

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CRIMINAL REVISION CASE No.711 of 2008**

**ORDER:**

This criminal revision case is filed under Sections 397 and 401 Cr.P.C., assailing the orders dated 18.04.2008 in CrI.A.No.97 of 2007 passed by the learned II Additional Sessions Judge, Kurnool at Adoni, partly confirming the orders dated 06.09.2007 in DVC No.2 of 2007 on the file of the Court of Judicial First Class Magistrate, Pattikonda.

2. The parties will hereinafter be referred to as they are arrayed before the trial Court.

3. Learned counsel for the petitioners herein(respondent Nos.2 to 4 in DVC) submitted that the findings recorded by the Courts below are not based on any material much less legally admissible evidence; therefore, the findings recorded by the Courts below are perverse and are liable to be set aside. He further submitted that the Courts below failed to consider that the house property in question is the self-acquired property of the second respondent and the same was sold by him in the year 2007. ***Per contra***, learned counsel for the second respondent (petitioner in DVC) submitted that the house in question is the joint family property; therefore, the petitioner and her children are entitled to stay in the house.

4. Now, the points that arise for consideration are:

1. Whether the findings recorded by the courts below are perverse? and
2. Whether there is any illegality or irregularity in the orders of the Courts below which warrants interference of this Court?

Both points are interlinked to each other hence, I am inclined to address both points together in order to avoid recapitulation of facts.

5. A perusal of the record reveals that the petitioner filed DVC No.2 of 2007 against the respondents 1 to 4 on the file of the Judicial Magistrate of First Class, Pattikonda, seeking various reliefs under the Protection of Women from Domestic Violence Act, 2005 (the DV Act). Respondents filed counter, *inter alia*, contending that the petition is liable to be dismissed as the DVC was filed falsely against the respondents at the instigation of the brothers and sisters of the petitioner. Before the trial Court, to substantiate the case, on behalf of the petitioners PWs.1 to 3 were examined and Ex.P1 was marked. On behalf of the respondents, R.Ws.1 and 2 were examined and no documents were marked. Basing on the oral and documentary evidence available on record, the trial Court allowed the DVC in part directing the respondents 1 to 4 not to commit any act of domestic violence. Respondents 1 to 4 are restrained from dispossessing or in any other manner disturbing the

possession of the petitioner and her daughter from the shared house-hold. The first respondent is directed to pay maintenance of Rs.1500/-p.m. to the petitioner and Rs.500/-p.m. to the daughter on or before 5<sup>th</sup> of every succeeding month. Respondents 1 to 4 are directed to pay compensation of Rs.60,000/-. Feeling aggrieved by the orders dated 06.9.2007, respondents 1 to 4 filed CrI.A.No.97 of 2007 on the file of the Court of II Additional District and Sessions Judge, Kurnool at Adoni. The appellate Court, after reappraising the oral and documentary evidence without being influenced by the observations made in the order of the DVC, arrived at a conclusion that the petitioner is entitled for shared house-hold. The appellate Court confirmed the orders of the Court below in part and modified to certain extent. The quantum of maintenance awarded by the trial Court @ Rs.1500/- p.m. to the petitioner was modified and reduced to Rs.1000/-p.m., and the first respondent-husband alone is directed to pay maintenance. The present revision is filed challenging the relief of permitting the petitioner to stay in shared house-hold. For one reason or other, the first respondent did not prefer any revision challenging the orders dated 18.04.2008 in the criminal appeal. Therefore, the findings recorded by the appellate Court became final so far as the first respondent is concerned.

6. At this juncture, the crucial question that falls for consideration is, whether the house in question is a shared

house-hold or not. It is the contention of the second respondent that the house in question is his self-acquired property and he sold the same to one Siva Gowri on 05.07.2007. It is not in dispute that the first respondent is the son, third respondent is the wife, 4<sup>th</sup> respondent is the son and the petitioner is daughter-in-law of the second respondent. It is also not in dispute that the marriage of the petitioner was performed with the first respondent on 25.06.1999. Out of lawful wedlock, the petitioner and the first respondent were blessed with one daughter. For one reason or other, disputes arose between the petitioner and the first respondent. A perusal of the record also reveals that the petitioner lodged a complaint against the respondents under Section 498-A IPC. It is not in dispute that the petitioner along with her husband stayed in the house in question up to filing of the petition though they are staying at different places in view of employment of first respondent. Simply because the first respondent and the petitioner stayed in different places, that itself is not a valid ground to arrive at a conclusion that their right in the shared house-hold is deemed to be ceased. If really the house in question is a self-acquired property, what prevented the second respondent to adduce oral and documentary evidence on this aspect? For the reasons best known to him, the second respondent did not produce the sale deed alleged to have been executed by him on 05.07.2007 in favour of one Siva Gowri. A duty is

cast on the party to the proceeding to substantiate his stand by producing cogent and convincing evidence. The second respondent miserably failed to establish that the house in question is his self-acquired property and the other respondents have no right whatsoever. The trial Court as well as the appellate Court arrived at a conclusion that the petitioner, being the wife of the first respondent and daughter-in-law of the second respondent, is entitled to stay in the shared house-hold. If the findings recorded by the Courts below are based on no evidence, or based on evidence, which is not legally admissible, then this Court can treat those findings as perverse. It is needless to say that if the revisional Court comes to a conclusion that the findings recorded by the Courts below are perverse, certainly it can interfere and set aside the same. In the instant case, the findings recorded by the trial Court as well as the appellate Court are based on material much less legally admissible material.

7. Having regard to the facts and circumstances of the case, this Court is unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the Courts below are perverse. It is a settled principle of law that the revisional Court shall not lightly interfere with the concurrent findings of the fact recorded by the Courts below. I am fully agreeing with the findings recorded by the Courts below. There is no illegality, irregularity or impropriety

in the orders of the Courts below, which warrants interference of this Court by exercising revisional jurisdiction under Section 397 Cr.P.C. Viewed from any angle, the revision lacks merits and the same is liable to be dismissed.

8. Accordingly, Criminal Revision Case is dismissed at the stage of admission. As a sequel, the miscellaneous petitions, pending if any in this revision, shall stand closed.

**Date: 31.08.2017**  
Rns

**T. SUNIL CHOWDARY, J**

