

REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% DATE OF RESERVE: December 08, 2009

DATE OF DECISION: March 12, 2010

+ RFA 183/2006 and CM No.4575/2006

SARDAR MALKIAT SINGH Appellant
Through: Mr. Amit Chadha, Sr. Advocate with
Ms.Bhawna Chopra, Advocate.

versus

KANWALJIT KAUR AND ORS. Respondents
Through: Respondent No.1 in person.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

1. This appeal is directed against the judgment and decree dated 28th October, 2005 passed by the learned Additional District Judge, Delhi whereby and whereunder the suit of the plaintiff was dismissed.

2. The brief facts leading to the filing of the present appeal are that the appellant had filed a suit for possession, recovery of damages and permanent injunction against the respondents 1 to 4 stating therein that the President of India through the Additional Secretary (Lease Administration Branch), Delhi

Development Authority, had executed a perpetual lease deed dated 08.03.1973 in favour of the appellant in respect of an industrial plot bearing No.115 situated at Block "B", G.T.Karnal Road, Delhi, which lease deed was registered with the Sub-Registrar and as such the appellant was the sole owner of the aforesaid plot of land. It was further stated that the appellant raised construction on the said plot of land for industrial purposes as per the terms and conditions of the aforesaid perpetual lease deed. The respondent No.1, who was married to the son of the appellant Sardar Gural Singh on 23.02.1993, deserted the said son of the appellant and went to reside at Ludhiana along with her daughter Sania and the respondents No. 2 to 4, being her mother, sister and brother, and thereafter started working as a Nurse in PGI Hospital, Chandigarh, where she is residing till date. During this period, the appellant had gone for treatment to the United States of America, leaving behind his brother, his wife and his mother in the suit property. In the second week of July, 2000, that is, on 12.07.2000, the respondent No.1 allegedly committed criminal trespass in respect of the two rooms situated on the first floor of the property and theft of the goods of Sardar Baljeet Singh (son of the appellant) lying therein apart from manhandling the inhabitants of the house, resulting in Shri Prahlad Singh, the brother of the appellant, lodging a report with the Commissioner of Police, Police Head Quarters, New Delhi on

07.07.2000 against the respondent No.1, her brother and father. Soon thereafter, on 11.07.2000, the respondent No.1 filed a civil suit for permanent injunction against the appellant, Shri Gurpal Singh (husband of the respondent No.1), Shri Baljeet Singh (son of the appellant) and one Shri Maakhan Singh. The said civil suit was withdrawn on 22.08.2000 on account of technical flaws with liberty to file a fresh one. When the appellant came to India on 14.08.2000, he after taking stock of the situation, lodged a report with the Commissioner of Police on 18.08.2000 as well as on 26.08.2000, but to no avail. Resultantly, the appellant served a legal notice upon the respondent No.1 by registered A/D post, but in spite of the said notice, the respondent No.1 instead of vacating the two rooms on the first floor of the property, filed a suit for permanent injunction against the appellant and others including her husband Sardar Gurpal Singh. The appellant left with no other alternative, filed the instant suit for possession, recovery of damages and permanent injunction against the respondents.

3. The suit was contested by the respondents by filing the written statements stating therein that the dowry furniture of the respondent No.1 was lying in the aforesaid two rooms since February, 1994, and the luggage and other goods of Shri Baljeet Singh were lying on the second floor of the premises, where other family members of the appellant were residing. It was

further stated that the respondent No.1 had full legal right to her in-laws property. It was denied that Sardar Gurpal Singh had obtained the divorce from the respondent No.1 on the ground of cruelty. Significantly, however, the respondent No.1 nowhere denied the fact that on 12.07.2000 she had broken open the locks of two rooms on the first floor of the property, which were, in fact, in the possession of the appellant.

4. The appellant filed replication to the aforesaid written statement filed by the respondents. On the pleadings of the parties, the following issues were struck by the learned trial court on 26.08.2003.

- “(i) *Whether the plaintiff is entitled to recover possession of the suit property? OPP*
- (ii) *Whether the plaintiff has suppressed the material facts and has not come to the court with clean hands? If so, its effect. OPD*
- (iii) *Whether the plaintiff is entitled to relief of permanent injunction? OPP*
- (iv) *Whether the plaintiff is entitled to damages at the rate of Rs.10,000/- per month from 12.07.2000 to 11.04.2002? OPP*
- (v) *Relief.”*

5. Evidence was adduced by the parties on the aforesaid issues. On consideration of the evidence, the learned Addl. District Judge held that the respondent No.1 had a vested right in the matrimonial home and could not be dispossessed. Relying upon the judgment of this Court in **Taruna Batra Vs. S.R.Batra and others** reported in **ILR (2005) I Delhi 60**, the learned trial court

held that it was a case where possession of the respondent No.1-daughter-in-law as well as grand-daughter was required to be protected as the appellant was also under liability to provide them shelter in the matrimonial house. The suit of the appellant was accordingly dismissed, which resulted in the filing of the present appeal in this Court.

6. The learned Addl. District Judge decided issue No.2 in favour of the respondents on the following grounds:-

“The facts pleaded by defendant which the plaintiff suppressed and concealed and as such failed to approach the court with clean hand with regard to celebration of the marriage at the premises in suit. This fact has not been denied in the replication also. This fact is very material for entitlement of the relief as claimed by the plaintiff against the defendant. The plaintiff has not only made the daughter of defendant No.1 namely baby Sania as a party to the suit but also concealed the material fact in that regard in the plaint. In fact in the replication the plaintiff denied that defendant is daughter in law of the plaintiff as was claimed and again the material fact of Sania being grand daughter of the plaintiff is neither admitted nor denied by taking a denial plea that plaintiff has a right to file suit for dispossession against defendant and female daughter Sania.

The concealment of such material facts certainly leads to denial of discretionary relief as sought by the plaintiff in the suit against the defendant without taking care of daughter of her daughter in law, who is even not made a party to the suit while seeking a relief against only defendants including defendant No.1 who is admittedly daughter in law and a divorcee as pleaded. With that view I decide the issue in favour of the defendant and against the plaintiff.”

7. Issues No.1, 3, 4 and 5 were taken up by the trial court together. The learned Additional District Judge, relying upon the judgment in ***Taruna Batra vs. S.R. Batra and Ors. ILR (2005) I Delhi 66***, held as follows:

“On the face of evidence and cited authorities I hold that defendant No.1 who has a vested right in the matrimonial home cannot be allowed to dispossessed and charged of damages as sought by the plaintiff against whom injunction has also been sought not to interfere in possession of the plaintiff who is admittedly residing in USA. It is a case where the possession of the divorcee's daughter in law as well as granddaughter has to be protected as the plaintiff is also under liability to provide them shelter in the matrimonial house.

The suit of the plaintiff as such failed as no judgment in favour of the plaintiff and against the defendants as well as against the granddaughter can be passed in the facts and circumstances of the case as discussed above and in the light of the observations made by Their Lordships in case of Taruna Batra. The suit of the plaintiff as such dismissed. However no orders as to the costs passed in the given facts.”

8. Arguments were advanced before this Court by Mr.Amit Chadha, the learned senior counsel for the appellant and by the respondent No.1, who appeared in person. It may be noted at this juncture that the respondent No.1 declined the offer made to her by this Court for a legal aid counsel to represent her in the present proceedings, but insisted on arguing the appeal herself, stating that she was fully capable of engaging a lawyer and had the requisite resources to do so.

9. The learned senior counsel for the appellant sought reversal of the

findings of the learned trial court, while at the same time giving up the right to mesne profits claimed in the suit.

10. The learned senior counsel for the appellant at the outset submitted that the ownership of the appellant in the suit property had not been disputed by the respondent No.1, and that the matter was squarely covered by the judgment of the Hon'ble Supreme Court rendered in the case of **S.R.Batra Vs. Smt. Taruna Batra 2006 (4) Crimes 433**, in which the Supreme Court, while setting aside the judgment of the High Court, held as follows:-

*“11. With respect, we are unable to agree with the view taken by the High Court. As held by this Court in **B.R.Mehta v. Atma Devi and Ors.** MANU/SC/0740/1987, whereas in England the rights of the spouses to the matrimonial home are governed by the Matrimonial Homes Act, 1967, no such right exists in India.*

In the same decision it was observed “it may be that with change of situation and complex problems arising it is high time to give the wife or the husband a right of occupation in a truly matrimonial home, in case of the marriage breaking up or in case of strained relationship between the husband and the wife.”

12. In our opinion, the above observation is merely an expression of hope and it does not lay down any law. It is only the legislature which can create a law and not the Court. The courts do not legislate, and whatever may be the personal view of a Judge, he cannot create or amend the law, and must maintain judicial restraint.

13. There is no such law in India, like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.”

11. In the aforesaid case, the Supreme Court, after quoting the provisions of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 and Sections 17 and 19 (1) of the aforesaid Act further held as under:-

“22. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member, it is the exclusive property of appellant No.2, mother of Amit Batra. Hence it cannot be called a 'shared household'.

23. No doubt, the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society.”

12. The respondent No.1, on the other hand, contended that the suit property was her matrimonial home and as such she was fully entitled to occupy the same. The appellant-father-in-law had no right to file a suit to dispossess her and her daughter Sania. Her husband, Gurpal Singh had filed for divorce in the Probate and Family Court Department in Commonwealth of Massachusetts Middlesex Division Docket No.99D 3729, on false and fabricated grounds. In fact, the respondent No.1 was working as a Staff Nurse in PGI, Chandigarh since 1992, where she was temporarily residing, but she

used to visit her matrimonial home since February 1994 every week. The respondent No.1 thus asserted that her possession was authorized and legal and had full right to use and occupy her in-laws property.

13. Having heard the learned counsel for the appellant and the respondent No.1 and scrutinized the records, I am unable to concur with the findings of the learned Addl. District Judge. So far as findings on the issue No.2 are concerned, in my view, the concealment cannot be said to be material for deciding the controversy between the parties and, in any case, is not of such a nature as to non-suit the appellant.

14. Regarding the findings on issue Nos.1,3,4 and 5 , the law by now is well settled that the wife has no right of residence in a house held by the father-in-law and/or the mother-in-law. It was so held by the Hon'ble Supreme Court in ***Taruna Batra's*** case (supra), while delineating the definition of a “shared household”, which, according to the Supreme Court, can only mean a house belonging or taken on rent by the husband or a house which belongs to a joint family of which the husband is a member. There is no dispute that the house in the present case neither belongs to nor is leased to the husband nor it belongs to the joint Hindu family of which the husband is a member. Admittedly also, ever since the year 1992, the respondent No.1 was not residing in the house in question and was settled in Chandigarh, where she was

working as a Staff Nurse. Thus, certainly, the respondent No.1 was not residing in the suit property on a permanent/regular basis, and her contention that the house is “matrimonial property” cannot be accepted as such. Her possession in the house of her father-in-law can at the most be said to be permissive in nature and by no means entitles her to stay in the house for an indefinite period of time, more so when her husband has no share or interest in the same.

15. While the legal position is clear that the husband has a legal and moral obligation to provide residence to his wife, and if the house where the wife lived on being wedded, belongs to her husband, it would certainly be treated as a “shared household” or a matrimonial home., there is no such obligation on the father-in-law or the mother-in-law to provide residence to the daughter-in-law. It is also clear that if the house in question belongs to the joint Hindu family, of which the husband is a member, even that would be termed as a “matrimonial house”. In the instant case, no such assertion has been made by the respondent No.1 and as a matter of fact, it is fairly conceded that the house stands in the name of the appellant, her father-in-law. This would not, in my view, vest any right in the respondent No.1 to stay indefinitely in the said house by claiming right of residence.

16. In ***Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and Ors.***

2008(4) SCC 649, the Supreme Court while observing that the Domestic Violence Act provides for a higher right in favour of a wife, in that, she not only acquires a right to be maintained, but also thereunder acquires a right of residence, clarified that the said right as per the legislation extends to joint properties, in which the husband has a share. In para-18 of the said judgment, it was stated thus:-

“18. Maintenance to a married wife during subsistence of marriage is on the husband. It is his personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can only be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject matter of attachment nor during the lifetime of the husband his personal liability to maintain his wife can be directed to be enforced against such property.”

17. I am, therefore, of the view that the findings of the learned trial court on the issues No.1,3,4 and 5 cannot be sustained. The appellant is the sole and absolute owner of the suit property and at best the possession of the respondent No.1 during the subsistence of her marriage with the appellant's son could be said to be permissive in nature. This by itself cannot entitle the respondent No.1 to claim a right of residence against her father-in-law, who has no legal obligation to maintain his daughter-in-law during the lifetime of her husband, more so when the respondent No.1 has parted the company with her husband

and is admittedly residing in Chandigarh since the year 1992.

18. The suit of the plaintiff /appellant for possession is accordingly decreed in favour of the appellant and against the respondents 1 to 4 with the direction to the respondents to deliver the possession of the property bearing No.B-115, G.T.Karnal Road, Industrial Area, Delhi in their possession to the appellant. The respondents 1 to 4 are further restrained by a permanent injunction from dispossessing the appellant from the second floor portion of the aforesaid property as well as from making any encroachment in respect thereof as well as from parting with the possession of the two rooms of the first floor to any other person/persons except the appellant. The prayer for mesne profits has been given up by the appellant and the same is accordingly declined as not pressed.

19. RFA 183/2006 and CM No.4575/2006 are disposed of in the above terms.

REVA KHETRAPAL, J.

March 12, 2010
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