

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Petition No.702 of 2014
M.P.No.1 of 2014

V.P.Anuradha

... Petitioner

Vs.

1. S.Sugantha @ Suganthi
2. S.Balasubramanian
3. M.S.Parvatham
4. Ganesh

... Respondents

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order passed by the learned IIIrd Additional Sessions Judge, Chennai, made in C.A.No.39 of 2013, dated 27.06.2014.

For Petitioner : Mr.John Sathyan

For Respondents 1 & 3 : Mr.M.Aravind
Subramaniam

For 2nd Respondent : Mr.S.Anand

Venkatesh

O R D E R

Criminal Revision Case is directed against the order, dated 27.06.2014, passed in C.A.No.39 of 2013, on the file of the IIIrd Additional Sessions Judge, Chennai.

2. Material on record discloses that marriage between the petitioner and the 2nd respondent was solemnised on 27.01.2002. According to the petitioner-wife, the 2nd respondent was already married and divorced twice. Concealing the said fact, marriage was solemnised. Husband and mother-in-law continuously harassed the petitioner. His family members also inflicted physical abuse. She has to suffer economic abuse, on account of domestic

violence, by her husband and others.

3. The petitioner has further alleged that under the influence of her mother-in-law, sister-in-law and sister-in-law's husband continuously ill-treated her. He was working as a Senior Manager in Chennai Petroleum Corporation and drawing a gross salary of Rs.1,30,000/-, per month. After the marriage, they were living at Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai and it is her matrimonial home. In the said house, when her father-in-law, was admitted in the hospital, due to cancer, her sister-in-law also lived with her, upto 2005. After the demise of her father-in-law, she permanently settled in the said house, with her children, in the first floor. According to the petitioner, first floor was constructed by her husband, by obtaining loan.

4. The petitioner has further submitted that on 23.06.2010, her husband informed her that the said house belonged to his sister and therefore, he should leave the house. On 27.06.2010, wife's brothers asked her husband for security, and that the same was refused by him. On 14.07.2010, she was sent out of the matrimonial home. When she questioned the conduct of in-laws, her sister-in-law quarreled with her and therefore, a police complaint was lodged. Thus, the respondents have thrown her out from the matrimonial home, at Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai. With the above averments, I.A.No.3735 of 2011 in CrI.M.P.No.1076 of 2011, has been filed, under Sections 18(a), (b), (c), (d) and (e), 19(a) and 20(d) of the Protection of Women from Domestic Violence Act, 2005, for an interim residence order and also for a restraint order, against the husband, mother-in-law, sister-in-law and sister-in-law's husband, from dispossessing or disturbing her possession, from the matrimonial home at Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai.

5. In the counter affidavit, the 2nd respondent-husband has denied the allegations and submitted that he has not committed any act of domestic violence. According to him, there was no question of aiding or abetting commission of acts of Domestic Violence. House in Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai, belonged to his mother, Mrs.M.S.Parvatham, W/o.Sethuraman, as per the registered Settlement Deed, dated 27.12.2005, executed by her husband, Late Sethuraman. Due to the harassment committed by the petitioner, the 2nd respondent-husband is living separately at Door No.12, Old No.42, Oliver Road, Mylapore, Chennai-4 and he has not visited the residence at Door No.1, First Floor, 4th Cross Street, C.I.T. Nagar, Mylapore, Chennai.

6. The 2nd respondent has further submitted that his nephew has moved out and living separately from the Mother. Mother is a senior citizen and her daughter, 1st respondent is taking care

of her. All the properties of the petitioner are in a bank locker and it is in her custody. The petitioner has filed a divorce petition. House is owned by the 1st respondent-Mother and therefore, no relief under Section 19 of the Act, can be granted. He has no objection for the petitioner to live at G2, Plot No.14, Brindavan Flats, 10th Street, Sowmya Nagar, Perumbakkam, Chennai-100, which is owned by him. For the abovesaid reasons, he has prayed for dismissal of the Miscellaneous Petition.

7. Mother of the 1st respondent, 2nd respondent in the above Miscellaneous Petition, has denied acts of harassment. She also denied the allegation of aiding or abetting the acts of domestic violence. According to her, she is in need of continuous medical treatment. The petitioner's right to live in a shared household can be enforced only against her husband's property and no order can be passed, in respect of any property owned by her. For the abovesaid reasons, she has prayed for dismissal of the prayer for a residence order.

8. The 1st respondent, sister-in-law, has filed a counter affidavit and submitted that the property in question was settled in the name of the 2nd respondent-Mother and that the petitioner's husband is staying elsewhere and therefore, the petitioner cannot seek for a residence order. She also prayed for dismissal of the relief sought by the petitioner. Counter affidavit filed by the 4th respondent is also on the same lines.

9. After considering the averments and documents, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, vide order, dated 18.01.2012, has observed that Late Sethuraman, father of the 1st respondent-Husband, had executed a Settlement Deed, dated 27.12.2005, in which, life estate has been given to the mother, Mrs.M.S.Paravatham, wife of the settlor, who would enjoy the property during her life time, without the power of alienation and after her lifetime, his son, Mr.S.Balasubramanian, husband of the petitioner, the 2nd respondent, would enjoy the said property, for his lifetime, without the power of alienation and after the lifetime of wife and son of the settlor, ie., 2nd respondent-Husband and his mother, the 1st respondent, Mrs.S.Sugantha Ganesh, daughter of the settlor and her sons, Vijay Somnath and Ramprasad, would enjoy the property, without any alienation.

10. During the hearing of the Miscellaneous Petition in I.A.No.3735 of 2011, 2nd respondent-Husband has offered to give a plot in the Ground Floor at G2, Plot No.14, Brindavan Flats, 10th Street, Sowmya Nagar, Perumbakkam, Chennai-100, to the petitioner, to stay. However, observing that the petitioner cannot be thrown out of the share household and holding that she is entitled to live in the said house, vide order, dated 18.01.2012, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, has ordered the

respondents not to dispossess the petitioner from her matrimonial home, at Door No.1, First Floor, 4th Cross Street, C.I.T. Nagar, Mylapore, Chennai and also directed the 2nd respondent-Husband to pay Rs.10,000/- per month to the petitioner, till the disposal of the main application.

11. Being aggrieved by the abovesaid order, Mrs.S.Sugantha @ Suganthi, the 1st respondent has filed an appeal, under Section 29 of the Protection of Women from Domestic Violence Act, 2005 and Rules, 2006. Before the learned IIIrd Additional Sessions Judge, Chennai, the order of the trial Court has been assailed, on the grounds, inter alia, that,

(i) The petitioner has no right to seek for any residence order.

(ii) The trial Court has failed to note that the petitioner-Wife has given different addresses in the petitions for restitution of conjugal rights and residence order, filed under the Protection of Women from Domestic Violence Act, 2005.

(iii) The trial Court has erred in holding that the petitioner and her husband were residing in share household. In fact, 1st respondent-Husband was residing at Door No.12, Old No.42, Oliver Road, Mylapore, Chennai-4.

(iv) The trial Court has also failed to consider that as a women, she has been penalised and in any case, right which may be available under any law, can enforce only as against the husband and not against her or her husband and children.

(v) The petitioner can claim accommodation only with her husband and not with his in laws or mother.

12. Considering the above contentions, the appellate Court has framed following points for consideration,

"(1) Whether the petitioner is not entitled to the interim residential relief, restraining the appellant therein and others from dispossessing or disturbing her possession from her matrimonial home or share household right at Door No.1, 4th Cross Street, C.I.T. Colony, Mylapore, Chennai-4?

(2) Whether the order of the learned XVIII Metropolitan Magistrate passed in Crl.M.P.No.3735 of 2011, in Crl.M.P.No.1076 of 2011, dated 18.01.2012, is not in accordance with law and legally sustainable?

(3) To what relief?"

13. After considering the submissions and documents, vide judgment in C.A.No.39 of 2013, dated 27.06.2014, the appellate Court has set aside the residence order, passed by the trial Court, against the respondents and modified the same, directing the 2nd

respondent-husband to provide a residence to the petitioner, at G2, Plot No.14, Brindavan Flats, 10th Street, Sowmya Nagar, Perumbakkam, Chennai-100, which belonged to him and in case of failure to accommodate in the said house, the petitioner has been permitted to reside at Door No.12, Old No.42, Oliver Road, Mylapore, Chennai-4, where the husband is staying in a rented house. The appellate Court has further directed the 2nd respondent-husband to facilitate the petitioner to stay in the above residence, by providing all necessary helps and further failing which, the petitioner can approach the nearest police station or the trial Court to assist her in this regard, as provided under Section 19(5) and (7) of the Protection of Women from Domestic Violence Act, 2005.

14. Being aggrieved by the reversal of the residence order, the present criminal revision has been filed by the wife.

15. Taking this Court through the abovesaid orders, Mr. John Sathyan, learned counsel for the petitioner submitted that the continuous acts of domestic violence, committed by the husband of the petitioner and his in-laws and the attempt to evict her from the matrimonial home, forced her to approach the Protection Officer, seeking protection to live in the share household and for maintenance and thus, the petitioner has filed C.M.P.No.3735 of 2011 in CrI.M.P.No.1076 of 2011, on the file of the XVIIIth Metropolitan Magistrate, Saidapet, Chennai.

16. Learned counsel for the petitioner further submitted that the earlier marriage and divorce has been concealed by the husband of the petitioner. Though the marriage was solemnised between the petitioner and the 1st respondent-Husband, in the year 2002, the settlement of the property, in favour of petitioner's mother-in-law, was never informed to her.

17. Inviting the attention of this Court to the date of the release deeds, executed by the 3rd respondent-mother and 2nd respondent-husband, learned counsel for the petitioner submitted that only with a view to drive the petitioner from out of the matrimonial home, release deeds have been executed by the abovesaid respondents, in favour of Mrs. Sugantha, Sister-in-law.

18. It is also his further submission that only after the filing of I.A.No.3735 of 2011 in CrI.M.P.No.1076 of 2011, under Sections 18(a), (b), (c), (d) and (e), 19(a) and 20(d) of the Protection of Women from Domestic Violence Act, 2005, the respondents have created the release deeds in favour of 1st respondent-Sister-in-law and therefore, mala fide intention on their part to somehow deny the share household right to live in the matrimonial home at Door No.1, 4th Cross Street, C.I.T. Colony, Mylapore, Chennai-4, is apparent.

19. It is the further submission of the learned

counsel for the petitioner that for all banking and official transactions, husband has given the address at Door No.1, 4th Cross Street, C.I.T. Colony, Mylapore, Chennai-4, but with the sole intention of denying residence order, he had taken up the rental premises at Door No.12, Old No.42, Oliver Road, Mylapore, Chennai-4.

20. Learned counsel for the petitioner further submitted that the purpose of denying maintenance to the petitioner, mother-in-law of the petitioner in collusion with the husband of the petitioner, had filed a maintenance case and obtained an order of Rs.40,000/- per month as maintenance. After filing of the divorce petition, the 2nd respondent-husband is keep on changing his residential address.

21. Referring to the definition of "Share Household", in Section 2(s) of the Protection of Women from Domestic Violence Act, 2005, learned counsel for the petitioner submitted that the words "interest" and "equity" mentioned therein, do not restrict the right of the petitioner to reside in the abovesaid matrimonial home. For the reasons, stated supra, prayed to reverse the order of the appellate Court in C.A.No.39 of 2013.

22. In order to sustain the impugned order made in the appeal and based on the counter affidavit filed by the appellant before the learned IIIrd Additional Sessions Judge, Chennai, Mr.Aravind Subramaniam, learned counsel for 1st respondent-sister-in-law, submitted that the property at Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai, belong to the husband of the 3rd respondent-Mother. He further submitted that as per the Deed of the Settlement, dated 27.12.2005, life estate has been given to the mother, Mrs.M.S.Paravatham, wife of the settlor, who would enjoy the property, during her life time, without the power of alienation and after her lifetime, his son, Mr.S.Balasubramanian, husband of the petitioner, would enjoy the said property, for his lifetime, without powers of alienation and after the lifetime of wife and son of the settlor, ie., 2nd respondent-Husband and his mother, the 3rd respondent, Mrs.S.Sugantha Ganesh, daughter of the settlor and her sons, Vijay Somnath and Ramprasad, would enjoy the property, without any alienation.

23. According to the learned counsel for the 1st respondent, it is the husband of the petitioner and other in-laws, who were subjected to all kinds of harassment, viz., complaints registered under Section 498-A IPC, allegations of domestic violence, resulting in filing of CrI.M.P.No.1076 of 2011, restitution of conjugal rights against the husband and other allegations have been made, against in-laws of the husband and it is the petitioner, who had harassed others.

24. Learned counsel for 1st respondent-sister-in-law further submitted that even assuming, without admitting that the release deeds have been executed in favour of the 1st respondent-sister-in-law, by the 2nd respondent-husband and his mother and not admitting the malafides alleged, as per the settlement deed, dated 27.12.2005, husband has no enforceable right, in praesenti, against the 3rd respondent-Mother, to insist for joint living in the house at Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai, settled in favour of the 3rd respondent-mother, for her life time.

25. Learned counsel for the 1st respondent-sister-in-law, further submitted that the husband is residing at Door No.12, Old No.42, Oliver Road, Mylapore, Chennai-4 and that the property at C.I.T.Colony, Mylapore, does not belong to the 2nd respondent-husband. Therefore, he submitted that the petitioner can claim residence order, only in the place owned or rented by the 2nd respondent-husband.

26. Learned counsel for the 1st respondent-sister-in-law, further submitted that even in the petition filed for restitution of conjugal rights in O.P.No.2493 of 2011, on the file of the Principal Family Court, Chennai, the petitioner has given the residential address at K3, Aashiana Apartments, 21, Venus Colony, Second Cross Street, Alwarpet, Chennai-18 and therefore, submitted that the petitioner was not residing in CIT Colony, Mylapore, Chennai.

27. Placing reliance on the decisions of the Supreme Court in S.R.Batra v. Taruna Batra reported in AIR 2007 SC 1118, Sameer Vyas v. State reported in 2010 (2) MLJ (Cr1.) 254, Lokesh Kiran Kumar Shah v. Shruddha Lokesh Shahs reported in 2013 (3) Crimes 479 (Bom.) and Vijay Vasant Sawant v. Shubhangi Shivling Parab reported in 2014 (1) Crimes 436 (Bom.), learned counsel for the 1st respondent-sister-in-law submitted that the petitioner has no right to seek for any residence order to live in a house, which would not fall under the definition of "share household", under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 and that she cannot maintain an application against the other respondents. According to him, when the husband himself has no right or title to the property, the petitioner-wife cannot derive a better right to seek for residence order. For the abovesaid reasons, he prayed for dismissal of the criminal revision case.

28. Earlier on 19.01.2015, this Court has recorded as follows:

"In the forenoon, Mr.Aravind Subramaniam, learned counsel for the respondents submitted that in the Mediation, there was an offer to settle a flat in the name of the petitioner, Mr.V.P.Anuradha. He further submitted

that the interim maintenance of Rs.10,000/- ordered, pending disposal of the Domestic Violence case, has not been challenged. Respondent-husband continues to pay maintenance at the same rate. It appears that there are proceedings under the Domestic Violence Act (Hindu Marriage Act) for dissolution and prosecution under Section 498-A against the respondent and others. Matter was passed over.

At 4.30 P.M., when the matter was taken up, the respondent in person, submitted that he had borrowed loan from HDFC Bank, Madipakkam Branch, for purchase of the flat and that the loan has to be discharged. However, he submitted that as a one time settlement, payments would be made within the continuance of the maintenance of Rs.10,000/- and he expressed difficulty for enhancement of maintenance amount.

Parties are directed to revert back on 19.01.2015.

29. Subsequently, on 20.01.2015, this Court has passed the following order,

"Record of proceedings shows that to arrive at an amicable settlement of dispute between the parties, Crl.RC.No.702 of 2014 has been referred to Mediation Centre of this Court. Both the learned counsel for the parties submitted that husband/respondent herein had offered a Flat at G.2, Plot No.14, Brindavan Flats, 10th Street, Sowmya Nagar, Perumbakkam, Chennai - 100, towards full quit of all the disputes. However, it appears that on the quantum of amount, corresponding to the valuation of the property, there was disagreement and thus, the Revision case is listed before this Court.

2. Explaining the long process involved in litigation of cases pending between the parties and since an attempt to mediate indicated the mind of the parties to settle the inter se disputes, time was given by this Court to reconsider. Residential Home Loan certificate issued by HDFC, to substantiate that the respondent has been granted loan of Rs.15,19,824/- was also perused. True copy of the sale deed and construction agreement produced by the respondent were perused. According to the respondent, the current value of the property intended to be settled in favour of the petitioner is Rs.34.8 Lakhs (580 sq.ft. @ Rs.6000/- per sq.ft). But, no document has been produced substantiating the said value.

3. Petitioner is not agreeable for the abovesaid proposal. Court cannot thrust its view or expect the petitioner to accede to the offer. Recording the submission of the petitioner that revision petition, be

decided on its merits, post the case on 28.01.2015."

Heard the learned counsel for the parties and perused the materials available on record.

30. Before advertng to the rival contentions, this Court deems it fit to have a cursory look at some of the relevant provisions, to address the issue, as to whether, the petitioner is entitled to any residence order, at the place, the spouses lived, before the dispute started.

"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;

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.

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.

19. Residence orders:-

(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 of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; 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 require:

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

(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."

31. Marriage between the parties was solemnised on 27.01.2002. After marriage, the petitioner and the 1st respondent-husband have lived at Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai. Admittedly, the house belonged to Late Sethuraman, father-in-law of the petitioner. During his lifetime, he had executed a Settlement Deed, dated 27.12.2005, in which, life estate has been created to the mother, Mrs.M.S.Paravatham, wife of the settlor, who would enjoy the property during her life time, without the power of alienation and after her lifetime, his son, Mr.S.Balasubramanian, husband of the petitioner, would enjoy the said property, for his lifetime, without the power of alienation and after the lifetime of wife and son of the settlor, 1st respondent-sister, Mrs.S.Sugantha Ganesh, daughter of the settlor and her sons, Vijay Somnath and Ramprasad, would enjoy the property, without any alienation.

32. The contention of the petitioner that she was kept in dark about the settlement deed upto 2010 and therefore, there was no bona fides on the part of the respondents, cannot be countenanced. Settlement deed has been executed in the year 2005. The dispute between the husband and the wife, appears to have started only in the year 2010 and therefore, it cannot be presumed that Late Sethuraman, owner of the house, had any ill-will towards his daughter-in-law, in the year 2005 itself, when he had executed the settlement deed. As per the settlement deed, dated 27.12.2005, Mrs.M.S.Paravatham, would enjoy the property, till her lifetime, without the power of alienation and after her lifetime, other settlors would enjoy the property, as stated supra.

33. The learned XVIII Metropolitan Magistrate, Saidapet, by observing that the petitioner cannot be thrown out the share household, leaving behind her husband, mother-in-law and sister-in-law, to live in the same roof, has decided the entitlement of the petitioner. Mrs.M.S.Paravatham, is alive and residing at Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai. She is entitled to enjoy the property, till her lifetime, without the power of alienation.

34. In S.R.Batra v. Taruna Batra reported in AIR 2007 SC 1118, marriage between the parties was solemnised on 14.4.2000. After the marriage, the respondent, Taruna Batra, started living with her husband, Amit Batra, in the 2nd floor of the house of the 2nd appellant therein, mother-in-law of Smt.Taruna Batra. Due to some misunderstanding, Amit Batra filed a divorce petition against his wife, Taruna Batra and it was alleged that as a counter blast to the divorce petition, Smt.Taruna Batra filed an F.I.R. under Sections 406/498A/506 and 34 of the Indian Penal Code and got her father-in-law, mother-in-law, her husband and married sister-in-law

arrested by the police and they were granted bail only after three days. Smt.Taruna Batra had shifted to her parent's residence, because of the dispute with her husband. She alleged that later on when she tried to enter into the house of the 2nd appellant, she found the main entrance locked and hence, she filed Suit No.87/2003, for a mandatory injunction to enable her to enter the house. But before any order could be passed by the trial Judge on the suit filed by their daughter-in-law, Smt.Taruna Batra, along with her parents forcibly broke open the locks of the house, belonging to 2nd appellant therein. According to the appellants therein, Amit Batra, husband of the respondent, had shifted to his own flat, before the above litigation between the parties had started. The learned trial Judge has granted a temporary injunction, restraining the appellants therein from interfering with the possession of Smt.Taruna Batra. As against the said order, the appellants therein filed an appeal before the Senior Civil Judge, Delhi, who by his order, dated 17.9.2004, held that Smt.Taruna Batra was not residing in the second floor of the premises in question. He also held that her husband Amit Batra was not living in the suit property and the matrimonial home could not be said to be a place where only wife was residing. He also held that Smt.Taruna Batra had no right to the properties other than that of her husband. Thus, he allowed the appeal and dismissed the temporary injunction application. Aggrieved by the same, a petition under Article 227 of the Constitution of India, was filed. After considering the definition, "share household" in Section 2(s) and Sections 17 and 19 of the Act, the Supreme Court, at Paragraphs 25 and 26, held as follows:

"25. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

26. It is well settled that any interpretation which leads to absurdity should not be accepted."

While considering Section 19(1)(f) of the Act, the Apex Court, at Paragraph 27, held as follows:

"Learned counsel for the respondent Smt

Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives."

In the above reported case, the property in question neither belonged to Amit Batra nor was it taken on rent by him nor was it a joint family property, of which, husband Amit Batra was a member. It was the exclusive property of 2nd appellant therein, mother of Amit Batra and therefore, the Apex Court held that it cannot be called a 'shared household', coming under the definition of Section 2(s) of the Act.

35. In *Ajay Kumar Jain vs. Baljit Kaur Jain* reported in 160 (2009) DLT 401 (DB), the court observed that a wife cannot have right to live in a particular property and the same cannot become a clog on the property denying the right of the husband to deal with the property when he is willing to provide an alternative matrimonial home to her. It was also held that she cannot insist on residing in the suit property alone when the husband had offered a suitable alternative arrangement for her.

36. In *Sameer Vyas v. State* reported in 2010 (2) MLJ (Cr1.) 254, at Paragraph 11, this Court held as follows:

"11. Extending the dictum laid down by the Honourable Apex Court, this Court holds that no claim for "shared household" can be made in respect of property of which neither the petitioner husband nor the respondent wife had a right of tenancy."

37. The Delhi High Court in *Shumita Didi Sandhu Vs. Sanjay Singh Sandhu & Ors.*, reported in 174 (2010) DLT 79 (DB), at Paragraph 48, held as follows:

"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'."

38. In M.Murugandam v. M.Megala reported in II (2011) DMC 159, this Court, held as follows:

"19. Coming to the second contention, the expression "shared household" is defined under Section 2 (s) to mean a household where the person aggrieved lives or has lived at any time either singly or along with the respondent. Such a household may be owned or tenanted, either jointly or by either of them and it may even belong to the joint family of which, the respondent is a member, irrespective of whether he has any right, title or interest.

20. Section 17 (1) entitles every women in a domestic relationship, the right to reside in the shared household, irrespective of whether she has any right, title or beneficial interest. Sub Section (2) of Section 17 protects her from being evicted or excluded from the shared household, except in accordance with the procedure established by law.

24. Sub Section (2) of Section 19 empowers the Magistrate to pass any other direction also, as is necessary to protect or provide for the safety of the aggrieved person or any child of such person. Sub Section (6) of Section 19 enables the Magistrate to impose on the respondent, obligations relating to the discharge of rent and other payments.

25. A combined reading of Sections 17 and 19 would show that it is only when a protection order

under Section 17 read with clauses (a), (b), (c), (d) and (e) of Sub Section (1) of Section 19 is claimed, that the property in respect of which it is claimed, should fall within the definition of the expression "shared household" under Section 2(s). To put it in simple terms, if an aggrieved woman seeks either a protection order to enable her to continue to reside in the shared household or a residence order to enable her to reside in the shared household, then the property which forms the subject matter of the claim, should be a "shared household", within the meaning of the Act."

39. Reverting to the case on hand, from the settlement deed, it could be deduced that the 2nd respondent-husband has no right even to enjoy the property at Door No.1, 4th Cross Street, C.I.T.Colony, Mylapore, Chennai, till the lifetime of his mother, Mrs.M.S.Paravatham, the first settlor. The property cannot be said to be a joint family property, of which, the 2nd respondent-husband is a member. In praesenti, he has no right to enjoy the property. Only after the demise of Mrs.M.S.Paravatham, first settlor, he can enjoy the property, without any right of alienation.

40. Though Mrs.M.S.Paravatham, first settlor, has no right of alienation, she has an absolute right to enjoy the property. Material on record discloses that even before the lower Courts as well as this Court, the 2nd respondent-husband has offered an alternate accommodation at G2, Plot No.14, Brindavan Flats, 10th Street, Sowmya Nagar, Perumbakkam, Chennai-100, which is stated to be nearer to the house of petitioner's brother.

41. Wife is entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to him or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. Property in question in the present case, neither belongs to the husband nor was it taken on rent by him, nor is it a joint family property of which he is a member. It is a fact that the spouses stayed in the house, after the marriage, till the dispute started. But it cannot be contended that neither the petitioner nor her husband can insist the 3rd respondent to permit them to stay in the said house, in which, she has an absolute right of enjoyment, till her lifetime. As per the decision of the Apex Court in S.R.Batra's case, merely because the spouses lived in the house of the husband's father, the property would not be the shared household of the petitioner.

42. As observed earlier, as per the Settlement, the 1st respondent-husband has no right to enjoy the property, so long as, the mother is alive. His right starts only after her lifetime.

While such be the position, even the husband cannot even demand and obtain any order, against his mother, for possession and enjoyment. Consequent thereof, the petitioner-wife has no better right. No doubt, both the petitioner and the 2nd respondent-husband would have lived in the said house with the permission of the husband's parent.

43. Under Section 19 of the Act, while considering 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, under Clauses (a) to (f), of the said Section. Depending upon the facts and circumstances of the case, he may pass an order, 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 rents for the same. In the case on hand, an alternate accommodation has been offered. But the petitioner has submitted that it is far away from the place, where she was residing and it is not in the same level, as enjoyed by her in the shared household.

44. As recorded earlier, the dispute between the parties was regarding the valuation of the property, offered as full quit of all the lis between the parties. Court cannot compel the petitioner to accept the offer. But the fact remains that an alternate accommodation has been offered. Though the learned counsel for the petitioner has contended that release deeds have been created just few months before the filing of the miscellaneous petition, seeking for residence order, with a mala fide intention to thwart the rights of the petitioner, to live in the shared household, whether respondents 2 and 3 can release their rights in favour of the 1st respondent or not, cannot be decided in this proceedings. As per the settlement deed, they have only a right of enjoyment over the property, that too, as stated supra.

45. Considering the facts and circumstances of the case, the appellate Court, while declining the residence order at Door No.1, 4th Cross Street, CIT Colony, Mylapore, Chennai, has ordered an alternate accommodation, in terms of sub-Section (f) of Section 19 of the Act. As per Section 19 of the Act, depending upon the circumstances of the case, the Magistrate is empowered to pass any order, under sub-Section (a) to (f) of the said Section. On the facts and circumstances of the case, indisputably, the petitioner shared the house, which belonged to her father-in-law and the same has been later on settled, in favour of others.

46. In the light of the statutory provision, the petitioner cannot insist that the Court below should have passed an order, directing the residence, at Door No.1, 4th Cross Street, CIT Colony, Mylapore, Chennai, where the spouses lived before the dispute, started between them. Decision in Ajay Kumar Jain's case, would lend support to the case of the respondents.

47. Contemplating a situation, where such an order, cannot be passed, in a given case, Legislature has carved out a provision, enabling the Court to pass an order, directing the respondent to provide an alternate accommodation. The intention of the Legislature, is to provide the aggrieved person a residence, of course, with the same level of enjoyment. The appellate Court has addressed the said aspect. Maintenance ordered to be paid to the aggrieved person has not been challenged and being paid regularly. In the light of the above, this Court is not inclined to interfere with the impugned order.

49. In the result, the Criminal Revision Case is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

skm

To

1. The IIIrd Additional Sessions Judge,
Chennai.

2. do thro the Principal Sessions Judge
Chennai

6 ccs to Mr.M. Aravind Subramaniam, Advocate, sr. 6103

Criminal Revision Petition No.702 of 2014

KV (CO)

kk 3/3