

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.388 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

1. Chitranjan Prasad Singh Son of Sharda Prasad Singh resident of Mohalla Suhird Nagar, Police Station- Begusarai Town (Lohiya Nagar Out Post) in the district of Begusarai being Permanent resident of Village Manjhaul, Panchamahala, Police Station- Cheriya Bariyarpur in the district of Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Smt. Uma Devi Wife of Sri Nalini Ranjan Singh resident of Village- Manjhaul, Panchamahala Police Station- Cheriya, Bariyarpur in the district of Begusarai.

.... Respondent/s

Appearance :

For the Petitioner/s : Mrs. Anita Kumari Singh, Advocate
For the Respondent/s : Mr. Rajesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 15-10-2015

The present Revision Application is directed against the judgment dated 9.4.2014 passed by Sri Parshuram Shukla, the learned Sessions Judge, Begusarai in Cr. Appeal No. 46 of 2013 setting aside the judgment dated 16.4.2013 passed by Sri Gaurav Anand, the learned Judicial Magistrate Ist Class, Begusarai in Domestic Violence Case No. 12 P of 2012 whereby the application of O.P. No. 2 under Section 12(1) of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act') was dismissed holding the dispute between the parties as a property dispute.

The factual matrix of the matter is that O.P. No. 2 Smt. Uma Devi filed an application on 5.7.2012 under Section 12(1) of the Act claiming Protection order under Section 18, Residence order under Section 19, Monetary relief under Section 20 of the Act and also claiming compensation under Section 22 of the Act.

The long and short of the case is that the petitioner is brother in law (Devar) of the O.P. No. 2. It is admitted case of the parties that Late Sharda Prasad Singh had three sons, namely, Nalini Ranjan Pd. Singh, Chittaranjan Pd. Singh and Arvind Prasad Singh and the O. P. No. 2 is the wife of Nalini Ranjan Prasad Singh. Chittaranjan Prasad Singh is the petitioner before this court. The O.P. No. 2 claims to be the owner of the land and house situated at Mauza – Suhird Nagar appertaining to Khata No. 25, Khesra No. 64, having an area of 3 kathas, corresponding to Holding No. 312, 312(ka), under Begusarai Municipal Corporation. OP no.2 claims to have purchased the said land through registered Sale Deed dated 09.07.1960 with her stridhan. The name of OP No.2 got mutated subsequent to the purchase vide Mutation Case No. 1160 of 1983-84 and thereafter she has been paying rent. Subsequently, OP no.2 constructed a house with her stridhan over the aforesaid 3 kathas of land and on creation of municipal holding she has been paying rent to the municipal corporation. The OP no.2 started residing at



Begusarai in the aforesaid house with her two daughters but her husband started residing at his native village Majhaul, hence, the father-in-law of OP No. 2 namely Late Sharda Pd. Singh started residing with the O.P. No. 2, as guardian. The petitioner Chittaranjan Pd. Singh being brother-in-law (devar) of OP No.2 was allowed to stay in one of the rooms of the aforesaid house to look after her daughter, as the father-in-law had become very old. The wife of Chittaranjan Pd. Singh also purchased 3 kathas of land in the aforesaid plot on 09.07.1960 through another sale deed with her *stridhan* and she is also coming in possession of her purchased land. The further case of OP no.2 is that in Begusarai town two houses were constructed, from joint family income, at two different places; one at Bagha Road, Muhalla Suhird Nagar at Begusarai and the other at Mungeri Ganj, Begusarai. The family, under a mutual agreement, decided that one storeyed building situated at Suhird Nagar will be in exclusive possession of petitioner Chittaranjan Pd. Singh whereas another two-storeyed building at Mungeri Ganj will be in exclusive possession of the other two brothers. Subsequently, after marriage of two daughters of O.P. No. 2, the behaviour of the petitioner changed towards OP No.2 when he started inflicting physical and mental torture upon OP No.2, as a result she fell seriously ill and finally her son-in-law took her to Delhi for treatment after locking the house,



except one room which was in possession of the petitioner. After her recovery from illness, the husband of OP No.2 took her to the native village for proper nursing and care but subsequently when they came to Begusarai for having better medical facilities, they were surprised to find that the lock of the room was broken and the petitioner was utilizing entire house including household articles of O.P. No.2. For some time, the petitioner allowed the OP No.2 to reside in the house but in the month of July, 2009 he again forcibly ousted her from the house. Thereafter, OP NO.2 filed petition before the Bihar State Women commission on 27.08.2009 as well as on 11.04.2011 with a prayer for recovery of possession of the house in question leading to registration of Case No. 1166 of 2009 against the petitioner. The Bihar State Women Commission (hereinafter referred to as the 'Commission'), vide order dated 22.06.2011 directed the authorities to remove the petitioner from the present house. The petitioner preferred writ application being CWJC No. 12694 of 2011 against the order of Women Commission before this Court and this Court vide order dated 28.03.2012 set aside the order of the Commission holding that the jurisdiction of the Commission is restricted to the matters relating to providing safeguards to women under the law. The Commission has the power to look into the matters which deprive a woman of her rights and implementation of laws in all such

matters which have been defined under sub clause (f) of sub clause (1) of Section 10 of Bihar State Women Act, 1999, hence, the order passed by the Commission was held to be without jurisdiction and was set aside. Thereafter, the application under Section 12(1) of the Act was filed by the O.P. No. 2 before the learned CJM, Begusarai on 05.07.2012.

The petitioner being opposite party appeared in the case and filed show cause on 01.10.2012 stating therein that the application is not maintainable, since the same has been filed in order to grab the joint family property, as the father of the petitioner Late Sharda Pd. Singh was a prominent Mukhtar, practicing at Civil Court, Begusarai. Initially he used to reside in a rental house along with his two children i.e., the petitioner and Arvind Pd. Singh, whereas the husband of OP No. 2 Nalini Ranjan Pd Singh used to reside at his native village at Manjhaul for looking after the agriculture and farming of the joint family. The property in question was purchased in 1960 from the joint family income, while the husband of OP No. 2 was deputed and authorized to get the sale deed registered with regard to 3 kathas of land, who got the same registered in the name of OP No. 2, instead of registering it in the name of his father late Sharda Pd. Singh. The family being joint, no objection was raised, since the husband of O.P. No. 2 was the eldest son of late Sharda Pd.



Singh. The father of the petitioner got the house constructed over the said land in 1961 and started residing in the newly constructed house alongwith the petitioner, whereas the OP No.2 and her husband used to reside at the native village at Manjhaul from where their children got their education and their marriages were solemnized. OP No.2 never lived at Begusarai nor her children ever studied at Begusarai. The petitioner's telephone connection, voter card, voter list of the family, ration card and electric bills of the petitioner incorporate the address of the property in question, which suggests that the petitioner was actually in possession of property in question. The further case of the petitioner is that by virtue of family arrangements the agricultural land and the house situated at native village at Manjhaul had been allotted to the husband of OP No.2 and in lieu thereof, only vacant land was given to the petitioner and his younger brother Arvind. When OP No.2 failed to get the petitioner evicted through a proceeding initiated before Bihar State Women Commission, then in the garb of the domestic violence, an application was filed under the Act for taking possession of the premises in question.

The learned Judicial Magistrate, Begusarai, after hearing the parties and considering the evidence, came to the conclusion that the claimant has not mentioned any specific date, manner or overt act of domestic violence nor the act of domestic violence has been proved.

The application is more in the nature of claiming right in property and the whole dispute, prima facie, appears to be a property dispute between the parties which the court is not competent to decide under the Act. Accordingly, the learned Judicial Magistrate Ist Class, Begusarai vide order 16.04.2013 dismissed the application of the petitioner, being Complaint Case No. 12P of 2012 filed under Section 12 of the Act.

OP No.2 preferred Cr. Appeal No. 46 of 2013 against the order dated 16.04.2013 passed by the learned JM, 1st Class, Begusarai on the ground that there is no dispute that the appellant/OP No.2 was in domestic relationship with the respondent-petitioner and that she was subjected to domestic violence by him. The learned Sessions judge, Begusarai vide judgment dated 09.04.2014 allowed the appeal while coming to the conclusion that appellant/OP No.2 succeeded in proving her case under the provision of the Act and therefore, she is entitled to protection order under the Act. Accordingly, the order of learned Magistrate dated 16.04.2013 was set aside. The appellant OP No.2 was allowed to live in the house in question directing the respondent/ petitioner to provide right of residence to the appellant and to remove himself from the shared household. Hence, the present revision against the appellate judgment.

It is submitted by learned Senior Counsel for the petitioner that



O.P. No. 2 got initiated the present proceeding by filing an application under Section 12 of the Act, only after being unsuccessful in getting the possession of the property in question, through a proceeding initiated before the Women Commission, since the order passed by the Women Commission in favour of the O.P. No. 2, was set aside by this Court in exercise of writ jurisdiction. There is nothing on record to suggest that O.P. No. 2 ever resided in the house in question. The property was purchased by the joint family income and since the husband of O.P. No. 2 was the eldest son he got the sale deed registered in the name of O.P. No.2. The telephone connection, voter I. card, voter list of the family, ration card, electric bill and government and public correspondences, incorporates the petitioner's address at the property in question. There is nothing on record to suggest that the O.P. No. 2 ever resided in the alleged house with the petitioner or had been in domestic relation with the petitioner. Hence, the learned Magistrate rightly held that O.P. No. 2 failed to prove that she had been in domestic relation in the shared household and that the petitioner had in any manner committed domestic violence.

It is submitted by learned counsel for the O.P. No. 2 that the petitioner and O.P. No. 2 had been in domestic relationship which gets proved from the fact that the petitioner is the brother-in-law



(Devar) of O.P. No. 2. The petitioner used to reside in one of the rooms of the alleged house with O.P. No. 2 and the same has also been stated by the two own brothers of the petitioner namely, Arvind and Nalini Ranjan, (the husband of O.P. No. 2). They have also suggested about the physical mental torture and economic loss caused to O.P. No. 2. It is not in dispute that in the sale deed the O.P. No. 2 has been described as purchaser and in the Municipal right of records her name is recorded. More over, she has been paying rent to the municipal corporation till date. The report of the Protection Officer also suggests that the house in question is recorded in the name of O.P. No. 2 and the Protection Officer while recording the statement of the petitioner has recorded that the petitioner is not willing to allow the informant to reside in the said house. Hence, the District and Sessions Judge has rightly held that O.P. No. 2 was in domestic relationship with the petitioner, who inflicted domestic violence upon O.P. No. 2.

From the records, it appears that I.A. No. 1029 of 2014 was filed with a prayer for staying of the operation of the order dated 9.4.2014 passed by the learned District and Sessions Judge in Cr. Appeal No. 46 of 2013. The said I.A. was filed on 7.5.2014 but on behalf of O.P. No. 2 an affidavit was filed on 12.5.2014 to the effect that the learned Judicial Magistrate Ist Class, Begusarai, in pursuance



to the Appellate order, intimated the Protection Officer, Mahila Help Line, Begusarai and with a copy of the same to the Superintendent of Police and the District Magistrate, Begusarai for complying the directions of the Appellate Court passed in Cr. Appeal No. 46 of 2013 and to submit compliance report to the court. Consequently, the S.D.O. Begusarai, Circle Officer Begusarai, Inspector Sadar Begusarai and Officer Incharge of Mahila Police Station, Begusarai went to the house of the petitioner with a request to vacate the premises. Consequently, the petitioner gave in writing on 18.4.2014 to the aforesaid authorities, with signature of other family members, that in pursuance to the order dated 9.4.2014 passed in Cr. Appeal No. 46 of 2013 he will vacate the house in question by 6 P.M. on 19.4.2014 and allow the O.P. No. 2 and her family to reside in the said house. The petitioner vacated the house and consequently, O.P. No. 2 informed the learned court below that the house has been vacated by the petitioner voluntarily and she is peacefully living in the said house. The Protection Officer, Begusarai, also submitted a report vide Memo no. 123 dated 2.5.2014 before the learned Judicial Magistrate, Begusarai that the petitioner voluntarily vacated the house on 19.4.2014 and the O.P. No. 2 is residing in the house peacefully. O.P. No. 2 filed an application before the Begusarai Municipal Commissioner for a permission to demolish the house

since it is in dilapidated condition. An application was also filed by O.P. No. 2 before the Executive Engineer, Electric Supply Officer for disconnecting the electric connection since the house required to be demolished.

It appears from the order dated 14.5.2014 of a co-ordinate bench of this Court that in view of the fact that the order passed by the appellate court has taken its effect, I.A. No. 1029 of 2014 was not pressed nor an interim order was passed. The order dated 14.5.2014 reads as follows:

“A counter affidavit has been filed. Let it be kept on record.

Mr. Akhileshwar Prasad Singh learned Senior counsel has submitted that an incorrect statement has been made in the counter affidavit regarding non service of copy of the petition when the same has been admittedly served on the counsel for the opposite parties.

It is not in dispute that the order impugned has taken its effect and the matter is required to be considered on merits.

Call for the Lower Court Records in connection with Complaint Case No. 12P of 2012 from the Court of Judicial Magistrate, 1st Class, Begusarai together with the records of Cr. Appeal No. 46 of 2013 and put up immediately thereafter under the heading ‘For Admission-I’.”

Considering the rival submissions of the parties, for the



purpose of clarity, it would be relevant to examine the Statement of Objects and Reasons of the Protection of Women from Domestic Violence Act, 2005. The first three paragraphs of the Statement of Objects and Reasons, under which Bill No. 116 of 2005 was placed before the Parliament for passing the Act, are extracted, (Published in the Gazette of India Extra Ordinary Part-II Seriatim 2 page 22 dated 22nd August, 2005), which are as under:-

“Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII(1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.
3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.”



Keeping these objects and reasons in mind and to provide for more effective protection to the rights of women guaranteed under the Constitution who are victims of violence of any kind, occurring within the family and for matters connected therewith or incidental thereto, the Bill was presented before the Parliament, which has become an Act after passing of the same by the Parliament. Thus, one cannot loose sight of the fact that the Act has been passed keeping in view the rights guaranteed under Articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Thus, basically the Act has been passed to provide the civil remedy against domestic violence to women.

For claiming the remedies under Sections 17 to 22 of the Act, the application has to be filed under Section 12 incorporated under Chapter IV of the Act. The application under Section 12 of the Act can be filed by an aggrieved person. The aggrieved person is defined under Section 2(a) of the Act which reads as follows:

“2(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;”



The above definition suggests that any woman who is, or has been, in a domestic relationship with the respondent, alleges to have been subjected by the respondent to any act of domestic violence. To understand the actual purport or the meaning of the aggrieved person, the meaning of 'domestic relationship' has to be understood. The word 'domestic relationship' has been defined under Section 2(f) of the Act which reads as follows:

“2(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;”

Meaning thereby, domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, being in relation by way of consanguinity, marriage, or through a relationship in the nature of marriage, adoption or as a family member living together as a joint family. To understand the meaning of domestic relationship, the meaning of 'shared household' has to be understood which has been defined under Section 2(s) of the Act which reads as follows:

“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.”

Meaning thereby, a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent which 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.

The word ‘respondent’ has also been defined under Section

2(q) of the Act which reads as follows:

“2(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act:

Provided that the aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner;”

Respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act, provided that the aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner.

The term ‘domestic violence’ has been defined under Section 3 of the Act which reads as follows:

“3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual

abuse, verbal and emotional abuse and economic abuse; or

- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I- For the purposes of this section,-

- (i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) “verbal and emotional abuse” includes-
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) “economic abuse” includes-
 - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately

owned by the aggrieved person, payment of rental related to the shared household and maintenance;

- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

The definition of ‘domestic violence’ suggests that it includes any act or conduct of the respondent, which causes harm, injury or endangers the health, safety, life, limb or to the wellbeing, whether mental or physical, of the aggrieved person, or even if the act or conduct of the respondent tends to do so and the definition further stipulates that such act or conduct includes causing physical, sexual, verbal, emotional or economic abuse. The definition also brings within its ambit, any conduct which harasses, harms, injures or endangers the aggrieved person, in order to coerce her or any other

person related to her to meet any unlawful demand for any dowry or other property or valuable security. Even the act of threatening by any such conduct detailed above also gets covered by the definition of “domestic violence”.

In the present case, it is not in dispute that the petitioner and the husband of O.P. No. 2 are own brothers. It is also undisputed that the land on which the house in question is situated was purchased in the name of O.P. No. 2. The O.P. No. 2 is paying rent to the municipal corporation. The two brothers of the petitioner, namely, the husband of O.P. No. 2- Nalini Ranjan Singh and Arvind Singh in their respective statements have supported the fact that the O.P. No. 2 was inflicted with mental and physical torture and O.P. No. 2 was residing in the major portion of the house in question whereas the petitioner was also occupying a room in the aforesaid shared household. The Protection Officer’s report dated 30.8.2012 also suggests that even the petitioner admitted that the land was purchased in the name of O.P. No. 2. The petitioner made objection with regard to residing of O.P. No. 2 in the said house and no document was produced with regard to partition, as the petitioner claims the said household being allocated to his share. Hence, in view of the own admission of the petitioner before the Protection Officer, the act of the petitioner comes within the ambit of domestic

violence as defined under Section 3, Explanation 1(iv)(c) of the Act, which includes the act of prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Hence, if the O.P. No. 2 was subjected to an act of domestic violence, then O.P. No. 2 definitely comes within the purview of 'aggrieved person', which also gets substantiated in view of the fact that the two brothers of the petitioner, as well as the O.P. No. 2 have stated that the petitioner and O.P. No. 2 lived together in the said shared household and petitioner and O.P. No. 2 are members of joint family. Hence, even as per own admission of the petitioner, there is no doubt that the O.P. No. 2 had been in domestic relationship with the petitioner. Hence, if the petitioner had been in domestic relationship with O.P. No. 2 then he definitely comes within the purview of 'respondent' as defined under Section 2(q) of the Act. The specific case of the petitioner is that the house in question was purchased by joint family income. Even such admission of the petitioner, that the house in question was purchased by joint family income, also helps in reaching to the conclusion that the said house comes within the purview of 'shared household'.

At this stage, the different reliefs and rights of an

aggrieved person/woman contemplated under the Act, requires to be examined. The Act envisages civil relief/reliefs to the aggrieved person on an application being filed under Section 12 of the Act. The Magistrate, on an application filed under Section 12 of the Act, can grant one or more reliefs under Sections 17 to 22 of the Act which are:

Right to reside in shared house hold under Section 17,
Protection Order under Section 18,
Residence Order under Section 19,
Order granting monetary relief Order under Section 20,
Interim Custody Order under Section 21 and
Compensation Order under Section 22 of the Act.

Rule 6(5) of The Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as 'Rules) envisages the processing of application under Section 12 of the Act in the same manner as laid down under Section 125 of the Code of Criminal Procedure, meaning thereby an application under Section 12 of the Act has to be dealt with as a summary proceeding. Rule 6(5) of the Rules reads as follows:

“6.Applications to the Magistrate.—

(1)....

(2).....

(3).....

(4).....

(5) The applications under Section 12 shall be dealt with
and the orders enforced in the same manner laid down

under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).”

The above discussion clarifies that immediate civil reliefs are being granted to the victim under Code of Criminal Procedure framework as Section 28 of the Act prescribes that all proceedings under Sections 12,18,19,20,21,22 and 23 and the offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure but Sub-Section (2) of Section 28 of the Act provides that nothing in Sub-Section (1) shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or under sub-Section (2) of Section 23, meaning thereby that the application under Section 12 of the Act has to be dealt with like a summary proceeding, for providing civil relief to the aggrieved person/woman and for the same, wide discretion has been provided to the Magistrate under Section 28(2) of the Act by allowing the Court to lay down its own procedure for disposal of application under Section 12 of the Act.

In view of this Court, the provision of the Act cannot be resorted to for redressal of purely a civil dispute, like, deciding title, possession or adverse possession, factum of partition or the question of stridhan etc. which can be decided by resorting to a civil proceeding, before a court of competent jurisdiction. There is no



doubt that O.P. No. 2 filed applications before the Women Commission on 27.8.2009 and 11.4.2011 with a prayer for recovery of possession of the house in question and consequently the Women Commission vide its order dated 22.6.2011 passed in Case No. 1166 of 2009 directed the petitioner to vacate the house belonging to O.P. No. 2, but the said order was challenged in C.W.J.C. No. 12694 of 2011, when a co-ordinate bench of this Court vide order dated 28.3.2012 set aside the order of the Women Commission and held that the order of the Women Commission was without jurisdiction as the Commission has the power to look only into such matters which deprive a woman of her rights and for ensuring the implementation of laws in all such matters which have been defined under Sub-clause (f) of Sub-Section (1) of Section 10 of the Bihar Women's Commission Act, 1999. Thereafter, O.P. No. 2 filed application by way of complaint under Section 12 of the Act before the learned Judicial Magistrate, Begusarai.

The Act does not debar a person, who has previously claimed title or possession against some one with regard to some property, from filing an application under Section 12 of the Act. For maintaining an application under Section 12 of the Act, the only pre-condition is that the person should come within the ambit of definition of 'aggrieved person', it should be proved that she had been in domestic relation

with the person concerned, the act of the respondent comes within the definition of domestic violence as incorporated under Section 3 of the Act and the house in question should come within the ambit of shared household.

The court while dealing with an application under Section 12 of the Act has to keep in mind that it is a summary proceeding and the court can only grant one or more reliefs as incorporated under Sections 17 to 22 of the Act and those reliefs can be altered under the changed circumstances as incorporated under Section 25 of the Act which reads as follows:

“25.Duration and alteration of orders.—(1) A protection order made under Section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.”

In the present case, in view of the claim of O.P. No. 2 as well as the two own brothers of the petitioner and even the admission of the petitioner himself, it is evident that O.P. No. 2 had been in domestic relationship with the petitioner and the act of the petitioner,



in view of the admission of the respective parties as well as the report of the Protection Officer, comes within the definition of domestic violence. Hence, the learned Magistrate erred in rejecting the application of O.P. No. 2 by holding that the O.P. No. 2 has not mentioned any specific date, manner or any overt act of domestic violence, particularly when the proceedings are required to be dealt with, in a summary manner. More over, the learned Magistrate also erred in holding that in the absence of any overt act of domestic violence being proved, the relief as claimed, cannot be granted. In view of this court, the specific date, manner and specific overt act need not be proved for constituting an act of domestic violence. The Magistrate has failed to appreciate that the reliefs provided under Sections 17 to 22 of the Act, are not the reliefs with respect to a criminal act. They are civil nature of reliefs. For constituting an act of domestic violence, specific overt act has not to be proved nor the date or manner of the act has to be proved. What has to be proved, is, that the aggrieved person was or had been in domestic relationship with the respondent and any harm or injury or danger to life or well being whether mental or physical was done to the aggrieved person or tends to be done and includes causing physical, sexual, verbal, emotional or economic abuse or has the effect of threatening the aggrieved person or any person related to her by any of the above

mentioned conduct. Mental torture may not be inflicted with specific overt act. Depriving O.P. no. 2 to reside in the joint family house in question, itself amounts to an act of domestic violence.

The Courts, under the Act can give relief with regard to residence in shared household, as stipulated under Section 17 of the Act, which reads as follows:

“17. Right to reside in a shared household.- (1)

Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person 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.”

The relief under Section 17 of the Act can be passed in favour of the victim or woman, who had been in domestic relationship with respondent and shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. Section 17 further stipulates that the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent, except in accordance with the

procedure established by law. The two own brothers of the petitioner have stated that the O.P. No. 2 was evicted from the shared household. The report of the Protection Officer reflects that the petitioner stated before him that he will not allow O.P. No. 2 to reside in the house.

Section 19 of the Act stipulates the eventualities and the nature of various kinds of residence orders which can be passed.

Section 19 reads as follows:

“19. Residence order- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so required:

Provided that no order under clause (b) shall be passed against any person who is a women.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the Court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled to.”

Section 19(1)(a) clearly stipulates that the respondent can be restrained from dispossession or disturbing the possession of aggrieved person from the shared household, whether or not the aggrieved person has any legal interest in the shared household.

Section 18 of the Act stipulates the nature of protection and prohibition order which may be passed against the respondent and in favour of aggrieved person which reads as under:

“18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an

opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from---

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence
- (g) committing any other act as specified in the protection order.”

It appears that none of such protection orders have been passed



by the learned Sessions Judge. The learned Sessions Judge has directed the petitioner to allow O.P. No. 2 to live in her house and provide her 'right to residence' and to remove himself from the shared household. This court is of the view that while dealing with the application under Section 12 of the Act, the Courts are not supposed to decide the title and possession. The operative portion of the order of learned Sessions judge reads as –

“The entire relevant documents shows that the property belongs to the appellant and the documents are sufficient to establish that the house in question exclusively belongs to the appellant and she was living with the respondent in the same house and the respondent has domestic relation with her and he has physically and mentally tortured her and he has debarred her from utilizing her own property by ousting her from house and therefore, all the acts of the respondent come in the purview of document violence. Therefore, from the fact and circumstances mentioned above, I find that the court below should have passed protection order U/s 19 of the D.V. Act. Accordingly, the appeal is allowed and the order passed by the learned trial court dated 16.4.2013 is set aside with modification that the appellant has succeeded in proving her case under the provision of D.V. Act and therefore, she is entitled for protection Order 18 and right of residence U/s 18 of D.V. Act and therefore, the appellant is allowed to live in her house aforesaid directing the respondent to provide right of residence to the appellant and to remove himself from

the shared household.”



The above findings suggest that the learned Sessions judge has held that the house in question is of O.P. No. 2. Hence, any observation with regard to title or possession either in the order and judgment of learned courts below or of this Court shall not be treated as finding of the courts with regard to title or possession of either party concerning to shared household or any property. Though the petitioner has vacated the house in question and the same has been brought on record through affidavit filed by O.P. No. 2, but this court is of the view that the learned Sessions Judge ought not to have directed the petitioner to remove himself from the share household, since, by doing so the learned Sessions Judge has allowed the relief of O.P. No. 2 claiming possession of the entire house in question. Under the provisions of the Act, the Court is not empowered to decide the possession or title of the shared household or indirectly allow the relief of delivery of possession.

No doubt, under Section 19(1)(b), the Magistrate can direct the respondent to remove himself from shared household or under Section 19(8), the Magistrate may direct the respondent to return the possession of stridhan to the aggrieved person, or any other property or valuable security to which she is entitled to. But in view of this



Court, in the present case, the O.P. No. 2 was only entitled to reside in the shared household, since it is her own admission that the petitioner was residing in one portion of the shared household. So far as delivery of possession of the shared household in question is concerned, the same cannot be given to O.P. No. 2 in exercise of jurisdiction under Section 19(8) of the Act, since it is disputed as to whether the land on which the shared household is situated, was purchased from stridhan of O.P. No. 2 or from the joint family fund and the said dispute can only be resolved in a proper civil proceeding and not under Section 19 of the Act.

Hence, the order of learned Sessions Judge to the extent of directing petitioner to remove himself from the shared household amounts to declaring and giving the possession of entire premises to the O.P. No. 2. Though the petitioner has vacated the house in question, but for doing complete justice, the order, to the extent of directing the petitioner to remove himself from the shared household cannot be held to be justified. Hence, the order of learned Sessions Judge only to the extent of petitioner being directed to remove himself from the said household, is set aside.

It is once again clarified that any observation with regard to the title and possession either by learned courts below or by this Court will have no effect while considering the question of title or

possession by any court in any proceeding between the parties.

Accordingly, this application is partly allowed to the extent indicated above.

The I.A. No. 1029 of 2014 also stands disposed of.

(Dinesh Kumar Singh, J)

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