

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

CRM-M-35430 of 2016 (O&M)

Date of decision: 17.11.2017

Gurdeep Kaur

...Petitioner(s)

Versus

Manjit Kaur

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Dinesh Ghai, Advocate for the petitioner(s).

Mr. M.S. Sachdev, Advocate for the respondent(s).

Jitendra Chauhan, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for setting aside the impugned order dated 16.08.2016 (Annexure P-8), passed by learned Addl. Sessions Judge, Jalandhar and impugned order dated 07.10.2015 (Annexure P-6), passed by Judicial Magistrate 1st Class, Jalandhar, whereby the petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, by the respondent was allowed.

Learned counsel for the petitioner has submitted that both the Courts below have erred in passing the impugned orders, whereby the son of the petitioner was directed to provide one separate room along with access to the kitchen and washroom etc., in

the house owned by parents in-law of the respondent. The house in question is owned and possessed by the petitioner, mother in-law of the respondent and as per settled law, the respondent being daughter in-law has no right over the same, however, both the Courts below have not taken into consideration the matter in right perspective and as per law. It is further argued that as per settled law, the house owned by the parents of the bridegroom is not the matrimonial home of bride, hence, no direction could be given for providing accommodation to the respondent in the house owned by the petitioner. The petitioner had already disinherited her son and his wife/respondent from her moveable and immovable properties. The impugned orders have been passed without going into the merits of the case, merely on the basis of the site plan of the house of the petitioner by holding that sufficient space is available in the house and also an access to the kitchen and washroom etc. As far as selling of 1/3rd share of the said property by the son of the petitioner to his maternal aunt is concerned, the same has wrongly been taken into consideration by the Courts below, as the agreement to sell qua the same had already been executed on a much prior date. He further states that the son of the petitioner is still ready to provide her a separate room in case the respondent is willing to live separately as per statement dated 7.10.2015 (Annexure P-6).

On the other hand, the learned counsel for the respondent

states that after the marriage, the respondent has continuously stayed and has cohabited in the house in question and thus, she is entitled to the said accommodation. The respondent has neither any source of income nor any property in her name and now after she was thrown out of her matrimonial home, the respondent and her minor child is totally dependent upon her brother, who is the sole bread winning member of the entire family. During the pendency of the litigation, the son of the petitioner, having right in the property has sold the 1/3rd share of the property to his maternal aunt. The entire house, in which the petitioner along with her husband and son are residing, measures 24 marlas, out of which, 6 marlas were owned by the husband of respondent. As it was a single dwelling unit, no possession could have been delivered to the so called purchaser, namely Sandeep Kaur as per provisions of Section 44 of Transfer of Property Act. In the present case, the purchaser had knowledge of the litigation being a real sister of the petitioner and the sale deed was executed just to defeat the rights of the respondent. Both the Courts below have held that the property in dispute is still a shared household. In fact, the son of the petitioner is residing in the same house, therefore, the respondent is entitled to reside in the same house.

Heard.

It is not in dispute that the house in question is owned by

the petitioner who is mother in-law of the respondent. The son of the petitioner having right in the property has sold his share to his maternal aunt, without consideration just to defeat the right of the respondent. The respondent has no source of income. The son of the petitioner is duty bound to provide shelter and to maintain his wife and minor child. As per the record, there are more than ten rooms in the house. The plea of the petitioner that the respondent would provide separate residence clearly appears to be an afterthought because she herself has got no personal income being a house wife. Perusal of the record would reveal that the son of the petitioner has admitted that he still resides in the house in question. The argument of learned counsel for the petitioner, that the Courts below has passed the impugned order on the basis of site plan, lacks merit, as the site plan was not controverted by the petitioner. Under the given facts and circumstances of the case, this Court finds no merit in the present petition. There is no illegality, infirmity or perversity in the impugned orders which are hereby affirmed.

Dismissed.

17.11.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable:	Yes	No