

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

RSA No. 6803 of 2016 (O & M)

Date of Decision:-09.01.2017

Inderjeet Kaur

...Appellant

Versus

Baldev Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Gazi Mohd. Umair, Advocate
for the applicant-appellant.

HARI PAL VERMA J.

CM No.17715-C of 2016

Prayer in this application filed under Section 149 CPC is for making up the deficiency of Court fee of Rs.121.20 paisa.

For the reasons mentioned in the application, same is allowed and the applicant is permitted to make up the deficiency of Court fee of Rs.121.20 paisa.

CM No.17716-C of 2016

This is an application seeking condonation of delay of 02 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 02 days in re-filing the appeal is condoned.

RSA No.6803 of 2016

Appellant/defendant No.2 Inderjeet Kaur wife of Karamjeet Singh has filed the present regular second appeal against the judgment and decree dated 08.8.2016 passed by learned District Judge, SAS Nagar, Mohali, whereby the appeal filed by the appellant against the judgment and decree dated 16.5.2016 passed by Civil Judge (Junior Division), SAS Nagar, Mohali, was dismissed.

Briefly stated respondents No.1 and 2/plaintiffs have filed a suit for mandatory injunction praying therein that defendants may be directed to vacate the two room set alongwith kitchen and bathroom on the ground floor of House No.1211, Phase 3B2, SAS Nagar, Mohali, which was owned by them. The case of the respondents/plaintiffs is that the suit property is a self-acquired property and vests in them. Defendant No.1 is the son of plaintiffs whereas defendant No.2 is wife of defendant No.1. They got married in the year 1990. On request of defendants, the plaintiffs allowed them to stay on the ground floor of the suit property consisting of two rooms along with the kitchen and bathroom as lessees with an expectation that they would take care of them. But the defendants have always misbehaved and abused the plaintiffs. They even levelled false allegations and have made complaints to the police against the plaintiffs, as a result of which they have defamed their public image and caused great embarrassment and shock to them. The plaintiffs have averred in the plaint that the appellant/defendant No.2 had attacked, threatened and abused them on the pretext of implicating them in a false case of outraging her modesty

and dowry. Defendant No.1, who is in the habit of drinking and intoxication remained a mute spectator throughout and at occasions he even gave beatings to the plaintiffs. On 18.5.2014, the plaintiffs had asked the defendants to vacate their house, but they did not vacate the same. Rather, defendant No.2 had threatened them that she would vacate the house only if a separate house in her name is purchased by them (i.e. by the plaintiffs). In this manner, the plaintiffs are not able to use the portion of the house in their possession. Accordingly, the plaintiffs issued a legal notice to the defendants asking them to vacate the premises and to terminate the license, but still the house was not vacated. Since the defendants have refused to accept the claim of the plaintiffs to vacate the premises, hence the present suit has been filed.

Upon notice, the defendants appeared and filed their written statement. They have taken preliminary objection regarding the maintainability of the suit, suppressing the material facts, locus standi of the plaintiffs and estoppel. However, on merits, it was submitted that the suit property was purchased by the plaintiffs after selling the ancestral property in which the defendants also had a right. The fact regarding marriage of the defendants and their possession on the ground floor has however duly been admitted.

The replication was filed by the plaintiffs in which the contents of the written statements were denied and that of the plaint were reiterated.

On the basis of pleadings of the parties, the following issues were framed :-

- “(1) Whether the plaintiff is entitled for mandatory injunction as prayed for ?OPP
- (2) Whether the suit of the plaintiff is not maintainable ?OPD
- (3) Whether the plaintiff has no locus standi to file the present suit ? OPD
- (4) Whether the suit is liable to be dismissed ? OPD
- (5) Relief.”

Learned Civil Judge (Junior Division), SAS Nagar, Mohali, vide judgment dated 16.5.2016 decreed the suit with costs and issued a mandate directing the defendants to vacate the suit property within one month from the passing of the decree.

The said judgment and decree were made subject matter of appeal before the learned District Judge, SAS Nagar, Mohali, which was also dismissed vide judgment and decree dated 08.8.2016.

It is in these circumstances, the present regular second appeal has been filed.

Learned counsel for the appellant has vehemently argued that the appellant is residing in the shared matrimonial house and every woman after her marriage has a right of residence provided by various acts i.e. The Women Protection Act and other civil Acts. Accordingly, the appellant is residing in her matrimonial house with her sons Gurinder Singh and Rupinderpal Singh, who are majors. The appellant as well as her sons are giving full love and affection to the respondents/plaintiffs. Now, respondents No.1 and 2 are playing in the hands of their son Karamjeet Singh. They intend to throw the appellant and her sons from her

matrimonial home illegally. In fact, Karamjeet Singh wants divorce from her and to re-marry. He further argued that respondents have no locus standi to file the suit and they are estopped from filing the present suit by their act and conduct as the suit is frivolous and misconceived. The respondents/plaintiffs had purchased the House No.1211, Phase 3B2, SAS Nagar, Mohali after selling ancestral property in which the appellant also had a right. It is after selling the said ancestral house, the house in question was purchased only to deprive the rights of the appellant. The marriage of the appellant with defendant No.1-Karamjeet Singh was solemnized in the year 1990 and after marriage, she has been residing on the ground floor of the house in question. Respondents Baldev Singh and Piar Kaur are NRIs and from the date of their arrival in India, they are being looked after by the appellant.

The appellant has formulated the following substantial questions of law in the appeal :-

- i) Whether the respondents/plaintiffs have any locus standi to file the suit ?
- ii) Whether the suit is liable to be dismissed ?
- iii) Whether the suit of the plaintiff is not maintainable ?
- iv) Whether the pleadings of the parties have been properly appreciated by the learned Courts below while passing the judgment and decree in the present case ?
- v) Whether the evidence produced by the appellant/defendant has been properly appreciated by the learned Courts below while passing the

judgments and decree in the present case ?

- vi) Whether the suit of the respondent/plaintiff is hit by the principle of estoppel ?
- vii) Whether the judgments and decrees passed by the learned Courts below are perverse in nature ?”

I have heard learned counsel for the appellant and peruse the records.

The respondents/plaintiffs are admittedly senior citizens and there are allegations that the appellant is continuously harassing and abusing the respondents/plaintiffs. The appellant is in possession of the ground floor of the house and had refused to vacate the premises and to terminate the license. The respondents/plaintiffs in their evidence vide Ex.P5 to Ex.P8 has brought the conveyance deed/allotment letter, letter with regard to the payment of installments. Letter with regard to the full payment of price of the premises has also been proved that the suit property was purchased by the plaintiffs and is their self-acquired property. In order to establish their possession, they have placed on record copy of ration card, voter ID cards vide Ex.P1 to Ex.P4, whereas, the defendants in their evidence have failed to rebut this fact in any manner. The appellant has also miserably failed to prove that the property in question was purchased by the respondents/plaintiffs by selling out the ancestral property. Thus, this Court has no hesitation to conclude that the house in question is a self-acquired property of respondents No.1 and 2. Thereafter, it cannot be termed as a 'shared household'.

In *S.R. Batra and Another vs. Smt. Taruna Batra, 2007(1)*

RCR (Criminal) 403, the Hon'ble Apex Court laid down certain principles. The self-acquired property of in-laws cannot be treated to be shared household in terms of Section 2(s) of the Act. Section 17(2) of the Act prescribes that the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

By relying upon **S.R. Batra and another's** case (supra) in **Suman vs. Tulsi Ram, 2015(1) RCR (Civil) 304**, this Court held in the following manner:-

“21. After going through both the judgments in S.R. Batra and another's case (supra) and in Smt. Preeti Satija's case (supra), I have come to the conclusion that the reasons given in S.R. Batra and another's case (supra), defining 'shared household', is of more conviction than the view taken by the Division Bench of the Delhi High Court in Smt. Preeti Satija's case (supra). Hence, it is held that the petitioner does not have any right of protection under Section 17 of the Act for the purpose of living in the house in question, which is exclusively owned by the respondent.”

In terms of aforesaid, any obligation on the part of in-laws on account of rule or interpretation of law or custom or usage as a part of law before commencement of the Act are no longer valid. In view of non *obstante* clause in terms of Section 4 of Hindu Adoption and Maintenance Act, the provision of the Act alone are applicable and any liability in respect of maintenance of daughter-in-law on death of son cannot be fastened upon the self-acquired property of the parents-in-law. In other statutes like Hindu

Adoption and Maintenance Act, the maintenance of wife is the personal obligation of the husband. Such an obligation cannot be satisfied from the self-acquired property of the parents of the husband. During subsistence of marriage maintenance of a married wife is a personal obligation on the part of husband. Such an obligation can be met from the properties of the husband out of joint properties. The properties shown exclusively in the name of parents cannot be subject matter of any attachment or enforcement of any right of maintenance of wife against her husband. In a nutshell it was held that the daughter-in-law cannot claim right to live in the house of the parents-in-law against their wishes.

In ***Hamina Kang vs. District Magistrate (U.T.) Chandigarh and others, 2016(1) RCR (Civil) 976***, this Court while interpreting the provisions of the Domestic Violence Act held in the following manners:-

“44. The Hon'ble Supreme Court in S.R. Batra v. Taruna Batra, (2007) 3 SCC 169, held that the wife could claim the right of residence in terms of Section 17(1) of the Act, only 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. It was held that the house which was the exclusive property of the mother-in-law could not be said to be a 'shared household' entitling the daughter-in-law to claim a right of residence therein. The Hon'ble Court negated the contention on behalf of the daughter-in-law that as per the definition, shared household' would include a household where the aggrieved person lives or at any stage had lived in a

domestic relationship. It was observed that if such submission is accepted it would lead to chaos, because in that event every place where the husband and wife had resided would be a shared household. The Hon'ble Court also observed that the definition of 'shared household' in Section 2(s) appears to be the result of clumsy drafting and that it had given it a sensible interpretation.

45. *The pertinent observations of the Hon'ble Court are as under:*

"24. Learned counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

25. *We cannot agree with this submission.*

26. *If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of*

the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. *It is well settled that any interpretation which leads to absurdity should not be accepted.*
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."*

46. *This decision has been reiterated by the Hon'ble Supreme Court in Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, (2008) 4 SCC 649. In this case, the Hon'ble Supreme Court adverted to the legal position that in terms of Sections 18 and 19 of the Hindu Adoption and Maintenance Act, 1956, liability in regard to maintenance of wife is upon her husband and only on his death does it become the liability of the father-in-law. In the context of the 2005 Act, it was observed that it provided a higher right in favour of wife, which extends to the joint properties in which the husband has a share. It was held that an order of maintenance against the husband can be executed only against the husband and his properties but not against the property of her mother-in-law.*

The relevant observations in this context are as under:

"27. *The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence.*

The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share.

28. *Interpreting the provisions of the Domestic Violence Act this Court in S.R. Batra v. Taruna Batra held that even a wife could not claim a right of residence in the property belonging to her mother-in-law, stating: (SCC p. 173, paras 17-19)*

"17. There is no such law in India like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

18. Here, the house in question belongs to the mother-in-law of Smt Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt Taruna Batra cannot claim any right to live in the said house.

19. Appellant 2, the mother-in-law of Smt Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.

- 47. Following these decisions, different High Courts have ruled that a residence belonging to the mother-in-*

law or father-in-law would not be a 'shared household' within the meaning of Section 2(s) of the 2005 Act and that a daughter-in-law would have no right of residence therein in terms of Section 17(1) of the 2005 Act. Following cases may be usefully referred to : Ekta Arora vs. Ajay Arora and another, 2016(1) RCR (Criminal) 39, 2015 AIR (Delhi) 180, V.P.Anuradha vs. S.Sugantha alias Suganthi and others, 2015(4) RCR (Criminal) 631 and A.R.Hashir and others vs. Shima and others, 2015(5) RCR (Civil) 35.

48. The Delhi High Court in two decisions which were relied upon by the Ld. Counsel for the petitioner has distinguished the aforementioned decisions of the Hon'ble Supreme in the matter of the restricted meaning given to 'shared household' as not including a property wherein the husband does not have any right, title or interest. In Navneet Arora's case(supra), the decision of the Hon'ble Supreme Court in S. R. Batra's case was explained as having been rendered in the fact situation obtaining therein where Taruna Batra (the aggrieved daughter-in-law) and her husband Amit Batra had been residing on the first floor, whereas the mother-in- law, (the owner of the house in question) along with her husband were residing on the ground floor. The Court

held that they were not residing as members of a 'shared household' as understood in the legalistic sense as the residence and kitchen were separate. It was concluded that S.R. Batra's case is only an authority for the proposition that under the 2005 Act, a wife is precluded from claiming the right of residence in a premises, not owned by the husband, where she has lived with her husband separately, but not as a member of the 'joint family' along with the relatives of the husband who own the premises. But if the couple live with the relatives of the husband as members of 'joint family' along with the relatives of the husband in premises owned by such relatives of the husband, then such residence would fall within the meaning of 'shared household' giving the wife the right of residence therein irrespective of the fact whether her husband has any right, title or interest therein. It was explained that living as 'joint family' meant living under one roof and having a common kitchen.

49. *In Preeti Satija's case (supra), also the decisions in S.R. Batra and Vimalben Ajitbhai Patel, were held to have been rendered in a different context and it was observed that these decisions did not decide the question that despite the definition of 'shared household'*

enabling a wife the right of residence in premises not owned by the husband, she could not claim to live there.

50. to 56. xxx xxx xxx

57. *Similarly, the judgment in Natasha Sood vs Chandigarh Administration, 2016 (1) RCR (Civil) 336: 2015 (4) PLR 521, is distinguishable. In that case, there was no pleading or evidence that the house in question belonged to the father-in-law or mother-in-law. It was held that as the question as to whether the house in question is a 'shared household' or not, was yet to be determined, hence the order for ejectment passed under the 2007 Act was quashed. In the present case it has already been concluded that the house in question is not 'shared household' qua the petitioner."*

On the basis of the evidence so adduced by the parties, House No. 1211, Phase 3B2, SAS Nagar, Mohali was not proved to be an ancestral property, as the appellant has not been able to substantiate her plea that the house in question was purchased by the respondents/plaintiffs by virtue of sale of ancestral property. Therefore, the plea of the ancestral property on the basis of which the appellant claimed her right in the said property is not established. Merely because the appellant is residing in the house since her marriage, it cannot be termed as "shared house" as the suit property has been concluded as self-acquired property of the respondents/plaintiffs. Thus, no substantial question of law is involved in the present appeal and

the appellant has no locus standi to file the present appeal. The possession of the respondents/plaintiffs has duly been admitted by the Courts below by passing the judgments and decrees. In this manner, this Court does not find any illegality in the judgments and decrees passed by the Courts below.

Therefore, in view of the aforementioned facts it can safely be culled out that the appellant has no right to live in the self-acquired property of the respondents/plaintiffs. The lower Appellate Court has rightly passed the impugned judgment and decree against the appellant, which is upheld. This appeal is accordingly dismissed.

C.M. No.17717-C of 2016

Prayer in this application filed under Order 41 Rule 5 CPC is for staying the operation and implementation of the impugned judgments and decrees passed by the Courts below.

Since the main appeal has been dismissed on merits, the instant application also stands dismissed.

January 09, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No