

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.819 of 2014 (O&M)
Date of Decision.08.09.2015

Sher Singh

.....Appellant

Versus

Shakuntala Devi and another

.....Respondents

Present: Mr. Aayush Gupta, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

-. -

K. KANNAN J. (ORAL)

1. The husband is the appellant before this Court. The suit was filed by his wife contending that the husband had offered the house and 18 marlas of land to her to be in her possession and handed over an affidavit in that behalf attested by one Pala Ram. The defendant was attempting to act against the terms of the affidavit and suit came to be filed for declaration that she had become owner of the property and for injunction. The defendant took an objection that Pala Ram as his friend had given some intoxicant and taken his signature on papers and used them to make it appear as though he handed over possession of the property to the wife. The trial Court found that the plaintiff's version had not been properly established and she had stated everything against her own version in the plaint and dismissed the suit. In appeal, the plaintiff gave up her relief of declaration, for, there had been no registered document of transfer of the property from the husband to the

wife but she pressed only for the relief of injunction. The Appellate Court relied on what was stated in the affidavit and granted the relief of injunction. The second appeal is filed by the husband against the judgment of the Appellate Court.

2. Learned counsel appearing on behalf of the appellant would state that if the trial Court had found that there was no proof of the affidavit and the plaintiff was also giving up her declaratory relief in respect of the property in the appeal, the Court must have seen that even the relief of injunction was not competent. I reject this argument and state that the husband is bound to maintain the wife so long as the status of the plaintiff as wife is not denied. She is entitled to a residence which is but a component of maintenance and if she is in possession of house that ought to be taken as sufficient for the relief of injunction to prevent the husband from evicting her. The Protection of Woman under the Domestic Violence Act recognizes through Section 26 that the provisions of the Act will be incorporated in any other civil or criminal proceeding. The right of residence in a shared household is available to the wife under the provisions of the Act and I apply Section 26 of the said Act to make possible a right of protection for wife to remain in the household that was once shared for their joint matrimonial living where she claims that she is in possession of. The restraint against alienation of the property is sought by the wife which also I would think is perfectly justified because Section 39 of the Transfer of Property Act protects a woman to claim maintenance and makes possible for charge over the property against any purchaser and would also be competent to secure the right unhindered by a wasteful

alienation by the husband. If the husband would not make provision appropriately for maintenance, she is entitled to have restraint against any alienation of the property till her right of residence is provided in any other way. I will find no cause for intervention and the argument that there is no proof of possession I will reject as untenable, for, the relationship between the parties is such that an assertion of one party against the other is sufficient.

3. The second appeal is dismissed as involving no substantial question of law for consideration in favour of the appellant and the point of law involved is addressed as above.

(K. KANNAN)
JUDGE

September 08, 2015
Pankaj*