

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

**(1) RSA No.2668 of 2013 (O&M)
Date of Order: 21st August, 2017**

Sardara Ram ..Appellant

Versus

Paramjit Kaur ..Respondent

(2) RSA No.2669 of 2013 (O&M)

Sardara Ram and another ...Appellants

Versus

Paramjit Kaur and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Jai Vir Yadav, Advocate,
for the appellant.**

**Mr. K.S.Dadwal, Advocate,
for the respondent.**

ANIL KSHETARPAL, J.

This common judgment shall dispose of two regular second appeals arising out of a suit.

The question that arises for consideration is whether daughter-in-law can claim protection from dispossession on the ground that the property exclusively owned by father-in-law is a “shared household”, within the meaning of Section 2(s) of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act').

Plaintiff- respondent no.1 filed suit for permanent injunction restraining the defendants from interfering in peaceful and lawful possession of plaintiff on property mentioned in the plaint in respect of two

houses, one double storey and second adjoining house.

Defendant no.1-Sardara Ram is father-in-law, whereas defendant no.2- Ashok Kumar is brother-in-law and defendant no.3-Sudesh Kumar is the husband.

The plaintiff filed a suit with the assertion that she was married to defendant no.3 on 04.10.2000 and thereafter plaintiff and defendant no.3 started living as husband and wife in village Dihana, in the property in dispute. She alleges that she was maltreated on account of bringing less dowry. She further claimed that she is residing in the property in dispute as licensee of the grand father of defendant no.3 namely Shri Karam Chand. It was claimed that the property, in dispute, is ancestral property of defendants.

Defendants no.1 and 2 contested the suit. It was asserted that plaintiff is licensee only with respect to first floor of the double storey house. Her license has been terminated by notice. It was claimed that the relationship of plaintiff and defendant no.3 were not cordial and defendant no.1 has already disinherited them from his movable and immovable property. It was also asserted that the property was purchased by defendant no.1 from Mala widow of Sant Ram and others. Even the second property was claimed to be self acquired.

Defendant no.1 filed a counter claim claiming possession of the first floor of double storey house.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit filed by the plaintiff after recording a finding that the property is self acquired property of defendant no.1. It was further held that the plaintiff has filed a petition under Section 12 and 19 of the Act,

which is pending. It was further held that plaintiff has not been subjected to any act of domestic violence. It is proved on the file that defendants are not residing in the property in dispute, rather defendant no.1 is residing with his son at Hoshiarpur, for the last 5 years on account of harassment and cruelty committed upon defendant no.1 by the plaintiff. Learned trial Court further held that in a complaint, an enquiry was conducted by Senior Superintendent of Police, Hoshiarpur, which is Ex.D1, on the file. It was concluded in the enquiry that defendant no.1 Sardara Ram being fed up of the atrocities of his son Sudesh Kumar (defendant no.3) and daughter-in-law Paramjit Kaur(plaintiff) started residing with his son Ashok Kumar at Hoshiarpur along with his wife Dalip Kaur. In the enquiry, it was further found that Sardara Ram has not committed any criminal act against the plaintiff. The trial Court while referring to the enquiry report has also held that in fact Pritam Kaur, the plaintiff, intended to grab the property of defendant no.1-Sardara Ram. With these findings, the suit filed by the plaintiff was dismissed, whereas counter claim filed by the defendant no.1 Sardara Ram was allowed.

Plaintiff-appellant filed two appeals, one against dismissal of the suit filed by her, whereas other against the decree passed in the counter claim.

Learned first appellate Court set aside the judgment passed by the learned trial Court on the ground that plaintiff is entitled to protect her possession as she has a legal right to remain in possession of the property in dispute. The first appellate Court has held that plaintiff being daughter-in-law is entitled to remain in possession of the property, in dispute.

That is how these two appeal have been preferred by

defendants no.1 and 2.

I have heard counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts as well as the records.

There is absolutely no dispute. The two houses are self acquired properties of appellant no.1-Sardara Ram-defendant no.1, as found by the Courts below and not disputed before me. Hon'ble Supreme Court of India while interpreting Section 2(s), 17 and 19 of the Act, has held that the property owned by mother-in-law is not joint family property and the daughter-in-law cannot claim such property to be "shared household" within the meaning of Section 2(s) of the Act. The conclusion drawn by the Hon'ble Supreme Court in paragraph 29 of the judgment reported as **S.R.Batra and another v. Smt. Taruna Batra, 2007(1) RCR(Criminal), 403**, is extracted as under:-

"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 share household, and a shared household' would only mean the house belonging to or taken or 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 no.2, mother of Amit Batra. Hence, it cannot be called, a 'shared household'."

The aforesaid view of the Hon'ble Supreme Court of India has also been followed by this Court in the judgment reported as 2014(3) RCR (Civil), 906 and 2015(1) RCR(Civil) 304.

Learned counsel for the respondent has relied upon a division Bench judgment of Delhi High Court reported as Smt. Preeti Satija v. Smt. Raj Kumari and another, 2004(2) RCR(Civil), 8.

I have considered the submissions of counsel for the parties.

Hon'ble Supreme Court of India has very categorically held that the property exclusively owned by mother-in-law cannot be claimed to be a "shared household" within the meaning of Section 2(s) of the Act of 2005.

In view of the judgment passed by the Hon'ble Supreme Court of India, I am afraid, the judgment passed by the Division Bench of Delhi High Court cannot be relied upon.

Learned first appellate court has further erred in ignoring the finding arrived at by the trial Court. Learned trial Court categorically held that the plaintiff has failed to prove any domestic violence. The learned trial Court further relied upon the conclusion drawn in an enquiry by the Senior Superintendent of Police, Hoshiarpur, wherein it was reported that on account of continuous humiliation and harassment at the hands of defendant no.3-husband and plaintiff, defendant no.1 along with his wife shifted to Hoshiarpur. It was further concluded in the enquiry report that the plaintiff is in fact trying to grab the property of defendant no.1. Learned first appellate Court has further overlooked that plaintiff had claimed protection of her possession from two houses, one double storey and second adjoining the house. Learned first appellate Court further overlooked that defendants are not living in the property in dispute for quite some time even before the

filing of the suit.

Plaintiff in her plaint had claimed that the property was given to her on license by Karam Chand, father of defendant no.1 and grand father of her husband. However, plaintiff failed to lead any evidence to prove that fact. Defendants have established on the file that the license was duly revoked vide notice dated 14.10.2009.

In view of the discussion made above, the question of law as framed earlier is answered in favour of the appellants. The judgments and decrees passed by the first appellate court are set aside and judgment and decree passed by the trial Court is restored.

21st August, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No