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

+ I.A. 4618/2020 in CS(OS) 506/2018

Reserved on: 25th June, 2020
Pronounced on: 2nd July, 2020

ANITA CHOPRA Plaintiff

Through: Ms. Malvika Rajkotia and
Mr. Rajiv Bajaj, Advs.

versus

ROHINI CHOPRA ... Defendant

Through: Mr. Prosenjeet Banerjee, Ms.
Kriti Awasthi and Ms. Shreya
Singhal, Advs. for D-1
Ms. Sudershani and Ms.
Shrutika Shridhar, Adv. for R-2

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HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G E M E N T

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02.07.2020

1. This is a somewhat extraordinary application.

2. The first defendant is the daughter-in-law of the plaintiff. Admittedly, she was staying with the plaintiff till 10th May, 2020, at No. 18, Avenue Amaltas, West End Green Farms, Rajokri, New Delhi - 110038 (referred to, hereinafter, as “the suit property”). On 10th May, 2020, the first defendant went to visit her mother. By the present application, the plaintiff seeks an interlocutory injunction, from this Court, restraining the first defendant from returning to the

suit property.

3. As to the law, which would empower me to grant the injunction, sought in the application, at this interlocutory stage, I was totally at sea, when the hearing of this application commenced, and, I must confess, I remain at sea even as on date, despite the valiant attempts, of Ms. Rajkotia, learned counsel for the applicant, to convince me that the application was maintainable, and deserves to be allowed. To my mind, it is obvious that the present application is an attempt, by the plaintiff, to capitalise on the departure, of her daughter-in-law, to her mother's abode, on 10th May, 2020. Had the first defendant not left, on 10th May, 2020, to visit her mother, there is little doubt that the plaintiff could not, at this interlocutory stage, have sought a direction, from this Court, to direct the first defendant not to return to the suit property. What could not have been achieved, directly is, in my opinion, being sought to be achieved indirectly, by way of this application, seeking a restraint, on the first defendant returning to the suit property, from her mother's house, where she is presently staying. In my view, this is totally impermissible, and may teeter perilously on the edge of abuse of the legal process.

4. Atul Chopra, the husband of the first defendant and the son of the plaintiff, it may be noted, though not a party to the original *lis*, was impleaded as the second defendant, *vide* order dated 3rd April, 2019, passed in these proceedings.

5. Before proceeding to reconnoitre, to the extent necessary, the

facts, it is worthwhile to mention, even at this juncture, that, on 10th July, 2019, I.A. 13931/2018, filed by the plaintiff with the present suit, seeking stay, was disposed of, in the following terms:

“ Defendant No. 1 has no objection to the order dated 20th December, 2018 being confirmed. Accordingly, the Defendant shall not hand over possession or create any third-party interest in property bearing No. 18, Avenue Amaltas, Westend Greens Farms, Rajokri, New Delhi-110038. *Status quo shall be maintained as to title and possession. This order shall operate during the pendency of the present suit, unless it is varied.*

I.A. is disposed of.”

(Emphasis supplied)

6. The status quo, as directed by the aforesaid order, dated 10th July, 2019, continues, unvaried, till date. No prayer, for modification, variation, or vacation, of the order, dated 10th July, 2019, has been made, in the present application. Ms. Rajkotia sought to submit that the status quo, as directed by the afore-extracted order dated 10th July, 2019, was by way of a direction to the first defendant, and would not apply to the plaintiff. The submission has merely to be made, to be rejected. On a plain reading, the direction for maintenance of status quo, as contained in the order dated 10th July, 2019, is a direction *qua* the suit property, and is not, expressly or by necessary implication, intended to operate *qua* the plaintiff, or the defendants individually. Status quo, regarding title and possession, has been directed to be maintained *qua the suit property*. Allowing the prayer, in the present application, for a restraint, on the first defendant, from returning to the suit property, would amount to disturbing the status quo, *qua* the

possession of the first defendant, even while the order dated 10th July, 2019 *supra*, continues to remain in force. This is obviously impermissible. Even on this sole ground, in fact, the present application deserves to be dismissed.

7. A brief allusion, to the facts, would be apposite, at this juncture.

8. Atul Chopra, the second defendant, is the husband of the first defendant and the son of the plaintiff. The defendants' marriage took place on 9th December, 2002, and they are the parents of Nitya Chopra, who is, presently, twelve years of age.

9. According to the recitals in the plaint, the plaintiff was, originally, the owner of half of the suit property, with her husband, Virender Chopra, being the owner of the other half, consequent to a Sale Deed, dated 14th December, 1992, executed by one Praveen Kumar. *Vide* a gift deed, dated 28th July, 2015, the plaintiff asserts, Virender Chopra gifted his share, in the suit property, to his wife, i.e. the plaintiff who, consequently, became the absolute owner of the suit property. The plaintiff claims to have been residing, in the suit property, with her husband Virender Chopra, for over 18 years.

10. It is further asserted, in the plaint, that, since their marriage, the defendants were residing at Lagoon Apartments, Ambience Island, Gurgaon, Haryana and that, from 2014, the plaintiff allowed the defendants to stay, with her, in the suit property. The status of the defendants, however, it is alleged, was always that of licensee in the

suit property. Consequent to acrimony developing between the plaintiff and the first defendant, and souring of the marital relationship between the defendants (consequent whereupon the second defendant shifted to another residence), the plaintiff alleges that the first defendant started filing false complaints against her till, on 16th April, 2018, the licence, of the first defendant, was terminated by the plaintiff, by a written legal notice. The status of the first defendant in the suit property is, therefore, it is alleged, that of a trespasser as, despite the plaintiff's repeated entreaties to that effect, the first defendant refuses to vacate the suit property. Various alleged incidents of harassment, of the plaintiff by the first defendant, have been adverted to, in the plaint.

11. In these circumstances, the plaintiff has approached this Court, by way of the present suit, for possession and permanent injunction. The prayer clause, in the suit, reads thus:

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to :—

(a) Pass a decree of possession in favour of the plaintiff and against the defendants for property bearing No. 18, Avenue Amaltas, Westend Greens Farms, Rajokri, New Delhi-110038 as shown in red colour in the site plan, in accordance with law, in the interest of justice;

(b) Pass a decree of permanent injunction whereby restraining the Defendant from interfering with the peaceful possession of the Plaintiff of property bearing No. 18, Avenue Amaltas, Westend Greens Farms, Rajokri, New Delhi-110038,

(c) Cost of the suit in the form of court fee paid and litigation expense incurred by the Plaintiff is also

awarded in favour of the Plaintiff and against the Defendant;

(d) Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the present facts and circumstances of the case.”

12. Along with the suit, I.A. 13931/2018 was filed, by the plaintiff, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (“the CPC”). The prayer clause, in the said application, reads thus:

“In view of the facts and circumstances stated herein above and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(a) Temporarily restraining the Defendant from interfering in the peaceful possession of the suit property bearing No. 18, Avenue Amaltas, Westend Greens Farms, Rajokri, New Delhi-110038, till the pendency of the suit.

(b) Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case;”

13. Summons, in the suit, and notice, in I.A. 13931/2018, were issued, by this Court, on 8th October, 2018. Given the nature of the dispute, this Court, on 27th November, 2018, directed the plaintiff, and the defendants, to make an effort to identify premises, where the defendants could reside, comfortably, with their minor daughter. However, on 20th December, 2018, this Court was informed that there was no possibility of settlement, whereupon the defendant was directed not to hand over, or create any third party interest as to the title and possession of the suit property.

14. Written statement, in response to the suit, was filed by the defendant on 25th January, 2019, and replication, thereto, was filed, by the plaintiff, on 8th March, 2019. Disputing the plaintiff's claim to ownership of the suit property, the first defendant has alleged, in her written statement, that the suit property was in the nature of a joint family property, purchased by the plaintiff's husband Virender Chopra out of joint family funds. It is claimed that the second defendant and his father Virender Chopra are coparceners, in the suit property, along with Mahender Kumar, the brother of Virender Chopra and his children, and the children of their two deceased brothers Surinder Kumar and Narinder Kumar. The first defendant has taken exception to the plaintiff seeking to obtain a decree of possession of the suit property, in her exclusive favour, without impleading the said coparceners. Consequent on the amendment in the Hindu Succession Act, 1956, the first defendant contends that Nitya Chopra, her minor daughter, is also a coparcener in the suit property. It is further asserted, in the written statement, that, in 2015, Virender Chopra gifted his share, in the suit property, to his wife, the plaintiff. The plaintiff, therefore, it is alleged, is "merely a name lender", who holds the suit property for the benefit and use of the members of the joint family, which include the defendants and their minor daughter. The written statement further points out that the suit property is the matrimonial home of the first defendant, where she has been residing since 2002, after her marriage with the second defendant, and that she could not, therefore, be legally ousted therefrom. The assertion, in the plaint, that the second defendant has moved out of the suit property,

has been denied by the first defendant, who alleges, *per contra*, that the second defendant has merely set up a false address, owing to the matrimonial discord between the first defendant and himself. It is further asserted, by the first defendant, in the written statement, that, *vide* interim orders dated 8th June, 2018 and 16th July, 2018, passed in CC 10396/2018, the learned Metropolitan Magistrate has protected the residential rights of the first defendant in the suit property, which fact, it is alleged, has been concealed in the plaint. For the limited purposes of deciding the present application, it is not necessary to refer, in any further detail, to the averments in the written statement.

15. The plaintiff has, needless to say, in her replication, again maintained that the suit property was self acquired, by the plaintiff and her husband, by virtue of sale deeds executed, in their favour, by Mr. Praveen Kumar, and that the plaintiff's husband gifted his share of the suit property, to the plaintiff, *vide* a registered Gift Deed. All assertions, in the written statement, aimed at establishing that the suit property was joint family property, have been denied. The replication also refers to an affidavit of admission and denial, filed by the defendant in the case, instituted, by her, against the plaintiff, under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV Act"), in which it is asserted that the defendant has admitted the plaintiff to be the owner of the suit property. There is, however, no specific traversal, in the replication, to the assertion, in the written statement of the defendant, regarding her possession having been protected by the learned Magistrate, *vide* interim orders dated 8th June, 2018 and 16th July, 2018, passed in CC No.

10396/2018.

16. Contending that the first defendant has, in an affidavit of admission and denial, filed by her in the proceedings, initiated against the plaintiff under the DV Act, admitted the plaintiff to be the absolute owner of the suit property, the plaintiff has instituted I.A. 3638/2019, under Order XII Rule 6 of the CPC, praying for a decree on admissions. Notice was issued, in the said application, on 13th March, 2019, and arguments were also heard, thereon, on 3rd April, 2019, on which date the parties were directed to bring proposals for the final settlement of the disputes between them. After interacting with the parties, however, this Court, *vide* its order dated 22nd April, 2019, opined that no possibility of settlement appeared to exist. Thereafter, on 10th July, 2019, I.A. 13931/2018, preferred by the plaintiff, with the suit, for stay, was disposed of, by this Court, *vide* the order reproduced in para 5 *supra*. The order categorically directed maintenance of status quo, as to title and possession of the suit property, during the pendency of the suit, unless the order was varied. I.A. 3638/2019, filed by the plaintiff under Order XII Rule 6, CPC, was adjourned.

17. On 16th December, 2019, this Court, having taken stock of the acrimonious relations between the parties, and the proliferation of litigations between them, opined that the position, that emerged, was that, subject to the rights of Nitya Chopra, the first defendant was seeking a reasonable alternative accommodation, which the second defendant undertook to provide. The defendants agreed to exchange details of alternative accommodations, whereupon the matter was

adjourned.

18. On 10th May, 2020, the first defendant left the house of the plaintiff, to visit her mother. A mere six days thereafter, on 16th May, 2020, the plaintiff filed I.A. 3927/2020, in the present proceedings, praying for an interlocutory injunction, directing the first defendant to remain at her mother's house, till lifting of the lockdown restrictions, imposed by the Central and State governments, consequent to the COVID-2019 pandemic, and to direct the first defendant to observe home quarantine. The basis, for seeking these reliefs, is completely incomprehensible, as it is candidly admitted, by learned counsel for the plaintiff, that neither the first defendant, nor her mother, are COVID-2019 positive. Subject, of course, to the restrictions on movement, imposed during the period of lockdown – which, in any case, no longer subsists – no justification, for the prayer for injunction in the first defendant, from returning to her matrimonial home, appears to exist. In any event, as the restrictions imposed by the lockdown have been lifted, and Delhi is presently in “Unlock” mode, the prayer, in I.A. 3927/2020, thus, does not survive for consideration.

19. Consequent to its filing, I.A. 3927/2020 was taken up, for preliminary hearing, by this Court, on 19th May, 2020. It is noted, in the order passed by this Court on the said date, that proposals and counter-proposals, qua providing of a suitable alternate accommodation for the first defendant, continued to be exchanged, between the defendants, till 23rd January, 2020. Thereafter, para 6 of the order (on which Ms. Rajkotia placed pointed reliance) records

thus:

“Heard the submissions of the parties. Mr. R.R. Kumar, Id. Counsel for Defendant No.1, states that instead of finding an alternate accommodation some amount may be paid in lieu of the alternate accommodation along with all the expenses for the education of the daughter who is studying in Modern School, Vasant Vihar. If the same is done by the husband, Id. Council submits that his client is willing to either continue to live with her mother or find an alternate accommodation.”

The order proceeds to record, in the very next paragraph, the response, of learned Counsel for the second respondent, to the effect that, as his income had been severely affected by the lockdown, he was in a position to pay only ₹ 30,000/- to ₹ 35,000/-, and no more. In view thereof, this Court proposed certain terms, for “consideration, as an interim arrangement for disposal of all pending applications, by consent, subject to an affidavit being filed by the parties”. The terms, proposed by this Court in its aforementioned order, dated 19th May, 2020, included residence, of Nitya Chopra, with the first defendant, subject to her right to visit her grandparents (i.e. the plaintiff and her husband) as and when she so chose.

20. On the next date of hearing, i.e. 21st May, 2020, however, the first defendant informed this Court that, as Nitya Chopra wanted to continue to reside with the plaintiff, the terms of settlement, proposed by this Court in its order dated 19th May, 2020, were not agreeable to her. In these circumstances, this Court observed that there was no possibility of settlement, and that the applications, pending between the parties, would have to be heard and decided on merits. Certain interim directions, to remain in force strictly during the lockdown period, were also issued, with which this order is not required to be

burdened.

21. While things stood thus, the present application (I.A. 4618/2020) was moved, by the plaintiff, purportedly under Section 151 of the CPC, praying that directions be issued “restraining the Defendant No 1 from entering the suit property till the disposal of the present suit”. The plaintiff has, in the application, reiterated her stance, in the plaint, that she is the owner of the suit property, and that the first defendant is merely an ex-licensee therein. Reliance has also been placed, in the application, on an order, dated 10th August, 2018, passed by a learned Single Judge of this Court in W.P. (Crl.) 2391/2018 (*Anita Chopra & anr v. State & ors.*). A reading of the said order reveals that the plaintiff and her husband, as the petitioners in the said writ petition, alleged apprehension of danger, to their person, as well as false implication in criminal cases, by the first defendant herein. This Court merely disposed of the petition by directing it to be treated as a representation, on behalf of the plaintiff, and her husband, and directed the Deputy Commissioner of Police, of the concerned area, to look into the matter, after hearing the parties. Nothing, quite obviously, turns thereon.

22. The present application further relies on the alleged admission, by the first defendant, in her affidavit of admission and denial, filed in CC No. 54/4/18, before the learned Metropolitan Magistrate, wherein she is stated to have admitted ownership, of the plaintiff, over the suit property. The application also alleges that the first defendant has unreasonably rejected the proposals, for alternative accommodation,

as suggested by the second defendant, on the ground of unsuitability of the suggested accommodations. Strangely, the application reiterates the assertion, contained in I.A. 3927/2020, regarding the special susceptibility, of the plaintiff and her husband, and of the daughter of the first defendant, to infection by the COVID-2019 virus, given their age and comorbid conditions.

23. Detailed submissions have been advanced, before me, on the present application, by Ms. Malavika Rajkotia, learned counsel for the plaintiff, and Mr. Prosenjeet Banerjee, learned counsel for the first defendant.

24. Ms. Rajkotia drew my attention, initially, to the orders, dated 19th and 21st May, 2020, passed in the present proceedings by this Court, and submitted that the disinterest, of the first defendant, to accept an alternate accommodation, clearly indicated that she was claiming much more than her legitimate right. Ms. Rajkotia took me through the facts of the case, and submitted that, in view of the termination, by the plaintiff, of the license granted to the first defendant, to occupy the suit premises, on 16th April, 2018, the status of the first defendant, thereafter, was that of a trespasser. She also pointed out that, in the income affidavit filed by the first defendant in CC No. 54/4/18 before the learned Metropolitan Magistrate, she had admitted that the plaintiff was the owner of the suit property, which was directly contradictory to her stand, in the present proceedings, that the suit property was joint family property. Ms. Rajkotia further sought to emphasise the iniquitous manner in which the first defendant

was acting, by drawing my attention to para 9 of the order, dated 19th May, 2020, and submitting that the said para had recorded the agreement, of the first defendant, to the interim arrangement proposed by this Court on the said date. Having so agreed, Ms Rajkotia pointed out, the first defendant resiled from her agreement on the very next date of hearing, i.e. 21st May, 2020. The intention, of the first defendant, to grab possession of the suit property, and harass the plaintiff, in the process, was, Ms. Rajkotia would seek to submit, self-evident. She points out that her client is 72 years of age, and Nitya Chopra is 12 years of age, and that, therefore, they are both susceptible to infection by the COVID-2019 virus. Ms Rajkotia submits, further, that, though her prayer, in the present application, amounts to seeking a mandatory injunction at the interlocutory stage, such injunction can, in exceptional cases, be granted, for which she relies on *Deoraj v. State of Maharashtra*¹, *Dorab Cawasji Warden v. Coomi Sorab Warden*², *Hammad Ahmed v. Abdul Majeed*³, and the judgement of this Court in *Sukerma Rani Kapoor v. Om Prakash Kapoor*⁴. Ms. Rajkotia also placed pointed reliance on the decision, by a Division Bench of this Court, in *Ajay Kumar Jain v. Baljit Kaur Jain*⁵ and *Sunil Madan v. Rachna Madan*⁶. Ms. Rajkotia took me, further, through the contents of the written statement, filed by the first defendant, to contend that the defence, of the first defendant, to the plaint was practically moonshine. She also pointed out that, in the written statement, the first defendant had admitted that the plaintiff

¹ (2004) 4 SCC 697

² (1990) 2 SCC 117

³ (2019) 14 SCC 1

⁴ MANU/DE/0624/2002

⁵ 160 (2009) DLT 401

⁶ MANU/DE/2548/2012

had sold the part of the suit property which, in itself, in her submission, amounted to recognition, by the first defendant, of the right of ownership, vesting in the plaintiff. Finally, Ms. Rajkotia submitted that, were mandatory injunction not to be granted, as prayed by her client, the purpose of filing the suit would be completely defeated, as it was likely to linger on, for years.

25. Responding to the submissions of Mr. Rajkotia, Mr. Prosenjeet Banerjee contends, emphatically, that the present application is a stark example of abuse of process, seeking to obtain the relief claimed in the plaint at any interlocutory stage, when the issues in controversy were triable and highly disputed. He submits that the order, dated 10th July, 2019 *supra*, of this Court, which directed maintenance of the status quo, regarding title in possession in the suit property pending disposal of the suit, was more than sufficient to warrant dismissal of the present application. This order, points out Mr. Banerjee, was never challenged; neither was any application filed, for modification thereof. He further submits that the filing, by the plaintiff, of I.A. 3927/2020 and I.A. 4618/2020, in quick succession, also indicated, *prima facie*, abuse of process by her, pointing out that his client had taken a specific defence, in her written statement, that the suit property was HUF property, Mr. Banerjee submits that no case, for grant of interlocutory mandatory injunction, could be said to exist. Mr. Banerjee submits, further, that his client had been staying, in the suit property, for over 14 years and that, therefore, the balance of convenience would also be against evicting her from the said property, at this point of time. In effect, submits Mr. Banerjee, the plaintiff is

attempting to argue her application, under Order XII Rule 6 of the CPC, by a side wind, even when the said application is still pending. Mr. Banerjee submits that none of the three criteria, which constitute the cumulative *sine qua non* for grant of injunction, i.e. the existence of a prima facie case, balance of convenience and irreparable loss, apply, to justify grant of injunction as sought by the plaintiff. In fact, submits Mr. Banerjee, were his client to be thrown out of the suit property at this point, irreparable loss would ensue to her. The present application, in his submission, is a veiled attempt to change the equities of the case midstream, which is clearly impermissible

26. To my mind, the fate of this application is pre-ordained. The suit is yet to be tried. The parties are in dispute, on the issue of title. The plaintiff claims the suit property to be self acquired, of which the plaintiff claims absolute ownership, the defendant claims, per contra, that the suit property is in the nature of HUF property. It is obviously impermissible, for me to, while adjudicating the present interlocutory application, reject, altogether, the claim of the first defendant, and to treat the claim of the plaintiff as gospel truth.

27. I.A. 3638/2019, filed by the plaintiff under Order XII Rule 6, CPC, is pending. This application cannot be used as a method of obtaining adjudication of the said I.A., or of advancing the date thereof. I am not inclined, therefore, in this application, to examine, on merits, the contention, of Ms. Rajkotia, that the first defendant has, in the proceedings pending before the learned Metropolitan Magistrate in CC 54/4/2018, admitted to the ownership of the plaintiff, over the

suit property.

28. It is obvious that the plaintiff is, by the present application, taking advantage of the fact that, on 10th May, 2020, the first defendant left her house, to visit her mother. Had the first defendant not so proceeded to her mother's house, there is little doubt that the plaintiff could not have sought to evict her, from the suit property, midstream, before the issues in the suit were tested and tried. I remain at a loss as to how, merely because the first defendant chose to visit her mother, the plaintiff could have thought of moving this Court, to restrain her from returning to the suit premises, which constitutes her matrimonial home. As recently as on 27th April, 2020, the Supreme Court has, in *Aishwarya Atul Pusalkar v. Maharashtra Housing & Area Development Authority*⁷, recognised the right, of the wife, to reside in her matrimonial home. The judgement goes on to state, in this regard, that "a married woman is entitled to live, subsequent to her marriage, with rest of the family members on the husband's side, in case it is a joint property". Whether the suit property is joint property, or self-acquired property of the plaintiff, therefore, becomes seminal to a determination of the right of the first defendant, to residence therein. This application cannot, therefore, base itself on a pre-trial adjudication of that issue, in favour of the plaintiff and against the first defendant. Essentially, in fact, the application seeks relief, which may be consequential to grant of the prayers in the suit, even before the suit has been tried.

⁷ 2020 SCC OnLine SC 408

29. The right of the first defendant, to reside in the suit property, stands, presently, protected by two sets of judicial orders, i.e. the interim orders, dated 8th June, 2018 and 16 July, 2018, of the learned Metropolitan Magistrate in CC No. 10396/2018, and the order, dated 10th July, 2019, passed in the present proceedings. The order, dated 10th July, 2019, passed by this Court, specifically directs subsistence of the status quo, regarding title and possession of the suit property, pending disposal of the suit. No doubt, this Court has made in the said direction applicable “unless varied”. The present application, however, does not seek variance of the order, dated 10th July, 2019, but, rather, seeks a direction, which would fly directly in the face of the said order, even while the order continues to remain in place. Unfortunately, there is no reference, whatsoever, in the present application, to the said order. The relief sought, in the present application, is essentially one in equity, and it is trite that a party, who comes to the court for equitable relief, has, herself or himself, to practise equity. The fact that the applicant has chosen to remain completely silent, in the present application, regarding the aforesaid order, dated 10th July, 2019, passed by this Court in the present proceedings, make itself constitute a ground to reject this application.

30. That apart, in my opinion, the plaintiff has not made out even the faintest of cases, to justify a prayer for variance of the status quo directed by the order dated 10th July, 2019.

31. Admittedly, the proceedings initiated, by the first defendant, against the plaintiff, under the DV Act, are pending before the learned

Metropolitan Magistrate. Section 17 of the DV Act provides for a right, by the aggrieved person, to reside in a shared household, and Section 18 empowers the Magistrate to pass protection orders. It is averred, by the first defendant, in her written statement, that such a protection order has, in fact, been passed by the learned MM in her favour, and there is no traversal, thereto, by the plaintiff.

32. The reliance, placed by Ms. Rajkotia, on the alleged unreasonable conduct, displayed by the first defendant, in my view, cannot advance the plaintiff's cause to any substantial extent. Much has been sought to be made, by Ms. Rajkotia and Mr. Rajiv Bajaj, of the fact that the first defendant is rejecting the suggestions for alternative accommodation, where she could reside. In the first place, if, in law, the first defendant is entitled to reside in the suit property, any suggestion, during the course of the proceedings, indicating that she would be willing to stay separately, cannot denude her of that right, unless it assumes the form of a binding compromise or settlement between the parties. It is true that, on 19th May, 2020, this Court proposed a working arrangement, keeping in view the principles enunciated in *Vinay Varma v. Kanika Pasricha*⁸, and also recorded, in para 6, the statement, of learned counsel for the first defendant, that, if an appropriate amount were paid to her, in lieu of alternate accommodation, along with the expenses for education of her daughter, the first defendant would be willing to continue to live with her mother, or to find an alternate accommodation herself. That, however, was a suggestion, which did not fructify, as no compromise

⁸ (2020) 1 DMC 180 : 2019 SCC OnLine Del 11530

could be reached, either on the amount which the second defendant would pay to the first defendant, or on the suitability of the alternate accommodation, suggested for her residence. While adjudicating the present application, it is, clearly, not open to me to pen down a value judgement, regarding these aspects. It is for this reason that, on the next date of hearing, i.e. 21st May, 2020, this Court, on finding that the first defendant was not agreeable for disposal of the present application, and other pending applications, in terms of the order dated 19th May, 2020, did not choose to return any adverse inference against the first defendant on that score (as Ms. Rajkotia would urge), but merely observed that the applications would require to be adjudicated. In my view, therefore, the implied suggestion, by Ms. Rajkotia, that an adverse inference should follow, from the reluctance, of the first defendant, to accept an alternate accommodation, or payment in lieu thereof, is misconceived.

33. Considerable reliance was placed, by Ms. Rajkotia, on the judgement of this Court in *Ajay Kumar Jain*⁵. A close reading of the decision reveals, however, that the reliance, thereon, is misplaced. No doubt, the respondent Baljit Kaur, in that case, also claimed a right to stay in her matrimonial home, in the suit, filed by her, wherefrom the matter travelled to the Supreme Court. *No dispute, as to title, however, arose in the said case. Nor did Baljit Kaur base her claim on the property in question being HUF, or joint family, property.* As such, of the two questions framed, by this Court, as arising for its consideration, the second was “the nature of protection necessary for the matrimonial home, which was stated to be the suit property”. Para

9 of the report sets out, precisely, the stand of Baljit Kaur, thus:

“The real bone of contention is the suit property. *The respondent is adamant that the same is the matrimonial home and she is not willing to shift to another place.*”

(Emphasis supplied)

Whether Baljit Kaur was justified in her “adamance”, merely on the ground that the suit property was her matrimonial home, was, therefore, the issue, with which this Court was concerned in the said case.

34. In para 10 of the report, this Court held thus:

“Learned Single Judge in the impugned order has laid great emphasis on the fact that both the appellant and the respondent had been originally residing in the suit property being the first floor. We, however, feel that a matrimonial home is a place where both the parties seek to reside and the object of protecting the same is that the wife should not be left homeless by any action of the husband. We are in agreement with the submission of learned Counsel for the appellant that the wife cannot have a right of living in a particular property and the same cannot become a clog on the property denying the right of the appellant to deal with the property when he is willing to provide an alternative matrimonial home. *It has to be appreciated that the claim of the respondent is not to any title, but of residence in the home.* The appellant and his brother seek separation. The brother of the appellant cannot be denied his right to realize the best value *for his share of the property* or get enjoyment of a demarcated share. The brother of the appellant owes no obligation to the respondent. We are, thus, unable to agree with the conclusion of learned Single Judge that there should be a blanket injunction against the appellant restraining him from alienating or selling the suit property other than partitioning it by way of metes and bounds. In fact, there is no merit in the cross-objections in this behalf of the respondent.”

(Emphasis supplied)

The two defining circumstances, which distinguish the decision in *Ajay Kumar Jain*⁵ from the present are (i) that there was no dispute, regarding the title of the appellant Ajay Kumar Jain, to the suit property and (ii) the respondent Baljeet Kaur Jain was claiming her right to residence, in the suit property, solely on the ground that it was her matrimonial home, and for no other reason. It was in these circumstances that this Court held that, merely on the ground that the house, owned by her husband, was her matrimonial home, the appellant could not claim of right of permanent residence therein, effectively, therefore, becoming a “clog on the property”, and denying, in the process, the right of her husband to deal *with his property*, in the manner he chose. In the present case, the first defendant has squarely questioned the title, of the plaintiff, to the suit property, and has contended that it is joint family property. She has claimed her right, therein, not merely on the ground that it is her matrimonial home, but as the mother of a coparcener to the joint family. These disputes required to be adjudicated, in the suit, and no order, interlocutory or otherwise, can be passed on the premise that the plaintiff is right, and the first defendant is wrong.

35. In my opinion, it is not necessary to enter, deeply, into the circumstances in which mandatory, or prohibitory, injunction, can be granted at an interim stage, as these principles are well settled. The decisions, on which Ms. Rajkotia relies, and which have been cited hereinabove, clearly indicate that, essentially, a plaintiff, in order to be justified to claim an interlocutory mandatory, or prohibitory, injunction, has to establish (i) a strong case in his favour, the standard

being higher than that of a *prima facie* case, (ii) that denial of prohibitory injunction would result in irreparable loss to her, and (iii) that the balance of convenience is decidedly in favour of grant of mandatory, or prohibitory, injunction at the interlocutory stage. Additionally, grant of mandatory or prohibitory injunction, at an interim stage, has been approved where the failure, to do so, would result in the suit becoming infructuous, or the final relief, sought therein, being rendered illusory. None of these criteria are satisfied, in the present case. Most importantly, the first defendant had been residing with the plaintiff, since 2002 (or, at the latest, 2014, even if the plaintiff's stand were to be accepted), and it was only on 10th May, 2020 the first defendant left the house of the plaintiff, to visit her mother. It cannot, therefore, be said, by any stretch of imagination, that, by allowing the defendant to return to the house, where she had been staying till 10th May, 2020, irreparable harm would ensue, to the plaintiff. Mere bald assertions, to the effect that the first defendant was harassing the plaintiff, can hardly suffice. Given the option between allowing the first defendant to return to her matrimonial home, where she had been residing since 2002, or 2014, and banishing her, at least during the pendency of the suit, therefrom, the balance of convenience is also, decidedly, in favour of the former, rather than the latter, alternative.

36. Ms Rajkotia had sought to submit that, were injunction, as prayed by her, in this application, not granted at this stage, the suit would be rendered effectively infructuous, as it would linger on for years. The submission fails to impress. The prayer, in the suit, is for

a decree of possession, in favour of the plaintiff and against the defendants, in respect of the suit property, and for the decree of permanent injunction, restraining the first defendant from interfering with the peaceful possession of the suit property, by the plaintiff. In fact, the prayer, in the present application, effectively seeks grant of the prayers in the suit, before the suit is tried and at an interlocutory stage. If this Court were to restrain the first defendant, at this stage itself, from returning to the suit property, the plaintiff would secure possession thereof, and, effectively, a permanent injunction, in terms of prayer (b) in the suit, would also be granted. The plaintiff, therefore, effectively seeks decreeing of the suit without a trial. As I have noted hereinabove, this order does not adjudicate on the application, of the plaintiff under Order XII Rule 6 of the CPC. Interestingly, the present application has been preferred, not under Order XXXIX, but under Section 151 of the CPC. Section 151 is not in the nature of a residuary provision, under which reliefs, otherwise unavailable under the CPC, could be obtained. [Refer *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*⁹]

37. It is obvious that the applicant-plaintiff is merely seeking to capitalize on the departure, of her daughter in law, from her house, to visit her mother. The plaintiff did not even wait for a week, after her departure, before moving this Court, with a prayer to restrain her from returning home. To say the least, this is unfortunate.

38. Given the fact that the dispute is between a mother-in-law and

⁹ AIR 2005 SC 242

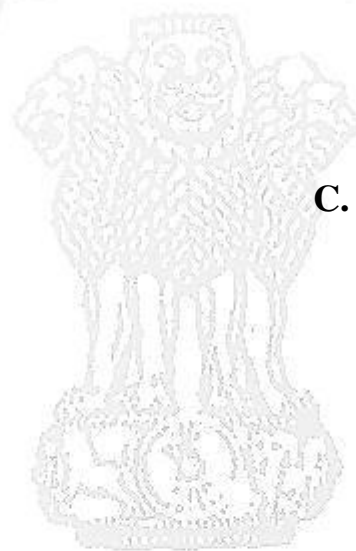
her daughter-in-law, I say no more.

39. Observations and findings, in this order, it is clarified, are intended only to dispose of the present application, and do not amount to any expression of opinion, either on the merits of the suit filed by the plaintiff, or on the merits of IA 3638/2019, preferred by her under Order XII Rule 6 of the CPC.

40. The application is dismissed.

JULY 02, 2020
HJ

C. HARI SHANKAR, J.



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