

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Rev. No. 4069 of 2015 (O&M)
Date of decision : 20.10.2016**

Guman Singh and another

.....Petitioner(s)

Versus

Luxmi Devi

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.P. Sharma, Advocate
for the petitioners.

Mr. Sarabjit Singh, Advocate
for the respondent.

ANITA CHAUDHRY, J.

The petitioners have assailed the order dated 11.09.2015, passed by the Additional Sessions Judge, Narnaul and the judgment dated 10.11.2014, passed by the Judicial Magistrate Ist Class, Narnaul, vide which the complainant Luxmi Devi, daughter-in-law of the petitioner has been given a right of residence in the house admittedly owned by the father-in-law.

The petitioners are residents of village Pichani, Tehsil Kotputli, District Jaipur (Rajasthan). Their son Bajrang is living in a rented quarter in Kotputli, District Jaipur. Luxmi had filed a petition under Section 125 Cr.P.C. against her husband in 2012 where she had given his address as that of Kotputli. The application filed by the wife under Section 24 of the Hindu

Marriage Act also indicated the same address.

A complaint under the Domestic Violence Act was filed by Luxmi and maintenance was granted. A residence order was also made. The Judicial Magistrate Ist Class, Narnaul vide order dated 10.11.2014 allowed maintenance of Rs.5,000/- per month against the husband and passed the residence order in the in-law's house. There is a mistake in para no.13 of the judgment where the village is mentioned as Kheri, P.S. Ateli whereas the in-laws are residing in village Pichani in Rajasthan.

Aggrieved by the order an appeal was preferred. The order was maintained and the appeal was dismissed.

Aggrieved by both the orders, the father-in-law and mother-in-law have preferred this revision.

The counsel for the petitioners urges that there is no dispute that this house is owned by the father-in-law and the lease deed is available on record. He further submits that after the grand daughter was born, the daughter-in-law went to her parent's house and did not return and their son is living in a rented house. It was urged that petitioner no.1 had purchased the house in 2008. It was urged that the daughter-in-law went to such an extent that she levelled false allegations of rape earlier against the father-in-law but did not lodge any FIR regarding that incident. It was urged that after the impugned order was passed, respondent no.2 with the help of the police had entered their house though on 14.10.2016 the operation of the judgment had been stayed by this Court. It was urged that in ***S.R. Batra & another Vs. Smt. Taruna Batra 2007(1) RCR (Crl.) 403***, the Apex Court has held that the wife is not entitled to live in the house owned by the in-laws and

both the Courts below have allowed residence to the daughter-in-law, which is against the judgment of the Apex Court. The counsel further submits that the grand daughter has also made a statement against respondent no.2 in the Court.

The complainant was present in the Court. She is unable to give any information about her daughter's schooling. The complainant states that she is not aware as to where her daughter had studied but states that she was now 14 years old.

The counsel appearing for the respondent submits that the husband is living with the parents, therefore, the wife has the right to reside in the same house as the husband. It was urged that the husband had also contributed in the purchase of the house.

A reading of the order of the first Court reveals that the child is with the father and this fact is admitted by the respondent. The wife had gone back to her parent's house and is living there. An FIR had been lodged by respondent in 2011, which ended in acquittal of the accused. A petition under Section 125 Cr.P.C. had been filed by the wife. The husband has filed for divorce. There is lot of acrimony between the couple. The only child is living with the father.

The daughter-in-law has been granted the right of residence on her plea that it was a shared house hold as enshrined under Section 15 of the Domestic Violence Act. The documents placed on the record show that the property is in the name of the father-in-law. The wife had filed a petition seeking maintenance and she had given the address of the husband as that of Kotputli.

The Apex Court in *S.R. Batra's case (supra)* examined Section 2(s), Section 17 and 19 of Protection of Women from Domestic Violence Act and rejected the argument that the household where the aggrieved persons lives or at any stage lives in domestic relationship would always be a 'shared household'.

Para 24 to 29 of the judgment are relevant and reproduced as under:-

“24. Learned counsel for the respondent Smt. Taruna Batra 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.

25. We cannot agree with this submission.

26. 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.

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

28. 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.

29. 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.'

The wife is entitled to a right of residence in the house of the husband. Respondent did not press for any right in the house occupied by the husband. She asserted her right of residence in the house of the in-laws. The house belongs to the father-in-law. It is his self-acquired property, it was acquired in 2008. It is the exclusive property of the father-in-law and cannot be said to be a shared house hold. The wife has a right to maintenance and a right of residence which can extend to the joint properties in which the husband has a share but she has no right to live in the house owned by the in-laws. Therefore, the order passed by the Courts below has to be modified and that part of the relief which provides for residence in the father-in-law's house, is set aside.

The order passed against the petitioners is set aside and the revision is allowed. If the respondent is still occupying the property, she will vacate it within a fortnight. Respondent would hand over the possession and remove her articles within the time frame given above and file her affidavit regarding vacation before the trial Court.

20.10.2016

Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No