

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

**RSA No.1409 of 2017 (O&M)
Date of Decision: March 10, 2017**

Abhilasha Sharma

..Appellant(s)

Versus

Kamlesh Sharma and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Appellant in person with
Mr. Arpandeeep Narula, Advocate.

ANITA CHAUDHRY, J.

This is the second appeal filed by the defendant whose plea was not accepted and a decree for mandatory injunction was passed in the suit filed by the mother-in-law.

The mother-in-law, Kamlesh Sharma filed a suit for permanent/mandatory injunction and directions to defendant no.1 to vacate the suit property. She was also claiming damages. It was claimed that she was the owner of the house in Sector -10, Gurgaon and she had become the owner on the basis of a family settlement. The plot earlier had been allotted to her husband in 1993. Giving the backdrop it was pleaded that the defendant had filed a complaint under the Domestic Violence Act wherein it was claimed that she was entitled to a residence order. The Magistrate disposed of the application and she was asked to live with her husband. No order in the interregnum was passed.

The daughter-in-law appealed against the order and was seeking permission to stay in the house but the appeal was dismissed. The plaintiff claimed that defendant no.1 entered the property and had handed over the possession to her relative. The plaintiffs pleaded that she was constrained to live on rent at Delhi and defendant no.1 was in possession of all the house-hold articles and her belongings.

The defendant had taken a plea that the property was ancestral and her husband had a right in it by birth and the plaintiff was not the exclusive owner. The defendant had referred to the order passed in the complaint filed under the Domestic Violence Act and it was pleaded that she was to get Rs.40,000/- per month, if she vacated the house. It was denied that the plaintiff was living in a rented accommodation in Delhi. A counter claim was also filed by defendant no.1.

Both the sides led evidence and the trial Court noted that an order had been passed in favour of the defendant in the complaint filed under the Domestic Violence Act and she was held to be entitled to additional amount of maintenance of Rs.40,000/- per month. The suit was decreed as the plaintiff was held to be owner. The counter claim filed by defendant no.1 was dismissed.

An appeal was preferred by both the plaintiff and defendant no.1, which was decided on 18.01.2017 by the Additional District Judge, Gurgaon. Both the appeals were dismissed. Defendant no.1 i.e. Abhilasha Sharma was granted two months' time to vacate the house and hand over the possession to her mother-in-law.

Today the respondents were also present in the Court and efforts were made for reconciliation on the request of the appellant. I was told that before the Revisional Court, the Co-ordinate Bench had spent some time but the appellant was asking for an exaggerated amount, which was not acceptable to the other side.

I have heard the appellant at length.

The counsel for the appellant has referred to ***Kamla Devi Vs. Radha Rani and another 2015(52) RCR (Civil) 361*** and it had been urged that ***S.R. Batra's*** case (supra) has been distinguished in the judgment by the Co-ordinate Bench and the wife is entitled to stay in the shared household.

I am unable to agree with the submission made on behalf of the appellant. The First Appellate Court had noted at length the order passed in the appeal preferred before the Additional Sessions Judge, Gurgaon in the Domestic Violence Act case. It had noted that the appellant was qualified and working as a Senior H.R. Executive and was earning Rs.30,000/- per month. The husband had been directed to pay Rs.40,000/- per month as interim maintenance to the wife, which was on account of interim maintenance and alternative residence. It was not disputed before me that Abhilasha Sharma had preferred a revision which was registered as CRM-23055-2015, challenging the order passed by the Additional District Judge. After making some submissions, the revision had been withdrawn. The order passed by the Additional District Judge had attained finality. The appellant cannot claim now that she was entitled to a residence order. No evidence was

led to prove that the property was ancestral. I find no infirmity in the findings recorded by the Courts below.

The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

March 10, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No