

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.818 of 2016(O&M)

Date of Decision:5.2.2016

Bishambher Dayal and another

---Petitioners

vs.

Renu

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ajay Jain, Advocate
for the petitioners

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

Rekha Mittal, J.

By invoking Article 227 of the Constitution of India, the petitioners pray for setting aside orders dated 22.1.2016 (Ammexure P-1) and 1.2.2016 (Annexure P-2) passed by the Civil Judge (Junior Division), Hisar and Additional District Judge, Hisar respectively whereby the application for grant of ad interim injunction has been dismissed.

The facts relevant for disposal of the present petition are that the petitioners (parents-in-law of Renu wife of Sunil Kumar) filed a suit for

permanent injunction restraining the respondent from interfering in possession of the petitioners over house situated on the first floor of SCF Nos. 92 and 93, Rajguru Market, Hisar with a consequential relief of mandatory injunction directing the respondent to shift from this house forthwith.

The plea of the petitioners is that though there is a dispute between petitioner No. 1 and his brother Raj Kumar qua ownership of SCF No. 92 but petitioner No. 1 claims to be the sole and exclusive owner in possession of said property. Radha Aggarwal petitioner No. 2 is the owner in possession of half share of SCF No. 93 vide civil court decree dated 31.10.2010 passed by the Civil Judge, Hisar which was later got registered at Serial No. 9089 dated 30.11.2010 in the office of the Sub Registrar, Hisar. The respondent is the daughter-in-law of the petitioners having been married to their son Sunil Kumar.

The respondent and Sunil Kumar are residing separately since 13.11.2010 as is clear from the divorce petition filed by Sunil Kumar against the respondent, pending in the Court of District Judge, Family Court, Hisar. The respondent lodged a false criminal case under Sections 406 and 498-A of the Indian Penal Code against the petitioners, Sunil Kumar and Deepak, younger brother of Sunil Kumar. However, on completion of investigation, report under Section 173 of the Code of Criminal Procedure (in short "Cr.P.C.") has been submitted against Sunil Kumar and petitioner No. 1. She has also filed an application under Section 125 Cr.P.C. against Sunil Kumar which is pending in the Court of Judicial Magistrate Ist Class, Fatehabad. She has further filed an application under

Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “the Act”) against the petitioners, Sunil Kumar and Deepak, pending in the Court of Judicial Magistrate, Fatehabad. Another petition under Section 9 of the Hindu Marriage Act, 1955 (for short “HMA”) has been filed by her against Sunil Kumar, pending in the Court at Fatehabad. It is argued that in all these cases, the respondent has taken a stand that she has been residing at the house of her parents at Bhuna District Fatehabad for the past more than five years.

The petitioners are owners in possession of the suit property upon which they have constructed a house on the first floor in which they have been residing and the respondent has no right, title, interest or connection with SCF Nos. 92 and 93. On 12.1.2016, the respondent entered the house in question and threatened petitioner No. 2 that in case she is not allowed to reside in the house, she shall implicate the petitioners in a false criminal case. On information received from petitioner No. 2, petitioner No. 1 went to the police station City Hisar at about 6.45 a.m. on 12.1.2016. The local police came to the spot and took the respondent from the house at 7-00 a.m. on that day. The parties were booked in security proceedings under Section 107/151 Cr.P.C., detailed in paras 13 and 14 of the plaint. The respondent again entered the suit house at about 7.30 p.m. on 12.1.2016 and refused to shift from there.

Counsel for the petitioners would contend that as the suit property exclusively belongs to the petitioners, the respondent has no right to live in the house nor her plea that the house in dispute is a 'shared household', is tenable. It is further argued that in the circumstances of the

present case, an interim order by way of mandate directing the respondent to leave the house in question can be granted. For this purpose, he has heavily relied upon judgment of this Court **Suman vs. Tulsi Ram 2015(1)R.C.R. (Civil) 304.** He has further relied upon judgment of the Hon'ble Supreme Court of India **S.R.Batra and another vs. Smt. Taruna Batra, 2007(3) SCC 169**

I have heard counsel for the petitioners, perused the records and the judgments relied upon in support of contentions of the petitioners.

Before advertng to the factual controversy, it is appropriate to deal with the judgment passed by this Court in **Suman's case (supra)** wherein the judgment passed by the Apex Court in **S.R.Batra and another's case (supra)** has been relied upon. In that case, Tulsi Ram (respondent, father-in-law of the petitioner) has filed a suit for mandatory injunction for a direction to the petitioner to leave the house in question and further restraining her to enter the house in question forcibly or illegally. In para 7, the Court has noticed the submissions made by counsel for respondent (father-in-law) that the house in question belongs to him exclusively and is not a joint family property in which Sanjeev Kumar, husband of the petitioner, has a right, therefore, it cannot be called a 'shared household' and as such, Section 17 of the Act is not applicable. For this purpose, counsel has relied upon a decision of the Delhi High Court in the case of **Neetu Mittal vs. Kanta Mittal and others 2009(4) R.C.R.(civil) 630** and judgment of the Supreme Court in **S.R.Batra and another's case (supra)**. The court, after taking into consideration the definitions of 'aggrieved person', 'domestic relationship', 'respondent' and 'shared

household' defined in Section 2 (a), (f), (q) and (r) respectively of the Act and the judgments relied upon by counsel for the respondent therein, came to hold that the petitioner has no right to live in the house in dispute and as a consequence, the interim direction issued by the trial court directing the petitioner to vacate the house in question during pendency of the suit, affirmed in miscellaneous appeal filed by the petitioner by the District Judge, Sirsa were found to be legal and valid with the observations that there is no error on the part of the courts below in granting ad interim mandatory injunction in favour of the respondent.

In **S.R.Batra and another's case (supra)**, the Apex Court in para 29 of the judgment has held, quoted thus:-

“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'.”

This brings the Court to examine if enunciation of law laid down in **S.R.Batra and another's case (supra)** relied upon by this Court in **Suman's case (supra)**, in view of the facts and circumstances of the case, can extend any benefit to the petitioners to find fault in the orders passed by

the courts below rejecting their prayer for grant of ad interim injunction either to prohibit the respondent from entering the house or to direct her to leave the house in question. The answer, at the outset, appears to be in the negative.

It is appropriate to recapitulate the legal position that while disposing of a petition against an order passed by the trial court for ad interim injunction, affirmed in an appeal preferred before the first appellate court, the only eventuality in which interference may be made by this Court is, if the order impugned suffers from perversity.

Counsel for the petitioners has submitted that marriage of the respondent with Sunil Kumar was performed in the year 2008. It is not the case of the petitioners that since the day of marriage of the respondent with Sunil Kumar son of the petitioners, he and Renu did not reside in the property in question as husband and wife. There is no averment in the plaint in regard to residence of Sunil Kumar at present. The petitioners in para 3 have made reference in regard to ownership of half share of SCF No. 93 by Radha Aggarwal on the basis of civil court decree dated 31.10.2010, got registered on 30.11.2010. However, they did not disclose as to against whom the said decree was obtained by Radha Aggarwal to become owner in possession of half share of SCF No. 93. It is also not clear on record as to who is the owner in possession of the remaining half share of SCF No. 93. However, it has been averred that a house has been constructed on the first floor of SCF Nos. 92 and 93 which is owned and possessed by the petitioners. On asking of the court, counsel for the petitioners has produced photocopies of certain documents i.e. plaint of the suit, judgment and decree

dated 30.10.2010 passed in civil suit titled “Smt. Radha Aggarwal vs. Sunil Aggarwal”.

A plain reading of the judgment dated 30.10.2010 makes it evident that one of the allegations of Radha Aggarwal in that case is that Radha Aggarwal and Sunil Aggarwal are the members of joint Hindu family and she is owner in possession of half share of SCF No. 93 and the building constructed thereon and Sunil Aggarwal defendant has no concern or title with regard to the suit property. It was further pleaded that suit property was purchased by grand father of Sunil Aggarwal and vide civil court decree passed by Sub Judge, Hisar in civil suit No. 31-C of 1987 titled “Sunil Kumar vs. Naurang Rai” the suit property was transferred in the name of the defendant and since then defendant and plaintiff are enjoying the suit property as members of joint Hindu family.

The averments in the earlier suit leaves no manner of doubt that Sunil Aggarwal was the owner in possession of SCF No. 93 at the time when marriage of the respondent and Sunil Aggarwal was performed in the year 2008. As has been noticed hereinbefore, it is none of the plea of the petitioners that Sunil Aggarwal and the respondent did not reside in the property in question as husband and wife. As Sunil Aggarwal was the owner of the suit property at the time of his marriage with the respondent and they resided together as husband and wife in the said property, it is difficult to accept plea of the petitioners that the house in question cannot be claimed as a 'shared household' by the respondent. It further appears that as there arose marital disharmony between Sunil Aggarwal and his wife Renu resulting in filing of a divorce petition with the plea that they are residing

separately since November 2010, Sunil Aggarwal and the petitioners joined hands to get a decree from the court in regard to SCF No. 93 in order to deprive the respondent to claim her right in the suit property in view of the provisions of the Act particularly the expression 'shared household' defined therein. In this view of the matter, I do not find any error much less perversity in the impugned orders, as would call for intervention.

For the foregoing reasons, the petition is dismissed in limine.

(Rekha Mittal)
Judge

5.2.2016
paramjit