of receipt of a copy of the said order.



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(f) In pursuance of the said order, the suit in O.S.No.72 of 2022 along with the application in I.A.No.5 of 2023 for rejection of plaint came to be transferred to the file of the Principal District Court, Tirunelveli. The learned Principal District Judge, after enquiry, has rejected the plaint and challenging the same, the present Appeals came to be preferred.

11. Before entering into further, it is necessary to consider the scope of Order 7 Rule 11 C.P.C., and the settled legal position therefor. Order 7 Rule 11 C.P.C., contemplates the grounds for rejection of plaint,

- (1) no cause of action - the plaint does not disclose the cause of action;
- (2) under valuation of the suit – the relief claimed is under valued and the plaintiff's failure to correct the valuation within the time stipulated by the Court;
- (3) insufficient stamp duty – the plaint is not stamped sufficiently and the plaintiff's failure to supply the requisite stamp-paper within the time to be stipulated by the Court;



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- (4) barred by law – the suit is legally not maintainable;
- (5) not filed in duplicate – the plaint is not filed in duplicate;
- (6) non-compliance of Order VII Rule 9 C.P.C., - the plaintiff does not file copies of the plaint along with process fee within a period of seven days despite the Courts order;

12. It is settled law that the provision of Order VII Rule 11 C.P.C., is mandatory in nature, as it contemplates that the plaint shall be rejected if any of the grounds satisfied in Clause (a) to (e) are made out. Very recently, the Hon'ble Apex Court in ***Shri Mukund Bhavan Trust and Others Vs. Shrimant Chhatrapati Udayan Raje Pratapsingh Maharaj Bhonsle and Another*** reported in ***2024 Live Law (SC) 1041***, (Civil Appeal No.14807 of 2024, dated 20.12.2024), while considering the scope of Order VII Rule 11 C.P.C., has reiterated the legal position that the spirit and intention of Order VII Rule 11 of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process and the Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. The Hon'ble Apex Court has referred its earlier decision in ***Dahiben v. Arvindhbai Kalyanji Bhanusali (Gajra) dead through legal***



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representatives reported in **2020 SCC Online SC 562**, wherein it has been held as follows:

“23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi⁹ this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :



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“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint 10, read in conjunction with the documents relied upon, or whether the suit is barred by any law.”

13. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed, which was laid down in ***Liverpool & London S.P.***



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& I Assn. Ltd. v. M.V.Sea Success I reported in **(2004)9 SCC 512**. In the **Shri Mukund Bhavan Trust case** above referred, the Hon'ble Apex Court has also referred its earlier decision in **T.Arivanandam v. T.V.Satyapal** reported in **(1977) 4 SCC 467** wherein, it was held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory and the relevant passage is extracted hereunder:

“The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing.”

14. The Hon'ble Apex Court has also reiterated the settled legal position that when an application to reject the plaint is filed, the averments in the plaint and the documents annexed therewith alone are germane. The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order



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VII Rule 11 by considering the averments in the plaint and the Court cannot look into the written statement or the documents filed by the defendants.

15. The learned Counsel for both parties have cited decisions pertaining to Order VII Rule 11 of the CPC, which reaffirm the legal position aforementioned. In ***Kum. Geetha v. Nandundaswamy (AIR 2023 SC 5516)***, relied upon by the appellants' counsel, the Hon'ble Supreme Court held that a plaint cannot be rejected in part; rather, it must be rejected in its entirety or not at all.

16. In ***Saleem Bhai and others Vs. State of Maharashtra and others*** reported in ***2003(1) SCC 557***, relied on by the learned Senior Counsel for the appellants, the Hon'ble Apex Court has held that the trial court can exercise the power under **Order VII Rule 11 C.P.C.** at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.

17. As rightly pointed out by the learned Senior Counsel appearing for the appellants, the Hon'ble Supreme Court in catena of decisions has



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reiterated the settled legal position that the plea of res judicata cannot be invoked as a ground for rejection of the plaint and that defence would be considered only at the trial.

18. Bearing the above legal position in mind, let us proceed with the case on hand. In the case on hand, the first defendant sought to reject the plaint on the grounds that the plaint does not disclose cause of action, that the suit is barred or prohibited by law, that the suit is undervalued and that the very filing of the suit is a clear abuse of process of law. According to the defendants, the suit is barred under multiple provision, including the Arbitration and Conciliation Act, 1996, Section 47 of the Code of Civil Procedure and Section 34 of the Specific Relief Act, 1963. Let us first consider the alleged bar under the provisions of the Arbitration and Conciliation Act.

19. The learned Senior Counsel appearing for the fourth defendant (8th respondent) in A.S.(MD)No.252 of 2024 and who is the sixth respondent in A.S.(MD)No.253 of 2024 would submit that a challenge to the Arbitral award can only be made by an application for setting aside such award in accordance with Section 34(2) and 34(3) of the Arbitration



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and Conciliation Act 1996, that a settlement can attain the status of an award either through Section 30 of Part I of the Act of 1996 or through Section 74 of Part III of the Act of 1996, that once the settlement attains the status of an award, the mode to set aside such an award can only be under the four corners of Section 34 of the Act of 1996, that Section 36(1) of the said Act specifically provides that an award shall be executed as if it is a decree and thereby given that award could be challenged only under Section 34 of the said Act, a challenge that such an award is not executable can only be made in execution proceedings and that beyond the above two remedies, a civil suit will not lie to challenge the award belatedly.

20. The learned Counsel appearing for the first defendant would submit that the plaintiffs having failed to challenge the Kaithadi Baga Privinai Pathiram under Section 34 of the Arbitration and Conciliation Act cannot now seek to challenge the same by filing a suit, as the Conciliation award has attained finality and it is a decree in the eye of law, that the plaintiffs have already missed the bus and ought not to do something indirectly when they failed to take the direct approach, that the parties had signed the documents with open eyes, and therefore, they are



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22. The learned Senior Counsel appearing for the plaintiffs 1, 2, 4, 6 would submit that by no stretch of imagination Ex.R.1 fabricated document dated 02.01.2019 can be given an exalted status of a “settlement agreement” to secure a deemed status of an award under Section 74 of the said Act, that the procedure under Part-III of the Arbitration and Conciliation Act has to be applied as a whole or not at all, that Part-III visualises invitation by a party to another for conciliation; acceptance by the invitee; nomination of a mutually acceptable conciliator who plays the role as visualised in the Statute; culminating in an conciliator authenticated conciliation settlement, that the so called award was created as an afterthought to give legal sanctity to Kaithadi Baga Privinai Pathiram, that in the absence of any proof of furnishing of the duly authenticated settlement agreement by the so called Conciliator, limitation to challenge the same does not commence to run at all and that since the impugned document is not a settlement agreement, Section 34 has no application and the seventh defendant - the alleged conciliator had no role at all and his fabricated document cannot be used to apply Section 74 and 34 of the said Act.



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23. It is pertinent to note that the plaintiffs have disputed and challenged the Conciliation award dated 02.01.2019 as fraudulent and fabricated document. But they have not disputed / denied the execution of Kaithadi Baga Privinai Pathiram (hereinafter referred as KBPP), dated 31.12.2018. No doubt, the plaintiffs have taken a stand that they were pressurised by the first defendant to sign the KBPP immediately, as it is only a draft and had to be registered to give effect to and since the first defendant was the elder brother of the first plaintiff, the plaintiffs trusted the first defendant implicitly and assumed that the division of the assets would be fair, just and equal, they signed in the document.

24. As the learned District Judge aptly observed, the plaintiffs do not allege that they refused to sign the document or that they were coerced into signing at knifepoint or under threat of death. Nor do they claim that the first defendant made material misrepresentations that induced them to sign the KBPP. Notably, the 310-page KBPP bears the signatures of all plaintiffs and defendants 1 to 6 on every page. The plaintiffs do not plead illiteracy or inability to read the Tamil-language KBPP, as they are educated individuals with control and management over various firms and companies. When this identical issue was raised



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before this Court in petitions filed under Sections 9 and 11 of the Arbitration and Conciliation Act, this Court observed in its common order dated 06.09.2019 as follows:

“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 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.

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



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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.”

25. The learned Senior Counsel appearing for the plaintiffs 3 and 5 would rely on the same judgment and the relevant paragraph is extracted hereunder:

“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



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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



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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](#).”

26. It is well-established that a party alleging fraud, coercion, or misrepresentation has a duty to provide specific particulars of these grounds and to prove them. In the present case, as observed by this Court in its common order dated 06.09.2019 and subsequently by the learned District Judge, the plaintiffs have failed to provide any particulars of the alleged fraud, coercion, or misrepresentation. Notably, the plaintiffs do not claim to have filed a police complaint or sent a letter or notice to the first defendant after executing the KBPP on 31.12.2018, alleging the purported wrongdoing by the first defendant in obtaining the KBPP.

27. It is undisputed that the first plaintiff sent two emails, the first on 14.01.2019 and the second on 23.01.2019. Notably, the first email made no mention of the KBPP or any complaints of fraud, misrepresentation, or coercion against the first defendant. Instead, the first plaintiff requested that the first defendant schedule a meeting to amicably settle disputes and divide properties. However, in the second



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email, sent 22 days later, the first plaintiff referenced the partition deed, claimed it was invalid and non-binding on his family, and purported to revoke the partition deed dated 31.12.2018. As rightly pointed out the by the defendants' counsel, first defendant's response on 24.01.2019 mentioned the role of the seventh defendant, Ganesan. As rightly contended by the defendants' counsel, the plaintiffs' failure to mention the KBPP or their complaints in their initial communication is significant, despite having the opportunity to do so.

28. In its common order dated 06.09.2019, this Court observed that if the partition deed did not result from Conciliation proceedings, it would constitute a settlement of all disputes and differences within the family, in accordance with the customs and practices prevailing in their community. The Court further held that the Kaithadi Partition represents a comprehensive settlement of all family issues. Although counsel were unable to explain the meaning of 'Kaithadi,' the Court inferred that the partition conforms to the customs prevalent among trading families in the area/community. The Court made the following additional observations:



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“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.”



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29. Concerning the argument that Part III of the Arbitration and Conciliation Act, 1996 was not complied with, as rightly contended by the learned Senior Counsel for the defendants, Section 61 of the Act begins with the phrase 'unless the parties have otherwise agreed.' This phrase suggests that the conciliation procedure is left to the parties' autonomy. As observed by this Court in its order dated 06.09.2019, Section 61(1) of the Act states that, subject to any applicable law and unless the parties have otherwise agreed, Part III applies to conciliation of disputes arising from legal relationships, whether contractual or not. In this case, since the parties have agreed to follow their customs and practices, they cannot now claim that Section 61 was not complied with. The parties' actions demonstrated that they reached a consensus, waiving the procedures outlined in Section 61(1) and subsequent provisions (Sections 62-74) of the Act.

30. It is pertinent to note that the plaintiffs previously sought interim orders under Section 9 of the Arbitration and Conciliation Act, 1996, in relation to the very same award now being challenged in the suit. As rightly contended by the learned Counsel for the fourth defendant, if the plaintiffs were aware that their remedy lay within the



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Act's scheme, their current claim that their only recourse against the award is by way of suit is unsustainable. The learned Senior Counsel for the fourth defendant would further contend that once an agreement is claimed to be an award, the award and agreement are inextricably linked. Consequently, the only way to challenge the agreement is by attacking the award under Section 34 of the Act. Conversely, it is not possible to attack the agreement independently, even if allegations of fraud, lack of registration, or non-compliance with Part III of the Act are made.

31. In the case on hand, as already pointed out, the parties have drawn and signed in the settlement agreement in terms of Section 73(2) of the Act of 1996 and such settlement agreement authenticated under Section 73(4) is a binding settlement agreement which has been culminated as an award under Section 74 of the said Act.

32. It is pertinent to note that the Arbitration and Conciliation Act's purpose and scheme are to ensure swift dispute resolution with minimal judicial intervention. Section 5 of the Act stipulates that judicial authorities cannot intervene in matters governed by the Act unless explicitly provided for. As rightly contended by learned Senior Counsel



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for the defendants, permitting a civil suit to set aside an award would undermine the Act's entire purpose. Section 34(3) of the Act mandates that applications to set aside arbitral awards must be made within three months of receiving the award. The proviso to Section 34(3) allows for a 30-day extension if the court finds sufficient cause for the delay. It is well-established that the time limit prescribed under Section 34 is absolute. In the present case, the action to set aside the award was filed after the prescribed period under the Act had expired.

33. In *Narendra Kumar Vs. Kishore Kumar and others* in *Civil Appeal No.9995 of 2017, dated 28.07.2017*, the Hon'ble Supreme Court has held that the only means of challenging the award is under [Section 34](#) of the Arbitration & Conciliation Act which provides for a stringent limitation period of three months plus one month, beyond which delay cannot be condoned and observing so, the Hon'ble Supreme Court rejected the plaint filed under Order VII Rule 11 C.P.C., challenging the award much after the period.



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34. A Division Bench of this Court in ***R.Raghavan vs Dr.R.Venkitapathy and others*** reported in **2013(2) CTC 172** has held as follows:

“21. It is clear, from the records available, that all the disputes, which had arisen amongst the parties concerned, had been referred to the Arbitral Tribunal, consisting of the respondents 5 to 7, for adjudication. It is for the Arbitral Tribunal concerned to decide as to whether it has the jurisdiction to adjudicate upon the issue relating to the dissolution of the partnership. However, it would not be open to the appellant to dispute the jurisdiction of the Arbitral Tribunal, with regard to the said issue, by filing a Civil Suit, as it is barred under [section 5](#) of the Arbitration and Conciliation Act, 1996. In fact, it would be open to the appellant to challenge the award passed by the Arbitral Tribunal, under [Section 34](#) of the Arbitration and Conciliation Act, 1996, by raising all the grounds available to him, as per law.

22. In such circumstances, we are of the considered view that any interference in the proceedings of the Arbitral Tribunal, at this stage, would be contrary to the object and spirit of the [Arbitration and Conciliation Act, 1996](#), which is to avoid unnecessary and unwanted delay in the settlement of the disputes, amongst the parties concerned. As such, the



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contentions raised on behalf of the appellant, in the present appeal, cannot be countenanced.”

35. Hence, the arguments made on behalf of the defendants that since the plaintiffs have failed to challenge the award within 3 months and 30 days, a belated challenge in the form of suit cannot be resorted to, cannot be rejected.

36. In light of the above, the trial Court correctly held that the KBPP is a settlement agreement arising from Conciliation proceedings, thereby possessing the status and effect of an arbitral award. Consequently, the award can only be challenged under Section 34 of the Arbitration and Conciliation Act, and no civil suit can be maintained to challenge the award. Thus, cognizance of the suit is impliedly barred under the provisions of the Arbitration and Conciliation Act.

37. Furthermore, the first defendant has contended that since the plaintiffs have already filed an execution application under Section 47 of the Code of Civil Procedure (CPC), seeking similar reliefs as those



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CPC.

claimed in the present suit, the suit is clearly barred under Section 47

“47. Questions to be determined by the Court executing decree .-

(1)All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[* *]*

(3)Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I .-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II .-(a)For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b)all questions relating to the delivery of possession of such property to such purchaser or his representative shall be



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deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.”

38. Notably, subsection (1) of Section 47 is mandatory, as it prohibits the filing of a separate suit to determine questions related to the execution, discharge, or satisfaction of a decree. The phrase 'relating to the execution, discharge or satisfaction of the decree' encompasses questions regarding the executability or non-executability of a decree.

39. The Hon'ble Supreme Court in ***Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman*** reported in ***(1970)1 SCC 670***, which came to be referred in ***Asma Lateef and another VS. Shabbir Ahmad and others*** reported in ***(2024)4 SCC 696*** relied on by the learned Counsel for the appellants, while considering the scope of objection under Section 47 C.P.C., in relating to the executability of a decree has observed

“6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or



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revision, a decree even if it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction....”

40. In ***Dhurandhar Prasad Singh V. Jai Prakash University*** reported in **(2021)6 SCC 534**, wherein the Hon'ble Apex Court has held that the exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and thus it is plain that executing court can allow objection under Section 47 of the Code to the



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executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.”

41. At this juncture it is also necessary to refer a decision relied on by the learned Senior Counsel for the respondents in ***Jagadguru Gurushiddaswami vs Dakshina Maharashtra Digambarjain Sabha*** reported in ***AIR 1953 SC 514***, wherein the Hon'ble Apex Court has held as follows:

“So far as the first ground is concerned, it may be stated at the outset that even if the appellant's contention is right, the present suit would be barred under section 47 of the Civil Procedure Code and the proper remedy of the plaintiff would be to apply for execution of the decree in the previous suit. This difficulty, however, is not insuperable, as under section 47 of the Civil Procedure Code the court is empowered to treat a suit as an execution proceeding, when there is no question of limitation or jurisdiction standing in the way of the plaintiff.”



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42. In ***Jai Narain Ram Lundia Vs. Kedar Nath Khetan and others*** reported in ***AIR 1956 SC 359*** relied on by the learned Senior Counsel for the defendants, the Hon'ble Apex Court has observed as follows:

“23. The only question that remains is whether the executing Court can consider whether the defendant is in a position to perform his part of the decree. But of course it can. If the executing Court cannot consider this question who can? The executing Court has to see that the defendant gives the plaintiff the very thing that the decree directs and not something else, so if there is any dispute about its identity or substance nobody but the Court executing the decree can determine it. It is a matter distinctly relating to the execution, discharge and satisfaction of the decree and so, under [section 47](#) of the Civil Procedure Code, it can only be determined by the Court executing the decree. And as for the first Court's conclusion that it could not decide these matters because it was not the Court that passed the decree, it is enough to say, as the High Court did, that [section 42](#) of the Code expressly gives the Court executing a decree sent to it the same powers in executing such decree as if it had been passed by itself.”

43. The learned Counsel for the plaintiffs would submit that the seventh defendant is not a party to any of the earlier proceedings



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including the execution proceedings, that the plaintiffs have raised allegations against the seventh defendant – conciliator, that the plaintiffs have also raised that a fraud has been committed and as such, the fraud cannot be gone into in the proceedings under Section 47 C.P.C., that the proceedings under Section 47 is of summary in nature and that therefore, it cannot be stated that the suit is barred in view of the pendency of the petitions filed under Section 47 C.P.C.

44. As already pointed out, the first defendant and his family members have laid the execution petitions in E.P.Nos.61 to 63 of 2017 for implementation of the Conciliation award. Challenging the very filing of the execution petitions, the plaintiffs have preferred revisions before this Court in C.R.P.(MD)Nos.1797 to 1799 of 2019 and the learned Judge of this Court while dismissing the revision has observed that 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 and that 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



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plaintiffs can address all the issues raised by them in the revisions including that of the maintainability of the execution petition before the Executing Court itself under Order 21 C.P.C., r/w Section 47 C.P.C., and that the Hon'ble Apex Court has, by confirming the said orders of the High Court, directed the Executing Court to decide the matter on its own merits uninfluenced by the observations made in the revisional orders.

47. As rightly contended by the learned Senior Counsel for the defendants, the plaintiffs, in pursuance of the orders of the High Court in the revisions as well as the Hon'ble Supreme Court, have invoked Section 47 C.P.C., challenging the Conciliation award and the KBPP. It is pertinent to note that the reliefs claimed in the application filed under Section 47 C.P.C., and in the present suit are almost similar. In the Execution Application, the plaintiffs sought declaration that the alleged Conciliation award dated 02.01.2019 is not a decree or a valid Conciliation award and hence, it is inexecutable and also become void and illegal, whereas in the plaint, they sought declaratory relief, that the alleged Conciliation proceedings of the seventh defendant culminating in the conciliation award dated 02.01.2019 propounded by the defendants is a fraudulent and fabricated document, void and illegal and not binding on



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the plaintiffs. In the Execution Application filed under Section 47 C.P.C., they have claimed another declaration that the alleged KBPP dated 31.12.2018 is not a settlement agreement within the meaning of the provisions of Part-III of the Arbitration and Conciliation Act and hence, it is inexecutable award, whereas in the plaint, they sought the declaratory relief that the KBPP dated 31.12.2018 propounded by the defendants has no legal status as it is neither registered nor having sufficient stamp duty paid. In essence, the plaintiffs have challenged the validity and legality of the Conciliation award and the KBPP in both proceedings. Therefore, the plaintiffs' current contention that the pendency of the Section 47 applications does not bar the filing of the suit, given the seventh defendant's non-participation in earlier proceedings and the plea of fraud, cannot be legally sustained.

48. It is pertinent to note that the plaintiffs failed to disclose the filing and pendency of their Section 47 CPC application in the stay applications filed alongside their appeals, thereby obtaining interim orders. Despite acknowledging that they filed the Section 47 application in compliance with this Court's and the Supreme Court's orders, the plaintiffs cannot now claim that the suit is also maintainable.



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49. The learned Senior Counsel appearing for the plaintiffs would submit that the first defendant had filed Tr.C.M.P.Nos.6833 to 6835 of 2023, wherein a learned Judge of this Court while dismissing the transfer petitions, directed for the transfer of the suit in O.S.No.72 of 2022 from the file of III Additional District Judge, Tirunelveli to the Principal District Court, Tirunelveli to be tried along with E.P.Nos.61 to 63 of 2019 and that since this Court has directed for the joint trial of the suit and the execution petitions, the very filing of the petition to reject the plaint cannot be sustained and moreover, this Court has directed that both the cases have to be tried jointly so as to decide all the disputes once for all. No doubt, the learned Judge, referred to the orders passed by this Court and the Hon'ble Supreme Court in the earlier proceedings and also the property orders passed by the Principal Sessions Court, Tirunelveli, with regard to the vehicles owned by V.V.Minerals and while dismissing the transfer petitions, observed that there are rival proceedings in the suit in O.S.NO.72 of 2022 and E.P.Nos.61 to 63 of 2019 arising out of the KBPP, dated 31.12.2018 and in Section 47 petitions ie., E.A.Nos.2,2, and 2 of 2021 in E.P.Nos.61 to 63 of 2019 and ordered for transfer of the suit in O.S.No.72 of 2022 from the file of III Additional District Court,



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Tirunelveli to the Principal District Court, Tirunelveli to be tried along with the execution petitions. The fact that the joint trial of the suit and execution petitions was directed in the transfer petitions, does not necessarily mean that the defendants have lost their right to invoke Order 7 Rule 11 C.P.C. Moreover, as rightly contended by the learned Counsel for the defendants, the Court's decision was made without considering the bars under Section 47 C.P.C., Section 34 of the Arbitration and Conciliation Act and Section 34 of the Specific Relief Act, for filing of the suit in O.S.No.72 of 2022 and the bars were neither canvassed by the parties nor considered by the Court.

50. The first defendant has also raised a ground that the plaintiffs have only claimed the relief of declaration without seeking any consequential reliefs, that the proviso to Section 34 of the Specific Relief Act provided that no Court shall make any such declaration whether being able to seek further relief than a mere declaration omits to do so and that therefore, the present with mere declarations is legally not maintainable.



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51. The plaintiffs' Senior Counsel would submit that the defendants' stance is based on the assumption that Section 34 of the Specific Relief Act is the sole provision for filing a declaratory suit. However, counsel would contend that Section 34 is not exhaustive, and the plaintiffs have sought declaratory relief under general law, which is permissible. Even if the suit were to fall under Section 34, the court's discretion to grant or deny the decree would only be determined after evaluating the evidence at trial. Therefore, the prohibition on seeking further relief not requested does not bar the suit itself, but rather only the specific relief.

52. The learned Counsel would further submit that the plaintiffs have claimed the relief to declare the so called Conciliation award as null and void and not binding and similarly the relief with reference to the KBPP only in respect of its legal status and that therefore, the present suit does not fall with the four corners of Section 34 of the Specific Relief Act.

53. The learned Senior Counsel for the plaintiffs would rely on the decision of the Hon'ble Supreme Court in ***Vemareddi Ramaraghava***



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Reddy and Others VS. Konduru Seshu Reddy and Others reported in **AIR 1967 SC 436** to canvass his argument that Section 42 of the Specific Relief Act, 1877 (Section 34 of the Specific Relief Act, 1963) is not exhaustive and the Courts can grant declaratory decree independently of the Section and the relevant passage is extracted hereunder:

*“In our opinion, s. 42 of the **Specific Relief Act** is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of s. 42 of the Specific Relief Act.”*

54. In the case of **Somasundaram Vs. Liyakat Ali and Another** reported in **1997(1) CTC 4** relied on by the learned Counsel for the plaintiffs, a learned Judge of this Court by following the dictum laid down by the Hon'ble Supreme Court in **Vemareddi Ramaraghava Reddy's case**, above referred, has observed that the suit claiming declaration based on inter-se seniority of employees does not fall within



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Section 34 of the Specific Relief Act, the relief could be granted under Section 9 C.P.C. Considering the above, the defendants' objections regarding the bar under Section 34 of the Specific Relief Act are untenable.

55. The defendants' learned Senior Counsel would submit that the plaintiffs should have sought cancellation of the KBPP and paid the requisite court fee under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act. Instead, learned Counsel would contend that the plaintiffs claimed declaratory relief regarding the KBPP to avoid paying a higher court fee.

56. It is evident from the records that the plaintiffs originally claimed the following reliefs ;

“declaring that the conciliation proceedings of the seventh defendant culminating in the conciliation award dated 02.01.2019 propounded by the defendants is a fraudulent and fabricated document, void and illegal and not binding on the plaintiffs and to declare that the Kaithadi Baga Pirivinai Pathiram dated 31.12.2018 executed by the defendants have no legal status and it is not binding on the plaintiffs and declaring that the



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KBPP is inexecutable as it is neither registered nor having sufficient stamp duty as it is construed as a draft”

After returning of the plaint, the plaintiffs have removed the consequential prayer and changed the second prayer to the effect “declaring that KBPP dated 31.12.2018 propounded by the defendants has no legal status as it is neither registered nor having sufficient stamp duty paid.”

57. As rightly observed by the learned trial Judge, the plaintiffs being the parties to the KBPP and pleading misrepresentation and fraud, they cannot seek to have the KBPP declared null and void, as it is a voidable document that can be avoided by the parties at their option and they should have claimed cancellation of the KBPP. As rightly observed, in order to evade and avoid huge court fee payable for cancellation of instrument if valued under Section 40 of the Courts fees and Suit Valuation Act, the plaintiffs have conveniently valued the suit under Section 25(d) and paid the Court fee.

58. At this juncture it is necessary to refer the decision of the Hon'ble Supreme Court in ***Deccan Paper Mills Co.,Ltd., Vs. Regency***



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Mahavir Properties and Others passed in ***Civil Appeal No.5147 of 2016, dated 19.08.2020***, wherein the Hon'ble Supreme Court referred to its earlier decision in ***Suhrid Singh v. Randhir Singh*** reported in ***(2010) 12 SCC 112***, wherein the Hon'ble Apex Court has held as follows:

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that



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the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs 19.50 under Article 17(iii) of the Second Schedule of the Act.”

59. The above decision is squarely applicable to the case on hand. As already pointed out, the plaintiffs, being parties to the document, cannot seek a declaration that the document is invalid or non-binding. Instead, they should have sought cancellation of the document, valuing the prayer under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act. In light of this, the Court holds that the plaintiffs have deliberately undervalued the suit under Section 25(d) to evade court fees. Consequently, the suit's framing and reliefs are unsustainable.

60. The next ground canvassed is that the plaint does not disclose any valid cause of action for the suit. The learned Senior Counsel appearing for the plaintiffs would submit that under Order 7 Rule 11 C.P.C., the plaint can be rejected on the ground of non-disclosure of cause of action, but not on the ground of “no cause of action”. The learned Counsel would emphasize that the issue of whether a cause of action exists can only be determined after a full-fledged trial, following



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the presentation of evidence. In essence, counsel drew a distinction between 'non-disclosure of cause of action' and 'no cause of action' and relied on the decision of the Allahabad High Court in **Jagan Nath Prasad and others Vs. Shrimati Chandrawati and another** reported in **AIR 1970 All 309** and the relevant passage is extracted hereunder:

“6. Initially I was impressed by the above argument and was inclined to accept the same but on closer scrutiny I find that there is a clear distinction between a case where the plaint itself does not disclose any cause of action and a case in which, after the parties have produced oral and documentary evidence, the Court, on consideration of the entire material on record, comes to the conclusion that there was no cause of action for the suit. In the latter case, obviously, the plaint cannot be rejected under Order VII, Rule 11, C.P.C. The instant one is a case where on the face of the plaint it could not be said that it did not disclose any cause of action. It was after the entire evidence had been led and documents produced in the case considered that the trial Court came to the conclusion that in point of fact and law it had not been proved that the tenant had committed any default in payment of arrears of rent within the statutory period, so as to expose him to the penalty of eviction from the accommodation, on the ground of his alleged default in payment of rent, after the receipt of the notice of demand.



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The above argument of the appellants, though plausible, has no substance and has to be rejected, because it is a case where it was ultimately proved that there was no cause of action for the suit and not a case where the plaint itself did not disclose a cause of action.”

61. The learned Senior Counsel for the defendants would submit that the plaintiffs have attempted to create an illusory cause of action by way of clever drafting.

62. The Allahabad High Court, in the aforementioned decision, drew a distinction between non-disclosure of the cause of action in the plaint and the defence that there is no cause of action for the suit. The court clarified that the former is a valid ground for rejecting the plaint under Order 7 Rule 11 of the Civil Procedure Code, while the latter is a matter to be decided during the trial. However, the Supreme Court has further clarified in *T.Arivanandam v. T.V.Satyapal* referred supra, that the trial court has the discretion to determine whether the cause of action disclosed in the plaint is genuine or merely a fabrication. In doing so, the court must adopt a meaningful and not formal approach to interpreting the plaint. This means that the court must look beyond the mere



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formalities of the plaint and examine the substance of the claims made therein. By taking this approach, the court can effectively determine whether the plaint discloses a valid cause of action or is merely an attempt to invoke the jurisdiction of the court without a legitimate basis.

63. In the case on hand, as already pointed out, the plaintiffs initially challenged the validity and legality of the Conciliation Award and the KBPP in petitions filed under Sections 11 and 9 of the Arbitration and Conciliation Act. They subsequently challenged the maintainability of the execution petitions in revisions. As rightly contended by the defendants' learned Senior Counsel, this Court ruled against the plaintiffs on both occasions, and these findings were later confirmed by the Hon'ble Supreme Court.

64. At the risk of repetition, it is necessary to refer the order of this Court in the order dated 06.09.2019

“First of all, 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



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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 misrepresentation cannot be entertained.”

65. Subsequently it has been observed:

“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.”

66. In paragraph No.21, this Court has held

“..... admittedly both parties have consented to the partition deed. The document also satisfies all the requirements of the Conciliation or even a partition.”

67. As already pointed out, the plaintiffs have taken a stand that they were pressurised by the first defendant to sign the KBPP



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immediately as it is only a draft and that the plaintiffs trusted the first defendant implicitly and assumed that the division would be fair, just and equal, signed in the document.

68. In ***K.M. Madhavakrishnan vs S.R. Sami and others*** reported in ***(1980)2 MLJ 398***, this Court has observed that the general rule of law is that a party of full age and understanding is normally bound by his signature to a document whether he reads it or understands it or not and the relevant passage is extracted hereunder:

“14. The general rule of law is that a party of full age and understanding is normally bound by his signature to a document whether he reads it or understands it or not. Equity does not save people from the consequences of their own folly but will save them from being victimised by other people.”

69. It is not in dispute that the first defendant through the Manager of the M/s V.V.Minerals, filed petitions for the return of the vehicles seized in the case in Cr.No.217 of 2022 by Nanguneri P.S. When the Principal Sessions Judge, Tirunelveli, dismissed these petitions, the same came to be challenged in revisions in CrI.R.C.(MD)Nos.719 to 721 of 2023. A learned Judge of this Court, while allowing the revisions,



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observed that the execution and validity of the Kaithadi Partition Deed dated 31.12.2018 were affirmed in favour of the Vaikundarajan group as consistently held in earlier proceedings and confirmed by the Hon'ble Supreme Court. The learned Judge further observed that even Jegadeesan (first plaintiff) group admitted the execution of the Kaithadi Partition deed, but they claim that they were misrepresented and that there was no sufficient time to verify the details of the properties transferred in the deed, but the same has not been accepted by this Court on the earlier two occasions and that therefore, this Court gave finding that Vaikundarajan is the absolute owner unless the misrepresentation alleged has been pleaded and proved in accordance with law and that the same was confirmed by the Hon'ble Supreme Court.

70. No doubt, the copies of the aforementioned order and the application filed under Section 47 C.P.C., were not produced before the trial Court. The learned Senior Counsel appearing for the plaintiffs would submit that the said documents cannot be considered, as they were not filed along with the plaint. I find some merits in the said contention. But this Court, in its supervisory capacity over the Subordinate Courts, has the authority to intervene if an abuse of process of law is brought to



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its its attention. If such abuse is alleged, this Court can scrutinize the relevant documents and take necessary action. Furthermore, in previous criminal revision proceedings, this Court has re-affirmed its earlier findings regarding the disputed documents which are now under consideration.

71. This Court, in the batch of revisions, has specifically observed that even assuming if Justice Pushpa Sathyanarayana's order in the petitions filed under Sections 11 and 9 of the Arbitration and Conciliation Act is per incuriam, it has no precedential value, but it is binding on the parties. In paragraph No.14, it has been observed

“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.”

72. As rightly contended by the defendants' Senior Counsel, the plaintiffs have reiterated in the present plaint all the contentions



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previously raised before this Court on two occasions and already decided. While the plaintiffs have introduced some new allegations not raised in the earlier proceedings, it appears to be an afterthought, attempting to establish a cause of action for filing the suit.

73. The Hon'ble Supreme Court in ***Madanuri Sri Rama Chandra Murthy vs Syed Jalal*** reported in ***2017(13) SCC 174***, has specifically held that if clever drafting of the plaint has created the illusion of a cause of action, it should be nipped in the bud at the earliest so that bogus litigation will end at the earlier stage and that the Court must be vigilant against any camouflage or suppression and determine whether the litigation is utterly vexatious and abuse of process of law.

74. Having considered the averments in the plaint and taken note of the earlier proceedings and their outcomes, this Court has no hesitation to hold that the plaintiffs have fabricated an illusory cause of action for the sole purpose of filing the suit, and that the plaint fails to disclose a valid cause of action.



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75. The learned Senior Counsel for the defendants would submit that, as the plaintiffs have been in control of certain businesses and in possession of the properties allotted to the first defendant's family, their motive is to keep some proceedings alive.

76. Admittedly, the challenge to the documents in question commenced in 2019 with the filing of petitions under the Arbitration and Conciliation Act, followed by revisions, Section 47 C.P.C., petitions and now the present suit. In other words, the present suit is the fourth attempt to challenge the documents and it is clear that the plaintiffs are persisting in their challenge despite losing two previous battles up to the Hon'ble Supreme Court and after initiating a third battle through proceedings under Section 47 C.P.C., and by keeping the same pending, the fourth battle through suit proceedings is still ongoing.

77. The learned Counsel for the fifth respondent would raise some fresh allegations, but as these do not find place in the plaint or the accompanying documents, this Court cannot take cognizance of the same.



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78. Now, turning to the issue of abuse of process of law by the plaintiffs, it is essential to note that any court can examine allegations of abuse of process. When such abuse is brought to the attention of the High Court, it is duty-bound to investigate and consider the matter. This is because abuse of process can lead to wastage of precious judicial time, undermine the integrity of the legal process, and potentially harm the parties involved. Moreover, the High Court possesses inherent powers to prevent the misuse of the judicial process and uphold the law.

(a) A perusal of the KBPP would reveal that all parties signed the document in the same order on all 309 pages in two sets from the first page to the last, which renders the plaintiffs' allegations that they were not allowed to read the document and were compelled to sign immediately, highly implausible. Moreover, the filing of the suit despite this would amount to an abuse of process of law.

(b) The plaintiffs' previous invocation of Sections 11 and 9 of the Arbitration and Conciliation Act as well as Section 115 C.P.C., and their subsequent raising of the same contentions in the present suit would



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demonstrate a clear attempt to abuse the process of law by re-litigating the same issues.

(c) Pursuant to the directions of this Court and the Hon'ble Supreme Court, the plaintiffs invoked Section 47 C.P.C., to challenge the Conciliation award the KBPP. By keeping this matter pending, filing the present suit for similar relief would amount to abuse of process of law.

(d) The plaintiffs, having suppressed the filing and pendency of their Section 47 C.P.C., applications in the affidavits filed in support of the stay petitions, obtained interim orders and the said behaviour would only exhibit that they have not approached the Court with clean hands.

(e) By failing to claim the cancellation of KBPP and undervaluing the suit thereby evading substantial Court fees, the plaintiffs' action would constitute an abuse of process of law.

Considering the above, this Court has no alternative but to conclude that the plaintiffs are guilty of abusing the process of law and the Court.

79. No doubt, the first defendant has also taken the plea of undervaluation of the suit as a ground to reject the plaint. But as rightly observed by the learned trial Judge, the plaint can be rejected on the said ground, only if the plaintiffs failed to correct the valuation within the



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time to be stipulated by this Court and as such, the said ground cannot be made applicable.

80. From the above, this Court is of the clear view that the learned District Judge has rightly rejected the plaint and there is absolutely nothing to interfere with the reasoned findings rendered by the trial Court. Consequently, this Court concludes that the appeals are devoid of merits and the same are liable to be dismissed. Considering the facts and circumstances of the case, as well as the plaintiffs' abuse of process of law and court, this Court decides that the Appellants/Plaintiffs must be mulcted with costs.

81. In the result, both the appeals are dismissed with costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

31.01.2025

NCC : Yes:No
Index : Yes : No
Internet : Yes : No

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To

- 1.The Principal District Court,
Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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