

233

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.24168 of 2014
Date of Decision: 6.04.2015**

Sangeeta

.....Petitioner

Vs

Om Parkash Balyan and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Balraj Singh Dhull, Advocate
for the petitioner.

Ms. Monika Thakur, Advocate &
Mr. Vibhav Jain, Advocate
for respondents.

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

RAJ MOHAN SINGH, J.

[1]. In this petition, petitioner has assailed the order dated 12.06.2014 (Annexure P-4) passed by Additional Sessions Judge, Rohtak vide which order dated 25.02.2014 (Annexure P-2) passed by Judicial Magistrate Ist Class, Rohtak was set aside.

[2]. Marriage of the petitioner was solemnised with late Satish Kumar Balyan son of Sh. Om Parkash Balyan-respondent No.1 on 14.01.2000. One daughter Lokansha took birth from their wedlock on 26.02.2004. Husband of the petitioner died on 06.06.2009. Petitioner alleged that she along with her minor daughter lived with respondent No.1 in House No.28-A/22 Luxmi Nagar, Rohtak till 20.02.2010.

[3]. The petitioner filed complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act') against the respondent-Om Parkash Balyan and one Ram Kumar Nara alleging that petitioner and her minor daughter have been thrown out of the house.

[4]. Judicial Magistrate Ist Class Rohtak passed an order dated 25.02.2014 as an interim relief that at this stage plea of respondents that house is not shared house cannot be entertained for want of *prima facie* proof to that effect and granted interim residential order to allow petitioner/complainant to reside in the house as shared household. The respondents were further restrained from alienating the share of the complainant, however the Magistrate did not agree to restrain the respondents from alienating the house situated at village Boria, District Jhajjar and one plot measuring 3000 sq. yards at Badli Road, Jhajjar for want of documents.

[5]. Respondents went in revision before Additional Sessions Judge, Rohtak who vide judgment dated 12.06.2014 accepted the revision petition, thereby setting aside the order dated 25.02.2014 passed by Judicial Magistrate Ist Class, Rohtak granting interim residence order in favour of petitioner.

[6]. Facts as emerged on record are that petitioner's husband was found murdered in his car on 07.06.2009. Learned counsel for the petitioner submitted that order passed by Magistrate was an interlocutory order and revision against the same was not maintainable before Additional Sessions Judge.

[7]. Learned counsel for respondents argued that under Section 29 of the Act an appeal is maintainable only against final order and revision is maintainable against the interim relief which can be revised by the Court of Sessions. Learned counsel placed reliance upon S. Srikanth v. Divyalaxmi, 2013(2) RCR (Civil) 35, Sheetal v. Hitesh, 2012(3) RCR (Criminal) 706 and Asifa Khatoon v. Rubina and another, 2010(6) RCR (Criminal) 2032.

[8]. Under Section 17(1) of the Act, right to residence in a shared household can only be appreciated if the house belong to or taken on rent by husband or the house belong to joint family to which husband is a member. Shared household cannot mean that wherever the husband and wife lived together in the past, the same would become shared household. There cannot be any legal obligation on the part of parents of the husband to maintain the wife of deceased son particularly in view of the fact that disrespect or disregard to them has become source of nuisance. The bonding can be on the basis of mutual relationship of love and affection but in any case parents of the husband cannot be forced to maintain daughter-in-law from their self-acquired property. The wife has only right to maintenance against her husband or sons/daughters or from the ancestral share of her husband in the property but certainly she cannot thrust herself against the wishes of parents of her husband nor she can claim against the wishes of the parents of her husband.

[9]. According to photocopy of sale deed No.953 dated 27.10.1989, plot No.28-A/22 in Luxmi Nagar, Rohtak was purchased

by respondent No.1 for a lawful consideration from its vendors. Therefore, house in question is self-acquired property of respondent No.1.

[10]. The petitioner along with Satish Kumar Balyan (husband) were living at S-2 Parwana Vihar, Plot No.52, Sector-9, Rohini Delhi. Income tax return of Satish Kumar Balyan for the year 2007-08 shows the aforesaid position i.e. resident of Delhi. Even the petitioner also filed the income tax return on the same address according to the assessment for the year 2007-08. Daughter of the complainant also took birth at Delhi on 26.02.2004 at Max Hospital and birth certificate of the daughter also showed the aforesaid factum of residence at Delhi. The aforesaid flat at Parwana Vihar was purchased by Satish Kumar Balyan and in this context its agreement to sell and general power of attorney assume significance and falsifies the plea of petitioner. The telephone bill also showed address of Satish Kumar Balyan to be that of Parwana Vihar Delhi. The declaration submitted by the petitioner also showed same address and so as her affidavit dated 04.12.2007. The rent agreement dated 11.04.2008 showed Satish Kumar Balyan had taken another flat on rent.

[11]. The aforesaid material showed that the petitioner has a flat in Delhi and in fact was residing therein for substantial period of time. On the other hand house No.28-A/22 at Luxmi Nagar, Rohtak, is a self-acquired property of respondent No.1 and it was purchased by him for lawful consideration and after construction thereon, the

petitioner cannot allege her right of residence particularly in view of the fact that neither the house in question is ancestral house nor the husband of petitioner was having any joint share in it. *Prima facie* material was available before the Magistrate at the time of passing interim order of shared household.

[12]. In such type of situation where relation of daughter-in-law and father-in-law are not cordial, no such fastening should be made as it may result in more ill-fated occurrence. Equally true is the proposition where the relations are cordial, then no father-in-law would object to daughter-in-law to give address of house for the purposes of making election voter identity card or in the school record of the grandchildren. The primary issue is whether house in question qua which interim relief of shared household has been granted by the Magistrate is self-acquired property of respondent No.1 or the same is property of husband of the petitioner or joint property in which husband of the petitioner was having share?

Prima facie evidence on record i.e. copy of sale deed brought on record makes out a case of self-acquired property in favour of respondent No.1.

[13]. Learned counsel for the petitioner relies upon **Smt. Preeti Satija v. Raj Kumar and another, 2014(2) RCR (Civil) 8** to contend that daughter-in-law has a right of residence in shared house even if the house was owned by the mother-in-law and her husband had no ownership right therein.

[14]. Each case has to be decided on its own distinct features.

The Hon'ble Supreme Court in **S.R. Batra and another v. Smt. Taruna Batra, 2007(1) RCR (Criminal) 403** laid down the concept of shared household where it should be applied.

[15]. In the present case the petitioner was found to be residing in Delhi along with her husband in their own flat. The principle laid down in **S.R. Batra and another's** case (supra) are the guiding principles particularly in view of facts and circumstances involved in the present case where petitioner is found to be owner of flat where she resided along with her husband for substantial period of time. The self-acquired property of respondent No.1 cannot be treated to be shared household for petitioner.

[16]. In **Neetu Mittal v. Kanta Mittal, 2008(4) RCR (Civil) 630** aforesaid proposition came up for consideration before the Delhi High Court and it was held that a woman has right of maintenance against her husband or sons/daughters. She can assert her right against the property of her husband but she cannot impose herself against the wishes of parents of her husband.

[17]. In **CRR 3833 of 2009** titled as **Shubwant Kaur @ Subh v. Lt. Col. Prithi Pal Singh Chugh** this Court also discussed the aforesaid phenomenon feature in the context of right of shared leasehold available to women and it was held that daughter-in-law has no right against father-in-law to occupy any portion of self-acquired property against his wishes.

[18]. Even in other statutes like Hindu Adoption Maintenance Act, maintenance of wife is the personal obligation of the husband.

Such an obligation cannot be satisfied from the self-acquired properties of the parents. It is settled law that during subsistence of marriage, maintenance of a married wife is always an obligation of the husband. This is a personal obligation. After the death of husband, such obligation can be met from the properties of husband where he is co-sharer. The property in the name of parents of husband cannot be made subject matter of any attachment and cannot be made subject matter of enforcement of any right of maintenance to wife against her husband.

[19]. Section 4 of the Hindu Adoption and Maintenance Act provides non obstante clause. In terms of which any obligation on the part of in-laws in terms of an rule or interpretation of Hindu Law or custom or usage as part of law before the commencement of the Act are no longer valid. In view of the non obstante clause in terms of Section 4 of the aforesaid Act, the provisions of the Act alone are applicable and anything and any liability in respect of maintenance of daughter-in-law on death of son cannot be fastened from the self-acquired property of the parents.

[20]. In the light of numerous precedents following i.e. **Sardar Malkiat Singh v. Kanwaljit Kaur and ors., 2010(2) PLR (Delhi) 59** and **Vimalben Ajitbhai Patel v. Vastslaben Ashokbhai Patel and Ors., 2008(4) SCC 649** it has become established legal principle that daughter-in-law cannot claim right to live in the house of the parents of her husband against their wishes.

[21]. Looking to the facts and circumstances of the case, Judicial

Magistrate Ist Class, Rohtak was obligated to see the *prima facie* title of the house in favour of respondent No.1 particularly when photostat copy of the sale deed was very much available, before ordering shared household in favour of petitioner. Order granting such permission has virtually decided the legal right of respondent No.1 at this stage and the proceedings being semi-criminal in nature does not provide any right of any appeal against such order, therefore, respondent No.1 has rightly availed remedy of revision of such order. Even otherwise this Court while exercising powers under Section 482 Cr.P.C. can endorse right course of action by giving effect to legal position in law.

[22]. In view of the facts as stated above, order dated 12.06.2014 (Annexure P-4) passed by Additional Sessions Judge, Rohtak does not seem to be illegal and, therefore, the same is upheld.

[23]. Petition is dismissed being bereft of merits.

April 6, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**