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

+ CS(OS) 1738/2013

Judgment reserved on 10th September, 2015
Judgment delivered on 23rd September, 2015

HARISH CHAND TANDON

..... Plaintiff

Through: Ms. Shalini Kapoor, Ms. Promil Seth
and Mr. Abhijeet, Advs. with plaintiff
in person.

Versus

DARPAN TANDON & ANR.

..... Defendants

Through Ms. Shobhana Takiar, Adv. for D-2
with D-2 in person.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

I.A. No. 2277/2015 (u/O 12 R 6 CPC by the Plaintiff)

1. Plaintiff is father of defendant no.1 and father-in-law of defendant no.2. He is aged about 69 years. He has filed this suit for mandatory injunction and damages against the defendants, praying therein that by way of mandatory injunction defendants be directed to remove their goods from the first floor portion of the house no. D-3, Green Park Extension, New

Delhi (hereinafter referred to as the 'suit property'), more particularly shown in red colour in the site plan annexed with the plaint and handover the vacant and peaceful possession thereof to the plaintiff; defendants be restrained from selling, alienating, assigning any portion of the suit property to any third party; and to pay damages @ ₹1000/- per month for the use and occupation of the suit premises.

2. Plaintiff has claimed himself to be the absolute owner of the house no. D-3, Green Park Extension, New Delhi. He has alleged that defendant no.1 was permitted to live in the suit property being his son. After the marriage of defendant no. 1 with defendant no. 2 on 18th November, 2011, defendant no.2 also started living in the suit property along with defendant no.1. Defendants were permitted to live in the suit property as a 'licensee'. Plaintiff along with his two daughters is living in the property bearing no. D-3, Green Park Extension, New Delhi, but in the different portion. After some time defendant no.2 started creating problems by her behaviour, as detailed in the plaint. She would pick up fights with the plaintiff's family members. At the instigation of defendant no.2, defendant no.1 also started misbehaving with the plaintiff and other family members. Vide a public notice dated 3rd August, 2013 published in the newspaper 'The Statesman', plaintiff

disowned his son, that is, defendant no.1. On 3rd August, 2013 itself, plaintiff terminated the licence and called upon the defendants to remove their goods and vacate the suit property. Defendant no.1 did take up a separate accommodation on rent, however, defendants did not leave the suit premises. Later, defendant no.1 left the suit premises but defendant no.2 continued to occupy the same. Defendant no. 2 has also implicated the plaintiff in criminal cases. It is submitted that defendants have no right to live in the suit premises after the licence had been terminated by the plaintiff.

3. Defendant no.1 has neither filed written statement nor has appeared in Court despite service. Defendant no.2 has filed written statement. Defendant no.2 has claimed that suit property also belongs to defendant no.1. She has denied that plaintiff is the absolute owner of house no. D-3, Green Park Extension, New Delhi. According to her, Late Shri Rang Behari Lal Tandon was the absolute owner of the suit property. Plaintiff is his adopted son. Shri Rang Behari Lal Tandon died intestate. He was survived by his widow Smt. Kamla Tandon and adopted son, that is, plaintiff. She has denied that defendant no.1 had been residing in the suit property as a licensee. As per defendant no.2, she had been living in the suit property

after the marriage which is a 'shared household' within the meaning of Section 2(s) read with Section 17(1) of the Protection of Women from Domestic Violence Act, 2005 ('the Act', for short), thus, she is occupying the suit property in her own independent legal rights. She has denied that she had spoiled the atmosphere of the house by her conduct. On the contrary, plaintiff, defendant no.1 and other family members had been treating her with cruelty. She has alleged that defendant no.1 and plaintiff are in collusion with each other.

4. Plaintiff and defendant no.2 have levelled allegations and counter allegations against each other. According to the defendant no.2, plaintiff and other family members had been ill-treating her after the marriage. As per the plaintiff, defendant no.2 had been troubling him and other family members. This Court is not concerned with these allegations in this suit for mandatory injunction, which is only in respect of the immovable property. Accordingly, such allegations are not delved in detail in this suit. For the purpose of this suit, the Court is only concerned as to whether plaintiff is the absolute owner of the suit property or that defendants have got any independent right therein to continue to occupy the suit property even after termination of the licence by the plaintiff.

5. The Court has to consider the legal position governing the field on the admitted facts so as to determine as to whether plaintiff is the absolute owner of the house no. D-3, Green Park Extension, New Delhi and also the fact as to whether the suit property is a 'shared household' within the meaning of Section 2(s) read with Section 17(1) of the Act. It is not in dispute that the house no. D-3, Green Park, New Delhi was owned by Late Shri Rang Bihari Lal Tandon. It is also not in dispute that plaintiff is the adopted son. It is also not in dispute that Shri Rang Bihari Lal Tandon and his wife Smt. Kamla Tandon are no more.

6. Section 8 of the Hindu Succession Act 1956 read as under :-

8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

7. A perusal of afore-quoted provision makes it clear that property of a male Hindu dying intestate shall devolve firstly upon the heirs specified in class I of the Schedule. In terms of the Schedule plaintiff and Late Smt. Kamla Tandon were the class I legal heirs of Late Shri Rang Behari Lal Tandon. Son of surviving son, that is, defendant no.1 is not the class I legal heir. Thus, property devolved on the plaintiff and Late Smt. Kamla Tandon and after her death her share devolved on the plaintiff being her class I legal heir under section 15 of the Hindu Succession Act, which envisages that property of a female Hindu dying intestate shall devolve firstly upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. Accordingly, in the facts admitted in the written statement, plaintiff is the absolute owner of house no. D-3, Green Park Extension, New Delhi even if the Will of Late Smt. Kamla Tandon, which, otherwise vests her share to the plaintiff, is ignored.

8. In Commissioner of Wealth Tax, Kanpur & Ors. Vs. Chander Sen and Ors. (1986) 3 SCC 567, Supreme Court has held thus “however, by reason of Section 8 of the Hindu Succession Act, 1956, the son’s son gets excluded and the son alone inherits the property to the exclusion of his son”. A

learned Single Judge of this Court in Ranbir Singh and Ors. Vs. Amrit Singh Thru LR's and Ors. 2012 Legal Eagle(Del) 1861, has held thus:

“In the present case, the father of the defendant Sh. Amrit Singh, namely Sh. Lal Singh expired in around 1968. This is admitted before me by the plaintiff no.1, who is present in the Court, although, the date and year of death does not find any mention in the suit plaint. Once, Sh. Lal Singh dies after passing of the Hindu Succession Act, 1956, the property inherited by his son namely Sh. Amrit Singh, the defendant, will be self acquired property in the hands of Sh. Amrit Singh, inasmuch as, it is not the case of plaintiff in the plaint that at the time of death of Sh. Lal Singh, there already existed an HUF between the parties”.

9. In view of the above discussions, the legal position which emerges is that house no. D-3, Green Park Extension, New Delhi is the self acquired property in the hands of the plaintiff and defendant no.1 has no right therein.

10. The next question which needs attention is whether the suit property will be 'shared household' within the meaning of Section 2(s) read with Section 17(1) of the Act. In my view, self acquired property of father-in-law will not be a 'shared household' within the meaning of Section 2(s) read with Section 17(1) of the Act. In S.R. Batra and Anr. vs. Smt. Taruna Batra (2007) 3 SCC 169, Supreme Court has held thus :-

“20. 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 grandparents, 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 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.

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

21.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.

22.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 mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member, it is the exclusive property of appellant No.2, mother of Amit Batra. Hence it cannot be called a 'shared household'.

23.No doubt, the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

11. In *Shumita Didi Sandhu vs. Sanjay Singh Sandhu and Ors.* 174 (2010) DLT 79 (DB), a Division Bench of this Court, in the context of Section 17 of the Act, has held that a wife would only be entitled to claim a right of residence in a “shared household” and such a household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. 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 them both, in which the husband has no right, title or interest, cannot be called a “shared household”.

12. In *Neetu Mittal vs. Kanta Mittal*, 2009 AIR (Del) 72, a Single Judge of this Court has held that a woman can assert her rights, if any, against the property of her husband, but she cannot thrust herself against the parents of her husband, nor can claim a right to live in the house of parents of her husband, against their consent and wishes. In *Barun Kumar Nahar vs. Parul Nahar* 2013 (2) AD (Delhi) 517, a Single Judge of this Court has held thus:-

“Testing the present case in the light of aforesaid discussion, the court is of the view that the plaintiff has been able to establish a very strong prima-facie case in his favour. The

defendant no.1 being a daughter-in-law has no right to reside in the subject property which belongs to her father-in-law as the said property is not covered by the definition of 'shared household', the same being neither a joint family property in which her husband is a member, nor it belongs to the defendant no.2' and is not even a rented accommodation owned by the defendant no.2".

13. In *Sardar Malkiat Singh vs. Kanwaljit Kaur & Ors.* 168(2010) DLT 521, a Single Judge of this Court has held thus :-

“While the legal position is clear that the husband has a legal and moral obligation to provide residence to his wife, and if the house where the wife lived on being wedded, belongs to her husband, it would certainly be treated as a "shared household" or a matrimonial home., there is no such obligation on the father-in-law or the mother-in-law to provide residence to the daughter-in-law. It is also clear that if the house in question belongs to the joint Hindu family, of which the husband is a member, even that would be termed as a "matrimonial house". In the instant case, no such assertion has been made by the respondent No. 1 and as a matter of fact, it is fairly conceded that the house stands in the name of the appellant, her father-in-law. This would not, in my view, vest any right in the respondent No. 1 to stay indefinitely in the said house by claiming right of residence.”

14. Learned counsel for defendant no.2 has placed reliance on the judgment *Smt. Preeti Satija vs. Smt. Raj Kumar & Anr.* AIR 2014 Delhi 46 to contend that the property of father-in-law, where daughter-in-law had been living with her husband, would fall within the ambit and scope of

Section 2(s) read with Section 17 of the Act. In view of the catena of judgments as cited above, Preeti Satija (supra) cannot be preferred. Furthermore, learned counsel for the plaintiff has placed reliance on Directors of Settlements, A.P. vs. M.R. Apparao 2002 AIR (SC) 1598 to contend that under Article 141 of the Constitution legal proposition as settled by the Supreme Court hold the field and any judgment of High Court laying down conflicting legal proposition of law has not to be followed. In this judgment Supreme Court has held as under :-

“So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has been 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have

a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the round that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see [MANU/SC/0391/1970](#): AIR1970SC1002 : AIR1970SC1002). When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court.”

15. In view of the unequivocal and unambiguous admission in the written statement that property was owned by Late Rang Bihari Lal Tandon and plaintiff was his only adopted son, the legal position as emerges establishes that plaintiff is the absolute owner of the suit property and his son, that is, defendant no.1 has no right, title and interest therein. It is also an admitted fact that defendant no.1 had been occupying the suit property being son of plaintiff and after the marriage, defendant no.2 joined the company of her husband (defendant no.1). In these facts status of the defendants is that of a “gratuitous licensees”. An adult son or daughter or for that matter daughter-in-law has no legal right to occupy the self acquired property of the parents or parents-in-law, as the case may be, against their consent and wishes.

16. For the foregoing reasons, a decree of mandatory injunction against the defendant no.1 is passed, under Order 8 Rule 10 CPC and qua defendant no.2 under Order 12 Rule 6 CPC; thereby defendants are directed to remove their goods and vacate the suit property being the portion of House No.D-3, Green Park more particularly shown in red colour in the site plan. As regards relief of damages is concerned, the same has been given up. Decree sheet be drawn accordingly.

17. Application as well as suit is disposed of in the above terms.

A.K. PATHAK, J.

SEPTEMBER 23, 2015

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