

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.711 of 2009

ORDER:

The applicant in DVC.No.7 of 2008, having been aggrieved of the orders dated 04.02.2009 of the learned V Additional Metropolitan Sessions Judge (Judge, Mahila Court), Hyderabad passed in Crl.A.No.382 of 2008, had preferred this criminal revision case.

2. I have heard the submissions of the learned counsel for the petitioner/applicant, the learned counsel for the respondents 1 and 2 and the learned Public Prosecutor representing the 3rd respondent/State. I have perused the material record.

3. Now the points for determination are:

Whether the order impugned is liable to be set aside in the facts and circumstances of the case? And, if so, whether the order of the trial court restraining the respondents 1 and 2 from dispossessing the applicant from the shared household is liable to be restored?

4. **POINTS:**

4. (a) The basic facts necessary for consideration, in brief, are as follows: - 'The applicant, who was aged about 75 years as on the date of her application, is the mother of the respondents 1 and 2. Her husband died in the year 1987 leaving behind him, the applicant, the respondents 1 and 2 and another son Arun. She is residing in a portion of the house bearing No.37/A Central Battery Colony, Secunderabad which originally belonged to her late husband. Her elder son/the 1st respondent herein is residing in the first floor of the said house and the other son/the 2nd respondent herein is residing in a house opposite to her house.

While she was using one room in the subject house, her other son Arun is in the occupation of remaining one room. The said son/Arun is looking after her. While so, in the last week of May, 2008, the respondents 1 and 2, who are the sons of the applicant, had broken open the existing lock and had put up a new lock to the premises. Therefore, the applicant gave a complaint on 11.06.2008 to the Station House Officer, Trimulgherry police station. Having agreed before the police to remove the lock, the respondents 1 and 2 are not allowing the applicant to reside in the house portion and are threatening her with dire consequences in case she returns to the house. Therefore, she is not in a position to reside in the house on account of the threats being given by the respondents 1 and 2 who want to grab the entire property. Hence, the applicant is now residing with her brothers. Being an aged widow she is obliged to seek protection order under the Protection of Women from Domestic Violence Act, 2005. Therefore, the respondents 1 and 2 may be prohibited from causing any domestic violence by granting the protection order to the applicant and by restraining them from repeating any acts which were earlier committed by them and restrain them from dispossessing the applicant from the shared household or entering into any portion of the shared household in which she is residing.'

4. (b) The defence of the respondents 1 and 2 as stated in the counter, in brief, is as follows: - 'The 1st respondent is the owner of the house bearing Nos.37/A and 37/C Battery colony, Trinulgherry, Secunderabad. He constructed the same about twenty years ago from out of his own funds. Therefore, the applicant and her son Arun are in the occupation of the said portion of the said house bearing No.37/A as licensees. The house does not belong to the husband of the applicant as the same was constructed by the 1st respondent after the death of his father. The first respondent had retired from Indian Army and the house was constructed with his retirement benefits. He is the absolute owner

of the house. Being the eldest son he had permitted his mother/the applicant to reside in a portion of the ground floor. She and her younger son are staying together in two rooms being licensees as per their convenience. No threats were ever given. The allegations are false and invented. The application may be dismissed.'

4. (c) No oral and documentary evidence was adduced before the trial court. After hearing the submissions of the learned counsel for both the sides and after considering the averments in the respective pleadings of the parties, the learned Magistrate had allowed the petition of the applicant and granted the relief claimed by her and had accordingly restrained the respondents 1 and 2 from dispossessing the applicant from the shared household. Aggrieved of the said orders the respondents 1 and 2 had preferred the aforementioned appeal before the learned V Additional Metropolitan Sessions Judge, Hyderabad. Having noted that no oral and documentary evidence was adduced and that the documents said to have been relied upon by the trial court were not placed on record and further *inter alia* observing that it is necessary to mark the documents to avoid confusion and that the title and the nature of the occupation of the parties in the said house is to be decided after full trial, the learned Additional Sessions Judge had set aside the order of the trial Court and had remitted the matter to the trial court for fresh disposal on merits after taking the evidence of both the parties. Aggrieved of the said orders, the applicant is before this court.

5. (a) The learned counsel for the applicant had contended as follows: - 'The appellate court had grossly erred in holding that the learned Magistrate did not follow the procedure while disposing of the DV case. The appellate court grossly erred in holding that the documents filed ought to have been marked as the Act provides for parties letting in evidence before the claim is decided. The appellate Court had not noticed the fact that the DV case is not a complaint under Section 200 of

the CrPC but is only an application under the provisions of the special enactment. Hence, the finding of the appellate court that unless documents are exhibited no finding can be given on the issues is erroneous and contrary to the object of the legislation. The appellate court grossly erred in allowing the appeal and remitting the matter to the trial court.'

5. (b) Per contra, the learned counsel for the respondents 1 and 2 while reiterating the contentions urged in the counter of the respondents had submitted that the court below had only remitted the matter to the trial court for fresh disposal after taking evidence and that therefore, by the order impugned, no prejudice has been caused to the applicant and that the revision is liable to be dismissed being devoid of merit.

6. Admittedly the applicant is the mother of the respondents 1 and 2. She is having another son by name Arun. Her husband died in the year 1987. According to her, the property in question i.e., the house bearing No.37/A Battery colony, Secunderabad originally belonged to her late husband and that she is residing in a portion of the said house. She had stated in her application that her elder son i.e., the first respondent is residing in the first floor and that her other son i.e., the 2nd respondent is residing in a house opposite to her house. According to her she is using one room and her other son Arun, who is looking after her, is using another room in the said house. Therefore, according to her contentions, she along with her son Arun is in occupation of two rooms in house No.37/A. Since her possession was sought to be disturbed and was disturbed in the circumstances pleaded by her, she had sought a restraint order to protect her possession in the shared household. Be that as it may. In the counter filed by the respondents before the trial court, while stating that the house belongs to the first respondent having been constructed by him about twenty years ago from out of his

retirement benefits, the first respondent had further contended that he being the eldest son of the parents had permitted his younger brother i.e., the 2nd respondent to stay as a licensee in the ground floor and had also permitted the applicant and his other brother Arun to stay together in two room portion in house No.37/A according to their convenience in one room each as licensees. Therefore, there is a categorical admission in the defence that the applicant and her other son by name Arun, who is not a party to the present proceedings, are together staying in two rooms i.e., ground floor portion in the house bearing No.37/A. Therefore, the applicant is in possession of one room and that her other son Arun is in possession of another room in house No.37/A Battery Colony, Secunderabad is an undisputed and admitted fact. As rightly and obviously held by the trial court, the admitted facts need no proof for granting the relief to the applicant and restraining the respondents from interfering with her admitted possession of the shared household. Therefore, the finding of the appellate court that it is necessary to permit the parties to let in evidence in a case of this nature is unsustainable as, in the well considered view of this court, admitted facts need not be proved. It is apt to note that in view of the fact that no oral evidence was adduced before the trial court and the court below had taken an exception for the same in the order impugned, this court with the consent of both the parties had appointed an Advocate Commissioner to inspect the disputed property and find out the factual position. The learned Commissioner having inspected the property had filed a report before the Registry of this court on 19.12.2013. A perusal of the said report would show that the property bearing House No.37A is a double storied building consisting of ground and first floors and it is 50 years old. According to the further contents of the said report, one room and kitchen of the said house are in the occupation of the other son of the applicant by name Arun and his family; The first floor portion is in the occupation of the first

respondent herein; The 2nd respondent is now in occupation of the Northern side room in the ground floor, which was originally in the occupation of the applicant; and, the respondents 1 and 2 had locked the premises and therefore, the applicant is not in occupation of any independent room; therefore, she is now residing with her other son Arun though originally she was having possession of an independent room i.e., Northern side room. From the report of the Commissioner, to which no objections are filed, it is clear that there is interference by the respondents 1 and 2 herein with the possession of one room which was earlier in the occupation and exclusive possession of the applicant. Therefore, based on the admitted facts and the contents of the Commissioner's report, it can safely be held that the applicant is entitled to the relief claimed and for granting such a relief, no further material like oral/documentary evidence is necessary in view of the admitted and undisputed facts brought on record.

7. Before concluding, it is necessary to advert to, *infra*, the claim of the applicant that the property is that of her husband and the rival claim of the first respondent that he had constructed the house with his retirement benefits. The said issues as to whether late husband of the applicant is the original owner of the house or whether the 1st respondent had constructed the house with his retirement benefits and is therefore, the absolute owner thereof are matters not germane for consideration in this proceeding as no declaration of title is sought and only a protection order for continuing to reside in a portion of the shared household without any interference from the respondents 1 and 2 is only sought by the applicant. It is needless to mention that an order restraining the respondents 1 and 2 from interfering with the possession of the applicant in respect of the two rooms in the shared household including the Northern side room will not in any way affect the property rights of the parties, if any, which are to be worked out separately in an

independent proceeding before an appropriate forum.

8. Viewed thus, this court finds that the order impugned remitting the matter to the trial court after setting aside the order of the trial court brooks interference.

9. In the result, the Criminal Revision Case is allowed and the impugned order of the court below is set aside and the order of the trial court is restored.

Miscellaneous petitions pending, if any, in this CrIIRC shall stand closed.

M.SEETHARAMA MURTI, J

30th January 2015
Vjl