

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

Crl.R.C.No.1317 of 2017

Mohamed Akbar

.. Revision Petitioner

Versus

Sajia Fathima

.. Respondent/Complainant

Revision Case filed under Section under Section 397 r/w. 401 Cr.P.C. against the impugned order dated 14.06.2017 made in Crl.A.No.263 of 2016 on the file of the learned XVI Additional City Civil Court, Chennai, confirming the order dated 01.09.2014 made in Crl.M.P.No.1192 of 2014 in Crl.MP.No.396 of 2014 in C.C. No.84 of 2014 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

For Revision Petitioner : Mr.H.Manivannan

For Respondent : Mr.G.Mani Prabhu

ORDER

The revision petitioner herein is the father-in-law of the respondent herein and conversely the respondent herein is the daughter-in-law of the revision petitioner.

2. The right to reside in the shared household property as contemplated under Domestic Violence Act is what is claimed by the daughter-in-law as against the father-in-law.

2.1. The right to reside in the shared household was upheld by the learned Metropolitan Magistrate as well as by the Appellate Court. Challenging the same, this Criminal Revision Case has been filed by the father-in-law.

2.2. The Appellate Court held that every women in 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 property and that the daughter-in-law has the right to claim the residential right in the self-acquired property of father-in-law.

3. The revision petitioner would submit that house is a place, where there should be mutual caring and sharing apart from the trust. It is stated that on account of the complaint preferred by the daughter-in-law, the mother-in-law, aged 68

years, was arrested and put behind the bar and subsequently, she was admitted in Intensive Care Unit in an hospital and continued presence of daughter-in-law at home would cause incalculable damage to physical and mental helath of the revision petitioner and his wife.

4. The revision petitioner contends that the Judgment of the lower Court is against the law declared by the Supreme Court in the case of S.R.Batra and another vs. Taruna Batra (2007 3 SCC 169) and reiterated in the case of Vimalban Ajitbhai Patel vs. Vastsalaben Ashokbhai Patel and others (2008 SCC 649).

5. The learned counsel for the revision petitioner, relying upon the various decisions rendered by the various High Courts and the Hon'ble Supreme Court, contended that the residence taken by the daughter-in-law either in the house of mother-in-law or in the house of the father-in-law would not be a shared household within the meaning of Section 2(s) of Protection of Women from Domestic Violence Act and that the daughter-in-law would have no right of residence therein, in terms of Section 17(1) of the Act. In pursuance of his contention, he brought forth the following reports for consideration:

(i) Sangeetha vs. Om Prakash Balyan (2015 Crl.L.J.2635)

8. Under Section 17(1) of the Act, right to residence in a shared household can only be appreciated if the house belong to or taken on rent by husband or the house belong to joint family to which husband is a member. Shared household cannot mean that wherever the husband and wife lived together in the past, the same would become shared household. There cannot be any legal obligation on the part of parents of the husband to maintain the wife of deceased son particularly in view of the fact that disrespect or disregard to them has become source of nuisance. The bonding can be on the basis of mutual relationship of love and affection but in any case parents of the husband cannot be forced to maintain daughter-in-law from their self-acquired property. The wife has only right to maintenance against her husband or sons/daughters or from the ancestral share of her husband in the property but certainly she cannot thrust herself against the wishes of parents of her husband nor she can claim against the wishes of the parents of her husband.

5.1. It is relevant to point out that this case has placed reliance on the decision of the Hon'ble Supreme Court

in S.R.Batra and another vs. Smt.Taruna Batra. In various decisions, it has been held that the daughter-in-law cannot claim right to live in the house of parents of her husband, against their wishes and the relevant observation reads as under:

"20. In the light of numerous precedents following i.e. Sardar Malkiat Singh v. Kanwaljit Kaur and ors., (2010 (2) PLR (Delhi) 59) and Vimalben Ajitbhai Patel v. Vastslaben Ashokbhai Patel and Ors., (2008(4) SCC 649) it has become established legal principle that daughter-in-law cannot claim right to live in the house of the parents of her husband against their wishes.

5.2. The next decision is one reported in Hamina Kang vs. District Magistrate, Chandigarh and others (2015 CrI.L.J.2635), whereunder, S.R.Batra's case has been referred to. In the said decision, the claim of the wife for alternative accommodation has been dealt with and the relevant observation reads as under:

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 (sic) 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 2, mother of Amit Batra. Hence it cannot be called a "shared household".

30. 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."

5.3. S.R.Batra's case has also been relied upon by the High Court of Kerala in AIR 2016 Kerala 8, wherein, it was

observed that the property exclusively belonging to the mother-in-law cannot be called a "shared household".

5.4. The pragmatic approach which is acceptable to majority is highlighted in the following decision with the meaning of shared household, as held in the decision Neetu Mittal Vs Kanta Mittal as under:

"Once a person gains majority, he becomes independent and parents have no liability to maintain him. It is different thing that out of love and affection, the parents may continue to support him even when he becomes financially independent or continue to help him even after his marriage. This help and support of parents to the son is available only out of their love and affection and out of mutual trust and understanding. There is no legal liability on the parents to continue to support a dis-obedient son or a son which becomes liability on them or a son who dis-respects or dis-regards them or becomes a source of nuisance for them or trouble for them. The parents can always forsake such a son and daughter-in-law and tell them to leave their house and lead their own life and let them live in peace. It is because of love, affection, mutual trust, respect and support that members of a joint family gain from each other that the parents keep supporting their sons and families of sons. In turn, the parents get equal support, love, affection and care. Where this mutual relationship of love, care, trust and support goes, the parents cannot be forced to keep a son or daughter in law with them nor there is any statutory provision which compels parents to suffer because of the acts of residence and his son or daughter in law."

Matrimonial home: A Definition

"However, matrimonial home was not just a building made of bricks and walls. It was a home/place comprising of sweetness of relations of family members and elders, full of blessing. In the matrimonial home, matrimonial rights and obligations are to be equally observed. Practically speaking, the residence of husband should be the home of the wife where both the spouses have equal right to reside."

6. The records have been produced to show that the property stands in the name of father-in-law. It has been allotted in favour of the father-in-law on 22.05.1967. Possession has been handed over on 08.06.1970. Sale deed dated 18.06.1986 stands in the name of the petitioner. There are ample documentary evidence to show that it is the exclusive property of father-in-law.

6.1. There is ample evidence to show that father-in-law and daughter-in-law are not in cordial terms and there are incessant fight between both of them.

6.2. The ground raised by the revisioin petitioner herein is that the Courts below have not approached the problem legally and has given the finding, which is perverse, illegal and against the decision of the Hon'ble Supreme Court.

7. However, considering the fact that the husband of the respondent is in USA, the father-in-law was requested to get the concurrence of son to provide Rs.20,000/- towards rent for alternative accommodation to his daughter-in-law and as the learned counsel on instructions from father-in-law agreed for the same, the father-in-law/petitioner shall pay a sum of Rs.20,000/- for a period of six months to the respondent/daughter-in-law towards payment of rent. This is placed on record. The said amount shall be paid by way of demand draft payable every month in favour of the respondent/daughter-in-law which shall be handed over to the counsel for the respondent.

7.1. The respondent is granted three months time to vacate and hand over the possession to the revision petitioner.

8. Accordingly, the Criminal Rvision Petition is allowed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

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To

1. The XVI Additional City Civil Court,
Chennai.
2. -do- Thro' The Principal Judge,
City Civil Court, Chennai.
3. The V Metropolitan Magistrate,
Egmore, Chennai.
- 4.-do- Thro' Thro' Chief Metropolitan Magistrate,
Egmore, Chennai.

+ 1 cc to MR. Mani Prabhu, Advocate Sr.92295

+ 1 cc to Mr. Manivannan, Advocate Sr.92511

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