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

+ **Date of Decision: 30.07.2015**

% **RSA 282/2015**

NEHA JAIN & ANR

..... Appellants

Through: Mr. Sanjeev Anand, Ms. Sonam
Anand & Mr. Arush Khanna,
Advocates.

versus

GUNMALA DEVI JAIN & ANR

..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

C.M. No.13397/2015

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RSA 282/2015 and C.M. No.13396/2015

3. The present second appeal is directed against the judgment dated 23.05.2015 passed by the learned ADJ-02 (East), Karkardooma Courts, Delhi in RCA No.06/2015. By the impugned judgment, the First Appellate Court has dismissed the first appeal preferred by the appellant against the

judgment dated 22.01.2015 passed by the learned Additional Senior Civil Judge, Karkardooma Courts (East) in Suit No.127/2011 titled *Smt. Gunmala Devi Jain Vs. Kapil Jain & Others*.

4. The appellant No.1/ Neha Jain is married to respondent No.2/ Sh.Kapil Jain. Appellant No.2 is the minor daughter of appellant No.1 and respondent No.2. Respondent No.1 is the grandmother-in-law of appellant No.1 and the grandmother of respondent No.2.

5. The case of the respondent No.1/ plaintiff in the suit was that she is the sole and absolute owner and in possession of the suit property bearing No.B-37, Vivek Vihar Phase-II, Delhi – 110 095. She stated that the property consisted of ground floor, first floor and second floor. Prior to 25.02.2011, the plaintiff was residing with her granddaughter-in-law, i.e. the appellant No.1 on the ground floor of the suit property. However, thereafter she shifted to first floor of the suit property and started residing with her son Sh. Anil Jain. The plaintiff claimed that she allowed her grandson Sh.Kapil Jain to occupy one room, kitchen, bathroom on the ground floor on license basis. On 03.01.2011, defendant No.1, i.e. Sh.Kapil Jain left the said premises. However, appellant No.1, the wife of Sh. Kapil Jain and her minor daughter/ appellant No.2 continued to occupy the ground floor premises, as aforesaid. The plaintiff claimed that on account of the short tempered and quarrelsome nature of appellant No.1, the plaintiff did not wish to keep the appellant No.1 in the premises. Consequently, a legal notice dated 07.03.2011 was served on the appellant No.1 terminating her license and calling upon her to vacate the suit premises. Since she did not vacate the premises, a suit for injunction and ejectment was preferred

against the appellants. The plaintiff also sought a perpetual injunction against the appellants, to restrain them from creating any third party interest in respect of the premises in occupation of the appellants, i.e. one room, one kitchen and toilet on the ground floor of back side portion of premises bearing No.B-37, Vivek Vihar Phase-II, Delhi – 110 095. Further injunctive reliefs were also prayed for.

6. The suit was contested by the appellants. Defendant No.1/ Sh. Kapil Jain was proceeded ex-parte on 13.09.2011. The appellants disputed the ownership of the plaintiff. It was claimed that the suit property was purchased by the great grandfather of Sh.Kapil Jain as *benami* property in the name of the plaintiff. The plaintiff was a housewife, and was not earning anything at that time. It was claimed that defendant No.1/ husband had a share in the suit property.

7. Upon issues being framed, the parties led their respective evidence. The conveyance deed (Exhibit PW-1/1) recorded the plaintiff as the sole and absolute owner of the suit property. The appellant No.1 admitted that she entered into the suit property upon her marriage with Sh.Kapil Jain/ respondent No.1. The Trial Court took note of the admission of appellant No.1 in her cross-examination that the property in question was the self-acquired property of the plaintiff. Since the appellants failed to establish any independent right, title or interest in the suit property, the Trial Court held that the status of the defendants was merely that of a licensee. Since the license had been revoked, they had no right to occupy the property of the plaintiff. Consequently, the suit was decreed in favour of the plaintiff directing the appellants to handover peaceful and vacant possession of the

suit property to plaintiff. The first appeal preferred by the appellants met with the same fate.

8. The submission of Mr. Anand, learned counsel for the appellants proceeds on the basis that the plaintiff is the owner of the suit property. In any event, that is a finding of fact returned by the Trial Court, and affirmed by the First Appellate Court, and being a consistent finding of fact, premised on evidence led by the parties, this Court would not interfere with the same in the second appeal. No perversity, or failure to take into account the evidence led by the parties in this respect, is pointed out.

9. The submission of Mr. Anand is primarily founded upon the rights vested in appellant No.1 under the Protection of Women from Domestic Violence Act, 2005 (the Act). Mr. Anand submits that the appellant and her husband were living along with the plaintiff, and the suit property was the matrimonial home and a shared household qua the appellant. Consequently, under the Act, the appellant is protected against eviction from the suit property.

10. Mr. Anand has placed reliance on two decisions of Division Benches of this Court reported as *Preeti Satija Vs. Raj Kumari & Another*, 207 (2014) DLT 78 (DB); and *Navneet Arora Vs. Surinder Kaur & Others*, 213 (2014) DLT 611 (DB).

11. Mr. Anand submits that the right of the lady to reside in the shared household, where she lives in a joint family with the owner, is protected under the Act. Mr. Anand submits that the ownership of the property need not be that of the wife, or her husband, and it is not necessary that either of

them should have any right to occupy the property either as owners, joint-owners, or even tenants. Mr. Anand submits that it is sufficient if, after the marriage, the husband and wife have lived in a joint family with the owner, that is to say, they have shared the mess, apart from living in the same house.

12. The Supreme Court in *S.R. Batra and Another Vs. Smt. Taruna Batra*, (2007) 3 SCC 169, had occasion to consider the definition of ‘shared household’ contained in Section 2(s) of the Act. In *S.R. Batra* (supra), Smt. Taruna Batra had married Sh. Amit Batra, son of the appellants. After the marriage, they were residing on the second floor of the house of appellant No.2. It was not in dispute that the said house did not belong to the husband of Smt. Taruna Batra, i.e. Sh. Amit Batra. Sh. Amit Batra filed a divorce petition against his wife Smt. Taruna Batra, which led to filing of First Information Report under Sections 406/ 498A/ 506/ 34 IPC against the father-in-law, mother-in-law, the husband and the married sister-in-law. They were arrested and granted bail, after three days in custody. The respondent/ Smt. Taruna Batra had shifted to her parents’ residence because of dispute with her husband. She alleged that later she tried to enter the house of appellant No.2, but the house was found to be locked. Hence, she filed the suit for mandatory injunction to be able to enter the house. The Trial Judge, by holding that the plaintiff/ Smt. Taruna Batra was in possession of the second floor of the property, granted a temporary injunction restraining the appellants/ defendants from interfering with the possession of Smt. Taruna Batra. Against the aforesaid order, the appellants filed an appeal before the Senior Civil Judge, Delhi, who held that Smt.

Taruna Batra was not residing in the second floor of the premises in question. He also held that her husband Sh. Amit Batra was not living in the suit property, and the matrimonial home could not be said to be a place where only the wife was residing. He held that Smt. Taruna Batra had no right to the property, independent of the right of her husband. Consequently, the appeal was allowed.

13. Smt. Taruna Batra then preferred a petition under Article 227 of the Constitution of India, which was allowed by this Court. It was held that the second floor of the property in question was the matrimonial home of Smt. Taruna Batra, and that even if her husband Sh. Amit Batra had shifted to Ghaziabad, that would not make Ghaziabad the matrimonial home of Smt. Taruna Batra. It was held that mere change of residence by the husband would not shift the matrimonial home from Ashok Vihar, particularly when the husband had filed a divorce petition against the wife. Consequently, this Court held that Smt. Taruna Batra was entitled to continue to reside in the second floor of the house in Ashok Vihar, on the premise that the same was her matrimonial home and a shared household.

14. The Supreme Court reversed the decision of this Court. The relevant discussion in the decision of the Supreme Court reads as follows:

"11. With respect, we are unable to agree with the view taken by the High Court. As held by this Court in B.R. Mehta v. Atma Devi and Ors., [1987] 4 SCC 183, whereas in England the rights of the spouses to the matrimonial home are governed by the Matrimonial Homes Act, 1967, no such right exists in India.

In the same decision it was observed "it may be that with change of situation and complex problems arising it is high

time to give the wife or the husband a right of occupation in a truly matrimonial home, in case of the marriage breaking up or in case of strained relationship between the husband and the wife."

12. In our opinion, the above observation is merely an expression of hope and it does not lay down any law. It is only the legislature which can create a law and not the Court. The courts do not legislate, and whatever may be the personal view of a Judge, he cannot create or amend the law, and must maintain judicial restraint.

*13. There is no such 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.***

14. Here, the house in question belongs to the mother-in-law of Smt. Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt. Taruna Batra cannot claim any right to live in the said house. Appellant No. 2, the mother-in-law of Smt. Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.

15. Learned counsel for the respondent then relied upon the Protection of Women from Domestic Violence Act, 2005. He stated that in view of the said Act respondent Smt. Taruna Batra cannot be dispossessed from the second floor of the property in question.

16. It may be noticed that the finding of the learned Senior Civil Judge that in fact Smt. Taruna Batra was not residing in the premises in question is a finding of fact which cannot be interfered with either under Article 226 or 227 of the Constitution. Hence, Smt. Taruna Batra cannot claim any injunction restraining the appellants from dispossessing her from the property in question for the simple reason that she was

not in possession at all of the said property and hence the question of dispossession does not arise.

17. Apart from the above, we are of the opinion that the house in question cannot be said to be a 'shared household' within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act').

Section 2(s) states:

"shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household".

18. Learned counsel for the respondent Smt. Taruna Batra has relied upon Sections 17 and 19(1) of the aforesaid Act, which state:

"17. (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

19. (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman".

19. Learned counsel for the respondent Smt. Taruna Batgra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in

question in the past, hence the said property is her shared household.

We cannot agree with this submission.

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 grand parents, 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 will be shared households and the wife can well insist in living in the all these houses of her 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."

(Emphasis supplied)

15. *Preeti Satija* (supra) was a case where the plaintiff had sought a decree for possession/ eviction of the defendant/ daughter-in-law. The plaintiff Raj Kumari disowned her son, who was arrayed as the second defendant. It was claimed that the suit property belonged to the plaintiff's husband, who died in 2008 leaving behind a registered Will by which he bequeathed the suit property in favour of the plaintiff. The plaintiff claimed that she became the sole and absolute owner of that property. The plaintiff sought ejectment of her daughter-in-law and disowned her son, on the premise that the relationship between her and the defendants had become estranged. This Court passed a decree on admission by invoking Order XII Rule 6 CPC against the defendant.

16. The Division Bench took note of the fact that the appellant/ daughter-in-law did not accept the claim of the plaintiff that she was the absolute owner of the suit property. The Will had not been probated, and was yet established in law. If the Will were not to be probated, the plaintiff's son, i.e. defendant No.2 would have a share in the property left by his deceased father, and the property would squarely fall within the definition of a "shared household". It was in this background that this Court proceeded to consider the meaning of the expression "shared household" as well as "joint

family”. In the penultimate paragraph of the said judgment, this Court, *inter alia*, observed as follows:

*“23. The facts of this case contain the classic elements of a husband seeking to evade his responsibilities upon marital discord breaking out. He allegedly disappeared and was “disowned” by his mother. The appellant’s mother-in law then instituted the suit, to dispossess the daughter in law and her grand-children, claiming that she no longer has any relationship with her son or her daughter in law. She based her claim to ownership of the suit property on a will. The daughter in law has not admitted the will. Nor has it been proved in probate proceedings. Often, sons move out, or transfer properties or ownership rights, or shares in immovable properties, at the hint of trouble or discord with their wives, in favour of their relatives. Likewise, the parents of the husband often in such cases “disown” them after the son moves out from the common or “joint” premises owned by either or both his parents, when there is outbreak of marital discord. Courts have to be cautious in their approach, while entertaining and short circuiting suits for possession, which are in effect directed against the plaintiffs’ daughter-in law, or else the right of residence in shared households would be a mere chimera, a teasing illusion which the law grandly promises, but is seldom, if ever, able to enforce. In fact, the strategy of “disowning” sons, through public notices or advertisement, is not to be taken lightly. For example, even if a son is disowned by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. Indeed, a mere proclamation does not have a dispositive legal effect, breaking all legally relevant familial ties. **Thus, absent a deed of relinquishment or other formal deed of partition of the family or separation between the members, the Court must be cautious in denying statutory rights to wives, as against members of the husband’s family, on the basis of such tentative facts.** To the contrary, if the Court is to place reliance on such acts, benefits enacted by the 2005 Act in favour of the wife would be bypassed on account of alleged, and possibly*

fleeting, discords between the husband and his family. Indeed, such an approach is neither legally tenable, nor viable given the scheme of the Act.”

(Emphasis supplied)

17. Thus, it would be seen that ***Preeti Satija*** (supra) was a case where the husband of the appellant/ wife had been disowned by the plaintiff/ mother-in-law, and there was no formal document of relinquishment of his interest in the property by disowned son. Moreover, the Will, on the basis of which the mother-in-law claimed exclusive and absolute ownership of the property in question allegedly executed by her late husband, had not been probated. It was in this background that the decree passed on the alleged admission under Order XII Rule 6 CPC was set aside. Consequently, the issues were left to be decided in the suit.

18. The position is similar in ***Navneet Arora*** (supra). In this case, the facts were that the property was owned by the father-in-law of the lady Navneet Arora. He lived with his family comprising of his wife, i.e. Surinder Kaur and two sons and an unmarried daughter, who left the home after her marriage. One son Gurpreet Singh was married to appellant Navneet Arora in 2001. The other son Raman Pal Singh was already married. The entire family consisting of Harpal Singh Arora, the original owner, his wife Surinder Kaur, i.e. the respondent, his two sons and their respective wives resided as one family with one kitchen on the ground floor of the property in Vishal Enclave. The father Harpal Singh Arora died intestate in 2008, survived by his wife, two sons and daughter as his legal heirs. Each one inherited one fourth share in the said property and other assets of Harpal Singh Arora. Thereafter, the three siblings, including the

husband of the appellant relinquished in favour of their mother, i.e. Surinder Kaur their interest, which was inherited from their father. Thus, Surinder Kaur became the sole owner of the property. The husband of the appellant died in May 2012. Differences cropped up between the parties. The appellant and her daughter were occupying one bedroom on the ground floor. The other son was in occupation of one room, and the third room was occupied by the respondent. Pertinently, the appellant filed civil suit challenging the relinquishment deed executed by her late husband in favour of his mother Surinder Kaur, which was pending before the Civil Judge, Tis Hazari Courts, Delhi. The appellant claimed that upon the death of her husband, his share devolved upon her and her daughter. She claimed that since the relinquishment deed was under question, the respondent Surinder Kaur should await the decision in the suit filed by her. She claimed that she was residing in the matrimonial house in her own right. The learned Single Judge held that since the property belonged to Surinder Kaur, it was not a shared household of Navneet Arora. Reliance was placed on ***S.R. Batra*** (supra). However, the appeal preferred by the appellant Navneet Arora was allowed.

19. Once again, I find that the Court undertook a detailed exercise to interpret the expression “shared household” and “joint family” widely, and proceeded on the basis that the ownership of the premises had no bearing on the meaning of the expression “shared household”. In paragraph 119 of this decision, the Division Bench observed as follows:

“119. Reverting back to the facts of the instant case, before Navneet Arora married Gurpreet Singh, he was living as one

*family with his parents Harpal Singh and Surinder Kaur. His brother Raman Pal Singh and his sister Sherry were also residing in the same house. The kitchen was one. **The two sons and their father were joint in business and the kitchen used to be run from the income of the joint business. They were all living on the ground floor.** Sherry got married and left the house. Navneet married Gurpreet. Raman Pal married Neetu. **The two daughter-in-laws joined the company not only of their husbands but even of their in-laws in the same joint family house i.e. the ground floor of B-44, Vishal Enclave, Rajouri Garden, New Delhi. All lived in commensality.** Navneet never left the joint family house. She was residing in the house when her husband died. She continued to reside there even till today. Under the circumstances her right to residence in the suit property cannot be denied, and as regards issues of title, we have already observed that the right of residence under the Protection of Women from Domestic Violence Act, 2005, the same would have no bearing. She may enforce it in civil proceedings. But her right of residence in the shared household cannot be negated.”*

(Emphasis supplied)

20. Thus, it would be seen that even this decision proceeded on a fact situation, wherein the widowed wife, who was sought to be evicted, claimed right in the property in herself. The Division Bench observed that the two sons and the father were joint in business, and the kitchen used to be run from the income of the joint business. They were all living on the ground floor. The two daughters-in-law joined the company, not only of their husbands, but even of their in-laws in the same joint family house and that the plaintiff was residing in the house till date. She was continuing to reside even during the pendency of the appeal.

21. It is well-settled that the decisions rendered by the Courts have to be

read in the context of facts in which they are so rendered. In fact, the decision of the Division Bench in *Navneet Arora* (supra) itself elaborately discusses the law on this aspect while distinguishing the judgment in *S.R. Batra* (supra). Reference may be made to paragraphs 24 and 25 of the judgment in *Navneet Arora* (supra). They read as follows:

“24. Before we embark on the journey of culling-out the ratio of the above- noted decision, it would be instructive to take into consideration the luminous observations expressed by Earl of Halsbury L.C. in the celebrated pronouncement of the House of Lords in the decision reported as [1901] A.C. 495 Quinn v. Leathem:

“Now, before discussing the case of Allen v. Flood,[1898] A.C. 1 and what decided therein, there are two observation of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expression which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

25. The said observations have been cited with approval since time immemorial by the Supreme Court. In the decision reported as (2007) 10 SCC 82 Sumtibai & Ors. v. Paras Finance Co. & Ors., the Supreme Court observed:

“10.As observed by this Court in State of Orissa v. Sudhansu Sekhar Misra - (1970) ILLJ 662 SC vide para 13:

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn v. Leathem, 1901 AC 495:

Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

11. In *Ambica Quarry Works v. State of Gujarat and Ors.*(1987) 1 SCC 213 (vide para 18) this Court observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

12. In *Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd* - (2003) 2 SC 111 (vide para 59), this Court observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

13. As held in *Bharat Petroleum Corporation Ltd. and Anr. v. N.R.Vairamani and Anr.*- AIR 2004 SC 4778, a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclids theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and

provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In London Graving Dock Co. Ltd. v. Horton - 1951 AC 737 Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima ventral of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In Home Office v. Dorset Yacht Co. -1970 (2) AER 294 Lord Reid said, Lord Atkin`s speech...is not to be treated as if it was a statute definition it will require qualification in new circumstances. Megarry, J. in (1971) 1 WLR 1062 observed:

One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board -1972 (2) WLR 537 Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in

*a legislative enactment,
and it is to be
remembered that judicial
utterances are made in
the setting of the facts of
a particular case.
Circumstantial flexibility,
one additional or
different fact may make a
world of difference
between conclusions in
two cases. Disposal of
cases by blindly placing
reliance on a decision is
not proper.*

*The following words of Lord Denning in the matter
of applying precedents have become locus
classicus:*

*Each case depends on its own facts
and a close similarity between one
case and another is not enough
because even a single significant
detail may alter the entire aspect, in
deciding such cases, one should avoid
the temptation to decide cases (as
said by Cardozo, J.) by matching the
colour of one case against the colour
of another. To decide therefore, on
which side of the line a case falls, the
broad resemblance to another case is
not at all decisive.*

** * **

*Precedent should be followed only so
far as it marks the path of justice, but
you must cut the dead wood and trim*

off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.””

22. The fact situation in the present case is starkly different from the fact situation which obtained in either ***Preeti Satija*** (supra), or ***Navneet Arora*** (supra). In the present case, the appellant No.1 admitted in her cross-examination that respondent No.1 was the owner of the suit property. The respondent No.1 is the grandmother-in-law of appellant No.1. There is absolutely nothing brought on record to even remotely suggest that respondent No.2/ Sh. Kapil Jain had an interest in the suit property by virtue of being the grandson of respondent No.1/ plaintiff. Respondent No.2/ Sh.Kapil Jain had moved out of the suit property. From the memo of parties itself, it is seen that he is residing at an address in Vishwakarma Nagar, Delhi. On a query by the Court, Mr. Anand states that divorce petition has not been initiated by either of the parties. The parties were living on different floors of the property.

23. In these circumstances, in my view, the decision in ***S.R. Batra*** (supra) squarely applies to the fact of this case, and not the decision in ***Preeti Satija*** (supra), or ***Navneet Arora*** (supra). One cannot lose sight of the fact that in ***S.R. Batra*** (supra), the Supreme Court did not accept the very wide and literal interpretation of the definition of “shared household” contained in Section 2(s) of the Act. The Supreme Court, in effect, held that a literal interpretation of the said expression will lead to chaos and absurdity. It also observed that the meaning of the expression “shared household” was not

happily worded, and appeared to be the result of clumsy drafting. In the face of such observations, it is evident that the Division Benches of this Court in ***Preeti Satija*** (supra) and ***Navneet Arora*** (supra) rendered those decisions in the fact situation obtaining in those cases.

24. I may also refer to another decision of this Court in ***Sudha Mishra Vs. Surya Chandra Mishra***, 211 (2014) DLT 537, decided by a learned Single Judge of this Court. In this decision, the learned Single Judge took note of another Division Bench judgment of this Court in ***Shumita didi Sandhu Vs. Sanjay Singh Sandhu & Others***, 174 (2010) DLT 79 (DB), wherein the Division Bench relying on ***S.R. Batra*** (supra), *inter alia*, observed as follows:

“Insofar as Section ‘17’ of the said Act is concerned, 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’. The concept of matrimonial home, as would be applicable in England under the Matrimonial Homes Act, 1967, has no relevance in India.”

25. After taking note of few other decisions, the learned Single Judge culled out the legal position as follows:

*“12. The legal position which can be culled out from the above reports is that **daughter-in-law has no right to continue***

to occupy the self acquired property of her parents-in-law against their wishes more so when her husband has no independent right therein nor is living there, as it is not a 'shared household' within the meaning of Section 17(1) of The Protection of Women from Domestic Violence Act, 2005. Wife is entitled to claim a right in a shared household which means a house belonging to or taken on rent by the husband or the house which belongs to joint family of which husband is a member. Daughter-in-law cannot assert her rights, if any, in the property of her parents-in-law wherein her husband has no right, title or interest. She cannot continue to live in such a house of her parents-in-law against their consent and wishes. In my view, even an adult son or daughter has no legal right to occupy the self acquired property of the parents; against their consent and wishes. A son or daughter if permitted to live in the house occupies the same as a gratuitous licensee and if such license is revoked, he has to vacate the said property."

(Emphasis supplied)

26. Reliance placed on *Preeti Satija* (supra) was rejected on the ground that the same was rendered in the context of different facts.

27. In view of the aforesaid discussion, I am of the view that there is no merit in this appeal, and no substantial question of law arises for consideration of this Court.

28. Dismissed.

VIPIN SANGHI, J

JULY 30, 2015

B.S. Rohella