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

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Date of Decision: December 20, 2016

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RSA 80/2016

POONAM TANWAR

..... Appellant

Through: Mr.Sachin Puri, Sr.Advocate with
Mr.Mayank Yadav, Advocate.

versus

SUBE SINGH TANWAR & ANR

..... Respondents

Through: Mr.Adesh Tanwar, Respondent No.2
in person.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. This Regular Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 against the concurrent judgment of the Trial Court dated 25th February, 2014 and of the First Appellate Court dated 18th November, 2015 whereby the prayer of the appellant for decree of permanent injunction has been declined by the Courts below.
2. The two Civil Suits No.506/2012 titled *Sube Singh & Ors. vs. Poonam Tanwar & Ors.* & 507/2012 titled *Poonam Tanwar & Ors. vs. Sube Singh & Ors.* seeking a decree for permanent injunction have been dismissed by the Trial Court by the common judgment dated 25th February, 2014.
3. The appellant herein who is daughter-in-law of respondent No.1 and

wife of respondent No.2 was plaintiff in Civil Suit No.507/2012. She has challenged the finding of the learned Trial Court as well the First Appellant Court claiming that she has a legal right to enter in the suit property in her capacity as daughter-in-law of respondent No.1 Sube Singh and wife of respondent No.2 Adesh Kumar. Hence both the Courts below have committed illegality in declining her relief of permanent injunction.

4. Civil Suit No.506/2012 titled *Sube Singh & Ors. vs. Poonam Tanwar & Ors.* was filed by the father-in-law and mother-in-law of Poonam Tanwar (appellant herein) against her as well her father and two brothers for passing a decree of permanent injunction restraining the defendants from forcibly entering or trespassing into the suit properties bearing No.WZ-572/B-1, Village Naraina, New Delhi and shop No.CB-390-A/2, Naraina, Ring Road, New Delhi.

5. Civil Suit No.507/2012 titled *Poonam Tanwar & Ors. vs. Sube Singh & Ors.* was filed by the appellant herein namely Poonam Tanwar against her father-in-law and husband who were impleaded as defendants No.1 & 2 respectively. The prayer made in Civil Suit No.507/2012 filed by the appellant herein was to the following effect:

“It is, therefore, prayed that this Hon'ble Court may kindly passed a decree of permanent injunction in favour of the plaintiff and against the defendants by restraining the defendants not to stop or locked the house bearing no.WZ-572/B-1, Village Naraina, New Delhi-110028 shown in site plan in red colour from entering in the abovesaid house to the plaintiff. It is further prayed to this Hon'ble Court that direction may kindly be given to the defendants not to locked the abovesaid house when ever the plaintiff wants to enter into the house abovesaid situated in village Naraina.”

6. The Civil Suit No.507/2012 was dismissed by the learned Trial Court placing reliance on the decision in *S.R.Batra & Anr. Vs. Smt.Taruna Batra*, 136 (2007) DLT 1 (SC), *Neetu Mittal vs. Kanta Mittal & Ors.* 152 (2008) DLT 691 and *Shumita Didi Sandhu vs. Sanjay Singh Sandhu & Ors.* 174 (2010) DLT 79 (B) holding that the plaintiff had no right to enter and live in the house of defendant No.1 father-in-law who is the exclusive owner. It was further held that the right of the wife to seek residence is available against her husband. Learned Trial Court refused to exercise the discretion in favour of the appellant/wife observing that the parties had been residing separately since May, 2004 and various litigations are going on including criminal proceedings under Section 498A & 406 IPC. Learned Trial Court did not find it to be a fit case to grant the discretionary relief of permanent injunction.

7. The First Appellate Court concurred with the finding of the learned Trial Court to the extent that the discretionary relief of injunction was declined to the appellant/wife, but set aside the finding of the learned Trial Court in respect of the title of defendant No.1 in the suit property observing that in a suit for injunction simplicitor filed by the plaintiff for restraining the defendant from obstructing her from entering in the suit property, the finding as to the title of the suit property need not have been given. The First Appellate Court while examining the case of the appellant as to whether the learned Trial Court has exercised its discretion on settled parameters while declining the relief of permanent injunction, in para 32 of the impugned judgment, held as under:

“Now, I shall consider whether the plaintiff is entitled to the relief of permanent injunction as prayed by her. It is a settled

law as per various judgments filed by both the parties that a wife has a right to claim residence from her husband. The question before this Court is whether in the facts and circumstances of the present case, it would be appropriate to permit the plaintiff to enter the suit property. Admittedly, there are a number of criminal and civil litigations pending between the parties. Parties are residing separately since 21.5.2004 i.e. for more than 11 years. The relations are so strained that on every instance when the parties meet a new complaint is made by either of the parties. In these circumstances, I do not deem it appropriate to exercise my discretion for granting the injunction in favour of the plaintiff as prayed. I find no infirmity or illegality in the exercise of discretion by Ld. Trial Court in refusing to grant the relief on injunction to the plaintiff. In case an injunction as prayed for by the plaintiff is granted in her favour it will simply result in disputes between the parties and further litigations. Even otherwise, the plaintiff, having a right to claim residence from her husband, has equally efficacious remedies available with her to exercise the said right. Accordingly, in my opinion she is not entitled to discretionary relief of injunction as prayed for and the same has been rightly denied by Ld. Trial Court by dismissing the suit. The impugned order to the said effect is accordingly, upheld. With these directions, appeal stand disposed off.”

8. On behalf of the appellant Mr.Sachin Puri, Senior Advocate submits that the appellant/wife has the right to enter and reside in the suit property which is an ancestral property and her matrimonial home. While assailing the concurrent findings of the Courts below, it has been contended that two civil suits were disposed of by common judgment and though the appellant pleaded the suit property to be owned by her father-in-law, the father-in-law in the suit filed by him claimed it to be built by him on a plot which was ancestral property. Learned counsel for the appellant submits that substantial question of law arises in this case as to the rights of the residence

of the daughter-in-law on the ancestral property in which her husband has a share. Learned counsel for the appellant has placed reliance on following judgments in support of his contention:

- (i) B. P. Achala Anand Vs S. Appi Reddy & anr. (2005) 3 SCC 313
- (ii) S. R. Batra & anr. Vs Smt. Taruna Batra 136 (2007) DLT 1 (SC)
- (iii) Dr. Abdul Rehim Undre Vs Padma Abdur Rahim Undre AIR 1982 Bombay 341
- (iv) Smt. Dipo Vs Wassan Singh & Ors. AIR 1983 Supreme Court 846
- (v) S. Melagiriappa & Ors. Vs Lalithamma AIR 1961 Mysore 152
- (vi) Commissioner of Income Tax, Bombay Vs Gomedalli Lakshminaryan AIR 1935 Bombay 412.
- (vii) Dr. Nilkanth Krishanrao Apte Vs Dr. Ramchandra Krishnarao Apte & anr. AIR 1991 Bombay 10.
- (viii) State Bank of India Vs Ghamandi Ram (Dead) through Gurbax Rai 1968 (2) SCC 33.
- (ix) Om Prakash Gupta Vs Ranbir B. Goyal (2002) 2 SCC 256
- (x) Rohit Chauhan Vs Surinder Singh & Ors. (2013) 9 SCC 419
- (xi) Kavita & anr. Vs Samunder Singh & Ors 203 (2012) DLT 621
- (xii) Madhukar & Ors. Vs Sangram & Ors. 2001 (4) Supreme Court Cases 756
- (xiii) Jawala Singh Vs Prem Singh, AIR 1972 (Delhi) 221
- (xiv) Narayan Bhagwantrao Gosavi Balajiwale Vs Gopal Vinayak Gosavi, 1959 Law suit (SC) 163
- (xv) Nagubhai Ammal Vs. B.Shama Rao AIR1956(SC) 593

9. It may be necessary to note here that above case law has been cited before the First Appellate Court as well and noted in para 29 of the impugned judgment. The First Appellant Court has dealt with the finding of learned Trial Court about the character of the suit property i.e. ancestral or exclusively owned by the father-in-law and set aside the finding of learned Trial Court observing that it was a suit for injunction simplicitor and not a title suit. In that circumstance it is not open to the appellant to contend in the Second Appeal that the suit property is an ancestral property.

10. A Regular Second Appeal has to be entertained only if there arises a substantial question of law. Suit for injunction is a discretionary relief. Both the Courts below have exercised their discretion after examining the legal position on the subject in issue.

11. In my opinion the arguments as raised by the learned Senior Advocate on behalf of the appellant are misconceived and no substantial question of law arises inasmuch as the right to residence or entering the suit property sought to be enforced by the appellant herein is available to her against her husband. Suit for injunction is maintainable only when no equally efficacious remedy is available, which is not the case here.

12. The jurisdiction of this Court under Section 100 CPC to entertain Second Appeal is confined only to such appeal which involves a substantial question of law. No jurisdiction is conferred on the High Court to interfere with bare question of fact in exercise of jurisdiction under Section 100 CPC.

13. In the instant case so far as title of respondent No.1 in the suit property is concerned, finding of the learned Trial Court to that extent has been set aside by the First Appellate Court mainly for the reason that title could not have been decided in a suit for injunction.

14. I completely agree with the conclusion arrived at by the Courts below as law is now well settled by the judgment of Apex Court in the case **S.R. Batra** (Supra) which was followed by the Division Bench of this Court in **Shumita Didi Sandhu** (Supra) that a house which was owned by the mother-in-law or the father-in-law is not the matrimonial home and the right of residence is available against the husband.

15. Admittedly the parties are litigating for more than a decade. Since May, 2004 the appellant had not resided in the suit property. In such

circumstances, both the Courts below have rightly exercised their judicial discretion by declining to pass a decree of permanent injunction in favour of the appellant/plaintiff in Civil Suit No.507/2012.

16. Since no substantial question of law arises for consideration in this case, the Regular Second Appeal is dismissed.

17. No costs.

CM No.10476/2016

Dismissed as infructuous.

DECEMBER 20, 2016

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PRATIBHA RANI, J.

