

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :10.11.2025

Pronounced on :28.11.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

O.S.A.No.206 of 2020

1.Vasanthi Suresh
W/o late Mr.Suresh Jayakumar Ignatius,
Plot No.474, 19th Street, IV Sector,
K.K.Nagar, Chennai 600 078.

2.Abhilasha A.J.,
D/o late Mr.Suresh Jayakumar Ignatius,
W/o Dr.Balaji.P.
Rep.by her Power of Attorney Agent,
Vasanthi Suresh
W/o Late Mr.Suresh Jayakumar Ignatius,
Plot No.474, 19th Street, IV Sector,
K.K.Nagar, Chennai 600 078.

3.Aadarsh Ignatius
S/o Late Mr.Suresh Jayakumar Ignatius,
Plot No.474, 19th Street, IV Sector,
K.K.Nagar, Chennai 600 078.



(Auto Dev Prakash, S/o late Mr.A.X.Ignatius
Plot No.474, 19th Street,
IV Sector, K.K.Nagar, IV Sector, K.K.Nagar,
Chennai 600 078.

(R2 transposed as A4 vide order of
Court dated 18.11.2024 made in
C.M.P.No.160 of 2021 in O.S.A.No.
206 of 2020(CJ &SKRJ)
Cause title accepted vide Court order
dated 09.09.2020 in C.M.P.No.
9410 of 2020 in O.S.A.SR.No.50081/2020
(RPSJ & CSNJ)

..Appellants/Petitioners

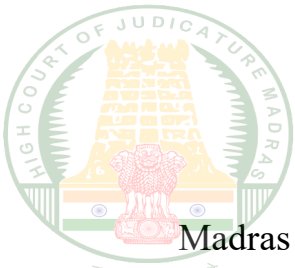
/versus/

1.Jayachitra Sahaya Josephine
W/o Mr.Mariasingam Joe Antony
Sahaya Basker,
D/o Late Mr.A.X.L.Ignatius
B-711, Safaa Apartments,
GST Road, Guduvanchery,
Chennai 603 202.

2.Anto Dev Prakash(Transposed as A4)
S/o late Mr.A.X.Ignatius
Plot No.474, 19th Street, IV Sector,
K.K.Nagar, Chennai 600 078.

3.The Hon'ble Mr.Justice M.Vijayaraghavan,
Retired Judge,

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Madras High Court-Sole Arbitrator,

Old No.88, New No.36,

Aravamudha Garden Street,

Egmore, chennai 600 008.

..Respondents/Respondents

Original Side Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 to set aside the common order dated 11.05.2020 passed in O.P.No.357 of 2015 on the file of this Hon'ble Court, by allowing this Original Side Appeal and to grant such other relief or reliefs that this Hon'ble Court may deem fit and property in the circumstances of the case.

For Appellants :Mr.S.Subbiah, Senior Counsel for
M/s Ajoy Kumar Gnanam

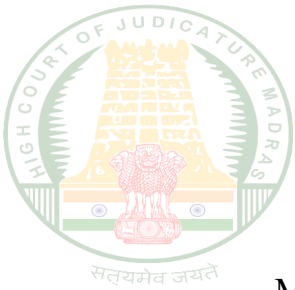
For Respondents :Mr.P.V.Balasubramanian, Senior Counsel for
Mr.D.Ferdinand for R1
R2-No appearance
R3-Arbitrator

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JUDGMENT

Dr.G.Jayachandran,J.

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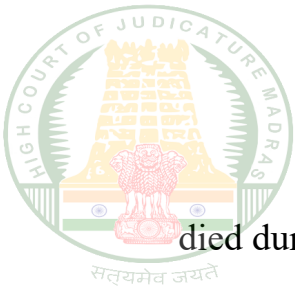


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Mr.A.X.L.Ignatius was an officer in the Income Tax Department and his wife, Mrs.Amirtham Ignatius was a home-maker. They had two sons and one daughter. One of his son, by name, Suresh Jayakumar Ignatius died leaving behind his wife, Mrs.Vasanthi Suresh and two children namely, Mrs.Abhilasha A.J., and Mr.Aadarsh Ignatius. They are the appellants 1 to 3. The other son Anto Dev Prakash initially shown as respondent now transposed to the fourth appellant. The daughter Jayachitra Sahaya Josephine is the respondent.

2.The dispute centers around the properties more fully described under three items of the schedule to the arbitration petition.

3.A.X.L.Ignatius died on 01.01.2005. His son, Suresh Jayakumar Ignatius, died on 21.12.2011. Amirtham Ignatius, the wife of A.X.L.Ignatius,

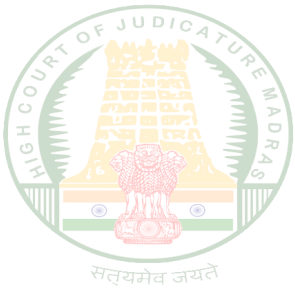


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died during the month of February 2012. After the death of Suresh Jayakumar

Ignatius, some time before the demise of Amirtham Ignatius, the members of Ignatius family, entered into a family arrangement, in respect of movables and immovable left behind Ignatius in the following manner:-

Immovable property in Tuticorin (2nd item under schedule) would devolve upon Amirtham Ignatius (wife of A.X.L.Ignatius); the property at Chennai (1st item under schedule) to be shared by the daughter, surviving son and the legal heirs of the deceased son of A.X.L.Ignatius at 1/3 share each, vesting the life interest with Amirtham Ignatius. The movables mentioned (3rd item under schedule) given to Amirtham Ignatius. The Agreement of family arrangement entered on 04.01.2012 between the parties with three specific clauses that if any bequeath is made by Late A.X.L.Ignatius by way of a Will, the parties waive their right conferred under the Will. To give effect to the terms of the family arrangement, if necessary, they will co-operate to execute necessary deeds and get it registered. In case of any dispute in implementing the terms of the settlement, they agreed to settle it through arbitration.



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4. Petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996, filed in O.P.No.79 of 2013 before the High Court by the daughter for appointing an Arbitrator, contending that the parties specifically agreed to waive any right devolves on them, if any Will of the father executed during his life time as per the family arrangement entered on 04.01.2012. As per the family arrangement agreement, the shares, fixed deposit and investments etc., shown under item 3 of the schedule were given to the mother absolutely. While so, ignoring the terms of the family arrangement, her younger brother Mr.Anto Dev Prakash and legal heirs of the deceased elder brother Suresh Jayakumar Ignatius are trying to usurp the Chennai property claiming exclusive right. Therefore, the arbitrator to be appointed to resolve the dispute in terms of the family arrangement.

5. In opposition, the Legal heirs of the first son and the second son, the

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respondents therein stated that when they were in the mist of mourning due to the demise of Suresh Jayakumar Ignatius, the petitioner was playing fraud and obtained their signatures in the family arrangement by coercion. Based on the invalid unregistered family arrangement deed, the petitioner is trying to sell the Chennai property without their consent. Amirtham, the widow of Ignatius, was with the petitioner. Taking advantage of it, the entire movables and valuable securities, such as, the title deeds relating to the Chennai property, the share certificates, the deposit receipts, pass book of bank accounts in the name of late Ignatius and other documents including the Will copy were taken away by the petitioners. The petitioners obtained their signatures in the family arrangement deed suppressing the existence of the Will. She is trying to invoke the provisions under the family arrangement for appointment of an Arbitrator, which is not maintainable. Since the family arrangement dated 04.01.2012 is vitiated by fraud and undue influence, it is void *ab initio*. There is no necessity for appointment of an Arbitrator as the very family arrangement, which stipulates for arbitration of the dispute, is not

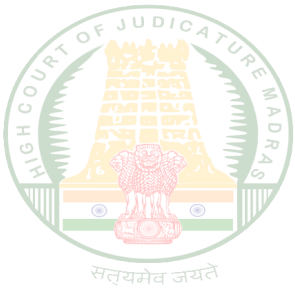


a valid document and being contrary to law.

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6. The learned Single Judge, who heard the application under Section 11(6) of the Arbitration and Conciliation Act, 1996, allowed it and appointed Arbitrator. In his order, he observed as below:-

“13.The question whether the petitioner played fraud on the respondents by suppressing the existence of the Will executed by her late father dated 22.01.1993, thereby coercing them into entering the family arrangement dated 04.01.2012, which invalidated the family arrangement, or whether the respondents were not vigilant enough in unraveling the truth as to whether there was any Will, especially in the face of Clause 9 of the family arrangement, by which they were to waive their rights in case any Will executed by the deceased father or the elder brother surfaced at a later point of time, or why the respondents were not reluctant to sign the family arrangement and unconditionally agreed to the terms therein, are all matters of evidence and cannot be gone into by this Court exercising jurisdiction under Section 11 of the Arbitration and Conciliation Act.”



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7. After referring the judgment of the Hon'ble Supreme Court regarding the objection to the jurisdiction and the existence of the arbitral agreement, the learned Single Judge further held that

“all that this Court has to do is to see whether it has the jurisdiction to appoint an arbitrator, that there is an arbitration agreement between the parties, that there was a live and subsisting dispute for being referred to arbitration. The answer to all these questions would be an emphatic yes. Further, the Court has held that it would be open for the arbitrator to take up the issue as to whether it has got the jurisdiction to deal with the issue, in view of the objections raised by the respondents with respect to the existence or validity of the arbitration agreement. Accordingly, Mr.Justice M.Vijayaraghavan, a retired judge of the Madras High Court has appointed sole arbitrator to adjudicate the dispute arising between the petitioner and the respondents in term of the agreement of family arrangement dated 04.01.2012.”

8. Before the learned Arbitrator, Hon'ble Mr.Justice



M.Vijayagaghavan(Retd.) the claim statement filed by the claimant

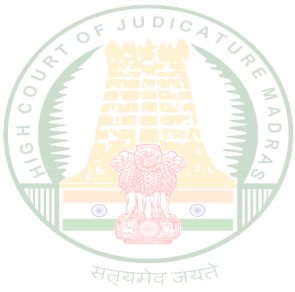
Mrs.Jayachitra Sahaya Josephine. Counter filed by the respondents and rejoinder filed by the claimant.

9. Perusing the pleadings, the Tribunal has framed the following issues:

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

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

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



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

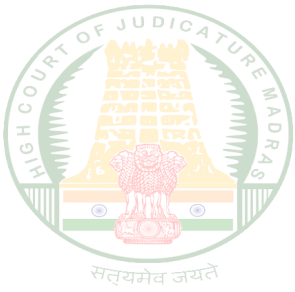
5. Whether the Arbitrator has got jurisdiction to decide the issue arising from the reference?

6. To what reliefs?

10. Arbitrator examined three witnesses, on the side of the claimant admitted 38 exhibits. For the respondents, two witnesses examined and three exhibits admitted. Based on the evidence, The arbitrator answered the issues as below:-

“Issue Nos.1 to 3:

Hence, this Tribunal easily comes to the decision that no coercion and undue influence were exercised by the claimant on the respondents 1 to 4 to sign the Family Arrangement Agreement and the Family Arrangement Agreement Ex.C9 and Ex.C10 were signed voluntarily by the respondents 1 to 4 along with the claimant for herself and on behalf of Mrs.Amirtham through Ex.C6-Registered Power of Attorney and absolutely there is no coercion and undue influence as defined under Sections 15 and 16 of the Indian Contract Act, 1872. Since Ex.C10 was marked as served copy of Mrs.Amirtham, objection was raised. Though it is the case of the claimant/petitioner that 6 copies were prepared and duly signed and Notarized and evidences also to this effect, even as per the admitted evidence of DW-2 two copies were signed. During the last days, Mrs.Amirtham was living with the petitioner, is not disputed and hence, this Tribunal holds that the objection raised for marking



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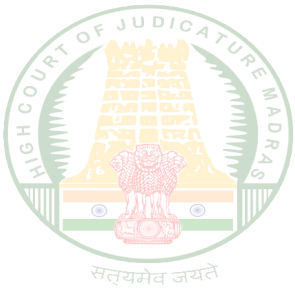
Ex.C10 shall not be sustained. Hence, this Tribunal easily comes to the conclusion that for the reasoning stated above and decisions arrived thereunder that the Memorandum of Family Arrangement dated 04.01.2012 was signed by Respondents 1 to 4 voluntarily after being aware of the Will executed by A.X.L.Ignatius dated 22.01.1993 and its contents and the claimants had not committed any fraud on the respondents 1 to 4 by cancelling the original Will and not coerced them and also not exercised undue influence to sign the Family Settlement Agreement dated 04.01.2012 immediately within 15 days of the death of late Mr.Suresh Jayakumar Ignatius and accordingly, the Issue Nos.1 to 3 are answered in favour of the claimant and as against the respondents 1 to 4.

Issue No.4:

This Tribunal already decided above under item Nos.1 to 3 that Ex.C9 and Ex.C10, Family Arrangement Agreement dated 04.01.2012 was signed by R1 to R4 voluntarily after being aware of the Will executed by A.X.L.Ignatius dated 22.01.1993 and its contents and the claimant had not committed any fraud on the respondents 1 to 4 by canceling the original Will and not coerced them and also not exercised undue influence to sign the Family Settlement Agreement dated 04.01.2012 immediately within 15 days of the death of late Mr.Suresh Jayakumar Ignatius. Hence, the Ex.C9 Family Arrangement Agreement is no way contravenes of any of the provisions of the Indian Contract Act, 1872, more specifically Sections 14 to 23. Hence, all the submission made by the learned counsel for respondents are not sustainable and the same are rejected. Hence, the Family Arrangement Agreement, dated 04.01.2012 is valid under law and binding on the claimant and respondents 1 to 4 and accordingly, this Issue is answered.

Issue No.5:

Therefore, this Tribunal holds that the Arbitrator/Tribunal has got jurisdiction to decide the issues arising from the reference and accordingly, this Issue is answered.



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Issue No.6

This Tribunal answered Issue No.1 to 3 in favour of the claimant and as against the respondents and under Issue No.4 this Tribunal has decided that the Family Arrangement Agreement dated 04.01.2012 is valid under law and binding on the claimant and the respondents 1 to 4 and answered accordingly. Hence, as per the terms of the agreement and as already decided under Issue No.4 the two immovable properties as shown in item Nos.1 and 2 as well as movable properties in item No.3 under schedule are liable for partition among the claimant and respondents 1 to 3 together (the heirs of the deceased Suresh Jayakumar Ignatius) and the 4th respondent and all the parties to the proceeding indicated above are having right and title over all the three items of properties and divide the same into 3 shares and get possession of item No.1 and 2 and possession/value of item No.3 in the proportions of i.e. 1/3rd share each.

Award passed dividing the 1st and 2nd items of schedule immovable properties into three parts by metes and bounds and divide the 3rd item of movable properties or its values into 3 parts and allot and handover possession of one share of the properties to the claimant, one share to respondents 1 to 3 together and one share to respondent-4. The respondents 1 to 3 are directed to pay compensation amount for the 1/3 share of 1st item of schedule property to the claimant from 01.05.2012 till the date of handing over the possession as determined by the Advocate Commissioner.

11. O.P.No.653 of 2015 filed by the second son, Auto Dev Prakash and O.P.No.357 of 2015 filed by Vasanthi Suresh and others filed under Section 34 of the Arbitration and Conciliation Act, 1996. The learned Judge in her common order dated 11.05.2020, dismissed both the original petitions. Being

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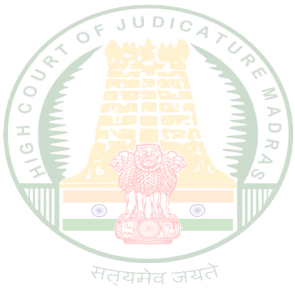


aggrieved, Mrs.Vasanthi Suresh and her children filed the present appeal in

O.S.A.No.206 of 2020. In this appeal, Auto Dev Prakash was earlier shown as the second respondent, later transposed as 4th appellant. In the appeal under consideration, the grounds of the Appeal are:

a)The learned Judge, though cannot re-appreciate of the evidence under Section 34 of the Act, still committed an error in not going further regarding the nature of the document, as to whether the document is inadmissible in evidence, for the want of the requisite stamp duty, and registration, in as much, the document dated 04.01.2012 is not a family arrangement but a partition by allotting the properties namely item 1 to the appellants, the first respondent, and the second respondent and so it is only a deed of partition requiring registration, which is a legal question going to the root of the matter regarding the very admissibility of the arbitral proceedings, and as such, the learned judgment ought to have on the basis of the settled law on this aspect should have allowed the original petition filed by the petitioners.

b) Furthermore, following the finding of the learned Arbitrator; the third respondent herein, and the learned Judge herself that it took over two weeks to lead to the existence of the document dated 04.01.2012 on the basis of

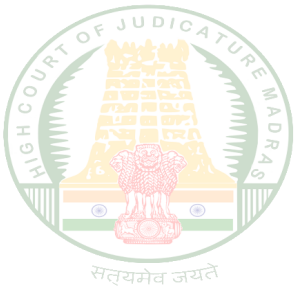


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the deliberations and discussions cannot be a condition to treat the document dated 04.01.2012 as a family arrangement, not requiring the payment of the required stamp duty, or the registration or both, and what is required to be considered is as to whether the document is a family arrangement could only be in the light of the settled law on this position, that this document should have been a proof of what they had arranged, and also that evidencing a family arrangement already entered into, and so, the extent of this finding being one contrary to law, such a finding has to be treated as one of perverse in nature warranting the interference of the Hon'ble Division Bench of this Hon'ble Court, under Section 37 read with Section 34 of the said Act thereto.

c) Equally so, the third finding that the family arrangement does not contemplate division under the said document but contemplates execution of further documents to give effect to the arrangement is equally untenable in law, in as much as, the appellants and the second respondent herein who were not otherwise entitled to item 2 of the property, and the first respondent, who is not otherwise entitled to item 1 of the property and Amirtham Ignatius who was not entitled to any property except the life interest over items 1 and 2 except her life interest limited to the enjoyment were created under this document dated



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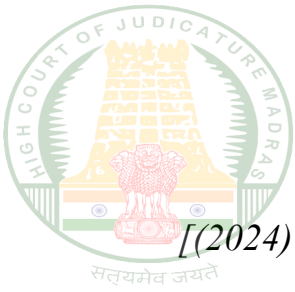
04.01.2012 and consequently, the document requires compulsory registration under Section 17(1) of the Registration Act, and accordingly the arbitral proceedings are incompetent in law.

d) The learned Judge should have also held that the subject matter of the present arbitration relates to the rights of the parties over two items of immovable properties, and the determination of the rights of the parties pertaining to the immovable properties could only be a “rem” and so, when the rights of the parties involve “rem” and not “personam” there cannot at all be any arbitration proceedings, in respect of immovable properties.

e) The learned Judge ought to have held that the dispute cannot fall under arbitrability of dispute as per Section 34(2)(d) of the said Act, assuming that such disputes in question were covered by arbitration clause, but they not being arbitrable as they related to rights in “rem”.

12. To buttress the appeal grounds, the learned Senior Counsel appearing for the appellants relied upon the following judgments:-

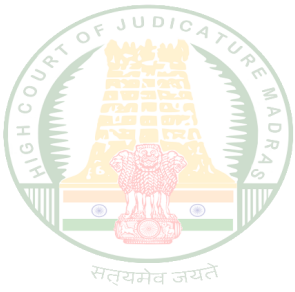
(i) In re, suo motu "*Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*", reported in



[(2024) 6 SCC 1], wherein in para 131 and 138 the Apex Court has said, :-

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"131. Section 16 empowers the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of arbitration agreement. Importantly, the parties have a right under Sections 16(2) and 16(3) to challenge the jurisdiction of the Arbitral Tribunal on grounds such as the non-existence or invalidity of the arbitration agreement. The Arbitral Tribunal is obligated to decide on the challenge to its jurisdiction, and where it rejects the challenge, it can proceed with the arbitral proceedings and make an arbitral award. It is the principle of procedural competence-competence which recognises the power of an Arbitral Tribunal to hear and decide challenges to its jurisdiction. Once the Arbitral Tribunal makes an arbitral award, Section 16(6) allows the aggrieved party to make an application for setting aside the award under Section 34. Sections 16(5) and 16(6) further show that Parliament has completely ousted the jurisdiction of Courts to interfere during the arbitral proceedings — courts can intervene only after the tribunal has made an award. Thus, Section 16 is intended to give full effect to the procedural and substantive aspects of the doctrine of competence-competence.



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138. In case the issue of stamping is raised before an Arbitral Tribunal, Sections 33 and 35 of the Stamp Act make it evident that a person having authority by “consent of parties” to receive evidence is empowered to impound and examine an instrument. A person having authority “by consent of parties” to receive evidence includes an Arbitral Tribunal which is constituted by consent of parties. ”

(ii) Also referring the following judgements, *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited and others* reported in [(2011) 5 SCC 532] and *Sita Ram Bhama v. Ramvatar Bhama* reported in [(2018) 15 SCC 130], the learned Senior Counsel for the appellants submitted that the Arbitrator ought not to have ignored the registered Will to substitute it with the subsequent unregistered family arrangement agreement. Relying upon a Clause in the family arrangement, which was obtained by fraud under coercion, the duly registered Will of the father is given a go-by. The Arbitrator failed to take note of the fact that Suresh Jayakumar Ignatius died



on 21.12.2011. The family arrangements is said to have been prepared on

04.01.2012 within 15 days of the demise of Suresh Jayakumar Ignatius. Soon

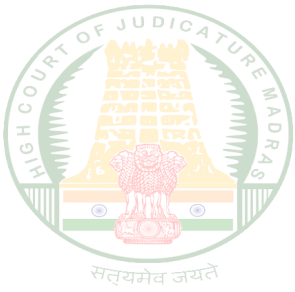
after the family arrangement, the mother Amirtham Ignatius also died on

15.12.2012. The devolution of the property as per the registered Will of

A.X.L.Ignatius, dated 22.01.1993 was totally suppressed from the knowledge

of the appellant.

(iii)As per the Will, on the death of A.X.L.Ignatius, the Chennai property devolved upon the two sons, vesting life interest to his wife Amirtham Ignatius and Tuticorin property devolved upon the daughter vesting life interest to his wife Amirtham Ignatius. The existence of the Will by Ignatius was in exclusive knowledge to the respondents alone and the appellants had no knowledge about the Will, when their signatures obtained in the unregistered family arrangement. Therefore, the waiver was invalid. This reason is sufficient to hold that the said family arrangement is unenforceable.

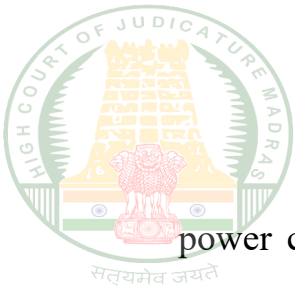


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(iv) The award being in right in rem, the order is perverse and without jurisdiction. The learned Single Judge failed to take note of the fact that the rights of the parties determined by the Court is in *rem* and not in *personam*. Even though there is no clause for payment of mesne profits, the learned Arbitrator by enhancing the scope of the dispute, has calculated a higher amount of compensation as mesne profits without power.

(v) The absence of knowledge of the existence of the Will is not a matter for inference. When a larger share is given to the appellants in the Will, there is no reason to waive the right devolves under the Will.

(vi) The learned Senior Counsel for the appellants submitted that the Arbitrator had adjudicated on non-arbitral matter. The learned Single Judge while exercising the power under Section 34 ought to have redressed the appellants instead of dismissing the petition, without proper exercise of



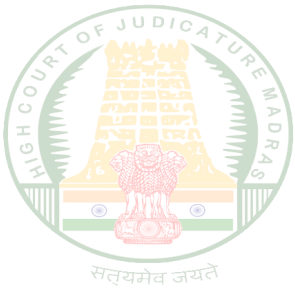
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power conferred under Section 34 of the Arbitration Act, 1996. He further submitted that both the arbitral award and the order passed by the learned Single Judge under Section 34 of the Arbitration and Conciliation Act, 1996 are perverse and illegal. Hence, it is liable to be set aside.

13. The learned Senior Counsel appearing for the respondents submitted that:

(i)The contention of the appellants regarding ignorance of the Will registered in the year 1993 is unbelievable and contrary to their conduct. The Tribunal as well as the learned Single Judge had disbelieved their plea and negatived it. The Tribunal and the Court had rightly held that the parties by consent entered into the family arrangement agreement with the intention to supersede the Will of A.X.L.Ignatius. Clause 9 and Clause 10 clears all doubt about the intention of the signatories to the instrument. The clauses 9 and 10 of the family arrangement reads as below”-

9.The parties hereto do hereby specifically
agree and undertake to waive all their respective rights and



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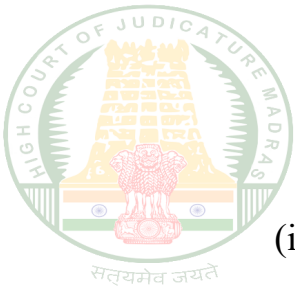


claims in the event of the existence of any Will/Wills purported to have been executed by either Mr.A.X.L.Ignatius or Mr.Suresh Jayakumar Ignatius or both brought to their notice at any time in future, in which even they shall not make any claim whatsoever in and by waiver of any such Will contrary to the terms of agreement as arrived hereunder.

10.If any deed of conveyances, including deeds of release etc. are required to be executed and registered to consolidate and formalize this family arrangement in future, all the parties hereto shall jointly complete such legal formalities by extending fullest co-operation mutually by way of mutual transfer and/or releases and all the costs and expenses incurred for such conveyancing shall be borne by the individual party or parties as the case may be at whose instance such conveyancing is effected and for whose interest such transfers are effected.

(ii)The case of the respondents is that the family arrangement was the outcome of deliberations and negotiations between the legal heirs of Ignatius with the help of respectable persons. The Arbitral award as well as the order under Section 34 of A & C Act, 1996 is supported with reasoning and law. No ground to interfere in exercise of power under Section 37 of the Act.

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(iii)The above contention, can be verified from the impugned order in which the Learned Judge, has assigned the following reasons to uphold the arbitral award:-

“i)This Court cannot re-appreciate the evidence under Section 34 of the Act, especially when the respondents have not made out any case to show that the award suffers from a perversity or a patent illegality or it is a public policy.

ii)Exhibits C3, C33 and C4 would clearly prove the knowledge of the respondents about the Will as early as in the year 2008 itself, and that the family arrangement Exhibit C10 series was not executed over night, but is the result of deliberations and discussions spread over two weeks.

iii)The family arrangement does not contemplate division under the said document but contemplates execution of further documents to give effect to the arrangement”

(iv)The other contention of the respondents that the family arrangement agreement Ex.C-10 requires compulsory registration and being an unregistered document is not admissible in evidence, is erroneous. The

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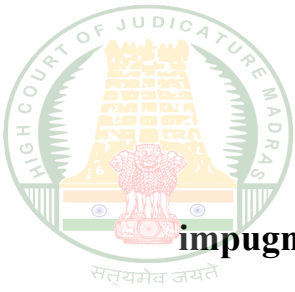
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dictum of Hon'ble Supreme Court in the curative petition, 'In re: *Interplay between Arbitration Agreements under A&C Act, 1996 and Stamp Act, 1899*'

had considered this issue and had clarified, both the Acts to be read harmoniously. Unstamped document does not render the instrument void. If at all any defect, it is curable.

(v) To buttress this argument, the observation in the Hon'ble Supreme Court Constitutional Bench Judgment in *N.N.Global Mercantile (P) Ltd –vs- Indo Unique Flame Ltd* reported in [(2023) 7 SCC 1] that the purpose of Stamp Act is to protect the interest of the Revenue and not to arm with a weapon of technicality by which the adjudication of the *lis* get delayed is referred and relied.

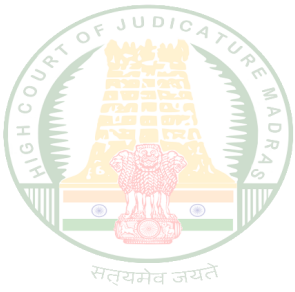
14. The point for consideration in this appeal is whether the



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impugned judgment passed under Section 34 of Arbitration and Conciliation Act, 1996, suffers any perversity or illegality or public policy violation to interfere with Section 37 of the said Act ?

15. According to the appellants, the family arrangement Ex.C-10 was obtained, when they were in duress and on suppression of the existence of the registered Will Ex.C-1 dated 22.01.1993. Therefore, the dispute among the legal heirs of Late Ignatius in respect of immovable and movable properties left by him is to be decided, based on the Will and not on the family arrangement, which is invalid for being an unregistered document and for being obtained by suppression of fact namely, the existence of the registered Will. The parties being followers of Christian faith, though the item No.1 property is located within the jurisdiction of this Court, no Probate or Letters of administration is required. Hence, on the death of Ignatius i.e. 01.01.2005, the Will has come into effect. The subsequent unregistered family arrangement dated 04.01.2012 cannot supersede the registered Will.



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16. The contra case of the respondents is that, the existence of Will is well known to the appellants even in the year 2008, if not earlier. The parties have specifically agreed to waive the right, in the event of any existence of Will by Ignatius or his son Suresh Jayakumar Ignatius. They have also agreed to resort arbitration, in case of any dispute. While so, the dispute is arbitrable by consent and no bar under statute to decide the dispute through arbitration. In the absence of any perversity or illegality or violation of public policy this appeal filed under Section 37 of the Act is not maintainable.

17. Amicable settlement between the parties in respect of properties is inheritable, which they are otherwise entitled to succeed under the law nowhere is prohibited under law. Nothing stands in the way of the parties concern, if all the parties with knowledge or with explicit consent desire to



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waive their right under the Will, if any. At the end, it is the parties, who have the right in the properties, which they likely to get through the Will. To test the validity of the waiver is, whether the waiver of right under the said Will was with knowledge of all the parties concern about the existence of the Will or without knowledge of all the parties concern under the Will. Only if cases where some of beneficiaries under the Will know about its existence and rest of the beneficiaries had no knowledge about the Will, agree to waive the right under the Will, the waiver is deemed to be obtained by fraud. The act of fraud should vitiate the family arrangement deed. Otherwise, the waiver by all parties concern, with valid consent, will always hold good.

18. In this case, through evidence and admission, the Tribunal as well as the learned Judge in the impugned judgment had concurrently held that the all the parties concern were aware of the existence of the Will dated 22.01.1993, much prior to entering into the family arrangement on 04.01.2012. The family Arrangement was arrived at after sufficient



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deliberation and discussions on various dates. The parties have consciously waived their right in the Will. Being a finding on fact and on appreciation of evidence, in exercise of power under Section 37 of the Act, the appellate Court should not substitute its view by re-appreciating the evidence. The Court, while exercising its power under Section 37 of the A&C Act, supposed to look at it if there is any perversity, illegality or order against public policy. In this case, we find no such infraction in the arbitral award.

19. In respect of the question raised regarding the admissibility of the unregistered family arrangement, the issue is no more *res integra*, in view of the opinion rendered by the Constitution Bench of the Hon'ble Supreme Court in 'In Re Interplay case' (cited supra).

20. The genesis of the issue, first stemmed from a two Judges Bench of the Hon'ble Supreme Court in *M/s SMS Tea Estate (P) Ltd. –vs- Chandrmari Tea Co Ltd. reported in [(2011) 14 SCC 66]* and *Garware Wall Ropes Ltd –*



vs- Coastal Marine Constructions & Engineering Ltd., reported in [(2019) 9

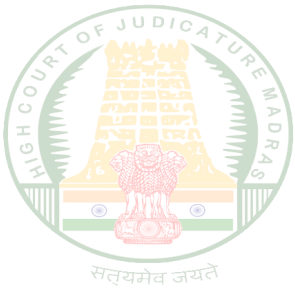
SCC 209]. Later, the Constitutional Bench judgment rendered in N.N.Global

Mercantile Ltd (cited supra) by a majority held as under:-

“92. While the Stamp Act is a fiscal enactment intended to raise revenue, it is a law, which is meant to have teeth. The point of time, at which the stamp duty is to be paid is expressly provided for in Section 17 of the Stamp Act. There cannot be any gainsaying, that call it a fiscal enactment, it is intended that it is to be implemented with full vigour. The duty of a Court must be to adopt an interpretation which results in the enforcement of the law, rather than allowing the law to be flouted with impunity. Once this principle is borne in mind, the task of the Court becomes less difficulty.”

21. The Hon’ble Supreme Court *In re:Interplay* judgment rendered by 7 Judges Bench, after considering all the earlier judgments and the statement of object of the Arbitration and Conciliation (Amendment) Act, 2015, held the application of Competence – Competence doctrine (right to decide jurisdiction vest with the tribunal itself) and had concluded as below:-

“224. The discussion in preceding segments has held that non-stamping or insufficient stamping of an instrument does not render it invalid or non-existent. Therefore, paras 22 and 29 of Garware Wall Ropes which



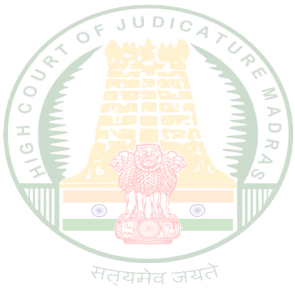
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held that an arbitration agreement contained in an unstamped or insufficiently stamped contract would be non-existent in law, does not set forth the correct position of law.”

22. In the instant case, the Referral Court, while appointing the sole arbitrator had taken note of the objection regarding the validity of the arbitration agreement and the same was considered and held as below :-

“13.The question whether the petitioner played fraud on the respondents by suppressing the existence of the Will executed by her late father dated 22.01.1993, thereby coercing them into entering the family arrangement dated 04.01.2012, which invalidated the family arrangement, or whether the respondents were not vigilant enough in unraveling the truth as to whether there was any Will, especially in the face of Cause 9 of the family arrangement, by which they were to waive their rights in case of Will executed by the deceased father or the elder brother surfaced at a later point of tie, or why the respondents were not reluctant to sign the family arrangement and unconditionally agreed to the terms therein, are all matters of evidence and cannot be gone into by this Court exercising jurisdiction under Section 11 of the Arbitration

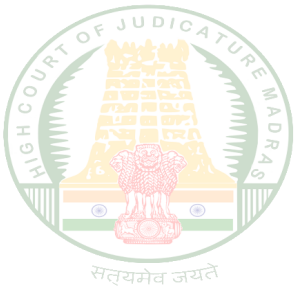


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and Conciliation Act.

23. The Arbitrator, while discussing the issue of validity of the family arrangement for not being registered, had held as below:-

“A careful perusal of the Ex.C9 Family Arrangement Agreement more particularly paragraph-5 of the same very specifically stipulate that all parties shall render mutual helps, assistants and co-operations to each other for smooth completion of legal and registration formalities and procedures by executing and/or registering all the requisite deeds of conveyances including deed of release etc. as and when required for the transfer of item No.2 of the schedule mentioned property in favour of the party of the first part and for the partition and/or disposal of the property shown as Item No.1 in the schedule by the parties of the 2nd, 3rd and 4th parts. The above provision contained in Ex.C9 family arrangement agreement proves that this Ex.C9 document is merely creating a right in the immovable properties ie.K.K.Nagar and Tuticorin House property to obtain another document which will when executed created, declare, right title or interest over it and hence the Ex.C9 document is squarely comes under Section 17(2)(v).”

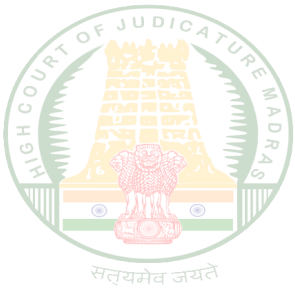


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24. Back to interplay case, the Hon'ble Supreme Court regarding the

validity of the unstamped instrument, has observed as below:-

“In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the Arbitral Tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason



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is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability presumption gives effect to the doctrine of competence-competence. “

25. Thus, the parties having appended their signatures in the document to refer the dispute to the Arbitrator and also having agreed to execute deeds of conveyance, including deed of release etc., required to be executed and registered to consolidate and formulate the family arrangement, as per the agreement, the plea that the family arrangement is unenforceable and invalid for want of registration, have no legs to stand.

26. The dispute is referred regarding the deed of family arrangement



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agreement and the right of the parties under the said family arrangement agreement. No doubt, the properties includes movables, immovable and valuable securities. However, the decision is in respect of interse dispute between parties and only declaration of right in *personum* and not in *rem*. The award is not against any other third party, who may have better title or rights in the property to term it as a declaration of right in *rem*. Hence, the last but a weak plea of the appellants, that the dispute deciding right in *rem* impermissible is also not sustainable.

27. In the result, **O.S.A.No:206 of 2020 is dismissed.** The judgment of the learned Single Judge passed in O.P.No.357 of 2015 dated 11.05.2020 is hereby confirmed. The award of the Arbitrator to be executed as per the law in force. No order as to costs

(Dr.G.J.J.) & (M.S.K.J.)
28.11.2025



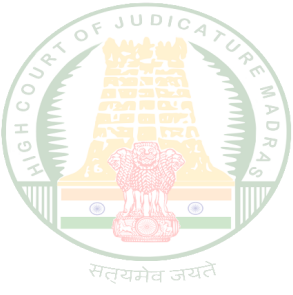
Index:yes

Internet:yes

Speaking order/non speaking order

Neutral citation:yes/no

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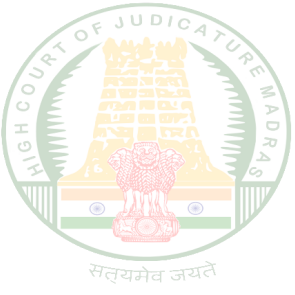
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Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.

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O.S.A.No.206 of 2020



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