

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

+ **RSA No.190/2011**

% **22nd January, 2014**

SH. PREM PRAKASH DABRAL Appellant
Through: Mr. Sandeep Sharma, Advocate.

VERSUS

SMT. SIKHA DABRAL AND ANR. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one appears for the respondents even in spite of a second call. I have therefore heard the counsel for the appellant and have perused the record. Accordingly, I am proceeding to decide the appeal.

2. This Regular Second Appeal impugns the judgment of the appellate Court dated 2.8.2011. The appellate Court by its impugned judgment upheld the judgment of the trial Court which had dismissed the suit for possession, recovery of damages etc filed by the appellant/plaintiff.

3. Since for the disposal of a second appeal, a substantial question of law has to be framed, the same is framed as under:-

“Whether the Courts below have gone against the settled law as held by the Division Bench of this Court in the case of *Shumita Didi Sandhu Vs. Sanjay Singh Sandhu & Ors.* 174 (2010) DLT 79 (DB) which holds that house of a father-in-law is not a ‘shared household’?

Relevant paras of the judgment in the case of *Shumita Didi Sandhu (supra)* are paras 40,41 and 45 to 48 which read as under:-

“40. From this line of cases, it is apparent that the concept of maintenance, insofar as a Hindu lady is concerned, necessarily encompasses the provision for residence. Furthermore, the provision for residence may be made either by giving a lumpsum in money or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Insofar as Section 17 of the said Act is concerned, a wife would only be entitled to claim a right of residence in a "shared household" and such a 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 which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a "shared household". Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to them both, in which the husband has no right, title or interest, cannot be called a "shared household". The concept of matrimonial home, as would be applicable in England under the Matrimonial Homes Act, 1967, has no relevance in India.

41. In the light of the aforesaid principles, the appellant/plaintiff would certainly have a right of residence whether as a part of maintenance or as a separate right under the said Act. The right of residence, in our view, is not the same thing as a right to reside in a particular property which the appellant refers to as her 'matrimonial

home'. The said Act was introduced, inter alia, to provide for the rights of women to secure housing and to provide for the right of the women to reside in a shared household, whether or not she had any right, title or interest in such a household.

45. From the aforesaid provisions, it is clear that the expression "matrimonial home" does not find place in the said Act. It is only the expression "shared household" which is referred to in the said Act. "Shared household" is defined in Section [2\(s\)](#) to mean 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. The 'shared household' also 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. The word "household" has not been defined in the said Act, however, Black's Law Dictionary, 9th Edition defines 'household' in the following manner:

household, adj. Belonging to the house and family; domestic.

household, n. (14c) 1. A family living together, 2. A group of people who dwell under the same roof. Cf. FAMILY. 3. The contents of a house.

46. In contrast, the impression that we get by reading Section [2\(s\)](#), which defines "shared household" is that the "household" which is referred to in the said provision, relates to the property and not just to the group of people who dwell under the same roof or the family living together. Therefore, we are of the view that the word "household" used in Section [2\(s\)](#) actually means a house in the normal sense of referring to a property, be it a full-fledged house or an apartment, or some other property by any other description. This is also clear because the expression "household" has been referred to as a place where the person aggrieved lives or, at any stage has lived.

It also refers to a property whether owned or tenanted or in which the aggrieved person or the respondent has any right, title, interest or equity. Therefore, in order to fall within the meaning of "shared household" as defined in Section [2\(s\)](#), it is essential that the property in question must be one where the person aggrieved lives, or at any stage, has lived in a domestic relationship, either singly or along with the respondent. It also includes such a property 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 of them or both jointly or singly have any right, title, interest or equity. It also includes a property 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 therein. The Supreme Court has already observed in S.R. Batra (supra) that the definition of "shared household" in Section [2\(s\)](#) is not happily worded, but the courts have to give it an interpretation which is sensible and which does not lead to chaos in society. In this backdrop and in the facts and circumstances of the present case, the property in question cannot be considered to be a shared "household" because neither the appellant/plaintiff, nor her husband (defendant No. 1) has any right, title or interest or equitable right in the same. The property may belong to defendant No. 3 exclusively or to defendants 2 and 3 jointly, but it certainly does not belong to the defendant No. 1 or the appellant/plaintiff. The position as it exists today also does not indicate even prima facie that the property in question is the property of a joint family of which the defendant No. 1 is a member. Therefore, in our view, the property in question does not fall within the expression "shared household" as appearing in Section [2\(s\)](#) of the said Act.

47. Section [17](#) of the said Act deals with the right of every woman in a domestic relationship to reside in the shared household and, Section [17\(2\)](#), specifically provides that such a woman shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law. In other words, the wife can be evicted or excluded from the "shared household" after following the due procedure established by law and it is not an absolute right of the wife to reside in a "shared household". However, in the present case, we need to go into this

aspect of the matter because Section [17](#) in itself would be inapplicable in view of the fact that the property in question cannot be regarded as a "shared household". The residence orders that may be passed under Section [19](#) are also subject to the Magistrate/court being satisfied that domestic violence has taken place. All the residence orders also relate to a "shared household". Consequently, Section [19](#) would also not come in the aid of the appellant/plaintiff.

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'." (underlining added)

4. The facts of the case are that the appellant/plaintiff filed against the respondent/defendant the subject suit for possession of one bed room, one kitchen and a bath room in the suit property C-1/35, Janak Puri, Delhi-110058. Admittedly the suit property belongs to the appellant/plaintiff and both the courts below have dismissed the plea of the respondent no.1, who is the daughter-in-law of the appellant/plaintiff, that the suit property was an HUF property. In this regard, para 20 of the judgment of the appellate Court is relevant and the same reads as under:-

“20. The onus to prove the said issue was upon the plaintiff and to discharge this onus, the plaintiff’s remained the solitary testimony. He admitted, in his testimony as PW-1 that he was the owner of the suit property and the same has been mutated in his name in the MCD record, the house having been purchased by him from his own earnings/income while working as Section Officer in the Ministry of External Affairs till March-1980. However, it is to be kept in mind that the plaintiff being the owner of the suit property as per the MCD records, is not disputed by the defendants, though it remained substantial plea that the suit property was a HUF property in which the husband of the defendant No.1 was the co-parcener. The said issue No.8 has already been decided against the defendants and therefore, the plaintiff being the owner of the suit property is not in contest, at all.”(underlining added)

5. Once the property in question is not a ‘shared household’ the respondents have no legal right to stay in the same inasmuch as the house does not belong to the husband of the respondent no.1 but belongs to the

appellant/plaintiff who is the father-in-law. I may also note that respondents are actually not physically staying in the subject portion, and because of which a learned Single Judge of this Court passed the following order on 23.5.2012:-

“CM No. 2730/2012

1. Present is an application on behalf of the appellant wherein prayer is made for breaking open the locks of the main gate and any other undisputed portion of the property in question in the presence of a Local Commissioner.

2. It is submitted that the father of the appellant i.e. plaintiff before the trial court had filed a suit for possession, recovery of damages for use and occupation and for permanent and mandatory injunction against the respondent no.1 i.e. the sister-in-law of the appellant and respondent no.2 i.e. his niece being his brother's daughter. The said suit was partly decreed as under:-

“In the light of my finding on the issues, the suit of the plaintiff is partly decreed for the relief of permanent injunction. Accordingly, a decree for permanent injunction is passed in favour of the plaintiff and against the defendants, restraining the defendants from alienating or parting with the possession in any manner of the bedroom with attached bath and kitchen situated in the ground floor of the property No.C-1/35, Janak Puri, New Delhi as shown in red colour in the site plan attached. The suit of the plaintiff for the relief of possession, mandatory injunction and recovery of damages and future damages is dismissed. In the facts and circumstances of the case, parties are left to bear their own cost.”

3. The said judgment/decreed was challenged by the plaintiff by filing an appeal before the learned ADJ, Delhi, which was dismissed vide impugned judgment and decree dated 02.08.2011. It is submitted that the plaintiff had died on 04.08.2011 leaving behind a Will dated

29.10.2004 and by virtue of the said Will the appellant has stepped into the shoes of his late father i.e. the plaintiff and therefore, the appellant has filed the second appeal assailing the judgment and decree dated 02.08.2011. The learned counsel for appellant has submitted that the substantial question of law is yet to be framed in this matter.

4. The counsel for the appellant submits that the respondents are not living in the suit property for the past one year and the main gate of the house has been locked by the respondents. It is stated that the appellant had visited the property in question on 21.01.2011 and found that the same has been abandoned and lot of dust and garbage has spread all over. The main gate of the property is also locked due to which the appellant is unable to enter into the property. It is stated that the appellant has come to know that some anti-social elements are trying to occupy the property and police reports have also been lodged. It is prayed that the appellant be allowed to break open the locks on the main gate of the property so that the appellant can enter the property and can take care the same.

5. No reply has been filed by the respondents to this application despite opportunity given in this regard.

6. The appellant and the respondent no.1 are present in the court today. It is admitted position that the main gate of the house is lying locked and the key is with the respondent no.1. The photographs of the property annexed with the application shows the condition of the house. On seeing the photographs, it is clear that nobody is taking care of the property. It is admitted position that respondents are also not residing in the portion which is in her possession i.e. one bedroom with attached bath and kitchen situated in the ground floor of the suit property, as is shown in the site plan attached. In these circumstances, the respondent no.1 is directed to hand over the duplicate key of the lock on the main entry gate within three days from today to the appellant so that the appellant can have access to the house without interfering with her portion which is described above. One set of the key shall remain with the respondents so that they can also have free access to their portion. It is clarified that the appellant will not enter the portion of the respondents as described above.

The application stands disposed of.

Dasti to both the parties.

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Renotify on 12.10.2012.” (underlining added)

6. In view of the above, the substantial question of law is answered in favour of the appellant by holding that respondent no.1 has no right to the subject property which is not a ‘shared household’. The appeal is allowed and it is directed that the appellant/plaintiff will be held entitled to possession of the bedroom with kitchen and bathroom situated on the ground floor of the property C-1/35, Janak Puri, Delhi as shown in red in the site plan Ex.PW1/20 filed with the plaint. Counsel for the appellant very fairly in view of the relationship between the parties does not press for damages. Parties are left to bear their own costs.

JANUARY 22, 2014
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VALMIKI J. MEHTA, J.