

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

RSA No.1360 of 2016 (O&M)

Date of Order:05.09.2018

Irshad Ahmad

..Appellant

Versus

Shabnam

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ankur Mittal, Advocate,
for the appellant.

Mr. Ashok Giri, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court.

Plaintiff who is exclusive owner of the property being allottee had filed a suit for possession against his own son and daughter-in-law.

Defendant-respondent daughter-in-law contested the suit and pleaded that it is her matrimonial home and therefore, falls within the definition of 'share household' as defined in Section 2(s) of the Protection of Women from Domestic Violence Act, 2005.

The learned trial court after appreciating the evidence decreed the suit, however, learned first appellate court reversed the judgment of the learned trial court by recording a finding that the property in question falls within the definition of 'share household'.

The learned first appellate court further held that the suit is also bad for non-joinder of parties as the plaintiff has not impleaded grand children who are also staying with daughter-in-law.

Without going into the detail, it may be noticed that the Hon'ble Supreme Court in the case of *S.R.Batra and anotehr v. Smt. Taruna Batra, 2007(1) RCR(Criminal), 403* has held that if the property is exclusively owned by father-in-law or mother-in-law, the accommodation/property does not fall within the definition of 'share household'. This court has also considered this aspect while deciding RSA No.2668 of 2013 decided on 21.08.2017 in which the subsequent judgment passed by the Hon'ble Supreme Court and Division Bench of the Delhi High Court in the case of *Smt. Priti Satija v. Smt. Raj Kumari and another, 2004(2) RCR(Civil), 8*, has also been considered.

Respectfully following the judgments passed by the Hon'ble Supreme Court, the judgment under appeal is clearly erroneous. Still further the second reason given by the learned first appellate court is also suffering from perversity as the plea of 'shared accommodation' is only at the behest of defendant/respondent.

Plaintiff had filed a suit against his own son who is stated to be missing and against his daughter-in-law. The children, although, at the time of filing of the suit were minor but as noticed by the learned first appellate court, one of them has become major. Plaintiff being exclusive owner is entitled to enjoy his property. The daughter-in-law having no right, cannot stay in the accommodation against the wishes of the owner-plaintiff.

Hence, the judgment of the first appellate court is set aside and that of the trial court is restored.

September 05, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No