



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.1152 OF 2012

Navaneetham @ Sundaravadivu ... Appellant/Defendant

Vs.

E.Jayagandhi
Rep. by Power Agent R.Mohan ... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.5 of 2011 dated 28.09.2011 on the file of Principal Sub Judge, Pondicherry, confirming the judgment and decree dated 23.12.2010 passed in O.S.No.973 of 2005 on the file of Principal District Munsif Court at Pondicherry.

For Appellant : Mr.S.Sudharshan

For Respondent : Mr.K.Anbarasan

J U D G M E N T

The unsuccessful defendant is the appellant before this Court. The plaintiff filed a Suit for vacating and handing over possession of the Suit property against the present appellant.

2.For the sake of convenience, the parties are called as per their ranking in the Suit.

3.Originally, the house property which is the subject matter of the Suit was purchased by one Mariammal W/o. Thangavel by way of registered Sale Deed dated 21.11.1970. She sold the same to the plaintiff by virtue of a registered Sale Deed dated 11.02.1981 and both the Sale Deeds were marked as Document Nos.1 and 2. The plaintiff purchased the property with the help of her brother. Thereafter, she developed the property and obtained electricity connection, water connection and other facilities



4.While the matter stood thus, the plaintiff's younger son E.Jeyachandran got married to the defendant on 01.05.2000. In November 2001, the defendant forced the plaintiff to shift her residence to the first floor portion from ground floor after vacating the tenant. Thereafter, in January 2004, the plaintiff was chased out of her own house. The defendant let out the first floor portion and was receiving a sum of Rs.3,000/- as rentals. However, the defendant failed to maintain the house, did not pay the electricity charges and other statutory dues, kept the ground floor under lock and seal and allowed it to deteriorate.

6. The defendant denied all the averments and contended that she got married to the younger son of the plaintiff on 01.05.2000 and gave birth to a male child on 30.01.2001. In order to nurture the child, she stayed with her parents. On 03.10.2003, her husband issued a legal notice directing her to go over to her matrimonial home and join him. On 07.10.2003, she joined with her husband. She underwent so much of harassment and cruelty by the members of the husband's family. Her husband has an affair with another girl and that girl refused to snap the relationship. Therefore, she filed a case in MOP No.162 of 2003 for restitution of conjugal rights. Her husband filed another MOP No.21 of 2004 for divorce. The defendant has no other go other than maintaining the tiny child and to reside in the shared household.

8.The learned counsel for the appellant would contend that the view taken by the Hon'ble Supreme Court in S.R.BATRA's case (cited supra) has been distinguished in the judgment of the Hon'ble Supreme Court in SATISH CHANDER AHUJA VS. SNEHA AHUJA [2021 (1) SCC 414]. Therefore, the house of the in-law shall be considered as a "shared household" and in view of the said



WEB COPY

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 Vs. Taruna Batra (supra) has not correctly interpreted [Section 2\(s\)](#) of Act, 2005 and the judgment does not lay down a correct law."

Further, paragraph No.89 of the said judgment reads as under:

"89.Now, coming back again to the facts of the present case, there being specific pleading on behalf of the respondent that the house, which is in the name of the appellant is the matrimonial home of the respondent where she was residing in first floor since her marriage. The fact that respondent is residing in first floor of the premises is not matter of dispute. Even if the house is in the name of the appellant and that even if we accept the case of the appellant that appellant's son Raveen has no share in the house belonging to appellant, with whom the respondent was living in the domestic relationship, whether the respondent is entitled to reside in the premises in question as shared household is the question to be answered. In the impugned judgment, Delhi High Court has refrained from deciding the point as to whether suit property is a shared household on the ground that the application filed under [Section 12](#) of Act, 2005 by the respondent is pending. In the suit filed by the appellant where respondent has pleaded and claimed that it is shared household and she has right to live and it was on that ground she was resisting the suit for mandatory injunction, the question that whether the suit property is a shared household or not becomes relevant and necessary and the said issue cannot be skipped on the ground that application under [D.V. Act](#) is pending. In the regular suit, which has been filed by the appellant, the plea of defendant that suit property is her shared household and she has right to residence could



12. In the very same judgment, it is also held that in a case that determination of right of the wife under Sections 17 and 19 read with Section 26 of the Domestic Violence Act, 2005, the plaintiff can be treated as respondent and the respondent / aggrieved person can be treated as plaintiff. It is incumbent on the aggrieved person to plead and prove that an act of domestic violence was committed on the aggrieved person and that she is entitled to shared household. In this regard, paragraph Nos. 110 to 112 of the said judgment are relevant:

111.As noted above, one of the conditions to treat a person as a respondent is that "against whom the aggrieved person has sought any relief under the Act". The defendant in her pleadings having claimed that she has right of residence in the suit property, she for successful resisting the suit has to plead and prove that she has been subjected to any act of domestic violence by the respondent, which is implicit in the definition of the aggrieved person itself as given in the [Section 2\(a\)](#) of the Act, 2005. It is, further, relevant to notice



WEB COPY

that although learned Magistrate passed an interim order in the application filed by the defendant under [Section 12](#) on 26.11.2016 but said order was interim order which was passed on the satisfaction of the Magistrate that "the application prima facie disclosed that the respondent is committing or has committed an act of domestic violence". For granting any relief by the Civil Court under [Section 19](#) it has to be proved that the respondent is committing or has committed an act of domestic violence on the aggrieved person. To treat a person as the "respondent" for purposes of [Section 2\(q\)](#) it has to be proved that person arrayed as respondent has committed an act of domestic violence on the aggrieved person.

112.We, thus, are of the view that for the purposes of determination of right of defendant under [Sections 17](#) and [19](#) read with [Section 26](#) in the suit in question the plaintiff can be treated as "respondent", but for the grant of any relief to the defendant or for successful resisting the suit of the plaintiff necessary conditions for grant of relief as prescribed under the Act, 2005 has to be pleaded and proved by the defendant, only then the relief can be granted by the Civil Court to the defendant."

Therefore, it is the law laid down by the Hon'ble Supreme Court that only when it is pleaded and proved that a women has been subjected to domestic violence, she can claim the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

13.In the instant case, the defendant / appellant claims that it is a shared household. But, irony of fact is that she had chased out her mother-in-law, who is 74 years old from the house and before this Court offers that she can come and reside in the very same property. From the evidence let in by the witnesses D.W.1 and D.W.4, it is clearly made out that the husband and wife are living separately from 2004 and the whereabouts of the plaintiff was not known. The house is kept under lock and seal after the plaintiff was chased out of the



house. Further, D.W.4 would depose that the plaintiff was living in a rental accommodation which means that the plaintiff was chased out of the house which is no more a shared household. Even assuming that as per the judgment of the Hon'ble Supreme Court in SATISH CHANDER AHUJA'S case (cited supra) to claim right of residence in the shared household, it is incumbent upon her to plead and prove that she was put to severe harassment, cruelty and domestic violence.

14. In the instant case, there is a vague and superficial averment that she underwent harassment and suffering and she had to go out of her home and was living separately. However, there is no evidence on record to prove the allegations. Therefore, it can be safely inferred that the appellant has not suffered any domestic violence, much less at the hands of the respondent. On the other hand, the respondent has been suffering the same at the hands of the appellant. It is found that the First Appellate Court has dealt with the issue and arrived at the conclusion that the appellant was provided with maintenance by her husband for herself and her child by virtue of the decree passed in MOP No.21 of 2004 by the Family Court, Pondicherry and she is taking money towards the educational expenses of the child. The First Appellate Court has also held that if the appellant seeks further relief, she can seek it from her husband. Therefore, the judgment relied on by the learned counsel for the appellant supports the cause of the respondent and does not aid the appellant in the peculiar facts and circumstances of the present case on hand. The appellant has not pleaded and proved the act of domestic violence and her entitlement to the shared household as envisaged under Section 26 of the Domestic Violence Act, 2005. In fact, the respondent / plaintiff had suffered the domestic violence at the hands of the appellant and was chased out from the house and living separately in a rental accommodation from the year 2005. The admitted position entitled her to get recovery of possession of the house which absolutely belongs to her through her husband. Further, the whereabouts of the husband of the appellant is not known. However, the appellant is receiving maintenance for herself and her son and also educational and other expenses from her husband.

15. Further, absolutely there is no domestic violence involved in this case and the provisions of the Domestic Violence Act, 2005 is also not involved. In that event, I do not find any question of law arising out of this Second Appeal much less a substantial question of law arises from the factual background. The Second Appeal merits no consideration and does



not deserve any admission and accordingly stands dismissed. No costs.

16.The appellant is directed to hand over possession to the respondent within a period of one month from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Principal Subordinate Judge
Principal Sub Court
Pondicherry.

2.The Principal District Munsif
Principal District Munsif Court
Pondicherry.

+2cc to Mr.K.Anbarasan, Advocate SR.No.46588
+1cc to Mr.S.Subramanian, Advocate SR.No.47057

SA NO.1152 OF 2012

KK(CO)
GN(11/02/2022)