

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Criminal Revision Case No.1382 of 2017 and
Crl.M.P.No.13460 of 2017 and
Crl.M.P.No.3946 of 2018

Vidhya ... Petitioner

vs

1.Bakkiam

2.Naveen Kumar

... Respondents

Prayer : Criminal Revision Petition filed under Section 397(1) and 401 of Code of Criminal Procedure, to set aside the Judgment dated 19.08.2017 passed by the learned III Additional District and Sessions Judge, Salem in C.A.No.16 of 2017 reversing the order dated 01.02.2017 passed by the learned Additional Mahila Court Judge, Salem in D.V.O.P.No.3 of 2015.

For Petitioner : Mr.L.Mouli

For Respondents: Mr.Ilanthiraiyan

for M/s.Sai, Bharath & Ilan (for R1)

Mr.S.Kishore Kumar (for R2)

ORDER

This Criminal Revision Case is filed by the petitioner / daughter-in-law as against the order made in Crl.A.No.16 of 2017, dated 19.08.2017, on the file of the IIIrd Additional Sessions Court, Salem, reversing the order made in D.V.O.P.No. 3 of 2015 dated 01.01.2017 on the file of the Learned Judicial Magistrate (Additional Mahila Court), Salem.

2.The following facts are necessary for the disposal of this Criminal Revision Case:

The petitioner herein is wife of the 2nd respondent and the daughter-in-law of the 1st respondent herein. According to the petitioner, the 1st respondent herein had purchased a house site in the year 1983 and constructed a house therein in 1984 by

obtaining bank loan. She constructed the said house with ground and 1st floor.

3.The 1st respondent's husband worked in Forest Department and owing to a departmental proceeding his retirement benefits were stopped. The 1st respondent herein went to her village and during that period the petitioner herein entered into the first floor of the house as her husband, the 2nd respondent herein was having key with him. After returning from the village, the 1st respondent herein requested the revision petitioner and the 2nd respondent herein to vacate and handover the key, but they requested the 1st respondent herein to permit them to stay for two month and in the mean time they would shift to the rented house.

4.Though the petitioner herein and 1st respondent herein got rental house in the month of September 2007 and shifted their residence nearby the college they work, even then they left certain things in the 1st floor of the 1st respondent's herein house and refused to hand over the key. In the mean time there arose a dispute between petitioner herein and the 2nd respondent and therefore the petitioner herein returned back and stayed in the 1st floor.

5.According to revision petitioner, her husband the 2nd respondent herein filed a divorce petition and the same is pending. When the 1st respondent herein requested her daughter - in-law to vacate the premises, as she and her husband lead their life with rental income derived from the 1st floor of the their house property, she refused to vacate and handover the same.

6.It is the further case of the 1st respondent herein before the trial court that the marriage between her son and the petitioner herein was solemnized on 13.12.2007. After marriage they lived separately in a rental house. As stated above after the retirement of 1st respondent's husband as there was no income, they rented out the 1st floor and by using the same they paid bank loan and as well as utilized for their livelihood.

7.While so, in the month of April 2012, the tenant vacated the premises. Thereafter the petitioner herein and the 2nd respondent herein during the summer vacation in May month kept

their household articles stating that they would take back the same after getting a rental house nearby the college where both of them worked.

8. When the 1st respondent herein requested the petitioner herein to vacate the premises, she was threatened by the parents of the revision petitioner with dire consequences. The petitioner herein also threatened the 1st respondent that if she is forced to vacate the premise, a false complaint will be lodged before the police and ultimately she will be sent to Jail. Therefore the 1st respondent herein had filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 (herein after called as 'Act').

9. According to the petitioner as per section 2 of the Act, she is entitled to file the above petition as she falls under the definition of "aggrieved person". She adds further that as per section 3 (iii) and (iv) of the said Act, she is entitled to seek protection under the said Act.

10. Rebutting the contention of the 1st respondent herein, the 2nd respondent / son of the 1st respondent filed counter contending that right from the date of his marriage, he and his wife are living in a rental house and not in the 1st floor of the 1st respondent's house as alleged by her.

11. The petitioner herein who is the daughter-in-law of the 1st respondent herein filed a counter contending that she has every right to live in the 1st floor of the house. Further she stayed in the 1st floor for safety purpose. She denied the allegation that her parents resided with her. The petitioner herein is residing in the 1st floor from the year 2012 as per the request of the 1st respondent herein / her husband. Therefore she prayed for dismissal of the criminal revision as it is not maintainable before the Learned Magistrate.

12. On the side of the 1st respondent herein, she examined herself as PW1 and marked Exs. P1 to P3 and on the side of the respondent/ petitioner herein, there was no witness. However, one document Ex-R1 was marked on her side.

13.The Learned Magistrate after considering oral and documentary evidence adduced on either side, dismissed the petition filed by the 1st respondent herein, holding that the relief sought for by the 1st respondent herein could be granted only by a competent Civil Court. Feeling aggrieved over the same, the 1st respondent herein filed appeal before the learned IIIrd Additional District and Sessions Court, Salem in CrI.A.No.16 of 2017 and the same was allowed by an order dated 19.08.2017, holding that admittedly the subject house being the self acquired property of the mother-in-law, therefore the 2nd respondent (ie) the revision petitioner have no right over the same and hence the revision petitioner cannot claim right of residence on the ground of shared house hold. As against the same the present revision is filed by the daughter-in-law.

14.It is the argument of the Learned Counsel for the petitioner that the complaint filed by the 1st respondent herein under Section 12 of the Act is not at all maintainable as against the petitioner herein. The Learned Counsel would further submit that the 1st respondent herein is not "an aggrieved" person as defined under sec.2 (a) of the Act.

15.The 1st respondent herein is not entitled to seek residence order as contemplated under Section 19(8) of the Act, since the 1st respondent herein is not living with the revision petitioner in a shared household so as to attract the provision of Section 19(8) of the Act. Hence the Learned Counsel submitted that the order of the Learned District Judge is totally arbitrary and against law and the same is liable to be set aside.

16.The Learned Counsel for the petitioner would further submit that the Learned Magistrate has rightly held that the complaint filed by the 1st respondent herein under Section 12 of the Act is not maintainable and she has to approach the Civil Court for possession of the property from the revision petitioner.

17.Per contra, the Learned Counsel appearing for the 1st respondent would submit that the order of the Learned Additional District Judge is legally sound and the same is not warranting interference. The Learned Counsel for the 1st respondent would further submit that the Learned District Judge was right in holding that the house in which revision petitioner is residing is a self acquired property of the 1st respondent herein and in

which the revision petitioner has no right and accordingly she cannot ask for right of residence and the same will not come under the purview of shared household.

18. Consequently the Learned Counsel contended that the house in which the revision petitioner residing cannot be meant to be "Shared household" as defined under Section 2(s) of the Act and so the revision petitioner is not entitled to claim right of residence as per Sec. 17 of the Act.

19. I have carefully considered of the rival submissions on either side and perused the records.

20. On a careful perusal of the records and orders of the both Courts, this Court is able to see that the revision petitioner is the daughter-in-law of the 1st respondent herein and wife of the 2nd respondent herein.

21. Admittedly the revision petitioner is residing in the 1st floor of the 1st respondent's house as daughter-in-law. According to the revision petitioner, she is residing in the said house as per the request of the 1st respondent herein and her husband along with her minor son.

22. Whereas the said contention of the revision petitioner is denied by the 1st respondent, now it has to be seen as to whether the 1st respondent herein can invoke the provision of Sec. 12 of the said Act to vacate the revision petitioner from the 1st floor of the house.

23. In the considered opinion of this court, the petitioner herein is having every right to reside in the said house, as Section 17 of the Act contemplates that every woman in a domestic relation shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

24. It would be relevant to extract section 17 of the said Act, which reads as follows:

"17. Right to reside in a shared household. -(1)
Notwithstanding anything contained in any other law for the time being in force, every women in a domestic

relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same".

25.A close reading of Sec. 17 of the Act makes it clear that every woman in a domestic relation shall have the right to reside in Shared House Hold. In the present case on hand, the revision petitioner being daughter-in-law of the 1st respondent has domestic relation with the 1st respondent and therefore she has every right to reside in the house of the 1st respondent herein.

26.In view of clear enunciation of law, it is needless to state that the revision petitioner is having every right to reside in the said house, whether she is having right or title over the said house. Therefore this Court is of the considered opinion that the interpretation given by the Learned Additional District Judge that revision petitioner should have resided with the 1st respondent herein is totally illegal and shows its non application of mind. More so, a complaint filed by the 1st respondent herein under Section 12 of the Act in any event cannot be allowed to be a tool of Eviction Proceeding.

27.For the forgoing reasons, I am of the view that the Criminal Revision Case is liable to be allowed, accordingly it is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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vs

To

1.The Additional District and Sessions Judge,
Salem.

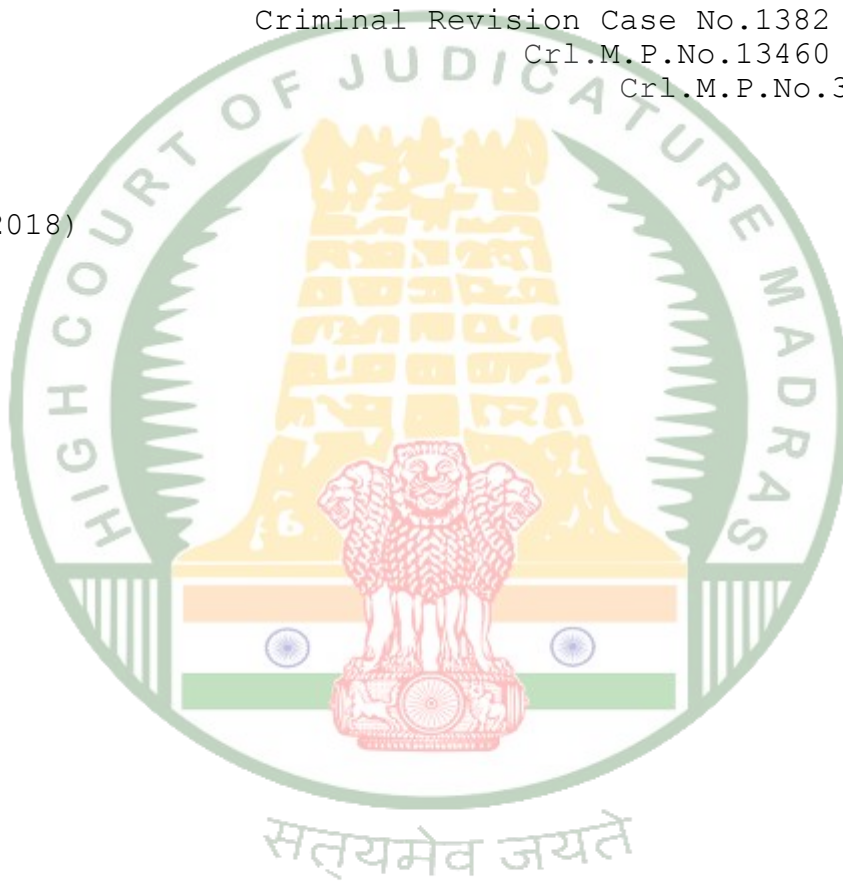
2.The Additional Mahila Court Judge,
Salem.

+ 1 cc to MR. L. Mouli Advocate Sr.19712

+ 1 cc to Mr. Si Bharath and Ilan Advocate Sr.19699

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(CS-VIII)
EU(20/09/2018)



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