

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FAMILY COURT APPEAL NO.260 OF 2014

Smt. Sucheta w/o Sachin Iyer,
Aged about 40 years,
Occupation : Business,
R/o "Girija" 1st Floor,
SBI Colony, Raj Nagar,
Katol Road, Nagpur - 13.

... **APPELLANT**

// VERSUS //

1. Sachin s/o Krishnamurthy Iyer,
Aged about 47 years,
Occupation : Service, R/o Chetana
Apartment, Opposite Jain Temple,
Maharajbagh Road, Ramdaspath,
Nagpur.
2. Mr. Kishnamurthy s/o Subramaniam
Iyer (Deleted).
- 2.i] Smt. Sujata wd/o Krishnamurthy
Iyer, Aged about 70 years,
Occ : Household, Resident of
Harihar's Gokul Park, Building
No.5, Flat No. 304, Opp. Kachore
Lawans, Manish Nagar, Nagpur.
- 2.ii] Sameer s/o Krishnamurthy Iyer,
Aged about 70 years, Occ : Service,
Resident of I-404, Pinak
Kanchanganga Aundh, Pune.

Shri S. V. Purohit, Advocate for appellant.

Shri A. M. Sudame, Advocate for respondent No.1 and respondent
Nos.2.i) and 2.ii).

CORAM: A.S. CHANDURKAR AND

G. A. SANAP, JJ.

DATED : 09/12/2021.

JUDGMENT : (PER G. A. SANAP, J.)

1. In this appeal, challenge is to the Judgment and order dated 20/07/2012 passed by the Family Court No.3, Nagpur, whereby the learned Judge of the Family Court partly allowed the petition to the extent of relief of permanent injunction restraining the respondents from alienating and dispossessing the appellant from the house and rejected the relief seeking declaration of right to stay in the house as a matrimonial home.

The facts are as follows :-

2. The house subject matter of the dispute, "Girija" is situated at SBI Colony, Rajnagar, Katol Road, Nagpur (Hereinafter referred to as "the suit house"). The appellant and the respondent No.1 were married on 14/06/1994. They have two daughters. The deceased - respondent No.2 was father-in-law of the appellant. The appellant after marriage found that the respondent No.1 was irresponsible and lazy person. He was not taking interest in his business or service. The respondent No.1 harassed the appellant mentally and physically. He spent the hard-earned money of the

appellant to satisfy his habit of drinking liquor and chewing tobacco. Finally, the appellant separated from the respondents. After two years of marriage, the appellant and the respondent No.1 started residing separately in the rented house at Ambazari Layout. They stayed at Aurangabad for few months. They again came back to Nagpur. It is the case of the appellant that the respondent No.1 behaved in irresponsible manner and on various occasions stayed out of the town. In November, 2000, he ran away from the house leaving the appellant and her minor daughter - Spruha. The deceased - respondent No.2 took pity on the appellant and brought her and her daughter back to the suit house. The deceased - respondent No.2 assured the appellant and her daughters that they could live without any disturbance permanently in the suit house. As permitted, the appellant started her business on the first floor of the suit house. The deceased - respondent No.2 executed a document dated 26/09/2003 in her favour. It is stated that after few months, the respondent No.1 came back and joined them. He again fled from the house. Thereafter, the deceased - respondent No.2 tortured the appellant and tried to drive her out of the house. The appellant made a complaint against the respondents to the police. The police registered a case against the respondents. According to

the appellant, the suit house is jointly owned by the respondent No.1 and other family members. The suit house is a matrimonial house and as such being a shared house the appellant and daughters have stayed therein. It is alleged that the respondents hatched a conspiracy to dispossess the appellant from the suit house. They intended to alienate the suit house. The appellant is entitled to stay in the suit house being a shared matrimonial house. The appellant, therefore, prayed for decree of permanent injunction.

3. The respondent No.1 filed written statement at Exh.19 and opposed the petition. According to the respondent No.1, suit house is a self-acquired property of his father the deceased - respondent No.2. The respondent No.1 has no right, title or interest in the suit house. The petitioner is not entitled to claim any right in the suit house including the right to stay in the suit house being shared house. It is stated that after the marriage, appellant and respondent No.1 stayed in the suit house. However, due to frequent quarrels and disputes, the deceased - respondent No.2 driven them out of the said house. The nature of the appellant is cantankerous and therefore, no one can reside with her peacefully. His father considering the welfare of the daughters, allowed the

appellant to stay in the suit house. However, the appellant started harassing him and his father. The appellant did not allow them to enter the house. She lodged a false report against the respondent No.1 and his family members. The appellant has no right, title or interest in the suit house and therefore, she is not entitled to get the relief.

4. The deceased - respondent No.2 filed written statement at Exh.20 and opposed the petition. He stated that the suit house is his self-acquired property. The appellant and the respondent No.1 while staying in the house quarrelled with each other. They caused harassment to the respondent No.2. He took pity on the appellant and allowed her with daughter to stay in the suit house and do the business. However, the appellant later on started causing harassment to him and his wife. He wanted to sell the house to meet the expenses of his medical treatment, etc. The respondent No.2 stated that the appellant has no right, title or interest to get the relief. The suit house being a self-acquired property of the respondent No.2 cannot be said to be a shared house or matrimonial home of the appellant.

5. The parties adduced their evidence. The learned Judge of the Family Court partly decreed the petition. The learned Judge relying upon the decision in the case of **S.R. Batra and another** **Vrs. Taruna Batra**,¹ held that the suit house could not be said to be matrimonial house or a shared household of the appellant. The learned Judge, therefore, partly allowed the petition and rejected the prayer for declaration. Being aggrieved by this part of Judgment and order, the appellant has come before this Court in appeal.

6. We have heard the learned Advocate for the appellant and the learned Advocate for the respondent No.1 and the respondent Nos.2.i) and 2.ii).

7. At the stage of argument, the learned Advocate for the respondent No.1 applied for withdrawal of the appearance. However, considering the fact that the notice in advance was not served upon the respondent No.1 by the Advocate and withdrawal of the appearance at this stage would cause inconvenience to the Court, we have rejected the said prayer for discharge.

1 AIR 2007 SC 1118

8. In view of the facts and circumstances of the appeal, following point falls for our determination :-

"Whether the appellant proves that the first floor of the suit house was her matrimonial home / shared household and as such, she has right to stay in the same ?

9. The learned Advocate for the appellant submitted that the learned Judge of the Family Court has denied the relief of declaration of her right to stay at the first floor of the suit house, inasmuch as the same could not be said to be her family home or shared household as provided in Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "Domestic Violence Act, 2005"). The learned Advocate took us through the Judgment and submitted that the learned Judge of the Family Court denied the relief holding that the suit house could not be said to be matrimonial house / shared household of the appellant relying upon the decision in the case of **S.R. Batra** (supra) and unreported decision of the Bombay High Court in the case of **Smt. Hemaxi Atul Joshi Vrs. Smt. Muktaben Karsandas Joshi and another** (Appeal No.866/2007 in S.C. Suit No.3072/2007 with Civil Application No.1194/2007 order dated 5th December, 2007).

10. The learned Advocate submitted that the Hon'ble Supreme Court in the case of Satish Chander Ahuja Vrs. Sneha Ahuja,² has considered the provisions of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 and the decision in the case of S.R. Batra (supra) and held that the Judgment in the case of S.R. Batra (supra) does not lay down the correct law. The learned Advocate submitted that in view of the law laid down in the case of Satish Chander Ahuja (supra), the family house where the appellant is residing with other family members jointly has to be held as shared household and the appellant is entitled to the decree as sought for.

11. The learned Advocate for the respondent No.1 and the respondent Nos.2.i) and 2.ii) submitted that apart from the consideration of the provisions of the Domestic Violence Act, 2005, the appellant was not found entitled to get the decree on the basis of the facts and evidence. In short, the learned Advocate for the respondent No.1 and respondent Nos.2.i) and 2.ii) supported the Judgment and order passed by the Judge of the Family Court.

12. Perused the Judgment and order passed by the learned Judge of the Family Court. The learned Judge on the basis of the law laid down in the case of **S.R. Batra** (supra) held that the first floor of the suit house could not be said to be a matrimonial house or shared household of the appellant. The learned Judge held that though the appellant and her husband stayed with the deceased - respondent No.2 jointly, the suit house could not be said to be a matrimonial house or shared household, inasmuch as the suit house was the self-acquired property of the deceased - respondent No.2. The learned Judge has also considered the case put-forth by the appellant with regard to the licence granted in her favour for doing business from Room No.1 admeasuring 151.12 sq.ft. on the terrace of the suit house. The learned Judge recorded a finding that the right claimed by the appellant on the basis of leave and licence agreement cannot be considered. On appreciation of the material, the learned Judge of the Family Court came to the conclusion that the appellant was not entitled to get declaration that the first floor of the matrimonial house / shared household and as such, the right to stay in the same and right of the appellant to stay in the same. As noted above, the relief was denied on the basis of the decision in the case of **S.R. Batra** (supra). In the case of **Satish Chander Ahuja**

(supra), the Hon'ble Supreme Court has considered the definition of shared household as provided under Section 2(s) of the Domestic Violence Act, 2005 and also considered the decision in the case of **S.R. Batra** (supra). The paragraph No.64 of this decision would be relevant for deciding this appeal. It reads thus :-

"64. In paragraph 29 of the judgment, this Court in S.R.Batra v. Taruna Batra (supra) held that 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 definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have noticed the definition of "respondent" under the Act. The respondent in a proceeding under Domestic Violence Act can be any relative of the husband. In event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household. We are of the view that this court in S.R. Batra v. Taruna Batra (supra) although noticed the definition of shared household as given in Section 2(s) but did not advert to different parts of the definition which makes it clear that for a shared household there is no such requirement that the house may be owned singly or jointly by the husband or taken on rent by the husband. The observation of this Court in S.R. Batra v. Taruna Batra (supra) that definition of shared household in Section 2(s) is not very happily worded and it has to be interpreted, which is sensible and does not lead to chaos in the society also does not commend us. The definition of shared household is clear and exhaustive definition as observed by us. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in S.R. Batra v. Taruna Batra (supra) if accepted shall

clearly frustrate the object and purpose of the Act. We, thus, are of the opinion that the interpretation of definition of shared household as put by this Court in *S.R. Batra v. Taruna Batra* (supra) is not correct interpretation and the said judgment does not lay down the correct law."

The final conclusion is in paragraph No.84. It reads thus :-

"84. In view of the foregoing discussions, we answer issue Nos.1 and 2 in following manner :-

(i) The definition of shared household given in Section 2(s) cannot be read to mean that shared household can only be that household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share. (ii) The judgment of this Court in *S.R. Batra v. Taruna Batra* (supra) has not correctly interpreted Section 2(s) of Act, 2005 and the judgment does not lay down a correct law."

13. The Hon'ble Supreme Court has held that the definition of shared household cannot be given a restricted meaning. It is held that the household of a joint family of which husband is a member, in which the husband of the aggrieved person has no share would be a shared household. In view of this decision in the case of **S.R. Batra** (supra) will not be applicable to the case of the appellant.

14. Admittedly, the appellant with her daughters has been residing in the part of the suit house. She was constrained to file petition due to threat to her right to stay in the shared

household with the respondent No.1 and the deceased - respondent No.2. The learned Judge, as can be seen from the Judgment, was otherwise convinced to accept the claim of the appellant. However, in view of law laid down in the case of S. R. Batra (supra), the claim was not accepted inasmuch as the learned Judge held that since the deceased - respondent No.2 was the sole owner of the suit house, the same could not be said to be a shared household of the appellant even though she resided in the suit house with the respondents. In our view, the laid down in the case of Satish Chander Ahuja (supra) will now govern the dispute. Applying the law laid down in the case of Satish Chander Ahuja, the contention of the appellant that she has right to stay in the suit house being matrimonial home / shared house cannot be denied. In our view, therefore, the appeal deserves to be allowed. Hence, the following order :-

ORDER

i] The judgment of the Family Court, Nagpur in Petition No.B-24/2007 dated 20/07/2012 is partly modified.

ii] It is held that the appellant-original petitioner is also entitled for a declaration that the suit property is a “shared household” of the appellant as per Section 2(s) of the Protection of Women from Domestic Violence Act,

2005 and that it would not be permissible for the respondents to evict her or to exclude her from its use and occupation except in accordance with law.

iii] The Family Court Appeal is allowed in aforesaid terms with no order as to costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)

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