

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 26th August, 2015

+ **I.A. No.7755/2012 in CS (OS) 1168/2012**

DEEPIKA KUMAR Plaintiff
Through Ms. Maninder Acharya, Sr. Adv
with Mr. Atul Bandhu, Adv.

versus

MEDHAVI KUMAR & ANR Defendants
Through Defendants are *ex-parte*

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed the suit for possession, permanent and mandatory injunction and for mesne profit in respect of portion of the property No.C-33, Niti Bagh, New Delhi-110049 admeasuring about 325.33 Sq. Yards (hereinafter referred to as the 'suit property').

2. It is claimed by the plaintiff that she is the sole and absolute owner of the suit property. She is 66 years old widow, suffering from old age ailments like hypertension, heart problem, diabetics and is under treatment for the same. The husband of the plaintiff Late Sh. Vineet Kumar was a renowned Advocate and was allottee/sublessee of suit property from Delhi Development Authority (as Lessor) and Supreme Court Bar Co-operative House Building Society being

Lessee vide Perpetual Lease Deed dated 2nd February, 1973 registered at Serial No. 761 in Additional Book No. 1, Volume No. 3067 at pages 9 to 15 registered on 5th February, 1973 being suit property.

3. After the allotment of said plot the plaintiff along with her husband Sh. Vineet Kumar constructed the building on the said plot from the joint funds of both of them.

4. Since the construction of building on the suit property, the plaintiff with her husband Sh. Vineet Kumar were residing in the suit property along with defendant No. 1 being their only son who is not their natural son, but have brought up by them as their own son.

5. After Delhi Development Authority allowed conversion of leasehold rights to the free hold, the said sh. Vineet Kumar got the Conveyance deed executed for the suit property/plot in his name vide registered Conveyance Deed which has been exhibited as Ex.PW1/1. He during his life time executed a Will, copy of which has been exhibited as Ex. PW1/2.

6. Sh. Vineet Kumar expired on 17th July, 2002 at Delhi. After the demise, the defendant No. 1 executed a Relinquishment Deed in favour of the plaintiff as Document No. 10313 in additional Book No. 1, volume No. 2981 at pages 84 to 86. Copy of the same has been exhibited as. Ex.-PW1/3.

7. After the demise of her son Sh. Vineet Kumar, she applied for mutation of the said property in the name of the plaintiff to Municipal-Corporation of Delhi which was allowed/granted vide letter no.

TAX/RKP/SAU/130 dated 20th August, 2002. Copy of the said letter has been exhibited as Ex.PW1/4. The plaintiff and defendant No. 1 kept on residing in the suit property peacefully, till the marriage of defendant No. 1 with defendant No.2 on 24th January, 2008.

8. It is alleged by the plaintiff that after the marriage of her son defendant No.1, the attitude of the defendant No. 2 was not reasonable, she always had an evil eye on her moveable and immovable properties. The husband of the plaintiff and defendant No.1 at the initial stage stopped the defendant No.2 from untoward behaviour towards the plaintiff but with the passage of time even the defendant No. 1 had colluded with defendant No.2 and started harassing and pressuring her to transfer her property in the name of defendant No. 2 failing which she would be harassed.

9. Due to the continuous harassment and torture from defendants, the plaintiff suffered an attack/stroke on 12th December, 2008 and was hospitalized in Holy Family hospital. After discharge from the hospital, she started living in Noida with her sister-in-law for recovery. After her coming back from the house of her sister-in-law, the defendants continued the harassment and torture. As such, she had to file a complaint in January, 2009 to the SHO, Gulmohar Park, Police Post, New Delhi. Copy of the same has been exhibited as Ex.PW1/5. It was alleged that despite of said complaint the behaviour of the defendant No. 2 did not improve and the plaintiff had to file another complaint dated 10th May, 2010 against both the defendants to National Commission For Women, copy of which has been exhibited as Ex.PW1/6. Later on she wrote a letter dated 20th

December, 2010 to Ms. Yasmin Barar, Member of National Commission for Women, copy of which has been exhibited as Ex. PW1/7.

10. The defendant No.2 even took away the car for which a report was lodged by the plaintiff to SHO, Hauz Khas, New Delhi by complaint dated 8th February, 2011, copy of the said complaint has been exhibited as Ex.PW1/8. The said car was recovered/traced by the police only after few days. Defendants subsequently made a complaint to the Police, to which the plaintiff filed a reply dated 26th April, 2011 addressed to Sh. B.K. Gupta the then Commissioner of Delhi Police. Copy of the said reply has been exhibited as Ex. PW1/9. Even the reply could not bring any change in the behaviour of the defendants, rather defendant No.2 further wrote a complaint to the office of the DCP of Police Special Police Unit Women and Children, Nanakpura Moti Bagh, New Delhi. In response to which a call letter No. 2023/2011 dated 24th May, 2011 was received by the plaintiff to appear in person on 3rd June, 2011. The plaintiff participated in the said proceeding and cooperated with the inquiry.

11. The plaintiff also made a complaint dated 6th June, 2011 to the said Cell, copy of which has been exhibited as Ex. PW1/10 and another complaint to SHO, P.S. Hauz Khas dated 16th July, 2011, copy of which has been exhibited as Ex. PW1/11 and further complaint on 22nd July, 2011 to Commissioner of Police, Police Headquarter, Delhi, copy of the same has been exhibited as Ex. PW1/12 and also one complaint dated 4th August, 2011 was made to

ACP, Hauz Khas, New Delhi by the plaintiff which has been marked as Ex. PW1/13.

12. The plaintiff submits that she issued a public notice to this effect in daily news papers namely “The Hindustan Times” and “Hindustan” dated 10th August, 2011. Copy of citations along with related documents to this effect has been exhibited as Ex. PW1/14. After issuance of the public notice, she also issued a legal notice dated 20th August, 2011 to the defendants which were duly received by the defendants. Copy of the legal notice along with postal receipts and Acknowledgement Cards has been exhibited as Ex. PW1/15. The plaintiff further filed a complaint dated 26th August, 2011 to ACP, Hauz Khas Police Station, New Delhi. Copy of the same has been exhibited as Ex. PW1/16.

13. In the plaint, it is stated by the plaintiff that the defendants were in exclusive use of only one bedroom, along with bathroom/toilet on the first floor of suit property, although the said room and toilet are also having number of articles of the plaintiff but as the said room being used by the defendants as bedroom, therefore the present suit has been filed seeking eviction from the said room along with toilet on the first floor of the suit property. The remaining portions of the suit property are in plaintiff's possession. The part in the possession of defendant No. 1 has been shown in red in site plan being Ex.PW1/17.

14. After coming to know of citation in Newspaper and service of legal notice to both the defendants, as counter blast the defendant No. 2 again filed a complaint to Special Police Unit for Women and Children, Nankpura Moti Bagh, New Delhi, as letter No. 5894 dated

4th October, 2011 from that office was received by the plaintiff to appear in person before the concerned officer on 7th October, 2011 and the complaint continued for few days. The plaintiff kept on appearing/co-operated in enquiry and ultimately the said complaint was closed on 21st November, 2011. The plaintiff also made a fresh complaint dated 11th October, 2011 to ACP, Hauz Khas, New Delhi. Copy of the same has been exhibited as Ex. PW1/18.

15. The plaintiff got served the notice to the defendants in the month of August, 2011 and had once again asked the defendants to vacate and leave one bedroom with attached bathroom/toilet on the first floor of the suit premises occupied by the defendants along with all their belongings who refused to do so.

16. In nut-a-shell the plaintiff did not want the defendants to continue residing in any part or portion of her property and had asked the defendants to immediately vacate the portion in their occupation. The defendants have no contractual/ legal rights or claim on any portion of the suit property belonging to the plaintiff.

17. Left with no option, the plaintiff filed the suit for possession, permanent and mandatory injunction and for mense profit.

18. The suit along with interim application was listed before Court first time on 27th April, 2012 when summons and notices were issued to the defendants and the defendants were also restrained from creating any nuisance or interference in the possession of the plaintiff.

19. On the next date, Mr. S. Shekhar, Advocate appeared on behalf of defendants and took time to file the written statement.

However it was noticed that despite of few opportunities, no written statement was filed on 27th February, 2013 and the time to file the written statement was closed. The statement was also made on behalf of defendants that they have settled the matter.

20. On 4th September, 2013, the plaintiff informed the Court that there was no settlement. Admission/denial of documents was partly completed. The documents filed by the plaintiff were deemed to have been admitted.

21. On 25th April, 2014, as no one appeared on behalf of the defendants, they were proceeded *ex parte*. *Ex parte* evidence by way of affidavit of plaintiff as PW-1 has been filed. The same has been marked as Ex.PW-1/A on 19th July, 2014. No cross-examination was conducted on behalf of defendants.

22. When the matter was listed for arguments on 6th August, 2014, the Court felt that in view of the disputes involved in the matter being a family dispute, the presence of the defendants was necessary therefore, Court notice was issued to the defendants. But despite of service no one appeared on behalf of the defendants.

23. On 14th August, 2015 still no one appeared on behalf of defendants' counsel. Learned counsel for the plaintiff had informed the Court that there was no chance of settlement thus further notice for appearance on behalf of the defendants for settlement was not necessary. As per information given to the Court, the defendants have obtained the decree for Dissolution of Marriage by mutual consent.

24. As there is no representation on behalf of the defendants and settlement is not possible, the final order is being passed on the basis of material available on record. The defendants have not filed the written statement. They have also not cross-examined the PW-1. The entire evidence has gone unrebutted.

25. It is undisputed fact that the plaintiff is the absolute owner of the suit property and pays the Electricity bills, House Tax, etc. for the suit property as an owner thereof. Copies of the Electricity Bill and house tax receipts have been exhibited as Ex. PW1/19(colly). It is a vacant room which was earlier used by the defendants.

26. On merits the arguments were advanced by learned Senior counsel for the plaintiff who has also referred the certain judgments.

27. (i) In **S.R.Batra v. Taruna Batra**, (2007) 3 SCC 169 wherein Supreme Court held that :

“There is no law in India like the British Matrimonial homes Act, 1967 and in any case the rights which may be available under any law can only be as against the husband and not against the father in law or mother in law. As regards Section 17 (1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only meant the house belonging to taken on rent by the husband or the house which belongs to the joint family of which the husband is a member.”

(ii) In **Barun Kumar Nahar v. Parul Nahar**, 199 (2013) DLT 1 wherein this Court held that “The defendant being a daughter in law has no right to reside in subject property which belongs to her father in law as said property is not covered by definition of shared

household same being neither a joint family property in which her husband is a member. Defendant being a daughter in law of plaintiff, has no right as against plaintiff father in law, to occupy any portion of the subject property which is his acquired property.” Relevant paras have been reproduced here as under:-

“5. Counsel for the plaintiff very strongly contended that the suit property in question is a selfacquired property of the plaintiff who had purchased the same by way of registered Sale Deed dated 10.8.1971 and therefore he is fully entitled to peacefully reside in the said property along with his old wife without any sort of interference or disturbance at the hands of defendant No. 1. Counsel also submitted that plaintiff and his wife are senior citizens aged about 80 and 74 years respectively, suffering from various ailments and because of continuous and unabated torture at the hands of defendant No. 1, the life of the petitioner and his wife has become miserable and they can collapse at any time if defendant No. 1 continues to reside in the said property. Counsel further submitted that defendant No. 2 has already shifted from the said premises to reside in a rented accommodation and instead of shifting with her husband, the defendant No. 1 has continued residing at the suit property and has been harassing the plaintiff and his wife by abusing and humiliating them daily and also calling the police every now and then on false pretexts so as to further embarrass them in the presence of their neighbors. Counsel also submitted that due to the marital discord, defendant No. 1 had left the said premises permanently on 18.10.2010 and she had also signed an affidavit dated 18.10.2010 to that effect but again she had illegally occupied the guest room on the ground floor of the said premises. Counsel also submitted that defendant No. 1 had no legal right to stay in the said premises and her occupation was permissive only when she was residing in the suit property with her husband, defendant No. 2 herein

and once defendant No. 2 has shifted to some other accommodation, the defendant No. 1 cannot force her to stay in the premises which is exclusively owned by the plaintiff. It was also submitted that defendant No. 2 had given many proposals to defendant No. 1 to reside with him at the rented accommodation or to reside in some other alternative accommodation at par with the rented accommodation of defendant No. 2 or to accept an amount to the tune of Rs.30,000 towards the monthly rent for an accommodation to be selected by her but none of these offers have been accepted by defendant No. 1. Counsel further submitted that the legal position is now well settled that daughter-in-law has no legal right whatsoever to reside in the property owned by her parents-in-law and parents-in-law have no obligation to provide a residence to their daughter-in-law. In support of his arguments counsel for the plaintiff has placed reliance on the following judgments:- 1. S.R. Batra and Anr. v. Taruna Batra, (2007) 3 SCC 169 2. Kavita Chaudhari v. Evenet Singh and Anr., 2012 (130) DRJ 83 3. Neetu Mittal v. Kanta Mittal, MANU/DE/1415/2008 : 152 (2008) DLT 691 4. Umesh Sharma v. State, 2010 (115) DRJ 88 5. Kulwant Singh v. Laljee Kent (DR.) and Ors., 162 (2009) DLT 625 6. Shumita Didi Sandhu v. Sanjay Singh Sandhu and Ors., 174 (2010) DLT 79 (DB).

28. I have also had occasion to deal with some-what similar situation in the case of Kavita Chaudhari v. Evenet Singh and Anr., reported in MANU/DE/2766/2012 : 2012 (130) DRJ 83, wherein the civil suit was filed by the mother-in-law seeking a decree of mandatory and permanent injunction against her son and daughter-in-law and in violation of the interim order passed by the court, the daughter-in-law failed to hand over the possession of the suit premises to the mother-in-law, thereby necessitating the Decree Holder i.e. mother-in-law to file an execution petition. Following the principles laid down by the Apex Court in the case of S.R. Batra (supra), it was held as under in the following paras:-

“The property which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a 'shared household'. Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to both of them in which the husband has no right, title or interest, cannot be called a 'share household'. The Hon'ble Division Bench in Sumita Didi (supra) also observed that the right of residence which a wife undoubtedly has does not mean her right to reside in a particular property although such a right in terms of Section 17 of The Protection of Women from Domestic Violence Act is a right to reside in a commensurate property.

17. At omega, this Court would like to observe that with a view to mitigate the oppression and inequality suffered by the fairer sex in this country from times immemorial; various woman friendly laws have been enacted so as to empower the women. It is a bitter truth that where on one hand these progressive laws have led to amelioration and advancement of the cause of the woman in this country, at the same time on the other hand these liberalized statutes have been flagrantly misused. The right of the woman to her matrimonial home is one such right which has been brought on the statute book to protect the woman from being left in lurch at the hands of the in-laws. However one cannot or may I say should not shy away from the hard hitting reality that it is not always the daughter in law who is berated but at times the in laws who are at the receiving end of the daughter in law's cantankerousness. It should not be for a moment consigned to oblivion that the parents in law have every right to live in peace in their own property and the right to property vested in them cannot be snatched away and used as a tool to harass them.

In the facts of the case at hand, it is not in dispute before this Court that the said property bearing No. D-32, South Extension, New Delhi is the property owned by the mother-in-law which property was bequeathed in her favour by her father and therefore the said property cannot be treated as a joint family property. The daughter-in-law has no right to stay in the said property and with the exit of her husband from the same the judgment debtor has also lost the right to the said premises as well.”

34. Counsel for defendant No. 1 also argued that there is an apparent collusion between the plaintiff and defendant No. 2 to throw out defendant No. 1 from the alleged matrimonial home. This argument of counsel for defendant No. 1 is also devoid of any merit as the Court has to prima-facie consider the right of defendant No. 1 to reside in the property owned by her father-in-law and as discussed above, defendant No. 1 has no legitimate right to stay in the self acquired property of her parents-in-law unless permitted by the parents-in-law themselves.

35. In the light of the above discussion, the balance of convenience strongly lies in favour of the plaintiff as against defendant No. 1. The non-grant of the interim mandatory injunction will result in causing more prejudice to the rights of the plaintiff in comparison with the alleged rights of the defendant No. 1 to stay in an accommodation which is neither a matrimonial home nor a shared household accommodation.

36. Interim mandatory injunction is therefore granted in favour of the petitioner and against the defendant No. 1. Defendant No. 1 is accordingly directed to vacate the subject property bearing No. B-197, Greater Kailash, Part-I, New Delhi and hand over peaceful possession of the same to the plaintiff within a period of one month from the date of this order. It is further directed that concerned Court seized with the petition filed by

defendant No. 1 under Domestic Violence Act shall decide the interim application of defendant No. 1 for the grant of maintenance, which will include her right to a residence in the commensurate property as per the financial status of defendant No. 2, within a period of one month from the date of this order. Defendant No. 1 in the meanwhile is also set at liberty to shift to the rented accommodation as offered by defendant No. 2 for her exclusive residence along with her children or to accept an amount of Rs. 30,000 towards the amount of rent, pending disposal of her maintenance application before the concerned Metropolitan Magistrate/Mahila Court.”

(iii) In ***Neetu Mittal v. Kanta Mittal***, 152(2008) DLT 691 wherein it was held that :

“The Matrimonial home is not defined in any of the statutory provisions. However, phrase "Matrimonial home" refers to the place which is dwelling house used by the parties, i.e. husband and wife or a place which was being used by husband and wife as the family residence. The son can live in the house of parents as a matter of right only if the house is an ancestral house in which the son has a share and he can enforce the partition. Where the house is self acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden through out the life.”

(iv) In ***Shumita Didi Sandhu v. Sanjay Singh Sandhu and Ors.*** 174(2010) DLT 79 (DB) wherein it was held that:

“a property which neither belongs to husband nor is taken on rent by him, nor is a joint family property in which husband is a member, cannot be regarded as shared

household and therefore, the daughter in law has no right to claim right to stay in such a property, which belongs to either the father in law or mother in law.”

28. The plaintiff has filed the present suit claiming herself as the absolute owner of the suit property. The copy of the conveyance deed shows that that plaintiff is an absolute owner of the suit property. The defendants on the other hand have not placed on record any documents to controvert the contentions of the plaintiff. The defendants are unable to bring on record any proof to show that the suit property is the ancestral property in which her husband has any right, title or interest. The rights of daughter-in-law would depend upon the rights of her husband. A son can reside in a house as a matter of right only if the same is an ancestral house in which he has a share for which he can seek partition. In the present case, the son of the plaintiff himself has executed the relinquishment deed in favour of his mother i.e., the plaintiff. The matrimonial house is a place which was being used by the husband and the wife as family residence.

29. It is now settled by the judgment of the Supreme Court in the case of **S.R. Batra** (supra) and which was followed by the Division Bench of this Court in the case of **Shumita Didi Sandhu** (supra) that a house which is owned by the mother-in-law or father-in-law is not the matrimonial home and a daughter-in-law has no right to live in the same.

30. In view of the settled law and facts and circumstances of the present case, the suit of the plaintiff is decreed in terms of prayer (a)

to (c). The other prayers are not claimed or argued by the counsel. The same are accordingly rejected. Decree be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

AUGUST 26, 2015