

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on:- 10.10.2019.

Date of Decision:- 18.12.2019.

+ RFA 222/2019
AMBIKA JAIN

..... Appellant

Through: Ms.Malavika Rajkotia with Ms.Rytim
Vohra, Advs.

versus

RAM PRAKASH SHARMA & ANR

..... Respondents

Through: Mr.Kotla Harshavardhan with
Ms.Aparna Arun, Advs. for R-1.
Mr.Arshdeep Singh with Mr.Aditya
Chopra, Advs. for R-2.

+ RFA 230/2019 & C.M. No.12833/2019 (for stay)
NEHA GROVER

..... Appellant

Through: Mr.Pradeep Singh, Adv.

versus

OM PRAKASH GROVER

..... Respondent

Through: Mr. Mohit Batra, Adv. with Mr.Saket
Gakhar, Adv.

+ RFA 381/2019 & C.M. Nos.19599/2019 (for stay), 19601/2019 (for
addl. doc.)

SNEHA AHUJA

..... Appellant

Through: Mr. J.P. Sengh, Sr.Adv. &
Mr.Prashant Mehta with
Mr.Himanshu Kapoor & Ms.Divita
Vyas, Advs.

versus

SATISH CHANDER AHUJA

..... Respondent

Through: Ms.Geeta Luthra, Sr. Adv. with

Mr.Altamish Siddiki, Mr.Prateek
Yadav, Mr.Anshul Duggal,
Ms.Anjana Ahluwalia, Ms.Asmita
Narula, Ms.Kamakshi Gupta &
Ms.Shivani Luthra Lohiya, Advs.

- + RFA 598/2019 & C.M. No.29599/2019 (for stay)
RUPALI KHULLAR Appellant
Through: Mr.Rajeev Nanda & Mr.R.K.
Kashyap, Advs.
versus
TARSEM LAL KHULLAR & ORS Respondents
Through: Mr.Shyam Sunder Khullar, Adv. for
R-2.
Mr.P.C. Thakur, Adv. for R-2 & LR
of R-3 & 4.
- + RFA 604/2019 & C.M. No.29735/2019 (for stay)
BINDYA GROVER Appellant
Through: Ms.Sunieta Ojha with Mr.Talish Ray
& Ms.Monisha Handa, Advs.
versus
SUDARSHAN GROVER Respondent
Through: Mr.Jatan Singh with Mr.Anish
Chawla & Mr.Neeraj Kumar, Advs.
- + RFA 609/2019 & C.M. No.30047/2019 (for stay)
RENU KUMARI Appellant
Through: None.
versus
GYANTI DEVI Respondent
Through: Mr.Amitesh Gaurav, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The daughter-in-law or the mother-in-law/father-in-law, who is right or whose right should prevail over the right of the other: is a dilemma which husbands all over the world have been facing since time immemorial; today in this batch of appeals under Section 96 of the Code of Civil Procedure, 1908 ('CPC' for short), this Court is faced with the same question. The appellants herein are daughters-in-law who, with their husbands and children, have been residing in the premises which, as on date, are owned by the respondents, who are their mothers-in-law, fathers-in-law or both, as the case may be (hereinafter referred to as 'in-laws'). In each of these appeals, the appellant/daughter-in-law is aggrieved by the decree of possession passed under Order XII Rule 6 CPC by the trial Court in favour of her in-laws, upon an admission made by her regarding their title over the suit premises. While the daughter-in-law claims that she has a statutory right to reside in the suit premises which may be in the name of her in-laws, as it is her shared household under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short), irrespective of whether it is a joint family property or not, the claim of the in-laws is that the suit premises is not a shared household and therefore the appellant/daughters-in-law have no right, under the DV Act, to reside therein. The alternative submissions of the respondents is that in any event the right of residence, if any, available to the appellant under the D.V. Act, being transient in nature, cannot stand in the way of the true owner from seeking possession in accordance with the procedure established by law, i.e., by instituting a suit for title, possession and

eviction before a civil court on the basis of the title documents in their favour.

2. As all these appeals are arising out of similar facts and raise identical issues, they are being decided by this common judgment. For the sake of convenience, this judgment refers to the competent court under the DV Act in all these appeals as ‘the DV Court’.

Facts

3. Before delving into the issues arising in the appeals, it would be apposite to briefly note the factual matrix of each case:

a. In RFA No. 222/2019, the daughter-in-law assails the judgment and decree dated 31.10.2018 passed by the learned Additional District Judge, Saket Court in CS No. 810/2017 whereunder the suit instituted by her father-in-law has been decreed by directing her husband/respondent no.2 and her to hand over vacant and peaceful possession of the suit premises to him and to pay mesne profits for the period during which they were in illegal occupation of these premises. The case of the father-in-law before the trial Court was that since 2005 his son, i.e., the husband of the appellant, had been residing as a licensee in the suit premises, where the appellant joined him after their wedding on 18.12.2009. When marital discord arose between the appellant and her husband in 2015, the husband vacated the suit premises and rented a separate accommodation while the appellant continued residing in the suit premises.

Contesting the suit, the appellant while admitting that the suit premises were owned by her in-laws urged that the alleged tenancy of her husband on the suit premises was a ruse by him to avoid incurring

tax liability on the House Rent Allowance which he received and could not, therefore, be treated as a legitimate tenancy. She further urged, by referring to the pending domestic violence proceedings instituted by her under the DV Act against her husband and in-laws, that she had a right to reside in the suit premises as it was her shared household. On facts, she pleaded having incurred expenses on making structural changes to the suit premises and claimed that she and her husband had been residing there virtually as owners thereof. Without prejudice to her defences, she expressed her willingness to pay to the respondent the arrears of rent w.e.f. September 2016 but reiterated that the suit was a pressure tactic adopted by the respondents in order to coerce her into settling the domestic violence proceedings. An application under Order XII Rule 6 CPC was moved by the father-in-law considering the appellant's admission regarding his ownership over the suit property. On the aforesaid application, the trial Court, despite the appellant's plea that her right of residence under Section 17 of the DV Act ought to be protected especially in view of the interim protection granted in her favour by the DV Court, passed the impugned decree. As Section 17 of the DV Act stipulates that the daughter-in-law's right of residence in the suit premises was subject to her dispossession as per the procedure established by law, the trial Court held that the suit filed by her father-in-law fulfilled this condition.

b. The facts of RFA No. 230/2019 are almost similar except that there is no specific admission made therein by the daughter-in-law with respect to the ownership of the suit premises. The impugned order dated

21.02.2019 in CS No. 1369/2017 has been passed by the learned Additional District Judge, Tis Hazari Court by allowing the respondent's application under Order XII Rule 6 CPC. Before the trial Court, the father-in-law contended that his son and daughter-in-law were his gratuitous licensees pursuant to their marriage in 2007, which license was terminated when marital discord arose between them compelling him to institute the subject suit. While opposing the suit, the daughter-in-law pleaded that *inter-alia* the suit itself was collusive, the suit premises was her shared household under the DV Act, a separate right thereon devolved on her through her husband as the premises was a joint family property and a residence order had been passed in her favour in the domestic violence proceedings instituted by her against her husband and the in-laws. The trial Court decreed the suit by holding that in view of the specific documents placed on record by the father-in-law to prove that the suit premises was his self-acquired property, the appellant's bald denials as regards the ownership of the suit premises could not hold ground; it was further held that the residence order in favour of the daughter-in-law was not absolute and was subject to her dispossession as per the procedure established by law, which condition was fulfilled by the institution of a suit. In these circumstances, the impugned decree came to be passed.

c. In RFA 381/2019 the daughter-in-law assails the judgment and decree dated 08.04.2019 passed by the learned Additional District Judge, Saket in CS No. 792/2017 whereunder the suit for possession and mesne profits instituted against her by her father-in-law has been decreed in his

favour. His case before the trial Court was that his son and daughter-in-law were his gratuitous licensees pursuant to their marriage in 1995, which license was terminated when marital discord arose between the two parties. As a result, his son rented a separate accommodation and left the suit premises but his daughter-in-law continued residing therein compelling him to institute the subject suit. While opposing the suit the daughter-in-law pleaded that her husband did in fact reside in the suit premises and that she jointly owned these premise which, even though stood exclusively in the name of her father-in-law, had been purchased from joint family funds and was her shared household – which claim could be corroborated by the residence order passed in her favour by the DV Court. An application under Order XII Rule 6 CPC was moved by the father-in-law considering the admission regarding his ownership of the suit premises. On the aforesaid application the trial Court, despite her plea that her right of residence ought to be protected, held that the daughter-in-law's right of residence was subject to her dispossession as per the procedure established by law and the institution of the suit for possession by her father-in-law satisfied this condition.

d. In RFA 598/2019 the daughter-in-law assails the judgment and decree dated 15.04.2019 passed by the learned Additional District Judge, Rohini in CS No. 598/2015 whereunder the suit for possession instituted against her by her in-laws has been decreed in their favour by allowing their application under Order XII Rule 6 CPC. Before the trial court the in-laws claimed that their daughter-in-law, after marrying their son on 14.09.2002, began residing with them at their self-acquired property as

gratuitous licensees, which license was revoked when marital discord arose between the two parties. The in-laws even claimed to have disowned and severed relations with their son vide newspaper publications. In her reply to the plaint the daughter-in-law, while admitting that her in-laws owned the suit premises, claimed that she had a right to reside therein being her shared household; however, in the light of her admission, the impugned order came to be passed by the trial Court.

e. In RFA 604/2019, the daughter-in-law assails the order dated 28.03.2019 passed by the learned Additional District Judge, Karkardooma Courts in CS No. 33/2017 whereunder the suit for possession, permanent injunction, damages and mesne profits instituted by her mother-in-law was decreed against her by allowing the respondent's application under Order XII Rule 6 CPC. Before the trial Court the respondent contended that the appellant, after marrying her son on 13.12.2002 began residing at the suit premises, which was her self-acquired property. However, marital discord arose between the appellant and her husband even leading to the institution of divorce proceedings in 2010 which was later withdrawn in the interest of their minor child, but the appellant never left the suit premises. The appellant contested the maintainability of the application under Order XII Rule 6 CPC moved by the respondent on the grounds that she had made no unequivocal admission as to the respondent's ownership of the suit premises and that by virtue of the monetary contributions made by her towards developing the premises, she was an owner thereof. The trial

Court, however, passed the impugned judgment holding that while the appellant did not admit the respondent's ownership of the suit premises but she did not specifically deny it either.

f. Similarly in RFA 609/2019, the daughter-in-law assails the order dated 29.03.2019 passed by the learned Additional District Judge, Saket in CS No. 685/2018 whereunder the suit for ejectment and recovery of possession instituted against her by her mother-in-law, was decreed in favour of the latter by allowing her application under Order XII Rule 6 CPC. Before the trial Court the mother-in-law claimed that her daughter-in-law, began residing with her son at the suit premises as gratuitous licensee after the solemnisation of their marriage and that, when marital discord arose between the two parties, she disowned them vide a newspaper publication. Resultantly, her son had left the suit premises to reside in a separate rented accommodation while her daughter-in-law continued residing therein without any right, compelling her to institute the subject suit. In opposition, the daughter-in-law pleaded that as the suit premises was her shared household, she had a right to reside therein. The trial Court, however, by relying on the appellant's admissions in the pleadings of the subject suit and the affidavit filed by her in the domestic violence proceedings that the suit premises was owned by her mother-in-law, passed the impugned order.

4. To sum up, in each of the decrees impugned by way of these appeals, the trial Courts have held that since the suit premises were, admittedly, owned by the in-laws and stood in their exclusive names, the in-laws were entitled to a decree for possession in their favour under

Order XII Rule 6 CPC itself, without compelling them to await final adjudication of the suit after a prolonged trial.

Submissions on behalf of the appellants/daughters-in-law

5. Mr. J.P. Sengh, learned senior counsel appearing on behalf of the appellant in RFA No. 381/2019 who has led the arguments on behalf of the appellants/aggrieved daughters-in-law, has primarily raised two submissions. Firstly, he submits that the suit has been erroneously and hastily decreed under Order XII Rule 6 CPC without appreciating the exigent fact that the daughter-in-law had not made any unambiguous admission regarding the exclusive ownership of her father-in-law to the suit premises. While she had clearly averred that her husband was also a co-owner of the suit premises, the trial Court has decreed the suit without granting her any opportunity to demonstrate that the suit premises, despite being in the name of her father-in-law was, in fact, joint family property. By drawing my attention to the pleadings on record, including the written statement and the application filed by the appellant/daughter-in-law before the trial Court seeking information on source of the funds used for purchasing the suit premises, he submits that in a country like ours merely because the title of the suit premises was in the name of the father-in-law, it could not lead to the conclusion that the daughter-in-law or her husband did not have any right in the said property. Had she been permitted to lead evidence and cross examine the father-in-law on this aspect, the daughter-in-law would have been able to prove that the funds used for purchasing the suit premises came from the joint family business. However by decreeing the suit under Order XII Rule 6 of the CPC the trial Court, in

effect, closed any opportunity for the daughter-in-law to prove her case. He submits that in doing so, the trial Court has failed to appreciate the settled legal position that a decree on admission passed under Order XII Rule 6 of the CPC must follow a clear, unconditional and unambiguous admission, which was not the case here. A mere admission made by the daughter-in-law that the title of the suit premises was in her father-in-law's name could not be construed as an admission on her part that he was the *exclusive owner* of the suit premises. Mr. Sengh further submits that notwithstanding the claim of the father-in-law that his daughter-in-law's right to reside in the suit premises flowed through her husband, the husband was deliberately not impleaded in the proceedings before the trial Court, thereby compelling her to move an application under Order I Rule 10 CPC seeking his impleadment, which application was kept pending by the trial Court at the time of passing the impugned decree. By placing reliance on ***Kavita Gambhir Vs. Harish Chand Gambhir &Anr.*** 162 (2009) DLT 459 he submits that institution of the suit by the father-in-law without impleading the husband, who is a necessary party, showed that the proceedings were evidently collusive and ought to be rejected at the outset. Mr. Sengh submits that in his appeal, had the husband been impleaded before the trial Court, he could have been cross-examined on the aspect of his partnership in the joint family business, namely M/s Gokulchand Harichand (formerly Gokulchand Ahuja and Sons), from where a sum of Rs.1,82,000/- was withdrawn in the year 1989-90 to purchase the suit premises. He further submits that contrary to the respondent's averments that his son was no longer residing in the suit premises which implied that it could not be treated as a shared household,

the husband in his Affidavit dated 30.11.2017 had set down the suit premises as his residence address, which contradicts the stand of the in-laws before the trial Court and this Court.

6. The second submission of Mr. Sengh is that, without prejudice to her plea that the suit premises was a joint family property, the daughter-in-law had a right of residence therein as it was her shared household, irrespective of whether she or her husband had a share thereon or who was the title holder of the suit premises. As per the provisions of the DV Act, the sole prerequisite to protect the right of residence of the daughter-in-law is that the suit premises must be shown to be a shared household falling within the ambit of Section 2(s) of the DV Act. However this right of residence, being a crucial right, may be altered “in accordance with the procedure as established in law”, as per Section 17(2) of the DV Act. Mr. Sengh submits that the phrase ‘procedure as per law’, however, cannot imply a simpliciter suit for injunction or possession without considering a vital, independent and statutory right of the daughter-in-law. By placing reliance on the decision of this Court in ***Smt. Preeti Satija Vs. Smt. Raj Kumari & Anr*** 207 (2014) DLT 78 and ***Navneet Arora Vs. Surender Kaur*** 213 (2014) DLT 611 he submits that the right of residence is a revolutionary right essential to the DV Act and, therefore, while dealing with a claim for enforcement of such right the Trial Court ought to bear in mind its sanctity and importance, without diluting it on the mere factum of ownership of the suit premises. He submits that in matrimonial disputes, the estranged husband often colludes with his parents/the in-laws to feign that he has no right in the suit premises, even if the same is actually owned by him – which misuse the DV Act aimed to rectify. He

relies on *Navneet Arora* (*supra*) and *Preeti Satija* (*supra*) to contend that once the daughter-in-law had been living jointly with her in-laws at their premises, her right of residence under the DV Act to continue her residence thereon cannot be defeated merely because the husband claims to be residing separately.

7. Ms. Sunieta Ojha, learned counsel appearing for the appellant in RFA 604/2019, adopts the submissions of Mr. J.P. Singh and reiterates the importance of the protections extended under the DV Act. She submits that the Act aims to ensure that aggrieved daughters-in-law are not left without shelter on reporting domestic abuse to the authorities. She further submits that once an order protecting the right of residence of a daughter-in-law has been passed under the DV Act, evidently prima-facie finding exists in her favour that the suit premises where she is residing is a shared household and that the in-laws were estopped from contending otherwise, unless they challenged the order by way of an appeal under Section 29 of the DV Act. Instead, the in-laws failed to avail the statutory remedy of appeal available to them and attempted to bypass the domestic violence proceedings by instituting the subject suit. She submits that in these circumstances, the residence order and the findings of the DV Court therein continue to be in operation today and cannot be treated lightly, as has been done in these impugned decrees. On facts, she submits that in any event the suit premises was indeed a shared household, as the daughter-in-law has been residing with her two minor children in the suit premises since 2002 and had been heavily contributing towards the family corpus by working in the family-owned Grover Medical Centre, as she is a qualified medical professional. She also claims to have financially

contributed to the construction of the property located on the suit premises which fact is evident from not only the written statement but also the plaint in the subject suit, showing the joint structure of the family and that the in-laws continued to have food from the same kitchen as her children.

8. She submits that merely because the language of both Section 17(2) of the DV Act and the residence order state that the in-laws cannot evict or exclude the daughter-in-law from the shared household save in accordance with the procedure as established by law, could not imply that the right of residence of the daughter-in-law would collapse in a suit for possession, by giving the DV Act a complete go-by. She further submits that the procedure as envisaged by Section 17(2) of the DV Act has to be located within the DV Act itself which implies that a recorded owner cannot be permitted to resort to other proceedings under common law to seek dispossession of the daughter-in-law. By relying on the decision of the Supreme Court in ***Vaishali Abhimanyu Joshi Vs. Nanasaheb Gopal Joshi*** (2017) 14 SCC 373, she contends that the ‘procedure’ referred to in Section 17(2) can be found subsequently within the DV Act itself in Section 19, which lays down the method to secure the right of residence of a daughter-in-law, and Section 26 which empowers a civil court to grant any reliefs under Sections 18-22 of the DV Act. Therefore, she submits that, while deciding the in-laws’ suit for possession, the trial Courts ought to have read the protection under Section 17 of the DV Act harmoniously with the provisions of the CPC as also the remaining provisions of the DV Act.

9. Ms. Malvika Rajkotia, learned counsel appearing for the appellant in RFA 222/2019, adopts the previous arguments made by Mr. Singh and Ms. Ojha on behalf of the daughters-in-law and submits that the DV Act is a special Act which has to prevail over the CPC, being a general law whereunder an owner can institute proceedings to seek possession of his property. Thus, an admission made by the daughter-in-law regarding the title of her father-in-law to the suit premises could not lead to her dispossession under Order XII Rule 6 CPC without considering her right of residence under the DV Act or granting her the opportunity of a fair trial. Taking this plea further, she submits that in the present appeal the daughter-in-law had raised two equally valid defences: first being her statutory right to reside in the suit premises as per the DV Act and the second being that the suit premises was not self-acquired; on the other hand, the father-in-law had made ambiguous averments in his plaint about the nature of rights claimed by him, yet, the trial court while dealing with these contrary stands came to pass the impugned decree under Order XII Rule 6 of the CPC without giving due consideration to these pleadings or affording the daughter-in-law an opportunity to prove any of her defences. By placing reliance on the decision in ***Evenet Singh & Ors. Vs. Prashant Chaudhari & Ors.***¹⁷⁷ (2011) DLT 124, she submits that in such cases where the husband is blatantly colluding with his parents to oust his wife and children from his house, the trial court cannot decree the suit on an admission.

10. Ms. Rajkotia submits that even if the in-laws are senior citizens who are entitled to seek remedy under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('Senior Citizens Act' for short), a

protective statute which was enacted to ensure that senior citizens are not ill-treated, the same cannot dilute the rights of the daughter-in-law under the DV Act. In any event, she contends that the Senior Citizens Act is not applicable to the facts of the present case and reiterates that, even if it were, this Act cannot be used to defeat the rights of the daughter-in-law under the DV Act, that too, in a blatantly collusive suit filed by her husband and father-in-law.

11. Mr. Pradeep Singh, learned counsel appearing for the appellant in RFA No. 230/2019 while adopting the arguments of the other counsel on behalf of the daughters-in-law, submits that the trial Court has failed to appreciate that the daughter-in-law had never admitted the title of her father-in-law to the suit premises. The in-laws' application under Order XII Rule 6 CPC has been erroneously allowed by the trial Court by holding that since the daughter-in-law had not specifically denied the in-laws' title to the suit premises in her pleadings, it was a case of evasive denial in terms of Order VIII Rules 3-5 CPC and had to, therefore, be treated as an admission. He submits that on the other hand, the father-in-law had, in his plaint, clearly admitted that initially the suit premises was jointly owned by him with his brother, which admission was sufficient to show that there was merit in the daughter-in-law's contention that the suit premises was joint family property and a shared household.

12. Mr. Rajeev Nanda, learned counsel appearing for the appellant in RFA No. 598/2019 adopts the previous arguments advanced on behalf of the daughters-in-law and submits, by relying on the decision in *Eveneet Singh* (*supra*), that this court can lift the veil to find out the true nature of the suits forming the subject of these appeals, which are collusive and

clearly malafide. He further submits that the impugned order in the present appeal has been passed by relying on the admissions not made by the daughter-in-law, but those made by her estranged husband who was her co-defendant before the trial Court. Thus, these admissions made by the husband shows that the suit was collusive and had been filed only to deprive the daughter-in-law of her rights under the DV Act. He submits that in fact, in the present appeal, the father-in-law had already filed a suit being CS No. 120/2014 earlier which came to be dismissed when he was unable to prove his title documents and, therefore, the suit was even otherwise barred by res judicata and ought to have been dismissed at the outset.

13. For the aforesaid reasons, the appellants submit that the impugned orders and judgments are unsustainable, having been passed without a correct appreciation of law and the fact situation of these appeals, and pray that the same be set aside.

Submissions on behalf of the respondents/in-laws

14. On the other hand, Ms. Geeta Luthra learned senior counsel for the respondent in RFA No. 381/2019 along with Mr. Prabhjeet Jauhar, led the arguments on behalf of the respondents/in-laws and submits that as per statutory provisions, a daughter-in-law claiming right of residence under the DV Act must necessarily prove that the suit premises is her a shared household. Ms. Luthra submits that the Supreme Court has, in ***Shumita Didi Sandhu Vs. Sanjay Singh Sandhu & Ors.*** 174 (2010) DLT 79(DB) and ***S.R. Batra & Anr. Vs. Taruna Batra*** (2007) 3 SCC 169, already examined what comprises a ‘shared household’ and has categorically held

that a shared household solely refers to the house belonging to/taken on rent by the husband or the house belonging to a joint family, of which the husband is a member. Therefore, as per the prevalent law, any property owned exclusively by an in-law cannot be treated as a shared household. She contends that in the light of this position, reliance cannot be placed on any decisions of this Court which hold to the contrary, as has been the case in *Preeti Satija (supra)* and *Navneet Arora (supra)*, relied upon by the daughters-in-law. By placing reliance on *Harish Chand Tandon Vs. Darpan Tandon & Ors. 2015 (153) DRJ 273*, she submits that the decision of the Supreme Court in *Shumita Didi (supra)* and *S.R. Batra (supra)* continues to remain binding on this Court under Article 141 of the Constitution of India. Thus, a daughter-in-law who resides in the suit premises as gratuitous licensees of the father-in-law in these appeals, cannot claim an absolute right of residence in these premises. In the present appeal she contends that the plea of the suit premises being a shared household is also belied by the averments of the daughter-in-law in her own complaint under the DV Act as she has, in paragraph 32 thereof, specifically stated that she was not being permitted to eat from the common kitchen of the household and had been using a separate kitchen set up for her in the year 2004; this is in the teeth of the settled position of law that a property cannot be treated as a shared household when there is no commonality of kitchen. Ms. Luthra contends that in any event, the daughter-in-law is only entitled to claim maintenance from her husband or claim a right to stay in a property where her husband is presently staying, but she cannot insist upon residing in a house exclusively owned by her in-laws. She submits that even the plea of the daughter-in-law that the suit

premises was joint family property cannot hold ground in the light of the conveyance deed dated 12.01.1983 whereby the premises have been recorded in the individual name of the father-in-law, and his income tax returns whereunder he has been assessed as an individual person and not as a HUF. In these circumstances, she submits that no HUF had ever been constituted by the father-in-law and a mere self-serving averment made by the daughter-in-law in her written statement that the suit premises is a joint family property, was rightly not relied upon by the trial Court. In case the daughter-in-law wanted to plead that the suit property did indeed form a part of the joint family property, the onus to prove this claim was on her, which she failed to discharge. Ms. Luthra submits that in any event, even as per the decisions in ***Uttam Singh Duggal & Co. Vs. United Bank of India & Ors.*** (2000) 7 SCC 120 and ***Preet Inder Singh Vs. Gursharna Kaur & Anr.*** (RFA No. 747/2010), once the daughter-in-law, in the present appeal, had specifically admitted in the domestic violence proceedings that her father-in-law was the owner of the suit premises in which she was residing, she was estopped from thereafter urging to the contrary. In these circumstances, she submits that the trial Court was fully justified in decreeing the suit under Order XII Rule 6 CPC without forcing the respondent to await a prolonged trial of the suit.

15. Ms. Luthra further submits that once the residence order passed in favour of the appellant by the DV Court and Section 17 of the DV Act provide that the right of residence of an aggrieved person is not absolute but is subject to being varied as per the procedure established by law, the daughter-in-law cannot claim otherwise or plead that she cannot be dispossessed even by resorting to other remedies available to the father-

in-law. By placing reliance on the decisions of *Vimlaben Ajithai Vs. Vatsalaben Ashokbhai Patel* (2008) 4 SCC 649, *Barun Kumar Nahar Vs. Parul Nahar* 2013 (199) DLT 1, *Kavita Chaudhari Vs. Eveneet Singh & Anr.* 202 (2013) DLT 548, *Eveneet Singh Vs. Prashant Chaudhari & Anr.* FAO (OS) 71-72/2011 *Meenu Vs Birma Devi* 2017 II AD(Delhi) 729 and *Sh. Vimal Khanna & Anr. Vs. Sh. Kishan Chand Khanna* (2010) 116 DRJ 251(DB), she submits that the estranged daughter-in-law's right of residence, after all, cannot override the right of the father-in-law, who is himself in the evening of his life and suffers from medical ailments, to seek possession of his exclusively owned property and lead his old age in peace. In these circumstances, the father-in-law instituted a suit for mandatory injunction and possession which was decreed under the impugned judgment. She contends, by placing reliance on the decision of the Supreme Court in *Maria Margarida Sequeria Fernandes and Ors. Vs. Erasmo Jack de Sequeria (Dead) through LRs* (2012) 5 SCC 370, that ultimately the only remedy available with the father-in-law was to seek adjudication of his rights as the title-holder of the suit premises before a court of competent jurisdiction. The daughter-in-law, therefore, cannot raise any grievance regarding the institution of the suit when the father-in-law, being the rightful owner of the suit premises, has acted well within the procedure established by law by filing a suit for possession before a court of competent jurisdiction, with sufficient opportunity having to all parties to be heard and file pleadings.

16. Ms. Luthra submits that even the reliance of the daughters-in-law on Section 26 of the DV Act is wholly misplaced as this provision only

permits an aggrieved person to seek the reliefs available to them under the DV Act in any other proceedings, even those instituted by a third party. However, once the daughter-in-law is granted a residence order in her favour by the DV Court, she has already exhausted her claim under the DV Act; when this residence order is subsequently set aside by a Civil Court in accordance with the procedure established by law, as has been contemplated in Section 17(2) of the DV Act as well as the order itself, the daughter-in-law cannot again raise a claim for the same right. Ms. Luthra finally submits that, even otherwise, it is not as if the daughter-in-law is without remedy as she can approach the DV Court to seek a direction to the husband to secure an alternate accommodation for her or to pay rent for the same under Section 19(1)(f) of the DV Act; this claim, however, can only be made against the husband and not the in-laws.

17. Mr. Jatan Singh, learned counsel for the respondent in RFA No. 604/2019 while adopting the submissions made by Ms. Luthra on behalf of the in-laws, submits that the appellant's written statement shows that she seeks to gain possession of the suit premises through any means as her prayer is not only confined to seeking residence in the suit premises which she claims is her shared household, but that, without any basis, she is also claiming ownership of the suit premises. Even her claim of having contributed substantially to the construction of the second and third floors of the suit premises out of her own earnings is belied by the fact that the construction in question had only been carried out in the year 2010, by which time the matrimonial relations between the parties had already soured. He submits that a perusal of the pleadings before the trial Court shows that the daughter-in-law failed to specifically deny the absolute

ownership of her father-in-law over the suit premises which ultimately led to the passing of the impugned judgment under Order XII Rule 6 CPC. It is a settled legal position that a daughter-in-law, or for that matter her husband, does not have a right to occupy the property exclusively owned by her parents-in-law; for this purpose he places reliance on *Sudha Mishra Vs. Surya Chandra Mishra* 211 (214) DLT 53, *Manju Gupta Vs. Pankaj Gupta & Anr.* CrI. M.C. No. 2082/2016, *Gauri Bhalla Vs. Ashish Bhalla and Ors.* 254 (2018) DLT 267 and *Sunita Gangwal Vs. Chottey Lal* 248 (2018) DLT 22.

18. Mr. Kotla Harsha Vardhan, learned counsel appearing on behalf of the respondent in RFA No. 222/2019, while adopting the contentions advanced previously on behalf of the in-laws submits that his appeal stands on a slightly different footing than the others as, in his case, on 20.02.2019, in the domestic violence proceedings instituted by the daughter-in-law against him and her husband, the DV Court had specifically returned the finding that the suit premises was not her shared household. In these circumstances, he urges that once the daughter-in-law's claim already stands decided by the DV Court, she cannot claim it once again before a civil court and that no further protection in this regard should be granted to her. By relying upon the decision of the High Court of Kerala in *A.R. Hashir v. Shima* AIR 2016 Ker 2 he contends that in any event, even as per Article 300A of the Constitution of India, the father-in-law has the right to obtain possession of the suit premises, being its absolute owner, and that the scope of a 'shared household' under the DV Act cannot be expanded to deny him of the same.

19. Mr. Mohit Batra, learned counsel appearing on behalf of the respondent in RFA No. 230/2019 adopts the previous submissions made on behalf of the in laws and submits that since the respondent in the present appeal had conclusively proved before the trial Court that the suit premises was his self-acquired property, the impugned judgments, in the light of the decision of this Court in ***Savitri Devi Vs. Manoj Kumar &Anr.*** CS(OS) No. 910/2011 was warranted. On facts, he contends that the claim of the daughter-in-law with respect to the original suit being barred under Section 7 of the Family Courts Act had already been successfully disputed before the trial Court and, therefore, evidently the appellant in the present case was trying every possible method to invalidate the civil proceedings by now adopting the defence of the suit premises being her shared household under Section 17 of the DV Act. He submits that the husband of the appellant herein had moved an application before the DV Court praying that he was ready and willing to provide alternate accommodation to his wife, which was vehemently opposed by her as she insisted on continuing to reside in the suit premises.

20. Mr. Amitesh Gaurav, learned counsel for the respondent in RFA No. 609/2019 submits that a distinct feature of this appeal, setting it apart from the accompanying appeals, is that the daughter-in-law till date has not obtained an order protecting her right of residence in the suit premises from the DV Court. He relies upon the decision of the Supreme Court in ***Vishnu Dutt Sharma Vs. Daya Sapra (Smt)***(2009) 13 SCC 729 to contend that in any event, the decision of a DV Court, which is essentially a criminal court, is not binding in a civil proceeding as it has limited applicability in proceedings before a civil court for determining *inter-alia*

who the accused was and the final outcome of such criminal proceeding; therefore, he submits that the orders passed by the DV Court were rightly not considered by the trial Court in the connected appeals, while passing the impugned decrees. Further, by relying upon *Vimlaben Ajitbhai Patel (supra)*, he submits that the right to own and enjoy one's property is a constitutional right which cannot be overlooked when considering the right of residence of an aggrieved person under the DV Act and that the trial Court, after adhering to the prescribed procedure, had concluded that the suit premises was a self-acquired property of the in-laws, and protected their constitutional right thereon.

21. For the aforesaid reasons, the respondents submit that the present appeals, being meritless, ought to be dismissed.

Analyses and findings

22. From the rival submissions of the parties, the undisputed factual position which emerges is that in all these cases the suit premises are standing exclusively in the names of the in-laws, though the appellants in most of the appeals are claiming that either they or their husbands are also co-owners of the suit premises despite the title documents thereof not bearing their names. Moreover, in the light of the souring domestic relationship between the parties, except in RFA 604/2019, the appellants have already initiated proceedings before the DV Court; and in most cases there are subsisting interim orders passed by the DV Courts protecting the right of the daughters-in-law to reside in the suit premises. It is also undisputed that under the scheme of the Act, these residence orders are granted only when the DV Court returns prima facie finding that the suit premises is a shared household. The parties are also *ad idem* that under

the DV Act if the aggrieved person, the daughters-in-law in these appeals, is found to be residing in a shared household, she is entitled to continue residing in the said household, irrespective of whether the premises are owned by her in-laws or by any other third party as long as the domestic relationship between them subsists. The bone of contention between the parties, however, is whether this right of the daughter-in-law is absolute and would continue during the continuance of the DV proceedings and till the subsistence of a domestic relationship between the in-laws and her, as the appellants would contend, or whether the same is transient in nature and subsists only till she is evicted by way of civil proceedings independently instituted by the owners seeking possession of the shared household as is sought to be contended by the respondents. The primary question which, thus, needs to be determined in these appeals is whether once domestic violence proceedings are pending and the daughter-in-law, or for that matter in favour of any aggrieved person, claims that she has a right of residence in the suit premises being her shared household, would the recorded owner of the property/shared household be entitled to institute a suit to recover possession from her during the pendency of the DV proceedings itself? If the answer to this question is in the affirmative, then the next question would be as to what procedure should be adopted and whether a decree of eviction can automatically be passed against the daughter-in-law on the basis of the title documents in favour of her in-laws, without considering the nature of her possession, the existing residence order in her favour or her claim that the suit premises is a shared household? An ancillary question is whether in a case where the daughter-in-law does not deny that the suit premises stands in the name of

her in-laws but instead pleads that the same is a joint family property in which her estranged husband has a share, can a decree on admission under Order XII Rule 6 CPC be passed without giving her an opportunity to prove that the property is indeed joint family property?

23. Since these appeals are premised on the right claimed by the daughters-in-law under the DV Act, it would be appropriate to examine the Statement of Objects and Reasons for the enactment of this special statute which reads as under:

“Statement of Objects and Reasons

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity,

marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. The right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe, shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.”

24. Ever since its inception in 2005 the DV Act, which gives this right of residence to a person who may not have any ownership rights, has invited great controversy and has been the subject matter of numerous decisions

of the Supreme Court and of this Court, exploring its application and the precise nature of its impact in varying domestic disputes. It would be instructive to refer to the observations of a Division Bench of this Court in *Evenet Singh* (*supra*) wherein this Court, after examining the aims and objects for enactment of this social welfare legislation, has emphasised that the DV Act should be interpreted in a manner which furthers the objects of the Act. The relevant extract of paragraphs 12 to 15 of the decision in *Evenet Singh* (*supra*) reads as under:-

"12. The Domestic Violence Act is a secular legislation, akin to Section 125 of the Code of Criminal Procedure, 1973. It was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family". The introduction of the remedy of right to residence is a revolutionary and path breaking step, taken to further the objects of the Act, and any attempt at restricting the scope of the remedy would reduce the effectiveness of the Act itself. Therefore, it would be contrary to the scheme and the objects of the Act to restrict its application to only such cases where the husband owns some property or has a share in it, as the mother-in-law can also be a Respondent in the proceedings under the Domestic Violence Act and remedies available under the same Act would necessarily need to be enforced against her.

13. Again, to confine the reference to "joint" family property by bringing in the concept of a HUF would be to restrict the application of the provision, to a point which is contrary to Parliamentary intention that the law is a non-sectarian one. The "joint" status of a family here obviously is in a generic sense, and importing notions of HUF would unwittingly give greater benefits to one section of the community, which was never the intention of Parliament. In a generic sense, it refers to a group of people, related either by blood or marriage, residing in the same house and instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in the house of the (husband's) parents after marriage. Even though a legal obligation to maintain a child ceases as soon as he attains

majority, the jural relationship between the parents and the child continues. The concept of a "joint family" in law is peculiar to Hindu law. No concept of a "joint family" similar to that of an HUF can be found in Muslim Law, Christian Law or any other personal law.

14. The danger of accepting a restricted interpretation of joint family by equating it to a HUF would result in discrimination, because women living in a shared household belonging to HUFs (and therefore Hindus) would have more security, by reason of their professing the Hindu faith than others who are not Hindus. Also, even among Hindus, women who are married into or live in HUFs, as compared with those living with husbands, whose parents own the property - on an application of Batra - would have the protection of the Act; the latter would not have any protection. It is precisely to avoid this anomaly that Parliament clarified that irrespective of title of the "Respondent" to the "shared household", a protection order can be made under Section 19(1)(a).

15. The definition of "shared household" emphasizes the factum of a domestic relationship and no investigation into the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of ownership of the household, the definition casts a wide enough net. It is couched in inclusive terms and is not in any way, exhaustive (S. Prabhakaran v. State of Kerala, 2009 (2) RCR 883. It states that "...includes such a household whether owned or tenanted either jointly by the aggrieved person and the Respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the Respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the Respondent is a member, irrespective of whether the Respondent or the aggrieved person has any right, title or interest in the shared household (Emphasis supplied)."

25. At this stage, it would also be useful to refer to the observations in paragraphs 20 and 21 of **Preeti Satija** (*supra*) wherein the Division Bench emphasised that the right of residence granted to an aggrieved

person and the genesis of a mechanism to enforce this right were ground breaking measures contained in the DV Act; the same reads as under:-

“20. Crucially, Parliament’s intention by the 2005 Act was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the Respondent (including relative of the husband) or in respect of which the Respondent had jointly or singly any right, title, interest, or “equity”. For instance, a widow (or as in this case, a daughter in law, estranged from her husband) living with a mother-in-law, in premises owned by the latter, falls within a “domestic relationship”. The obligation not to disturb the right to residence in the shared household would continue even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to “equity” (such as an equitable right to possession) in those premises. This is because the premises would be a “shared household”. The daughter-in-law, in these circumstances is entitled to protection from dispossession, though her husband never had any ownership rights in the premises. The right is not dependent on title, but the mere factum of residence. Thus, even if the mother-in-law is a tenant, then, on that ground, or someone having equity, she can be enjoined from dispossessing the daughter in law. In case the mother in law is the owner, the obligation to allow the daughter in law to live in the shared household, as long as the matrimonial relationship between her and the husband subsists, continues. The only exception is the proviso to 19(1)(b), which exempts women from being directed to remove themselves from the shared household. No such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Had the Parliament intended to create another exception in favor of women, it would have done so. This omission was deliberate and in consonance with the rest of the scheme of the Act. There can be other cases of domestic relationships such as an orphaned sister, or widowed mother, living in her brother's or son's house. Both are covered by the definition of domestic relationship, as the brother is clearly a Respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property by the son or brother. Thus, excluding the right of residence against properties

where the husband has no right, share, interest or title, would severely curtail the extent of the usefulness of the right to residence.

21. The other aspect, which this Court wishes to highlight, is that the 2005 Act applies to all communities, and was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family". The right to residence and creation of mechanism to enforce is a ground breaking measure, which Courts should be alive to. Restricting the scope of the remedies, including in respect of the right to reside in shared household, would undermine the purpose of this enactment. It is, therefore, contrary to the scheme and the objects of the Act, as also the unambiguous text of Section 2(s), to restrict the application of the 2005 Act to only such cases where the husband alone owns some property or has a share in it. Crucially, the mother-in-law (or a father-in-law, or for that matter, "a relative of the husband") can also be a Respondent in the proceedings under the 2005 Act and remedies available under the same Act would necessarily need to be enforced against them."

26. The observations of a subsequent Division Bench of this Court in ***Navneet Arora*** (*supra*) offer further insight into the ambit of the DV Act and the mischief which it seeks to redress. The relevant paragraphs of the said decision, i.e., paragraphs 53, 57 to 59, read as under:-

"53. There can be no quarrel that Protection of Women from Domestic Violence Act, 2005 is a social-welfare legislation enacted for the benefit and amelioration of women.

....

57. On the first blush it may appear quite jarring to certain quarters of the society that by enacting the Protection of Women from Domestic Violence Act, 2005 the legislature has invested a right of residence in favour of wives qua premises in which they or their husband admittedly have no right, title or interest and such premises are in fact owned by the relatives of the husband.

58. It may be highlighted that the Act does not confer any title or proprietary rights in favour of the aggrieved person as misunderstood by most, but merely secures a right of residence in the shared household'. Section 17(2) clarifies that the aggrieved person may be evicted from the shared household but only in accordance with the procedure established by law. The legislature has taken care to calibrate and balance the interests of the family members of the respondent and mitigated the rigour by expressly providing under the proviso to Section 19 (1) that whilst adjudicating an application preferred by the aggrieved person it would not be open to the Court to pass directions for removing a female member of the respondents family from the „shared household“. Furthermore, in terms of Section 19 (1) (f), the Court may direct the respondent to secure same level of accommodation for the aggrieved person as enjoyed by her in the shared household" or to pay rent for the same, if the circumstances so require.

59. The seemingly radical provisions comprised in the Protection of Women from Domestic Violence Act, 2005 must be understood and appreciated in light of the prevalent culture and ethos in our society."

27. At this stage, reference may also be made to **Hiral P. Harsora & Ors. Vs. Kusum Narottamdas Harsora & Ors.** (2016) 10 SCC 165 wherein the Supreme Court has, in paragraphs 16, 18 and 25 of its decision, once again elucidated the reasons behind enactment of the DV Act; the same read as under-

"16. A cursory reading of the Statement of Objects and Reasons makes it clear that the phenomenon of domestic violence against women is widely prevalent and needs redressal. Whereas criminal law does offer some redressal, civil law does not address this phenomenon in its entirety. The idea therefore is to provide various innovative remedies in favour of women who suffer from domestic violence, against the perpetrators of such violence.

18. What is of great significance is that the 2005 Act is to provide for effective protection of the rights of women who are victims of

violence of any kind occurring within the family. The Preamble also makes it clear that the reach of the Act is that violence, whether physical, sexual, verbal, emotional or economic, are all to be redressed by the statute. That the perpetrators and abettors of such violence can, in given situations, be women themselves, is obvious. With this object in mind, let us now examine the provisions of the statute itself.

.....

25. When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of “respondent” in the 2005 Act. Thus, an invidious discrimination will result, depending upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It is clear that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under other Acts, in which the self-same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family. This anomaly again makes it clear that the definition of “respondent” in Section 2(q) is not based on any intelligible differentia having any rational relation to the object sought to be achieved by the 2005 Act. The restriction of such person to being an adult male alone is obviously not a differentia which would be in sync with the object sought to be achieved under the 2005 Act, but would in fact be contrary to it.”

28. What thus emerges is that the legislature, faced with rampant incidents of domestic violence in the country and the desperate call for legislative action to mitigate its devastating social impact, enacted this path breaking statute with the object and purpose of combating routinely perpetrated violence taking place within the confines of victims’ homes.

The legislature, by way of the DV Act, intended to equip aggrieved persons with a mechanism to freely protect and defend themselves against violence inflicted in an intimate domestic setup, without fearing urgent retaliatory action from their perpetrators, who are persons that they identify as their family and loved ones. Even though the Act may not be a magical solution for eradication of domestic violence, it does serve the crucial purpose of transforming the journey of a victim of domestic violence by enabling timely judicial intervention and protection to the victim. It provides for specific legal rights and protections, both permanent and interlocutory, to persons trapped in an endless cycle of familial violence in order to discontinue this process of harm endured by them. At the time of its enactment, the DV Act had specifically been hailed for bestowing, for the very first time, a right of residence in favour of an aggrieved person which practically amounted to safeguarding one of the most essential rights for their survival – the right to shelter. In incidents of domestic violence arising out of matrimonial disharmony, this right of residence is a special step towards ensuring that a helpless wife and her children are not abandoned without any shelter, by categorically protecting their right to reside in the shared household, irrespective of whether the aggrieved wife or her spouse, bears any title or interest in the said household. It is in the light of this background that the provisions and the ambit of the rights granted under the DV Act have to be interpreted.

29. As is evident from the submissions of the parties, the trope in these appeals is regarding the nature of the right of residence accruing to a

daughter-in-law under Section 17 of the DV Act, which provision reads as under:-

“17. Right to reside in a shared household.-

(1) Notwithstanding anything contained in any other law for the time being in force, every woman 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.

(2) 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 the procedure established by law.”

30. As on date the admitted position is that in most of the matters, there are either subsisting orders passed by the DV Court in favour of the appellants protecting their right of residence in the suit premises, which orders have not been assailed by any of the respondents by filing an appeal under Section 29 of the DV Act, or domestic violence proceedings seeking protection of their right of residence on the ground that they are shared households are presently pending before the DV Court. I, therefore, find that the real point of determination in these appeals is not as to whether the suit premises is a shared household or not. In fact since the domestic violence proceedings initiated by the daughters-in-law are presently pending adjudication, I am of the view that any determination of this issue in these proceedings would result in causing serious prejudice to the claims of these parties in the domestic violence proceedings where this question would be determined under the scheme of the Act. I find that not only have the trial Courts, in some of the orders impugned herein, ventured into giving cryptic findings on this aspect, without examining this aspect in depth or being circumspect about its possible impact on the

claims of the parties in the proceedings before the DV Court. In fact, the only question which arises for my consideration in the present appeals is apropos the nature and extent of the right of residence accruing to the daughters-in-law under the DV Act during the pendency of the DV proceedings. For that reason, despite both parties making an endeavour to show, by relying upon several judgments of the Supreme Court as well as this Court, including the decision in *S.R. Batra (supra)* as to why the suit premises in each of these appeals should or should not be held as a shared household of the aggrieved daughter-in-law, I have consciously refrained from determining this question or discussing the decisions relied upon by the parties on this issue. In any event, a perusal of the decisions relied upon by the parties on the issue of interpreting the term 'shared household' viz. each of these suit premises reveals that none of the said decisions appear to have considered the effect of the pending domestic violence proceedings instituted by the daughter-in-law upon the civil suits and are, therefore, inapplicable to the issues raised in the present appeals.

31. Now the fulcrum of the respondents' opposition to the present appeals is that the right of residence of the daughters-in-law, forming the basis of their continued residence in the suit premises as also the residence orders granted in their favour by the DV Courts, is not an absolute right but is subject to the rider within Section 17 itself which in no uncertain terms provides that the aggrieved person can be evicted from the shared household by recourse to procedure established by law. It is thus the respondent's case that the institution of civil suits for *inter-alia* mandatory injunction, possession or eviction, undoubtedly falls within the ambit of procedure established by law and therefore, the appellants cannot

demur that their rights under the DV Act were infringed by the institution of these suits or the impugned orders passed therein against them. The appellants, on the other hand, plead that procedure established by law as envisaged under Section 17 cannot be read in the manner in which the trial Courts have interpreted but would exclusively mean the procedure as set out under the DV Act.

32. On a perusal of the statute I find that Section 17 of the DV Act no doubt, while protecting the right of an aggrieved person to reside in a shared household, envisages that she could be evicted or excluded from the same in accordance with the procedure established by law. Hence, the first point of issue arising for my consideration would be as to what is the import of the phrase ‘procedure established by law’ as found in Section 17 of the DV Act. Can this phrase be read to mean procedure prescribed under the DV Act as the appellants would contend, or does it imply a simpliciter suit for possession or injunction instituted by a rightful owner in accordance with the provisions of the Transfer of Property Act, 1882 and the CPC, whichever applies, as urged by the respondents? The phrase “procedure established by law”, when not given an exclusive definition, would typically encompass general legal principles, due process of law and the entire omnibus of legislations in the country read with the Constitution of India. The in-laws instituted suits seeking *inter alia* possession of their residential premises, in accordance with the provisions of the CPC, when their daughters-in-law claimed a right to continue residing at these premises in the light of Section 17 of the DV Act. Evidently the claim for possession raised by the in-laws, being title holders of the suit premises, arose out of their desire to enjoy peaceful

possession of their self-acquired property which is their constitutional right. On the other hand, the right of residence of a daughter-in-law is essentially a statutory right, albeit temporary in nature, protecting their right to a roof over their head. Can this, however, lead to the conclusion that daughters-in-law can be deprived of their statutory right on the ground that Section 17 of the DV Act, which gives them the right itself makes it subject to institution of civil proceedings for possession by the title holder of the property?

33. Thus, even though the suits for possession instituted by the in-laws cannot be said to be not maintainable, as they would necessarily fall within the term 'procedure established by law', but the question however is whether the suits could be simply decreed by the trial Court on the basis of title without weighing the effect of the statutory rights in favour of the appellant. The phrase 'procedure established by law' cannot be interpreted in such a narrow manner so as to permit a decree being passed only on the basis of title documents by ignoring the statutory rights in favour of the appellant. To determine this question, it would be apposite to examine the nature of this statutory right granted to the appellants under the DV Act and the reasons for introducing this right of residence. The legislature, in its wisdom, was conscious that any claim raised by an aggrieved person to continue residing in the premises also inhabited/owned by the respondents in the domestic violence proceedings was likely to face vehement opposition. In disputes of such nature, where the relationship between the parties has witnessed a complete breakdown, is bruised by great animosity and where aspersions are being cast on the conduct and character of the opposite party by both the sides, any

opposition to the claim for right of residence made by a daughter-in-law is not unforeseen or unexpected. Clearly, had there been no opposition or animosity ensuing from a respondent in domestic violence proceedings, the need for a right of such nature would have never arisen. For the purpose of effectively addressing this situation, Section 17 specifically protects the aggrieved person from being dispossessed from her residence by securing this right irrespective of whether she has a right title or interest in the same. Thus, I find that the DV Act has aspired to bring in a sea change in the rights of persons affected by domestic violence by ensuring that irrespective of the ownership of the suit premises where the aggrieved person resided, she would still retain the right to reside therein as long as she was able to prove that she had endured domestic violence while being in a domestic relationship with the owner of such premises. Even the decisions of the Supreme Court in *Saraswathy Vs. Babu* (2014) 3 SCC 712 and *Shalini Vs. Kishor & Ors.* (2015) 11 SCC 718, relied upon by Ms. Ojha, show that the apex court also remained conscious of the gravity of this right for, even in cases where the wife was driven out of her matrimonial home years before the domestic violence proceedings had commenced, the aggrieved person had been granted a residence order with respect to her right to reside in the house owned by her mother-in-law.

34. Equally important to this discussion is the consistent position of this Court upholding purposive construction of the DV Act, being a beneficent piece of legislation drafted specifically to provide respite to one of the most vulnerable groups in this country. While dealing with the concept of shared household, two separate Division Benches of this Court in

Navneet Arora (supra) and *Preeti Satija (supra)* have categorically held that a bar cannot be read into the right of residence to a shared household granted to an aggrieved person, under the DV Act, by restricting this right to only include those properties in which the husband of the aggrieved person has a share. Once the mother-in-law or the father-in-law or for that matter any other relative of the husband, can be arrayed as a respondent in the proceedings instituted under the DV Act, there can be no doubt that all remedies under the Act would also be enforceable against them. On the other hand, the interpretation adopted by the trial Courts in the impugned judgments suggests that the Civil Court, irrespective of the plea adopted by an aggrieved wife that the premises she seeks to reside in is a shared household or that residence orders have been passed in her favour by the DV Court, would perforce decree the suit against her on finding that the ownership of the premises vested in a person other than her husband. This, in effect, would be an egregious deprivation of the wife's statutory rights under the DV Act. The greatest fall-out of this interpretation, however, would be that it would single-handedly make the rights of an aggrieved person and the proceedings instituted under the DV Act lapse and render the statute, itself, nugatory. This right, therefore, being a vital statutory right could not simply be brushed aside and the trial Court, notwithstanding that the respondent's ownership over the suit premise was a matter of fact, ought to have taken cognizance of these rights and protections prior to making its decision. In these circumstances, I have no hesitation in holding that the interpretation and procedure employed by the trial Courts was not only incorrect and in violation of the legislative intent, but also suffers from a complete

misreading of the DV Act and virtually amounts to depriving the daughters-in-law of their statutory right.

35. At this juncture, I am compelled to ask: Were the Trial Courts justified in passing decrees under Order XII Rule 6 CPC merely because the appellants/daughters-in-law truthfully did not dispute the fact that the suit premises were standing in the exclusive name of the in-laws/respondents, without considering their claim to reside in these premises under Section 17 of the DV Act?

36. Even if the daughter-in-law had, indeed, admitted to the title of her in-laws to the suit premises, the validity and import of her admission ought to have been duly considered by the Trial Court before hurrying to pass a decree under Order XII Rule 6 CPC. In this regard, I find merit in the submissions made by Ms. Rajkotia that the provisions of Order XII Rule 6 CPC cannot be assigned a hypertechnical interpretation that just because there is an admission of title, the suit must be decreed especially since in our country, commonly, the title of properties which are inhabited by patrilocal families, may often stand in the names of the father-in-law or the mother-in-law. However, in the light of the settled position of law that an admission ought to be read as a whole, the claim of the daughters-in-law for a statutory right accruing to them, which right serves the purpose of ensuring that they are not rendered homeless, also needs to be taken into consideration. Thus, when determining the validity and import of an admission made before it, the Court must decide, after considering the effect of the entire body of pleadings and arguments made before it, whether the admission conclusively lays the dispute to rest. It was, therefore, incumbent upon the trial Court to assess the effect of the

admissions made by the daughters-in-law in the context of all the pleadings on record including her claim of right of residence and the sanctity thereof, her allegations regarding the collusive nature of the suit and the bitter acrimony between the parties. Another fundamental principle for a Court to keep in mind at the time of decreeing a suit on an admission, as laid down by this Court in *Preeti Satija (supra)*, is whether the party making the admission can explain this admission during the course of the trial. Since the admissions in these appeals were regarding the title of the suit premises, it is pertinent to note that in most of these cases, fairly, the daughters-in-law are not even claiming title rights to the suit premises; although, in some of these appeals the daughters-in-law are claiming title rights by virtue of their husbands being entitled to a share in the suit premises or the suit premises having been purchased out of joint family funds in which the daughter-in-law, through her husband, has a claim as well. Therefore, it cannot be said that the admissions of these daughters-in-law could not be explained by them or were unambiguous in nature. Yet, I find that in most cases the trial Court has proceeded by reading only one some parts of the written statement where the daughter-in-law admitted to the suit premises being in the name of the respondent without giving due regard to the specific pleading made by her, in the very same written statement, that irrespective of the title documents being in the exclusive name of the in-laws, her husband and she had a right in the suit premises.

37. Reading these judicial admissions in isolation, as has been done in the present appeals, can lead to another anomalous situation; decrees under Order XII Rule 6 CPC would become a norm in civil proceedings which

would inevitably trigger an endless loop of litigations for aggrieved persons and eventually sweep their rights and protections under the DV Act, beneath the carpet. The judicial admissions of an aggrieved person, therefore, cannot be read in isolation in order to decree a suit under Order XII Rule 6 CPC, by ignoring his/her legal rights; doing so would contravene the very scheme of the Act as, in the fact scenario of these appeals, it would leave the daughter-in-law and her dependent children without any shelter till the DV Court examines her entitlement to an alternate accommodation. Such practice, as rightly contended by the appellants, would imply that even though the trial Court remains conscious of the rights of an aggrieved woman under the DV Act, it does not protect the same on the ground of a judicial admission made by her, even though such admission does not bear any impact on her right of residence under the DV Act which is her absolute right.

38. Even if the trial Court was of the view that the in-laws should not be made to undergo trial on account of their old age, it was required to consider and adequately deal with the effect of the protections given to the daughters-in-law under the DV Act and their other defences under the dictates of 'procedure established by law'. Ultimately, an admission of title by the daughter-in-law and the *power* of the trial Court to pass a decree on such admission, does not mean that the trial Court should *necessarily* pass a decree under Order XII Rule 6 CPC. The Courts cannot also simply breeze through these crucial considerations to render a 'quick judgment', especially since the passing of such a decree would result in rendering the daughters-in-law and their dependent children without a shelter. Although the respondents are correct in contending that

admissions can be inferred from the pleadings and evidence and need not be explicitly part of the proceedings where the decree on admission is sought, I find that even if the daughter-in-law is unable to and does not seriously dispute the title of her in-laws, a decree under Order XII Rule 6 CPC could not have been passed without even considering her rights under the DV Act or by dismissively directing her to approach the DV Court for protection of her rights under the DV Act.

39. Relevant to this discussion is the decision of the Supreme Court in *Maria Margarida* (*supra*), heavily relied upon by the respondents in support of their various contentions; which I find, instead, accurately sums up the procedural irregularities ailing the decree passed by the trial Court.

“66. A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the Defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's

claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

(a) who is or are the owner or owners of the property;

(b) title of the property;

(c) who is in possession of the title documents

(d) identity of the claimant or claimants to possession;

(e) the date of entry into possession;

(f) how he came into possession -whether he purchased the property or inherited or got the same in gift or by any other method;

(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;

(h) If taken on rent, license fee or lease -then insist on rent deed, license deed or lease deed;

(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

(j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and

(k) basis of his claim that not to deliver possession but continue in possession.

*71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. **While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.***

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.”

40. Thus, the principle set down in *Maria Margarida* (*supra*) is that in a suit for possession, even if there is no dispute regarding the title, the statutory rights of the person, if any, based on which he/she claims to be in possession must also be considered. In these appeals, *prima facie* at the very first instance of the admission by the daughter-in-law, the title dispute stood removed and the suit proceeded to assume the role of a suit for ejectment. At this stage, it was necessary for the trial Courts to consider whether notwithstanding the title existing in favour of their in-laws, the daughters-in-law could still, by claiming that it was a shared household and by relying on the residence orders passed in their favour under the DV Act, claim that they were entitled to continue residing in the suit premises. The observations in *Maria Margarida* (*supra*) itself show that only in the event when pleadings in a suit do not provide sufficient details leading to raising of an issue, can the Court reject the claim of the daughter-in-law or pass a decree on admission. In most of these cases, despite the daughters-in-law having raised a legitimate defence to their

ejectment on the ground of a protective right existing in their favour, the trial Court proceeded to decree the suit by summarily dismissing their defence. No doubt the purpose of Order XII Rule 6 CPC is to shorten unnecessary litigation, but that does not mean that the defence of the party making the admission can be ignored even if there is proof that they are not a sham. In the present case, it can by no stretch of imagination be said that the defences raised by the daughters-in-law are, in any manner, a sham. In fact, the defences raised by all of them are stemming from a valid right arising in their favour under a statute.

41. Therefore, when I compare the procedure actually followed by the trial Court with the phrase “procedure established by law” as employed in Section 17(2) of the DV Act, I find that the impugned decrees do suffer from an evident hastiness as they fail to address the legitimate claims raised by the daughters-in-law under the DV Act. While the trial Court had the power to pass a decree under Order XII Rule 6 CPC, it also had the duty and requisite power to balance the rights of both the parties; yet the proceedings before the trial Court have continued in a manner blind to the rights accruing to daughters-in-law under the DV Act. Merely because the rights accruing to an aggrieved person under the DV Act is in the nature of a special protection, and not of a proprietary right, the trial Court was not justified in passing a decree which, in effect, whittles away such protection. Our society, already mired by its painful history of centuries’ long oppression of women, cannot afford to brush aside the provisions of Sections 17 and 19 of the DV Act by following an oppressively technical application of the CPC. The phrase ‘procedure established by law’ as employed in Section 17(2) of the DV Act cannot be

interpreted in a manner so as to defeat the very Act within which it is nestled.

42. The trial Courts, therefore, have erroneously proceeded to pass the decrees under Order XII Rule 6 CPC by not only failing to appreciate the specific submission of the appellants, while admitting the title of the respondents, that the suit premises was joint family property but also by completely losing sight of the spirit of the DV Act. It was imperative for the trial Court to be sensitive to the surrounding circumstances and reasons leading to enactment of the DV Act, being a social welfare legislation, while dealing with the in-laws' proprietary claim. The trial Court was also required to properly consider both the procedure as set down under Order XII Rule 6 CPC as well as the rights of the daughters-in-law under Section 17 of the DV Act before passing the impugned judgments. Moreover, the trial Court could not have lost sight of the fact that these disputes, involving friction and heightened tension between family members, required the Court to apply and interpret family laws and social welfare legislations in a manner whereby the statutory rights and protections afforded to both the parties were balanced. In these litigations, which are usually a battleground with embittered family members hotly contesting each other's assertions and trying to one up the other's claim of abuse, the Court ought to have proceeded with greater sensitivity, and taken into consideration the effect of the rights granted to the aggrieved person under the DV Act, while adjudicating the opposing claims raised therein.

43. Another shortcoming in the procedure followed by the trial Court is the non-impleadment of the husbands in some of the matters, prior to

passing of a judgment under Order XII Rule 6. As the claim of the daughter-in-law arises out of her relationship with her husband, the stand of the husband was certainly crucial to these suits for possession before the trial Court. Despite this position, I am constrained to note that in cases where the in-laws had not impleaded their sons, the trial Court instead of impleading the husbands by exercising their suo motu powers under Order I Rule 10(2) CPC, proceeded to decree the suit without taking the stand of the husband on record, which I find was improper.

44. On the other hand, in cases where the husband has been impleaded as a party defendant, an additional serious infirmity noticed is that the trial Court proceeded to decree the suit under Order XII Rule 6 CPC on an admission made by the husband and not by the daughter-in-law. No doubt that generally the court, while exercising its powers under Order XII Rule 6 CPC, may rely on the admissions by a co-defendant, but in cases like the present where the DV proceedings between the parties are already pending, the admissions made by the husband could not at all be relied upon; when such bitter acrimony already exists between the parties, it is but obvious that the husbands would be motivated by their desire to somehow oust their wives from the matrimonial home. Had the trial Court appreciated this nuance, it would not have deemed it appropriate to decree the suits on the basis of the admissions made by the husband. Previously, in paragraphs 19,20 and 21 of its decision in **Kavita Gambhir** (*supra*) this Court has addressed the practice of non-impleadment of the husband in proceedings of such nature by observing as under:

“19. As far as the defendant is concerned a reading of her written statement would show that she is claiming the right to be in

occupation of the first floor through her husband only who was already living there when he had brought her 'doli' there. The learned trial Judge has also observed in the impugned judgment that: "Even according to the plaintiffs she was not a tenant rather a permissive user, being the wife of the son of the plaintiffs." For the defendant the first floor of the suit property was her matrimonial home from where the plaintiffs cannot evict her. For ousting her from there the plaintiffs have to first oust their son who only had brought her there and it is the plaintiffs' own case that they had permitted their son to live there with his wife. It is not the case of the plaintiffs that they had terminated the arrangement whatsoever they had with their son under which he was occupying their property with his family. It is also not their case that they had asked their son to move out from their house lock stock and barrel i.e. along with his cantankerous wife and children. So, the plaintiffs cannot simply ask their daughter-in-law alone to move out of their house. And if actually the plaintiffs have revoked the permission/licence of their son to stay in their house then they have to obtain a decree of possession against their son because of his failure to surrender vacant possession of their property in his occupation and only in that way they can get their son's family also evicted. Unless the plaintiffs get a declaration against their own son Anil Gambhir that he having failed to put them in possession of their property by moving out of the first floor of their property along with his family despite revocation of the permission which they had given to him to stay on the first floor they were entitled to get him and his family evicted through a decree of the Court they cannot claim that the occupation of their daughter-in-law Kavita Gambhir was unauthorised. Now, whether the plaintiffs' son was living there as a tenant or as a licensee or in any other capacity could be known only if he had been impleaded in the suit by the plaintiffs and in whatever capacity their son was permitted by them to occupy the first floor the 'privity' was between them and their son and not between them and their daughter-in-law. They have, however, chosen not to implead him. In my view the defendant's husband was certainly a necessary party and in fact the suit should have been filed only against him and if an order of eviction had been passed against him that would have bound his wife also because she is not claiming any independent right. This position was not disputed even by the learned Counsel for the defendant during the course of arguments.

20. In my view, non-impleadment of their son in this suit by the plaintiffs is a fraud on the right of the defendant to stay in her matrimonial home being played by her husband in collusion with his parents. Learned Counsel for the plaintiffs had submitted that the defendant's matrimonial home could be where her husband was living and the suit property had ceased to be her matrimonial home after her husband shifted to NOIDA. So, what was being suggested was that the defendant could go to occupy the house in NOIDA where her husband is staying. I do not agree with this submission. The husband may have many places to reside, whether as a tenant or licensee or in any other capacity and in each such place the wife also gets the right to stay claiming that to be her matrimonial home so long as their jural relationship as husband-wife subsists. It is also not necessary that both husband-wife must be staying in a particular house for it being labelled as the matrimonial home of the wife. In this regard I may refer to the views of Bombay High Court in a judgment which was cited by the Counsel for the plaintiffs before me. That judgment is 2008 (5) Bom CR 149, Shammi Nagpal v. Sudhir Nagpal. In that case one of the points under consideration was as to what is meant by the expression 'matrimonial home' and it was observed that, "In other words, the 'matrimonial home' is the domicile where persons live together actually or constructively, as man and wife." Now, in the present case if the plaintiffs had impleaded their son Anil in this suit only then, as observed already also, it could be known as to in what capacity he was staying on the first floor of the suit property, whether as a tenant, licensee or in any other capacity and whether that right to occupy the first floor was subsisting or had stood determined. In his absence it cannot be decided by the Court that his occupation was only permissive or as a gratuitous licensee of his parents. The plaintiffs have also not pleaded that they had revoked the permission given to their son to occupy the first floor of their house. All these facts are required to be gone into since if the plaintiffs' permission to their son to occupy the first floor, if at all his possession was permissive, has not been revoked the first floor would continue to be the defendant's matrimonial home.

21. The reason given by the learned Counsel for the plaintiffs for the non-impleadment of their son in this suit was that their son having voluntarily left their property they were not obliged to obtain any declaration against him that he was an unauthorised occupant

when he actually was not no more in physical possession and no decree of possession was required to be obtained against him. I, however, do not find any substance in this submission also of the learned Counsel for the plaintiffs that since the husband of the defendant had shifted to NOIDA before the filing of this suit he was not required to be sued. I do not agree with this submission. As noticed already, in the judgment of Bombay High Court relied upon by the Counsel for the plaintiffs it had been held that for a house to be called a matrimonial home of the wife it is not necessary that the possession of both husband and wife has to be actual. It can be constructive also. Here, in the cross-examination of plaintiff No. 1 he had also admitted that after they all had moved out of the suit property the defendant's son had lived with the defendant in the suit property. No doubt he had also clarified that that was during the pendency of conciliation proceedings before the Legal Aid Cell at Patiala House Courts but that shows that the defendant's husband was still treating the place where his wife was residing to be her matrimonial home as otherwise he could have invited her to live with him in his house at NOIDA claiming the same to be her matrimonial home."

45. Even the respondents' plea that the daughters-in-law were merely their gratuitous licensees and, on that account, were liable to be ejected when the permission to reside in the suit premises came to be revoked, glosses over the statutory rights accruing to the daughter-in-law under the DV Act. Even if this plea of the respondents were to be accepted, this would have absolutely no bearing on the claims raised by the daughters-in-law under the DV Act. In the sociological construct of the Indian society, most persons and their spouses tend to reside with their parents in order to care for them and for the purpose of establishing a strong familial support system; one therefore has to infer that the legislature was aware of this ground reality while enacting a statute which specifically seeks to set up a protection mechanism for victims of domestic violence across the length and breadth of our nation. Yet, instead of carefully weighing in this

protection afforded to the daughter-in-law, I find that the trial Court ascribed undue importance to the quality of permissiveness or gratuitousness of her possession, which in my opinion, could not have been used to defeat the spirit of the right given to the daughter-in-law under the DV Act.

46. Once it is found that the procedure adopted by the trial Court was erroneous, the question is - what next? Confronted by the fact scenario of these disputes and the error in the impugned judgments, what is the appropriate course to adopt in order for the trial Court to ensure justice in these appeals? Once the right of the daughter-in-law to reside in the suit premises is acknowledged, should the in-laws be compelled to wait till the proceedings under the DV Act are brought to a logical conclusion? Conversely, keeping in view their old age coupled with the multifarious medical problems being faced by them, and the provisions of the Senior Citizens Act which was enacted to ensure that parents and senior citizens are not made to suffer by their children, should the legislature devise a legal framework to prevent them from being forced to reside with their estranged daughters-in-law in a property which, as on date, stands exclusively in their names? Alternatively, as has been the case in RFA No. 380 of 2019, should the daughters-in-law be directed to approach the Magistrate by instituting independent proceedings under the DV Act, while decreeing the suit and directing their eviction?

47. To my mind, the answer to this quagmire is contained in the comprehensive provisions of the DV Act itself, specifically in Sections 19 and 26 which read as under:-

“19. Residence orders.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order –

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require;

Provided that no order under clause (b) shall be passed against any person who is a woman.”

“26. Relief in other suits and legal proceedings.-

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

48. The DV Act, as has often been iterated, is a confluence between civil and criminal laws, which means that to confine it to any single branch of jurisprudence would be erroneous. It is in Section 26 of the DV Act where this point of intersection manifests, which provision also shows the specific intent of the legislature to ensure that the claims raised by the daughters-in-law before the DV Court can also be raised before the Civil Court, and that both the courts hold equal jurisdiction to grant the reliefs sought by an aggrieved person under the DV Act. The purpose of this provision was to ensure that an aggrieved person could claim the benefit of the DV Act in proceedings of a different nature and was not rendered helpless and without remedy, simply because a special Court had been constituted to deal with her claims arising under the DV Act. Section 26 in no way bars the powers of a Court, seized by a civil proceeding affecting an aggrieved person and the respondent under the DV Act, to grant reliefs to the aggrieved person under Sections 18 to 22 of the DV Act in the civil proceedings itself. Essentially, this provision presents an avenue to the daughter-in-law to claim her right of residence in the civil proceedings pending between her and her in-laws, provided that they are 'respondents' within the meaning of Section 2(q) of the Act. Section 26, therefore, serves to build a bridge between civil and criminal proceedings in cases involving a frequent interplay of civil and criminal laws, such as matrimonial disputes, in order to ensure that aggrieved persons are not compelled to run from pillar to post while navigating the labyrinth of complicated legal procedures to seek enforcement of their rights under the DV Act. Evidently, the legislature never intended that the protection of right of residence granted to a daughter-in-law under the DV Act should

cease to apply merely because a suit seeking possession of the premises had been filed by the in-laws. Section 26, thus, is proof of the extent to which the legislature intended to protect the rights given to an aggrieved person under Sections 18-22 of the DV Act and it would be wrong to hold that the daughters-in-law can be denied these rights without even properly ascertaining the merit of their claim therefor.

49. Against this backdrop, I am of the view that the only way to strike a balance between the beneficiaries of the DV Act and the Senior Citizens Act, both of which are special statutes enacted to address the problems of two different vulnerable groups, i.e., the daughter-in-law and their children viz. the aged in-laws, is by resorting to Section 26 of the DV Act. In fact the Supreme Court made the following observations in ***Vaishali Abhimanyu Joshi*** (*supra*) when considering the matter of interpreting Section 26 of the DV Act any time domestic violence proceedings as also legal proceedings of a differing nature would arise out of the same domestic relationship:

“26. Order 50 CPC enumerates the provisions which shall not extend to the Provincial Small Cause Court. The provisions which have been excepted from applicability of the Small Cause Court do not include Order 8, thus, counterclaim can very well be filed by the defendant in a suit before the Small Cause Court.

.....

39. The learned counsel for the appellant has placed reliance on the judgments of this Court in Allahabad Bank v. Canara Bank [Allahabad Bank v. Canara Bank, (2000) 4 SCC 406] Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. [Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71] and Bank of India v. Ketan Parekh [Bank of India v. Ketan Parekh,

(2008) 8 SCC 148] for the proposition that a special Act overrides a general Act and when a conflict is found in two special Acts, the special Act latter in point of time has to prevail. He further contends that dominant purpose of the Act has to be looked into while deciding the question as to which of the Act shall prevail over the other. In the facts of the present case, especially Section 26 as inserted in the State of Maharashtra by Maharashtra Act 24 of 1984, it is not necessary to enter into the issue of conflict between the 1887 Act and the 2005 Act. We have already observed above that the suit in the nature of the present suit was cognizable before the Judge, Small Cause Court, hence, in the said suit determination of claim of the appellant seeking a right of residence under Section 19 is also not excluded from consideration. It is further to be noted that the 2005 Act was enacted to secure a social purpose. The provisions of the Act have to be construed widely. This Court in *Hiral P. Harsora v. Kusum Narottamdas Harsora* [*Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165 : (2017) 1 SCC (Civ) 468 : (2017) 1 SCC (Cri) 1] had occasion to consider the ambit and scope of the 2005 Act. In para 25, the following has been stated by this Court: (SCC p. 190)

“25. When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of “respondent” in the 2005 Act. Thus, an invidious discrimination will result, depending upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It is clear that there is no intelligible differentia

between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under other Acts, in which the self-same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family. ...”

40. Section 26 of the 2005 Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. **Unless the determination of claim by an aggrieved person seeking any order as contemplated by the 2005 Act is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court.** When the proceeding initiated by the plaintiff in the Judge, Small Cause Court alleged termination of gratuitous licence of the appellant and prays for restraining the appellant from using the suit flat and permit the plaintiff to enter and use the flat, the right of residence as claimed by the appellant is interconnected with such determination and refusal of consideration of claim of the appellant as raised in her counterclaim shall be nothing but denying consideration of claim as contemplated by Section 26 of the 2005 Act which shall lead to multiplicity of proceedings, which cannot be the object and purpose of the 2005 Act.”

50. Thus, the Supreme Court in *Vaishali Abhimanyu Joshi* (*supra*) not only held that any relief available under Sections 18-22 of the DV Act may *also* be sought by the aggrieved person in any legal proceedings affecting her whether instituted in a civil court, or a family court or a criminal court but it also held that undoubtedly, the trial Court is empowered to grant as well as mould the reliefs, in accordance with the provisions of the DV Act. Therefore while dealing with these appeals, keeping in view the hardships claimed by the parties, it was requisite for the trial Courts to direct impleadment of the husband, when he was not impleaded in these suits to enable passing of an appropriate order against

him under Section 19(1)(f) of the DV Act. In this regard, Ms. Luthra has vehemently urged that once domestic violence proceedings had been initiated by the daughters-in-law, the civil court could not have exercised its powers under Section 26 of the DV Act to grant any relief to them as this would lead to multiplicity of orders and decrees in favour of the daughters-in-law, out of the same claim. However, I am unable to accept her contention as it overlooks the fact that Section 26(3) of the DV Act specifically provides for such an eventuality and makes it incumbent on the daughter-in-law to inform the DV Court in case any relief is obtained by her under the DV Act, in any proceeding other than the proceedings before the DV Court.

51. Significantly, the impugned judgments reveal the trial Court's failure to appreciate its own powers under Section 26 of the DV Act. Consequently, the aggrieved persons, despite being entitled to protection under the DV Act, have been virtually rendered roofless by these impugned judgments when they approach the Courts, which in turn also appear to be unclear about the precise nature of their powers and responsibilities under the DV Act. To put it differently, the daughters-in-law continue to harbour under the mistaken belief, augmented by the arguments of the in-laws and the misinterpretation of the DV Act by the trial Courts, that their rights can only be claimed before the DV Court. In reality Section 26 makes it clear that, irrespective of any pending proceedings before the DV Court, daughters-in-law can claim the reliefs under Sections 18-22 of the DV Act before any other court, including the Civil Court, in any proceedings instituted by them or the in-laws. In fact, I find no impediment to a civil court exercising its powers under Section 26

to mould the reliefs, despite the pendency of the domestic violence proceedings before the DV Court, if a case was made out to pass directions under Section 19(1)(f) to prevent the possibility of a protracted litigation. In conclusion, the findings of the trial Courts decreeing these suits under Order XII Rule 6 CPC, without considering the rights and claims of the appellants under the DV Act as also their defence that, notwithstanding the title documents being in favour of the respondents, the suit premises is still a joint family property, cannot be sustained and are, accordingly, set aside.

52. In the light of my findings that as on date the domestic violence proceedings where residence orders qua the suit premises have been claimed by the appellants are pending and have, in fact, been granted in many of the cases, this Court was confronted with two possible directions in these appeals, both of which were carefully examined to ascertain which course would further the cause of justice. The first possible direction was that this Court could have directed the trial Court to stay civil proceedings of this nature instituted by in-laws and, in the interregnum, direct them to move an appropriate application before the DV Court for modification or alteration of the interim order protecting the daughters-in-law's right of residence and praying for a direction to the husbands to provide their wives with a suitable alternate accommodation under Section 19(1)(f) of the DV Act. In the alternative, these appeals can be remanded back to the trial Courts for fresh adjudication of the suits, along with a direction to ensure that the defences raised by the daughters-in-law are duly considered by the trial Court in exercise of its jurisdiction under Section 26 of the DV Act, and adjudicate the claims of both the

parties by duly considering the individual merit thereon. On giving my thoughtful consideration to these two possible directions, I am of the view that directing the in-laws to approach the DV Court to pass further orders after considering Section 19(1)(f) of the DV Act would cause further delay in adjudicating the claims of the parties; in the light of several factors, viz. the advanced age of the respondents and their vehement opposition to residing with their daughters-in-law owing to the existing acrimony between them, such a direction would in effect compel the in-laws to spend the final years of their lives battling protracted legal proceedings while continuing to live with their daughters-in-law in their own homes against their will, which would completely defeat the purpose of justice.

53. While deciding on an appropriate course of action, I was also conscious of the need to forestall the possibility of two different courts being made to adjudicate on a dispute arising out of the same issue, but seeking separate reliefs. It also cannot be lost sight of that in most of these appeals, the appellant has taken upon herself the additional responsibility of single-handedly bringing up her minor children, in the light of her domestic dispute with her husband and her in-laws. Ultimately, in the interest of justice, I am of the view that these appeals ought to be remanded back to the trial Courts for fresh adjudication of the suits, which shall be decided by substantively considering the defences raised by the daughters-in-law. It is reiterated that it will be incumbent upon the Courts to consider the facts of each case and examine whether a case is made out to mould the reliefs under Section 19 of the DV Act, before ordering the appellants' dispossession from the suit premises. In order to

make this direction effective in each appeal, the trial Court would necessarily have to implead the appellant's husband if he is not already a party to the suit, so that in case the Court is of the opinion that despite the residence order subsisting in the appellant's favour or the statutory rights claimed by her under the DV Act, the hardships faced by the respondents warrant her eviction, then appropriate orders can be passed under Section 19(1)(f) of the DV Act to provide her with an alternate accommodation by exercising its powers under Section 26 of the DV Act. This, in my opinion, is the only interpretation which forwards a purposive construction of the DV Act as well as the Senior Citizens Act, while also balancing the rights of the senior citizens/in-laws as against the rights of the aggrieved persons/daughters-in-law.

54. At this stage reference may also be made to a recent decision dated 29.11.2019 passed by a Coordinate Bench of this Court in ***Vinay Verma vs. Kanika Pasricha & Anr.*** CM(M) 1582/2018 in which case, even though there was no pending domestic violence proceedings under the DV Act which is the primary issue arising in the present appeals, some broad guidelines have been laid down to determine as to who should bear the obligation of providing alternate accommodation to the daughter-in-law; whether it should be on the in-laws or the husband under Section 19(1)(f) of the DV Act. The guidelines, set down in paragraph 46 of the decision read asunder:

“1. The court/tribunal has to first ascertain the nature of the relationship between the parties and the son's/daughter's family.

2. *If the case involves eviction of a daughter in law, the court has to also ascertain whether the daughter-in-law was living as part of a joint family.*

3. *If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son-in-law from their premises. In such circumstances, the obligation of the husband to maintain the wife would continue in terms of the principles under the DV Act.*

4. *If the relationship between the parents and the son are peaceful or if the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the in-laws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the daughter-in-law from their property, an alternative reasonable accommodation would have to be provided to her.*

5. *In case the son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life and also put the property to use for their generating income and for their own expenses for daily living.*

6. *If the son has abandoned both the parents and his own wife/children, then if the son's family was living as part of a joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-in-law, however, for a reasonable period they would have to provide some shelter to the daughter-in-law during which time she is able to seek her remedies against her husband."*

55. Before I conclude I may note that in some of the appeals, i.e., in RFA Nos. 222/2019, 604/2019 and 609/2019, unlike the other appeals, there are no residence orders passed by the DV Court and, in fact, in RFA

222/2019, the DV Court has rendered a finding at the interim stage that the suit premises cannot be treated as a shared household. However, considering that the DV Act seeks to ensure that an aggrieved person, the appellant/daughter-in-law in these appeals, is not rendered without shelter during the pendency of the domestic violence proceedings and that these suits have been decreed by the trial Courts solely on the premise of ownership rights of the respondent over the suit premises, without appreciating the effect of the statutory rights under the DV Act claimed by the appellant; I am of the view that respondent's rights as well as the nature of the appellant's claim under the DV Act ought to be considered by the trial Courts prior to passing a decree evicting them from the suit premises.

Directions

56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the trial Court for fresh adjudication in accordance with the directions given hereinbelow:

- (i) At the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the trial Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.
- (ii) The trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed therefrom is her right of residence under the DV Act, then

the trial Court shall, before passing a decree of possession on the sole premise of ownership rights, ensure that in view of the subsisting rights of the appellant under the DV Act, she is provided with an alternate accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship.

(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents, directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1)(f) of the DV Act, which direction would also be subject to the final outcome of the suit.

(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the trial Court may be guided by paragraph 46 of the decision in *Vinay Verma (supra)*.

(v) The trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.

(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be completed expeditiously and not later than 6 months from today.

57.The appeals are allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

DECEMBER 18, 2019

SDP/gm

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