

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

CRR No.3186 of 2015 (O&M)

Date of Decision: February 28, 2020

Narain Bai and others

...Petitioners

Versus

Swaranjit Kaur

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Shiv Kumar Sharma, Advocate
for the petitioners.

None for the respondent.

JAISHREE THAKUR, J. (Oral)

1. The present criminal revision petition has been filed seeking to challenge the order dated 10.08.2015 passed by the Additional Sessions Judge, Sirsa, whereby the order passed by the JMIC, Dabwali, was upheld vide which the respondent was permitted right of residence in the house of the petitioners under the provisions of Protection of Women from Domestic Violence Act, 2005.

2. In brief, the facts of the case as stated are that the respondent herein filed a petition under the Protection of Women from Domestic Violence Act, 2005. When the matter was taken up on 26.05.2015 the respondent came present in person and requested for grant of residence order in the household of the petitioners as she had become homeless. It

was stated that her husband had gone to Germany and the petitioners were not allowing her to enter into her matrimonial home. After hearing the matter, vide order dated 26.05.2015, the JMIC, Dabwali ordered to the petitioners to grant separate residence for her in the house of the petitioners. Being aggrieved against the above order, the petitioners herein filed an appeal where it was averred that the respondent married with Bhajan Lal and soon after marriage she started residing separately with Bhajan Lal in a separate house. After marriage, her husband had gone abroad, the respondent was sent to her parental home by locking the house in which she was residing with Bhajan Lal. It was also averred that the petitioners did not torture her and never demanded dowry as alleged and also the respondent has filed a false petition against the petitioners as they were residing separately. It was further stated that Bhajan Lal, husband of the respondent, had already sold his share in the property vide sale deed dated 11.10.2012, which was purchased by the petitioners herein and therefore, now the respondent has no concern with the property of the petitioners herein. It was also argued that in the will executed by Milkha Raj, father of Bhajan Lal-husband of the respondent, has mentioned that Bhajan Lal had received his share in the joint property and he is living abroad and earning well, therefore, nothing was being bequeathed in his favour. They have further stated that the husband of the respondent went abroad in February, 2013 with the concurrence of the respondent and since respondent could not get the visa, she could not go with her husband. The respondent countered the arguments raised by the petitioners and requested for dismissal of the appeal.

3. The Additional Sessions Judge, Sirsa has noted that the JMIC, Dabwali in his order has categorically observed that as per the report of the protection officer, the respondent wanted to reside in the matrimonial house and she had been subjected to mental, physical and economic violence by the petitioners herein and as such she falls under the definition of 'aggrieved person' as per Section 2(a) of the Protection of Women from Domestic Violence Act, 2005. Therefore, while deciding the appeal, the Additional Sessions Judge, Sirsa finding no illegality or infirmity in the order, upheld the order of the JMIC, Dabwali and appeal was dismissed vide order dated 10.08.2015.

4. Being aggrieved against the dismissal of the appeal, the petitioners have challenged the order of the Additional Sessions Judge, Sirsa by filing the present revision petition.

5. In the case in hand, the wife is seeking the right of residence in a house which is claimed to be that of her husband. She claimed that she was entitled to live in the said premises as the family was joint Hindu Family. However, the contention raised is controverted by the petitioners who claim that Bhajan Lal had sold his share in the said property by way of a registered sale deed dated 11.10.2012 for a sum of ₹19,25,000/- to the petitioners and therefore, being the exclusive property of the petitioners, no right of residence could have been allowed in the same premises. It is also to be noted that the petitioners are none other than the mother-in-law, brothers-in-law and sisters-in-law of the complainant-respondent.

6. The question of allowing residence to an 'aggrieved person' in 'shared household' under the provisions of the Protection of Women from

Domestic Violence, Act, 2005 was considered by the Supreme Court in '***S R Batra and another vs. Smt. Taruna Batra, 2007 (3) SCC 169*** and it has been clearly held by the Hon'ble Supreme Court that the house which belonged to father-in-law or mother-in-law cannot be termed as 'shared household' merely because complainant-wife and her husband lived together in the past as husband and wife there. The Hon'ble Supreme Court took a note of the fact that if the property where the husband and wife lived together in the past is accepted as 'shared household' then the every place where the husband and wife lived together, will be a shared household and the wife can insist in living in all these houses, then such a view would lead to chaos and would be absurd. It was held that any interpretation which leads to absurdity should not be accepted. It has been further observed by the Hon'ble Supreme Court that the wife is only entitled to claim a right to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The ratio of the judgment rendered in ***S.R. Batra's case (supra)*** has been subsequently followed by this Court in ***Avtar Singh and another vs. Jaswinder Kaur 2015 (3) RCR (Cr.) 461, Renu Beniwal and others vs. Sarika Nehra Beniwal 2018 (3) RCR (Cr.) 280, Sangeeta vs. Om Parkash Balyan and another, 2015 (3), RCR (Cr.) 336, Varinder Kaur vs. Jitender Kumar and another 2016 (4) RCR (Cr.) 861.***

7. In view of the foregoing discussion and ration of law held by the Hon'ble Supreme Court in ***S.R. Batra's case (supra)***, the respondent would not be entitled to a right of residence in a house which belongs

exclusively to the petitioners No.3 and 5, besides Karuna w/o Ashok Kumar. The house in question, cannot be called a 'shared household' within the ambit of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005. Consequently, the impugned judgment dated 10.08.2015 passed by the Appellate Court and the order of the JMFC, Dabwali are liable to be set aside to the extent that complainant-wife is entitled to shared accommodation in the house belonging to the petitioners. However, the complainant-wife is held entitled to claim for alternative accommodation or payment of rent in lieu thereof.

8. The criminal revision stands allowed accordingly.

February 28, 2020
seema/vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No