

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 8th November, 2011

+ FAO (OS) 71-72/2011

EVEENEET SINGH ...Appellant
Through: Mr.Y.P.Narula, Senior Advocate with
Ms.Shobhana Takiar and
Mr.Aniruddha Choudhury,
Advocates

versus

PRASHANT CHAUDHARI & ANR. ...Respondents
Through: Ms.Geeta Luthra, Senior Advocate
with Mr.Jatin Sehgal and Mr.Harish
Malik, Advocates for R-1
Mr.Ravi Gupta, Senior Advocate
with Mr.Ankur Mahindro, Advocate
for R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

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

PRADEEP NANDRAJOG, J.

1. The issue at hand is settled by a decision of a Division Bench of this Court in FAO(OS) No.341/2007 Shumita

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Didi Sandhu vs. Sanjay Singh Sandhu & Ors. In paragraphs 48 and 49 the Division Bench held as under:-

“48. The learned counsel for the appellant had also referred to Single Bench decisions of the Kerala High Court and the Madras High Court in the cases of S.Prabhakaran (supra) and P.Babu Venkatesh Kandayammal and Padmavathi (supra) to indicate instances of cases where the Supreme Court decision in S.R.Batra (supra) was distinguished. Those decisions are Single Bench decisions and that too of other high courts and are, therefore, of no precedential values insofar as this Bench is concerned. We feel that in view of the prima facie finding that the property in question does not belong to the appellant's/plaintiff's husband nor does he have any share or interest in the same, there is no question of the said property being regarded as a “shared household” in terms of Section 2(s) of the said Act. We also find that the expression “matrimonial home” is not at all defined in the said Act and the concept of the matrimonial homes as prevailing in England by virtue of the Matrimonial Homes Act, 1967 cannot be applied in India as pointed out in S.R.Batra (supra) and B.R.Mehta (supra). There is no doubt that the appellant/plaintiff has a right of a residence whether as an independent right or as a right encapsulated in the right to maintenance under the personal law applicable to her. But that right of residence does not translate into a right to reside in a particular house. More so, because her husband does not have any right, title or interest in the said house. As noted by the Supreme Court in the case of Komalam Amma (supra) as well as in Mangat Mal (supra), the right of residence or provision for residence may be made by either giving a lumpsum in money or property in lieu thereof. In the present case, we have noted earlier in this

judgment that the learned Single Judge had recorded that alternative premises had been offered to the appellant/plaintiff, but she refused to accept the same and insisted on retaining the second floor of the property in question claiming it to be her 'matrimonial home'.

49. We must emphasize once again that the right of residence which a wife undoubtedly has does not mean the right to reside in a particular property. It may, of course, mean the right to reside in a commensurate property. But it can certainly not translate into a right to reside in a particular property. In order to illustrate this proposition, we may take an example of a house being allotted to a high functionary, say a Minister in the Central Cabinet and who resides in the same house along with his wife, son and daughter-in-law. It is obvious that since the daughter-in-law and son reside in the said house, which otherwise is a government accommodation allotted to the father-in-law, the same could be regarded as the house where the son and daughter-in-law live in matrimony. Can the daughter-in-law claim that she has a right to live in that particular property irrespective of the fact that the father-in-law subsequently is no longer a Minister and the property reverts entirely to the Government? Certainly not. It is only in that property in which the husband has a right, title or interest that the wife can claim residence and that too, if no commensurate alternative is provided by the husband."

2. Vide impugned order dated 20.12.2010, the learned Single Judge has held that the appellant would have no right to enforce a claim for residence in the ground floor of building bearing Municipal No.D-32, South Extension Part-II, half-share

whereof was inherited by appellant's mother-in-law through her mother, a fact which is undisputed; and yet in spite thereof we find appellant claiming the subject property to be ancestral property in the hands of her mother-in-law and through her husband having an alleged right therein, and hence a claim set up that being the wife the appellant would have a right of residence in the house belonging to her husband. Said claim on the plea afore-noted cannot be sustained and we reject the same outright.

3. Whether appellant can claim a right on the ground that the premises in question is a shared household because after marriage she and her husband set up their matrimonial home in the house is the question which we need to decide.

4. Section 2(s) of The Protection of Women from Domestic Violence Act 2005, (herein after referred to as 'the Act') defines 'shared household' as under:-

"2(s) 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

5. It is not in dispute that after marriage, appellant and her husband set up their matrimonial home in the house in question, but after a few months the husband and wife fell apart and the husband took on rent the barsati floor, consisting of a drawing room, a bed room, kitchen and an attached toilet with an open terrace abutting on the second floor of House No.C-528 Defence Colony, New Delhi at a rent of ₹30,000/- per month.

6. Alleging the same to be a ruse and a game-plan to make the appellant shift to the said house and thereafter abandon her requiring rent to be paid or face eviction therefrom and additionally on the ground that the appellant has a right to be protected in the shared household and has a right to restrain her mother-in-law and her husband to dispossess her from the shared residence, claim was raised in CS(OS) No.1307/2010 which appears to be a counterblast to CS(OS) No.505/2010 whereunder appellant's mother-in-law claimed a right to possess the entire premises. The appellant has lost before the learned Single Judge.

7. It is no doubt true that the appellant has a right under clause (a) of sub-section 1 of Section 19 of the Act, but clause (f) thereof cannot be lost sight of, and indeed the learned Single Judge has relied thereon. The learned Single Judge has also relied upon Section 26 of the Act, holding said provision to be a concurrent jurisdiction. It has been directed

that monthly rent @₹30,000/- should be paid to the appellant towards alternative accommodation and ₹45,000/- per month towards maintenance. The appellant has thus come under a legal obligation to vacate the shared household.

8. The respondents have unequivocally stated that they shall comply with the obligation placed upon their shoulders by the learned Single Judge, but the appellant continues to urge that her right to continue to live in the shared household is indefeasible.

9. Upon the presumption that the ground floor of House No.D-32 South Extension Part-II, New Delhi is the shared residence of the appellant, notwithstanding the same being the absolute property of appellant's mother-in-law, we concur with the view taken by the learned Single Judge inasmuch as vide clause (f) of sub-section 1 of Section 19 of the Act, in lieu of the shared accommodation, a Court can direct the opposite party to secure same level of alternative accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require. Further, vide Section 26 of the Act, reliefs available under Sections 18 to 22 may be granted by any Civil Court.

10. We have already noted herein above the view taken by a co-ordinate Division Bench of this Court in FAO(OS) No.341/2007 and thus we need not pen a lengthy judgment since we have not been persuaded to take a different view. As a matter of fact, we see hardly any scope to urge to the

contrary in the teeth of the language of clause (f) of sub-section 1 of Section 19 of the Act.

11. The only limiting words in the said clause, if at all, would be '*if the circumstances so require*'.

12. Thus, at best it can be urged that while deciding an issue pertaining to a wife's claim for residence in the shared household the discussion must start with a presumption in favour of the wife that law leans in her favour to continue to reside in the shared household and only upon adequate circumstances being manifestly and objectively disclosed by the opposite party, could an order contemplated by clause (f) of sub-section 1 of Section 10 of the Act be passed.

13. In the instant case the circumstance to take recourse to clause (f) of sub-section 1 of Section 19 of the Act would be the extreme ill health of the mother-in-law of the appellant; medical documents pertaining to whom would show that she suffers from 'tachycardia' with heart muscles functioning at about 20%. The constant strife with the newly married daughter-in-law in her house would certainly have an adverse effect on the mother-in-law. Besides, the husband of the appellant is currently in Hyderabad and not at Delhi.

14. It is apparent that clause (f) of sub-section 1 of Section 19 of the Act is intended to strike a balance between the rights of a daughter-in-law and her in-laws, if a claim to a shared residence by the daughter-in-law pertains to a building

in which the matrimonial home was set up belongs to her mother-in-law or father-in-law.

15. Taking on record the undertaking by the respondents i.e. the husband and the mother-in-law of the appellant, both being jointly and severally liable to pay monthly rent @ ₹30,000/- to the appellant and additionally to pay maintenance @ ₹45,000/- per month, the appeal is dismissed but without any order as to costs.



(PRADEEP NANDRAJOG)
JUDGE


(S.P. GARG)
JUDGE

November 08, 2011
dk