

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment Reserved on: 15th October, 2018
Judgment delivered on: 16th November, 2018

+ CRL.M.C. 3381/2018

GAURI BHALLA

..... Petitioner

versus

ASHISH BHALLA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Petitioner in person.

For the Respondents : Mr. Chandan Junto, Advocate for respondent No.1.
Mr. Narender Malawaliya, Advocate for respondent
Nos.2 and 3.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 26.02.2018 whereby the application of the petitioner seeking residence in the matrimonial home/shared household has been rejected.

2. The petitioner had claimed the right of residence in House No. 51, Anand Lok, New Delhi on the ground that the petitioner had been granted rental for accommodation under Section 19(f) of Protection of Women from Domestic Violence Act, however, the respondent no. 1 had not paid the same. It is contended that she was suffering from

trauma and had no accommodation to live in. As per the petitioner, the petitioner sought resident in the house which was the matrimonial house and was a joint family property. She has been residing in one bedroom with attached bathroom on the ground floor in the said property after her marriage.

3. As per the petitioner, she was married to respondent no. 1 on 31.08.2012, resided with him till 21.04.2013 at 51, Anand Lok, New Delhi. Thereafter they went to Australia where they resided together till 29.06.2015. The petitioner alleges that her husband had, subsequently, taken her to Australia for the purpose of abandoning her. Further it is contended that on 29.06.2015 the petitioner had been abandoned by her husband.

4. The petition is opposed by respondent no. 2 and 3 contending that the subject property is the self-acquired property of respondent no. 2 and the property was allotted to respondent no. 2 by way of a perpetual sub-lease dated 22.01.1971 and said property sole and absolutely belongs to respondent no. 2 and the petitioner could not claim right of residence in the same.

5. The Trial Court by the impugned judgment has held that the property is the self – acquired property of the father-in-law of the petitioner. Though immediately after marriage the petitioner lived with her husband, in the said property, however, she and her husband last resided together in Australia till the date of their separation. The

property was neither taken on rent by her husband nor belongs to the joint family to which her husband was a member.

6. The trial court has held that the claim for alternative accommodation in terms of Section 19 (f) of the Act could only be made against the husband and not against in-laws or relatives of the husband.

7. In the facts of the present case, the petitioner contends that prior to moving to Australia she was living in house number 51, Anand Lok, New Delhi along with her husband and this is a matrimonial home and thus qualifies as a shared household.

8. To be entitled to a right of residence in a house, the wife has to show that the same is a shared household in which her husband has a right to reside. It is not sufficient to merely show that the house in which the wife claims residence is a shared household, in addition she has to show that her husband has a right in the property.

9. In *S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169 the Supreme Court of India dealing with a claim of residence by the wife in the house owned by the mother in law held:

“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”.

(underlining supplied)

10. In *Taruna Batra (supra)*, the Supreme Court negated the contention that shared household included every household where the wife lived at any stage with the husband in a domestic relationship. The Supreme Court further held that claim for alternative accommodation can only be made against the husband and not against the husband’s family or other relatives. The wife is entitled to claim a right of residence in a shared household and 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.

11. The Supreme Court of India in *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel*, (2008) 4 SCC 649 held that “Maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name

of the mother-in-law can neither be a subject-matter of attachment nor during the lifetime of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.”

12. Applying the principle of law laid down by the Supreme Court in *Vimlaben Ajitbhai Patel (supra)*, it would not be possible to accept the contention of the petitioner that since her husband has failed to honour the order of the family Court directing him to pay maintenance, it would be the responsibility of the family of the husband to permit her to reside in the shared household.

13. As noticed above, the contention of the respondent No. 2 and 3 is that the property in which the petitioner is seeking a right of residence is the sole and absolute property of the father of the husband. The property was allotted to the father of the husband as far back as 1971 by way of a perpetual lease deed. There is nothing on record to show that the husband of the petitioner has any right or interest in the subject property. Further there is nothing on record to show that said property is a joint family property in which the husband has any right. Merely because the husband has failed to comply with the order of the family Court, does not imply that the petitioner would be entitled to a residence in the property owned by the father of the husband.

14. The trial court has correctly applied the principle of law laid

down by the Supreme Court in *Taruna Batra (supra)*.

15. In view of the above, I find no infirmity in the order of the trial court holding that petitioner is not entitled to a right of residence in the property owned by the father of the husband and has correctly rejected the application under section 19 (f) of the domestic violence act.

16. The petition is accordingly dismissed. There shall be no orders as to costs.

17. Order *Dasti* under the signatures of the Court Master.

NOVEMBER 16, 2018
'rs'

SANJEEV SACHDEVA, J

नित्यमेव जयते