

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

Criminal Revision No. 1665 of 2017 (O&M)

Date of decision : July 11, 2017

Kamaljit Kaur

.....Petitioner

Versus

Salinder Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Ruchi Sekhri, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 24.02.2014 passed by the learned Judicial Magistrate First Class, Jalandhar as well as order dated 03.02.2017 passed by the learned Additional Sessions Judge, Jalandhar.

Brief facts of the case are that the complainant – petitioner filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short – 'the Act'). It is prayed therein that the complainant has a right to reside in the shared household of the ancestral house of her husband. When she came back from America, she was not permitted to enter the ancestral home of her husband by the respondent, who is her brother-in-law (Devar). She, thus, prayed that she should be permitted residence in two of the rooms in the said household including kitchen, bathroom. Her dowry and household articles lying in the house be got recovered. The petitioner stated before the learned trial Court that she was

married with Nirmal Singh on 20.03.1988. She alongwith her husband lived at their ancestral home at village Basrampur. Her father-in-law died in the year 1995 leaving behind three sons including her husband as well as two daughters. The petitioner shifted to America in the year 2001 alongwith her husband and family. It is stated that when the petitioner left for America she left her household articles i.e. ceiling fan, table fan, chairs, table, double bed, bedding, utensils, suit cases, old clothes and photographs etc. in the said house and she locked two rooms in the said house. However, when she returned to India in the year 2008, the respondent had illegally stolen her belongings by breaking the lock of the said two rooms and she was not allowed to enter the ancestral home. Therefore, the present petition was filed.

The said averments were denied by the respondent while stating that the petitioner and his wife were in the United States of America for the last 10/15 years. Father of the respondent passed away in the year 1995. Family partition had taken place during the life time of his father.

In the affidavit filed by the respondent before the learned trial Court, it is mentioned that during the life time of his father, family settlement/partition was effected in the year 1990. Their elder brother Jagir Singh was given 09 kanals of agricultural land and about 08 marlas situated in the village for their residence. The petitioner's husband was given 16 ½ kanals of agricultural land and about 0-12 marlas area within the village (within phirni) adjoining to the area given to their brother Jagir Singh. Respondent received 11½ kanals of agricultural land, 0-12 marlas from the phirni at the Northern side and one house i.e. the house in question. A power of attorney was executed by their father in favour of the petitioner's

husband. The petitioner had no right whatsoever over the house in question in which the respondent alongwith his family were residing since a number of years after the family partition. The learned trial Court dismissed the petition filed by the petitioner on the ground that the petitioner was unable to prove that the house in question remained an ancestral house in the hands of the respondent after the family partition in question. Therefore, it is not proved that the said house falls within the definition of 'shared household'. Aggrieved therefrom, the petitioner preferred an appeal, which was also dismissed by the learned Additional Sessions Judge, Jalandhar vide impugned order dated 03.02.2017.

Learned counsel for the petitioner has vehemently argued that the impugned orders have been wrongly passed. No mention has been made about her dowry articles etc. which have been averred to be lying in the said house. The house in question retains the character of a shared household in which the petitioner has a right to reside. Therefore, this petition be allowed.

I have heard learned counsel for the petitioner and have gone through the file as well as the application under Section 12 of the Act, the written statement alongwith the photocopy of the evidence, which is produced by learned counsel for the petitioner in Court today. It is not denied that the petitioner as well as her husband are living in America since the year 2001. The petitioner's father-in-law admittedly transferred six kanals of land in favour of the petitioner's husband, another six kanals in favour of Jasbir Kaur w/o Jagir Singh. The petitioner CW3 has admitted that in respect to the rest of the property her father-in-law executed a power of attorney in favour of her husband. It is further admitted that her husband

being a power of attorney holder transferred 3 kanals of land in favour of Jagir Singh, his elder brother and 11 ½ kanals in favour of the respondent and 10 kanals of land was transferred in favour of the present petitioner. It is further admitted by her that the entire property of her father-in-law was transferred during his lifetime.

In the factual matrix of the case, it has been rightly held by the learned trial Court that an oral partition did take place between the family. The family settlement was duly acted upon. The family was joint till the year 1992 only. The respondent was working in Dubai and he returned in the year 1997. It was on his return that he demolished the whole house and reconstructed the same. The electricity connection is proved to be in his name from the year 1999. Electricity bills for the years 2000 to 2007 have been produced on record.

Similarly, the learned appellate Court while dealing with the matter extensively has rightly dismissed the appeal. Keeping in view the facts and circumstances of the case where the petitioner alongwith her husband and family are admittedly living in the United States of America since a number of years after the family partition as well as the specific evidence on record, I do not find any ground to interfere in the petitioner's favour.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or any error apparent on record in impugned order 24.02.2014 passed by the learned Judicial Magistrate First Class, Jalandhar or order dated 03.02.2017 passed by the learned Additional Sessions Judge, Jalandhar which calls for interference of this Court in exercise of its revisional jurisdiction.

Accordingly, this revision petition is dismissed.

July 11, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No