

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

**CR No.3540 of 2014(O&M)
Date of Decision-15.10.2019**

Mukhtiar Kaur ... Petitioner

Versus

Pritam Kaur and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.K. Bakolia, Advocate for the petitioner.

Mr. J.C. Kapoor, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 04.07.2013 passed by Guardian Judge, Chandigarh, vide which application under Section 19 of the Hindu Adoption and Maintenance Act filed by the respondents was allowed.

[2]. The application was allowed on the ground that after the death of Inderjit Singh husband of plaintiff No.1 on 17.04.1997, all the plaintiffs/respondents requested the defendant/petitioner and her husband to give share in the suit property to the plaintiffs and the property bearing plot No.C-29 at Focal Point Moga, measuring 1000 sq. yards which was exclusively purchased/owned by husband of plaintiff No.1.

[3]. Plaintiffs alleged that the defendants have forcibly and illegally occupied the plot in question which was purchased by husband of plaintiff No.1 and the same was allotted to him by the

Punjab Small Industries and Export Corporation Limited, Sector-17, Chandigarh vide letter dated 19.10.1988 and price was also paid by the husband of plaintiff No.1 from his own pocket. No other person including the defendants had paid any amount towards consideration of the plot. Plaintiff No.1 claimed that she is not in a position to maintain herself and her three children in these days of high prices and has not obtained any share from the ancestral property till date. Plaintiff No.1 has not re-married after the death of her husband Inderjit Singh. Plaintiffs prayed for grant of maintenance to the tune of Rs.40,000/- per month i.e. Rs.10,000/- each to the plaintiffs.

[4]. The suit was contested by the defendants claiming that the suit is not maintainable and the plaintiffs have not come to the Court with clean hands. Plaintiffs have concealed the material facts. A suit for declaration filed by the plaintiffs to the effect that they are co-owners of 1/6th share in the six properties is pending. Defendant No.1 is claimed to be head of the family and owner in possession of khasra No.157 Patti Kharain Di, Moga Mehla Singh as he had purchased the said property on 12.06.1967 and vacant plot and thereafter, spent huge amount in construction of the house. Thereafter, they started living in the house. Inderjit Singh was residing with the defendants and the defendants spent huge amount on his education and got him educated. He had passed BA LLB and thereafter, he remained posted in Audit Department at Chandigarh. Defendant No.1 paid Rs.2,50,000/- to Inderjit Singh for purchasing a plot in Chandigarh.

[5]. Both the parties went to trial on definite issues.

[6]. Guardian Court recorded that the relationship between the parties is proved on record. Inderjit Singh was husband of plaintiff No.1 and son of the defendants. Inderjit Singh died on 17.04.1997 leaving behind the plaintiffs as legal heirs. It is also admitted by the defendants that they are owners of various properties as mentioned in the petition. The factum of plaintiff No.1 having not re-married after the death of Inderjit Singh is also an admitted fact. Guardian Judge, Chandigarh allowed the application to the extent of granting maintenance of Rs.3500/- per month to plaintiff No.1, Rs.2500/- per month to plaintiff No.2 till her marriage and Rs.2000/- per month to plaintiff No.4 till he attains the age of majority. The maintenance was awarded from the date of filing of the petition.

[7]. Learned counsel for the petitioner relied upon an information dated 29.04.2014 received under R.T.I Act to the effect that plaintiff No.1 Pritam Kaur is working on the post of Auditor against the salary of Rs.23,376/- per month. After the death of her husband, she was granted monthly family pension @ Rs.780/- plus admissible D.A. per month upto 17.04.2004 and thereafter, Rs.450/- plus admissible D.A per month. After implementation of 5th Central Pay Commission, it was revised to Rs.2650/- plus admissible D.A. upto 17.04.2004 and thereafter, Rs.1590/- plus admissible D.A. per month.

[8]. The aforesaid information was received only on 29.04.2014 after passing of the impugned order. There was nothing on record to show that the plaintiffs were earning any income from any source. No consideration could have been made by the Guardian Court on that premise. Mere exhibition of document does not dispense with proof of its execution, particularly when a specific issue was framed by the Guardian Court in the context of entitlement of maintenance in favour of the plaintiffs. Defendants did not lead any such evidence during course of the trial. Guardian Court after due assessment of evidence on record, held that the plaintiffs are entitled for grant of maintenance in the manner as suggested in the impugned order.

[9]. Right of widow for maintenance after the death of her husband has been acknowledged by the Co-ordinate Bench in **Balbir Kaur Vs. Harinder Kaur, 2003(1) RCR (Civil) 624** and it was held that widowed daughter-in-law of a pre-deceased son is entitled to claim right of maintenance against the self-acquired property of her father-in-law. In **Smt. Raina Vs. Hari Mohan Budhaulia, 2005(3) RCR (Civil) 129 (Allahabad)**, it was held that widow having no means to maintain herself and minor children can claim maintenance for herself and for children from father-in-law. Similar view was taken by the Division Bench of Chattisgarh High Court in **FAM No.72 of 2016** titled **Mithai Lal Vs. Premlata Sahu and others** decided on 15.09.2016.

[10]. In cases of right of residence in a shared household under Domestic Violence Act, the wife of pre-deceased son was held not entitled to claim right of residence. The house being self-acquired property of father-in-law cannot be termed to be shared household in terms of Section 2 of the Domestic Violence Act. **In S.R. Batra and another Vs. Smt. Taruna Batra, 2007(1) RCR (Criminal) 403**, the Hon'ble Apex Court has 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 procedure established by law. In **Smt. Preeti Satija Vs. Smt. Raj Kumari and another, 2014(1) RCR (Criminal) 1035 Delhi (DB)**, it was held that daughter-in-law has a right of residence in a shared household under Domestic Violence Act. In **RSA No.4398 of 2016** titled **Varinder Kaur Vs. Jitender Kumar and another** decided on 21.10.2016, this Court held that daughter-in-law has no right to occupy self-acquired house of father-in-law, particularly when her husband is alive. In the instant case, no such proposition is involved.

[11]. The Co-ordinate Bench of this Court in **Suman Vs. Tulsi Ram, 2015(1) RCR (Civil) 304** by relying upon ratios of **S.R. Batra and another's case (supra)** and **Smt. Preeti Satija's case (supra)**, held that the wife of pre-deceased son does not have any right of residence under Section 17 of the Act for the purpose of living in the

self-acquired house of father-in-law, however subject to protection as granted in **S.R. Batra and another's case (supra)** that she shall not be evicted or excluded from the shared household or any part of it save in accordance with procedure established by law. The ratios of **S.R. Batra and another's case (supra)** and **Smt. Preeti Satija's case (supra)** were applicable in criminal cases arising out of Domestic Violence Act. Such a proposition is not attracted in the present case.

[12]. In the instant case, the Court has deliberated upon the evidence on record to hold that the wife of pre-deceased son of the petitioner and his children are entitled for maintenance on the basis of evidence led on record. The evidence as sought to be produced on record by way of R.T.I information was not led before the Guardian Court, nor any such application for additional evidence has been filed in the present revision petition. Mere production of R.T.I information on record is not sufficient to dispense with proof of its execution.

[13]. In view of findings recorded by the Guardian Court, Chandigarh, I do not see any justification to interfere in this revision petition. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

15.10.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No