

2026 LiveLaw (SC) 135

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SANJAY KUMAR; J., K. VINOD CHANDRAN; J.

Special Leave Petition (C) No.16254, 16880 of 2025; February 10, 2026

J. Muthurajan & Anr. versus S. Vaikundarajan & Ors.

Arbitration and Conciliation Act, 1996; Part III — Sections 61, 73, and 74 — Challenge to Conciliation Award and Partition Deed — Order VII Rule 11 of CPC — Rejection of Plaint — The Supreme Court set aside the rejection of a suit challenging a partition deed (KBPP) and a subsequent Conciliation Award - held that the Jegatheesan group's challenge based on coercion, undue influence, and misrepresentation regarding the KBPP, and the allegation of fraud/fabrication regarding the Conciliation Award, disclosed a real cause of action that could not be summarily dismissed – Noted that while an execution proceeding under Section 36 is pending, an Execution Court cannot examine the validity of a partition deed or family arrangement; such challenges must be resolved through a properly instituted civil suit.

Arbitration and Conciliation Act, 1996 — Section 73 — Authentication of Settlement — A settlement agreement (KBPP) not authenticated by the Conciliator as mandated under Section 73(4) and not signed by the parties at the time of the alleged award (Annexure P-2) raises serious questions regarding its status as an award under the Act – noted that coercion within a family context may not always involve physical threats or "life threats"- It can arise from a feeling of subservience or manifest obedience to an elder's opinion, which are matters of evidence and cannot be peremptorily rejected at the threshold of a suit - The plea of constructive res judicata is not applicable when earlier rounds of litigation specifically reserved liberty for the parties to work out their remedies in accordance with law and challenge the partition deed in a Civil Court. [Relied on *Dahiben v. Arvindbhai Kalyanji Bhanusali* (Gajra) D. Thr. LRs and Ors. (2020) 7 SCC 366; Paras 23-31]

For Petitioner(s) :Mr. V. Prakash, Sr. Adv. Mr. Nishant, AOR Mr. S. Karupasamy, Adv. Mr. S. Gokul, Adv. Mr. M. Gothaman, Adv. Ms. Oviya Barathi Ur, Adv. Mr. Anurag Tandon, Adv. Mr. Gopal Sankaranarayanan, Sr. Adv. Mr. S. Santanam Swaminadhan, Adv. Mr. N. V. Prakash, Adv. Mrs. Aarthi Rajan, AOR Mr. Rohan Rajasekaran, Adv. Ms. Abhilasha Shrawat, Adv. Mr. Tushar Shrivastava, Adv. Mr. Shourya Dasgupta, Adv.

For Respondent(s) :Mr. Mukul Rohatgi, Sr. Adv. Mr. Niranjan Reddy, Sr. Adv. Mr. S Elambharathi, Adv. Mr. Balaji Srinivasan, AOR Mr. S. Elambharathi, Adv. Mr. Vishwaditya Sharma, Adv. Mr. Subornadeep Bhattacharjee, Adv. Mr. Muthu Thangathurai, Adv. Ms. Harsha Tripathi, Adv. Ms. Kanishka Singh, Adv. Ms. Suganya Ts, Adv. Mr. Parikshit Pitale, Adv. Mr. S. Santanam Swaminadhan, Adv. Mr. N. V. Prakash, Adv. Mrs. Aarthi Rajan, AOR Mr. Rohan Rajasekaran, Adv. Ms. Abhilasha Shrawat, Adv. Mr. G. Anandaselvam, Adv. Mr. Habib Muzaffar, Adv. Mr. Abiram R, Adv. Mr. Jay Kishor Singh, AOR Mr. G. Balaji, AOR Mr. Neeleshwar Pavani, Adv. Ms. Arzu Paul, Adv. Mr. V. Puneedhan, Adv. Ms. D. Naveena, Adv. Ms. Vaishnavi, Adv. Mr. Shiv Kumar, Adv. Mr. Udayaditya Banerjee, AOR Ms. Shubhangi Pandey, Adv. Mrs. Parul Shukla, Adv. M/S. Mukesh Kumar Singh And Co., AOR Mr. Mukesh Kumar Singh, Adv. Mr. Narendra Kumar Goyal, Adv. Mr. Subodh, Adv. Mr. Kadam Hans, Adv. Mr. Jeetendra Kumar, Adv. Ms. Komal Singh, Adv. Ms. Kajal Rani, Adv. Mr. L.sivaraman, Adv. Mr. Harsh Chaturvedi, Adv. Ms. Maulshree, Adv.

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. Orchestrating the dissolution of a business empire built by the father, the children resorted to arbitration, conciliation and litigation to go their independent ways with their share of the pie, as is common in families with multiplying numbers and proliferating assets. Two out of the four siblings found an amicable partition through arbitration. The two remaining, along with their families are grappling with each other for an equitable partition of the huge assets and the vast properties amassed over the years. The respective families are represented by their eldest, the brothers, Vaikundarajan and Jegatheesan who along with their immediate kin stakes equal claim to the assets, left to their joint share in the earlier arbitration and those accumulated thereafter. Vaikundarajan group relies on a Conciliation Award, strongly refuted by the Jegatheesan group, who took recourse first to arbitration, which failed and then to litigation. Assailed herein is a judgment which confirmed the rejection of a suit filed by the Jegatheesan group, allowing an application under Order VII Rule 11 of the Civil Procedure Code, 1908¹. We refer to the parties by their names and the documents from Civil Appeal @SLP (C) No.16254 of 2025.

3. Differences simmering for some time, surfaced in the year 2018 and Vaikundarajan group asserts that on a request made by Jegatheesan, their half-brother Ganesan, acted as a Conciliator to bring about a settlement by a fair partition. A Partition Deed termed *Kaithadi Baga Pirivinai Pathiram*² was drawn up with the entire assets included in two Schedules. The division, alleged to be as per custom, was made by Jegatheesan with Vaikundarajan at the first instance choosing Schedule 'C' and the remaining Schedule 'A' left to Jegatheesan. The parties agreed by putting their signatures on the *KBPP*, the translated copy of which is produced as Annexure P-1 dated 31.12.2018.

4. The Conciliation Award drawn up by Ganesan, their Conciliator/half-brother is produced as Annexure P-2 dated 02.01.2019. While Jegatheesan group accepts and admits their signatures on the *KBPP*, they maintain that it was just a tentative draft, not intended to be acted upon without further deliberation; especially since the document had to be stamped & registered to confer it the status of a partition deed. Jegatheesan also denies having made the division, and the group in one voice denies that there was ever a conciliation and opposes the Conciliation Award as one fabricated, without their knowledge and to which they were never parties. The Conciliation Award was an afterthought, alleges Jegatheesan group; that document itself having been prepared far later to their group having resiled from the *KBPP*, which deed itself tilted the scales substantially in favor of the Vaikundarajan group. The fabrication was also intended to thwart any attempt of the Jegatheesan group to have an equitable partition by resort to legal remedies, either through arbitration or by litigation. The suit now rejected was initiated by the Jegatheesan group having failed in their attempt to initiate an arbitration as also their attempt to abruptly end the proceedings initiated by Vaikundarajan group to execute the Conciliation Award.

5. Sh. Gopal Shankaranarayanan and Sh. V. Prakash, learned Senior Counsel appeared for Jegatheesan group, the appellants/plaintiffs and Sh. Mukul Rohatgi and Sh. Niranjan Reddy, learned Senior Counsel appeared for Vaikundarajan group, the respondents/defendants.

6. Sh. Shankaranarayanan, took us through the communications immediately after the *KBPP*, to contend that Jegatheesan had objected to the partition as per the *KBPP* at the first instance and sought for an arbitration as was done before. The correspondences do

¹ For brevity, 'The CPC'

² For brevity, 'the *KBPP*'

not indicate a conciliation having been carried out in accordance with Part III of the Arbitration and Conciliation Act, 1996³ as it existed then. None of the requirements as is mandated under Sections 61 to 74 of the Act of 1996 have been followed and the alleged Award is passed behind the back of Jegatheesan group as is evident from the documents on record. It is pointed out that the so-called Conciliation Award surfaced long after the dialogue commenced with respect to the *KBPP*; which was resiled from by the Jegatheesan group since it was not an equitable partition, making it highly suspect. Though the Jegatheesan group was unsuccessful in initiating an arbitration and putting an abrupt end to the execution proceedings, this Court preserved their rights which enabled them to initiate the present suit challenging the *KBPP*; as arbitrary and not one intended to be acted upon and the Conciliation Award; as one vitiated by fraud. It is pointed out from the recitals in the document dated 02.01.2019 that it is prepared on 31.12.2018, which is belied by the fact that some of the members admittedly signed it on an earlier date. The learned Senior Counsel would urge that there was no cause for rejection of the suit at the threshold, especially when the plaint cannot be rubbished as having set up no cause of action nor is it barred by any law or vitiated by any of the other grounds found in Order VII Rule 11 of the CPC and not in the least is vexatious. A compilation of decisions is placed before us on the principles regulating consideration of an application under Order VII Rule 11, the inadequacy of the remedy under Section 47 of CPC, the law on partition deeds and conciliation awards as also to canvas the contention raised on fraud which vitiates every proceeding and renders any decree, award or order, a nullity

7. Sh. Prakash, learned Senior Counsel takes us to the specific provision of Section 61 and argues that the minute Vaikundarajan pleads a custom, of one of the parties dividing the partible assets into two separate schedules and the other party given the first choice to take one, there can be no application of Part III. There is no Conciliation Award passed under the Act of 1996 and also considering the plea of the Award set up, being vitiated by fraud, there is no status of an Arbitral Award conferred on it to avail the remedy of execution akin to that from a decree. It is also pointed out that the execution proceedings in which the appellants have filed objections under Section 47 of the CPC have been clubbed with the suit, for joint trial. The suit was necessitated since, Ganesan the so called Conciliator was a necessary party in the resolution of the dispute based on the challenge raised against the so-called Conciliation Award; who was not a party to the conciliation and hence was outside the scope of Section 47 of the CPC.

8. Sh. Rohatgi, learned Senior Counsel at the outset points out that there are two admitted facts which the Jegatheesan group cannot wriggle out of. All the members of their group have put their signatures to the *KBPP*, which is a lengthy document; a deliberate action involving considerable time for the mere execution, especially since it has been signed on all the 308 pages by the several members. The document discloses the two Schedules and the division of assets which include, running industrial concerns, valuable shares, vast tracts of immovable property, mining leases and so on. None of the family members, who put their signature to the document can now contend that they were not aware of the division or the assets they would be entitled to, on its execution. The second admitted fact, according to Vaikundarajan is that it was Jegatheesan who first went to Ganesan to conciliate; seriously disputed by the learned Senior Counsel appearing for Jegatheesan.

³ For brevity 'the Act of 1966'

9. Yet again, Sh. Rohatgi forcefully argues that the very initiation of the suit is an abuse of process since the appellants had failed in three attempts before Courts, to wriggle out of the conciliation. The observations in the decisions are binding *inter partes* and disable the appellants from initiating a suit challenging the *KBPP*, which, read with the Conciliation Award is a decree, possible of execution under Section 36 of the Act of 1996; upheld by this Court and remedy left to raise objections, only in the execution proceedings. The attempt to initiate arbitration had failed, which forecloses such right; finding Annexure P-2 dated 02.01.2019 to be a Conciliation Award under the Act of 1996. A further attempt was made through a revision filed, to frustrate the remedy of execution, which was rejected by the High Court with a reasoned order affirmed by this Court by dismissal of the SLP filed against that order. The execution thus is pending, and the appellants have filed their objections thereat. Without pursuing their remedy permitted by this Court, the attempt is again to challenge the *KBPP* and the Conciliation Award by a freshly instituted suit which has been found by the Trial Court and the High Court to be not possible under Clauses (a) and (d) of Order VII Rule 11 of the CPC.

10. In addition, it is contended that the present attempt also falls foul of Section 47 of the CPC and is in turn an abuse of process of law. Part III of the Act of 1996 and the provisions therein, are read over to urge that if the parties have agreed to a settlement and the Conciliator has endorsed the terms of the settlement it takes the character of an Award under the Act of 1996 which is a deemed decree capable of being executed under Section 36, taking recourse to the remedy under the CPC. The *KBPP* and the Award are inseparable and read together, it takes the form of a decree capable of execution by either party. The only possible remedy against it is under Section 34 of the Act of 1996, which having not been availed of till date, the execution has to proceed seamlessly. The contention that despite having affixed their signatures in the *KBPP*, they did not read it and hence is not enforceable, are mutually destructive and *per se* dishonest. Insofar as the ground of abuse the learned Senior Counsel would place reliance on ***Shri Mukund Bhavan Trust and Others v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another***⁴, ***Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) D. Thr. LRs and Ors.***⁵ and ***Rajendra Bajoria and Ors. v. Hemant Kumar Jalan and Ors.***⁶ The learned Senior Counsel also took us through the decisions *inter partes* to contend that the contentions taken in the suit and arguments addressed before this Court, have been negated earlier, which binds the parties who were agitating the very same cause in the earlier instances too.

11. Sh. Reddy, learned Senior Counsel would take us to the communications addressed after the *KBPP* was executed, to contend that though Vaikundarajan had specifically referred to Ganesan and efforts taken by him at the instance of Jegatheesan, it has not been categorically denied in the response made. It is reiterated that the remedy now available is only to pursue the objections under Section 47 of the CPC, which the appellants have resorted to. The reliefs prayed for in the objection and suit are pointed out to argue that they are similar and it would only lead to multiplicity of litigation and possibly conflicting orders. The attempt is only to stay the Execution Proceedings and pursue the suit so as to further delay the process. Reference is specifically made to ***Electrosteel Steel Limited v. Ispat Carrier Private Limited***⁷ and ***MMTC Limited v. Anglo American***

⁴ (2024) 15 SCC 675

⁵ (2020) 7 SCC 366

⁶ (2022) 12 SCC 641

⁷ (2025) 7 SCC 773

Metallurgical Co. Ltd.⁸ to contend that the remedy under Section 47 is a wholesome one which alone can be pursued at this point. The translation of the document dated 02.01.2019 is also seriously challenged, with another translation which indicates that the recital in Tamil is to the effect that “*final deed dated 31.12.2018 was prepared*”.

12. The dispute between the two groups, represented by the two brothers, boils down to how the *KBPP* dated 31.12.2018 and the so-called Conciliation Award dated 02.01.2019 are to be construed. The Vaikundarajan group asserts that the only possible mode of construction is to read it together, which gives it the status and effect of a conciliation award under Part III of the unamended Act of 1996. The Jegatheesan group insists that there was no conciliation and the so-called Award dated 02.01.2019 is a fabricated document and the *KBPP* is vitiated by reason of undue influence, coercion and misrepresentation under which it was executed, also resiled from immediately after finding the partition to be unequal and inequitable. The very fulcrum of the arguments of the Vaikundarajan group is based on the earlier litigation which according to them restrict the remedy of the appellants; the Jegatheesan group, to contest the execution filed under Section 36 of the Act of 1996. Hence, it is imperative that we look at the earlier decisions of the High Court of Madras which, *inter partes*, have attained finality by the dismissal of the SLPs filed, in which orders this Court made certain reservations with respect to rights of the appellants. The binding nature of the decisions of the High Court and the escape valve provided through the liberty reserved by the High Court or this Court would in fact decide the questions raised herein.

13. After the *KBPP* dated 31.12.2018 was executed by all the members of the two groups, there occurred a series of correspondence between the two brothers regarding the partition. It is to be immediately noticed that, as admitted by both the parties, all the members of the two families did not put their signature on a particular day or on the day shown in the deed. In fact, the admission is to the extent that the signatures were put before and even after the date shown on the *KBPP*, by some members of both the families. Jegatheesan group also pleads in their suit that some of their family members were abroad between 29.12.2018 and 02.01.2019. This is refuted on the specific plea that they had affixed their signatures prior to their going abroad. It is also pertinent that Vaikundarajan’s assertion is of a conciliation by Ganesan at the instance of Jegatheesan, the latter disputes it. There is neither any such communication exchanged placed on record nor a substantiation of the procedure under Part III of the Act of 1996 resorted to. The contention is attempted to be raised on the basis of the veiled reference to Ganesan and his intervention in the matter by Vaikundarajan, which is not specifically disputed by Jegatheesan, persuading us to draw inferences. The document dated 02.01.2019 from the recitals therein leave a lot to be desired, especially with respect to the statement of all the executants having signed the *KBPP* in the presence of the Conciliator.

14. On 14.01.2019, Jegatheesan emailed his brother Vaikundarajan accusing him to have occasioned financial crisis in the businesses. Jegatheesan hence suggested parting of ways by an equitable division of the assets. Vaikundarajan did not reply to the same and Jegatheesan followed it up with a communication on 23.01.2019 where he specifically raised the issue of the *KBPP* dated 31.12.2018, admittedly signed by himself and his family members. He claimed that such execution was only at the instance of Vaikundarajan. It was also alleged that the division was not at all fair and equitable which they have realized after deliberating on the division effected. The partition deed dated

⁸ 2025 SCC OnLine SC 2328

31.12.2018 was expressly revoked by the said letter. This was responded to by Vaikundarajan by a communication dated 24.01.2019 wherein he spoke of a request having been made through the elder half-brother Ganesan and also pointing out certain disputes with respect to the operation of accounts of the running concerns. It was stated in unequivocal terms that the partition has already been carried out by the deed of 31.12.2018, which however was not referred to in the first communication of Jegatheesan dated 14.01.2019. The said communication ended with a request that if Jegatheesan decided to have the partition as per the *KBPP*, before the end of the year, Vaikundarajan was willing. Jegatheesan replied through Annexure P-6 dated 05.02.2019 refuting the statements made by Vaikundarajan and seeking an arbitration by a retired Judge of this Court who had earlier acted as an Arbitrator in settling the disputes in the family. This was replied to by Annexure P-7 dated 18.02.2019 wherein the mediation through Ganesan and the partition having been completed by execution of the deed, was reaffirmed. The request for an arbitration by a named retired Judge of the Supreme Court was specifically declined asserting that there is nothing more to be done since the partition stood concluded as on 31.12.2018. This was contested by Jegatheesan in his reply dated 09.03.2019. Again, a request was made to share the complete details of the assets so as to effectuate an equitable partition which was replied to by Annexure P-9 dated 17.03.2019.

15. It has to be observed with emphasis that the Conciliation Award of 02.01.2019 was not referred to by Vaikundarajan in any of these communications despite the emphatic references to intervention of Ganesan and the *KBPP*. Having reached a stalemate Jegatheesan group issued a notice through an Advocate, Annexure P-10 dated 28.03.2019, requesting arbitration through a named retired Judge of this Court. The request was declined by Annexure P-11 dated 12.04.2019, by the Advocate of the Vaikundarajan group wherein for the first time the proceeding dated 02.01.2019 was referred to and contended that it has the status and effect of an Arbitral Award under the Act of 1996.

16. Jegatheesan group hence approached the High Court under Section 11 of the Act of 1996 for appointing an Arbitrator which petitions were heard alongwith O.A. No. 543 of 2019 which sought an injunction restraining the Vaikundarajan group from giving effect to the *KBPP*; all rejected by Annexure P-16. After noticing the facts as also the *KBPP* and the Conciliation Award, reference was made to the admitted execution of the *KBPP* and it was observed that if there is a challenge to the same on the ground of coercion then the remedy would be to seek a declaration that the *KBPP* cannot be effectuated. The plea of fraud was found to be general and vague since admittedly *KBPP* was signed by the appellants. It was categorically held in paragraph 19 that if the partition deed is not a result of conciliation proceeding then the document is in settlement of the disputes in the family, as per the customs and practice prevailing in the community. The learned Judge found that the absence of stamping or registration of *KBPP* was not very significant, since then, it has the trappings of a family arrangement. The conclusion was that if the execution of the deed was on account of undue influence, coercion and misrepresentation, the document is only voidable which has to be set aside in the manner known to law, '*by the Civil Court after trial*'(sic). On the other hand, if it was the result of conciliation proceedings, it was held that the same could be assailed under Section 34 of the Act of 1996, wherein the question of insufficient stamp duty and registration could also be agitated.

17. We cannot but find that the remedy of the appellants to challenge the *KBPP* or the Award was not foreclosed by the judgment of the High Court. What stood foreclosed is the initiation of arbitration, that too on the assumption that the documents of 31.12.2018

& 02.01.2019 together constitute a Conciliation Award. An SLP was filed, the order in which is produced as Annexure P-18, wherein despite refusing interference under Article 136 of the Constitution of India, the appellant was left with '*liberty to work out the remedy in accordance with law*'(sic).

18. The appellants then approached the Madras High Court with three revisions to strike out the proceedings in EP No. 61, 62 and 63 of 2019 filed before the Principal District Judge, Tirunelveli, seeking execution of the conciliation award. The said revisions were heard together and dismissed by Annexure P-20 Order, which essentially followed the earlier decision in Annexure P-16. The learned Single Judge expressed hope that the dispute having arisen between close family members, there could be mediation, to facilitate which a Mediator was appointed on the request of Vaikundarajan group. It was also observed that if the mediation fails, Jegatheesan group would be entitled to raise all issues before the Executing Court. An SLP filed against the said order also stood rejected by Annexure P-21 which again made a caveat that '*none of the observations made in the impugned judgment shall hamper the Executing Court in deciding the matter on its own merits*'(sic). Hence, based on the contentions left open to be decided by the High Court and the liberty reserved to avail remedies in accordance with law, at the earlier point, we are of the opinion that the challenge against the *KBPP* and the Award is still at large.

19. It cannot be assumed for a moment that what was intended by Annexure P-21, the rejection of the SLP against the judgment rejecting the prayer to strike off execution proceedings as such, would confine the agitation of such claims before the Executing Court alone. If the Executing Court finds that the *KBPP* is not a result of conciliation and does not constitute an Award under the Act of 1996 then necessarily, it would be open for the Vaikundarajan group who stands by the *KBPP* to take remedies for enforcement of the same, even as a family arrangement; in which event it cannot be said that the rights of the Jegatheesan group would stand fully precluded. The remedy against the *KBPP* cannot be left unresolved, especially when liberty was left to challenge it in a Civil Court.

20. The essential question the High Court considered at the first instance, rejecting the plea for arbitration, was as to whether the *KBPP* and the document of 02.01.2019, together make out an award; an executable decree under Section 36 of the Act of 1996 or whether it is a partition deed or a family arrangement, the last in view of absence of stamping & registration. It is hence, the High Court held that the challenge against the *KBPP* could be made before a Civil Court or application filed under Section 34 of the Act of 1996, depending on the nature of challenge. The remedies were thus left open by the High Court itself in Annexure P16, which reservation was affirmed by this Court while rejecting the SLP.

21. We cannot but notice that on two aspects the High Court fell into a serious error, which assumes relevance, considering the liberty left to the appellants. The first error was in finding the allegation of fraud to be without basis for reason of the admitted execution of the *KBPP*. Though it was argued vigorously that both the *KBPP* and the Award are to be read together, it can be so done only if it is found that the conciliation had proceeded under Part III of the Act of 1996 and culminated in an Award as contemplated under Section 73 of the Act, giving it the status and effect of a Settlement Agreement under Section 74.

22. We cannot but notice that the contention taken by the Jegatheesan group from the inception and in the present suit, against the *KBPP* and the Award are distinct and different. While the execution of *KBPP* is admitted, the agreement was revoked by the Jegatheesan group after a few days. The contention against *KBPP* is that the appellants

did not get enough time to go through the same and they were made to execute on undue influence, coercion and misrepresentation. Only after a studied deliberation on the division of assets, it was found that the partition was tilted substantially in favour of the Vaikundarajan group. It is not uncommon that in family arrangements, the younger members succumb to the dictate of the eldest, and on further deliberation and introspection, especially in partitions, raise disputes on the inequitable division. Here, we have to reiterate pertinently that the remedy to file a civil suit against the *KBPP* was reserved to the appellants even at the first instance.

23. Insofar as the award dated 02.01.2019, we cannot but notice that the earlier communications between the brothers did not at any point refer to a conciliation having been initiated and concluded under Part III of the Act of 1996, though reference was made to an intervention by the elder half-brother, Ganesan. We are also not able to find any documentary substantiation of the conciliation having been initiated and carried out under Part III of the Act of 1996. Even if we accept the contention of the Vaikundarajan group that a settlement arrived at between the family members could also be an Award under the Act, as per sub-section (2) of Section 73; the Settlement Agreement, which is essentially the *KBPP* has not been authenticated by the Conciliator as is mandated under sub-section (4) of Section 73. The document dated 01.02.2019 produced as Annexure P-2 is later to the *KBPP* and is not signed by any of the parties to the settlement. In this context we also observe that in Annexure P-2, the so-called Conciliator alone has put his signature to the document, categorically stating that the *KBPP* was signed in his presence by all the members. This has to be considered in juxtaposition with the admitted position that all the members did not sign it on 31.12.2018 and some of them were abroad till 02.01.2019, that is a plea specifically taken in the present plaint.

24. We may not be mistaken as finding the Award to be not one issued under the Act of 1996, but it raises serious questions regarding the Award, which grounds are pleaded in the suit. The specific contention taken against the Award is that the same is vitiated by fraud, being a fabricated document; created only to give the *KBPP* the sheen of an Award under the Act of 1996, created behind the back of the Jegatheesan group and to their detriment.

25. The other error in Annexure P-16 is that referring to the custom, it was held that the implied consent by reason of execution of the *KBPP* results in a finding of waiver of the provisions of Part III specifically, Section 61-74 of the Act of 1996. We are unable to accept the said finding especially since there is no partial waiver, of the provisions, contemplated. Yet again we also notice the contention raised by the appellants that if custom is resorted to there can be no application of Part III of the Act of 1996, which too we cannot subscribe to. On a reading of Section 61, any conciliation between two parties brought about by following the procedure in Part III of the Act of 1996 would definitely get the status and effect of an Award under the Act of 1996 unless the parties have agreed otherwise; which agreement should be expressly for the exclusion of Part III of the Act of 1996, despite a conciliation having been proceeded with and concluded. Here, the custom asserted is also claimed to have been on the intervention of Ganesan, as a Conciliator. Hence, if it is found to be an award of conciliation then there is no exclusion of Part III pleaded and if it does not have that status, then there is no application of Part III.

26. The remedy of an arbitration has been foreclosed but only subject to a challenge to the *KBPP* which the plaintiffs in the present suit assailed on the grounds of undue influence, coercion and misrepresentation. The challenge to the Award under Section 34 would be available if it can be termed 'an Award' under the Act. The specific contention of

the plaintiff/appellants is that though execution of the *KBPP* is admitted, which agreement has been resiled from later, the Award is a fabricated document, clearly the fraud employed to undermine and frustrate the rights of the plaintiffs/appellants.

27. The Trial Court considering the application under Order VII, Rule 11 of the CPC and the High Court considering the challenge against the rejection of the plaint fell into an error in reading the *KBPP* together with the Conciliation Award, as contended by the respondents, deeming it to be a Conciliation Award; against which is the challenge raised by the appellants in the suit. Both the Courts categorically found that the *KBPP* cannot be resiled from, the plaintiffs having affixed their signatures to it and there is no sustainable allegation of fraud, except the appointment of the Conciliator having been projected as a cooked up, fraudulent theory. The Trial Court went to the extent of finding in Annexure P-31 that the allegation of coercion to sign the *KBPP* cannot be accepted since there was no threat at knifepoint or a fear of death, alleged in the plaint and hence, there is no fraud perpetrated on the plaintiffs, appreciated as valid by the High Court too. It was also found that in the earlier rounds, the High Court had clearly found that a plea of fraud and misrepresentation cannot be entertained. A reading of the plaint, according to the impugned orders, would indicate that having lost in the earlier round of litigation upto the Hon'ble Supreme Court, an illusory cause of action is attempted to be raised on the allegation of fraud and misrepresentation without any specifics on that count. The Trial Court also found fault with the simultaneous filing of a suit, when on the very same averments and grounds an objection was filed under Section 47 of the CPC in the execution petitions.

28. The High Court upheld the findings of the Trial Court holding that the Conciliation Award though challenged as fraudulent and fabricated, there could be no such contention since admittedly the execution of the *KBPP* was not denied or disputed. The earlier finding regarding the *KBPP* possible of being construed as a family arrangement settling the disputes and differences within the family in accordance with the customs and practices prevailing in the community was emphasized. Finding the provisions of Part III of the Act of 1996, specifically Section 61-74 having been waived, the High Court also extracted from the decisions of this Court to find the plaint liable to be rejected on five grounds. The five grounds were:- (i) the admission of execution of *KBPP*, justifying the ground taken of abuse of process of law, (ii) the dismissal of the application under Section 11 of the Act of 1996 and the revision under Section 115 of CPC, validating the contention of constructive *res judicata*, (iii) the simultaneous proceedings in the suit and objection under Section 47 of the CPC being an abuse of process of law, (iv) the suppression of the proceedings under Section 47 and (v) the refusal to set up a claim for cancellation of the *KBPP* and the under valuation of the suit; the contention of suppression and under valuation, having not been argued before us by the respondents at all.

29. A reading of the plaint would clearly indicate that the grounds taken against the *KBPP* and the Conciliation Award are distinct and different. The plaint averments categorically challenge the contention of the defendants that the *KBPP* and the document of 02.01.2019 are to be read together and construed as a Conciliation Award. No doubt, if read together, the two documents constitute a Conciliation Award. But the averments in the plaint resist such construction especially since the document dated 02.01.2019 is challenged on the ground of it having been drawn up behind the back of the defendants and the conciliation said to have been carried out by Ganesan having not actually taken place. The reliance on the custom alleged; of one of the parties carrying out the division of the assets, permitting the first election to the other and then to take up the remaining

partible assets, is vehemently denied by the plaintiffs. The *KBPP* is challenged as one drawn up unilaterally by the elder brother. The plea is also that the members of the younger brother's family executed the same under coercion, undue influence and misrepresentation, which is a matter of evidence. We are unable to agree with the impugned orders of the Trial Court and the High Court that a ground of coercion could be urged only if the younger brother's family was faced with a life threat. As we found, especially within the family, the coercion would not be very explicit and it could even arise from an apparent feeling of subservience or a manifest obedience to the elder's opinion, which are all matters to be substantiated in evidence and it cannot be merely brushed aside or rubbished only on the ground that there is no case set up of a physical threat. The grounds of coercion, undue influence and more importantly misrepresentation, resulting in an inequitable partition, cannot be peremptorily rejected while considering an application under Order VII, Rule 11 of the CPC.

30. We reiterate that the *KBPP* and the document of 02.01.2019 are challenged on two distinct grounds. The *KBPP* on the allegation of coercion, undue influence and misrepresentation, resulting in inequities, while the document of 02.01.2019 is challenged as a fabricated document created as an afterthought to give the *KBPP* the status and effect of an Award. We also cannot accept the grounds of simultaneous proceedings in the suit and the objection under Section 47, to be an abuse of process of law, for more than one reason. The execution has been filed on the specific ground that the *KBPP* and the document dated 02.01.2019 read together is a Conciliation Award having the status and the effect of an Arbitral Award under Section 74 which also is possible of execution as a decree under Section 36 of the Act of 1996. If the objection raised by the judgment-debtors in the Execution Petition under Section 47 is accepted by the Executing Court, that the document dated 02.01.2019 is not brought about after a proper conciliation proceeding, then the execution cannot proceed. That would not, however, enable the Executing Court to look into the challenge raised against the *KBPP* on the specific grounds hereinabove detailed. Whether the *KBPP* is a valid document, sustainable as a partition deed or a family arrangement, cannot be examined by the execution Court and for that, the only possible mode is a suit properly instituted.

31. We hence find the order of the Trial Court as confirmed by the High Court, resulting in the rejection of the plaint to be egregiously erroneous in law. We are of the opinion that there is a *prima facie* cause of action disclosed in the suit and it cannot be termed vexatious or an abuse of the process of law. The cause of action as seen from the above discussion is a real one and not illusory or fictional. The factual averments, the legal grounds and the relief sought are not meaningless nor can it be said at this stage that the suit is bound to fail. The decisions relied on by the respondents have no application. We also do not look at the decisions placed on record by the appellants regarding fraud, the validity of a Conciliation Award or the construction of a Partition Deed or of a family arrangement, lest we unwittingly make any observation regarding the facts of the case. We make it clear that whatever observations we have made here, are only *prima facie* in nature and would not govern the final adjudication in the suit, except insofar as our finding that the remedy of the appellants to challenge the *KBPP* and the so-called Conciliation Award are not foreclosed, which is unexceptionable. Based on the decisions in the earlier rounds of litigation, there can be no plea taken of a constructive *res judicata* insofar as the independent challenge now raised against the *KBPP* and the document dated 02.01.2019 is permitted by the High Court in the earlier rounds and liberty left by this Court too in both the proceedings.

32. We also find no reason to look into the plea of multiple proceedings and conflicting orders being passed especially noticing Annexure P-27 wherein the suit and the objection under Section 47 of the CPC were clubbed together to be tried by the Principal District Judge, Tirunelveli before whom the execution petitions were pending. We set aside the impugned orders of the High Court and the Trial Court, allowing the application under Order VII Rule 11 and restore the plaint to the files of the Principal District Court, Tirunelveli, which rejected the plaint after the transfer by Annexure P-31. The suit shall be tried alongwith the objection raised under Section 47 of the CPC.

33. Before we part with the case, we have to observe that after arguments were concluded and the judgment reserved, on the next day, Sh. Niranjana Reddy, learned Senior Counsel appearing for the respondents herein, made a submission before us that there could be a mediation. We directed the learned Counsel representing the appellants also to be present in the afternoon, when the suggestion of a further mediation was fiercely opposed by Sh. Gopal Sankaranarayanan and Sh. V. Prakash, learned Senior Counsel appearing for the appellants, that having been already attempted and failed. In unequivocal terms, we informed Mr. Reddy that if the respondents withdrew all the contentions regarding the *KBPP* and the document dated 02.01.2019, still, there could be an arbitration which would relieve the parties of further litigation delaying the process of partition especially since the businesses are remaining with the Administrator, as directed in the revision against the execution proceedings.

34. We make it clear that it would be open for the parties to make the plea of relegating them to an Arbitration when they appear before the Principal District Court, Tirunelveli before whom the suit and the execution proceedings are pending. We make it clear that the plea could only be of an arbitration and not a mediation, in which event, the respondents/judgment-debtors/defendants will, on affidavit, agree and undertake to withdraw all the contentions regarding the *KBPP* and the document dated 02.01.2019, so as to initiate an arbitration afresh *dehors* the two contentious documents, which shall be facilitated through any suitable Arbitrator, mutually agreed upon by the parties.

35. The appeals are allowed with the above reservation of an arbitration made possible and that of the findings herein not governing the final adjudication of the suit and the objections under Section 47; except the rejection of the plea of constructive *res judicata* which plea cannot be now raised by the respondents/defendants.

36. Pending applications, if any, shall stand disposed of.