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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RFA 704/2019 & CM APPLs. 32947/2019,**
9568/2020, 7544/2021 & 20759/2022

Between: -

SMT. SEEMA BANSAL
W/O SHRI BHUPESH BANSAL
R/O BN 40, WEST GROUND FLOOR,
SHALIMAR BAGH,
DELHI - 110088

.....APPELLANT

[Through: Ms. Aditi Gupta, Adv. (DHCLSC)].

VERSUS

SH. DURGA DASS BANSAL
S/O LATE SH. SAJJAN KUMAR

.....RESPONDENT NO.1

SH. KRISHNA BANSAL
W/O SH. DURGA DASS BANSAL

.....RESPONDENT NO.2

BOTH RESIDING AT:
R/O BN 40, WEST GROUND FLOOR,
SHALIMAR BAGH, DELHL - 110088

SH. BHUPESH BANSAL
S/O SH. DURGA DASS BANSAL
C/O M/S IREO MANAGEMENT LTD.
5TH FLOOR, ORCHID CENTRE,

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By:MAANAS JAJORIA
Signing Date:08.08.2024
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By:PURUSHAINDRA
KUMAR KAURAV

GOLF COURSE ROAD, SECTOR 53,
GURGAON, HARYANA

.....RESPONDENT NO.3

(Through: Mr. Pratyush Chiranjani, Adv. for R-1 and R-2.)

% Reserved on: 03.07.2024
Pronounced on: 07.08.2024

J U D G M E N T

This is an appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') challenging the validity of the impugned judgment and decree dated 07.05.2019 and 16.05.2019, respectively, passed by the learned Additional District Judge in CS (OS) No. 575890/2016 titled as *Shri Durga Dass Bansal & Anr v. Smt. Seema Bansal & Anr.*, whereby, the suit for possession, recovery of mesne profits and injunction has been decreed in favor of respondent nos. 1 and 2.

B R I E F F A C T S

2. The respondent decree holders are parents-in-law of the appellant, and they hold decree against both their son and daughter-in-law in the suit, wherein, the son was arraigned as defendant no.2 and daughter-in-law was arraigned as defendant no.1. The appellant herein is the daughter-in-law of the decree holders.

3. The facts necessary for deciding the controversy at hand would exhibit that the appellant and her husband, i.e. respondent no.3, solemnized their marriage on 10.07.2000 and two children were born out of the wedlock. The elder daughter of the appellant was born in the

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KUMAR RAURAV

year 2001 and in the year 2005, the younger son was born. The relationship was tumultuous since inception and multiple proceedings in various fora were initiated by the parties against each other.

4. On 07.06.2014, a civil suit for eviction was filed by respondent nos.1 and 2 for eviction of the appellant along with her husband. The said suit was decreed in favour of respondent nos.1 and 2 herein by the impugned judgment and decree as respondent nos.1 and 2 were found to be sole and exclusive owners of the suit property in the absence of any Hindu Undivided Family (hereinafter 'HUF').

5. Being aggrieved by the passing of the impugned judgment and decree, the appellant has preferred the instant appeal.

SUBMISSIONS

6. Ms. Aditi Gupta, learned counsel for the appellant submitted that based on a reading of Section 17 of the **Domestic Violence Act, 2005** (hereinafter 'DV Act'), the appellant is in a '*domestic relationship*', residing in the suit property since the inception of her marriage and by virtue of the '*domestic relationship*' arising from a solemnized marriage, the appellant is entitled to a "*shared household*".

7. Based on a reading of the provisions of the DV Act, it is to be understood that a "*shared household*" arises by virtue of a "*domestic relationship*". Learned counsel referred to the following provisions of the DV Act:-

"2 (f) "domestic relationship"- means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

2 (s) “shared household”- means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold 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;

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.”

8. She further submitted that the impugned order directs eviction of the appellant solely by considering the appellant as a regular licensee who can be evicted by a mere revocation of the license and the learned Trial Court has miserably failed to consider the statutory rights of the appellant under the provisions of the DV Act. She contended that as long as the marriage subsists, the appellant cannot be evicted on the pretext of being termed as a mere licensee in view of the matrimonial relationship and the “shared household”.

9. To substantiate her position, she placed reliance on the decision rendered by the Supreme Court in the case of **Prabha Tyagi v. Kamlesh Devi**¹, wherein, it has been observed that every woman in a ‘domestic relationship’, irrespective of whether she is an aggrieved person or not, has a right to reside in the shared household even in the

absence of any act of domestic violence. The relevant extract of the said decision is reproduced herein for reference:-

“34. While Section 19 deals with a multitude of directions or orders which may be passed against the respondent vis-à-vis the shared household in favour of an aggrieved person, Section 17 confers a right on every woman in a domestic relationship to reside in the shared household irrespective of whether she has any right, title or beneficial interest in the same. This right to reside in a shared household which is conferred on every woman in a domestic relationship is a vital and significant right. It is an affirmation of the right of every woman in a domestic relationship to reside in a shared household. Sub-section (2) of Section 17 protects an aggrieved person from being evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

35. The distinction between sub-sections (1) and (2) of Section 17 is also to be noted. While sub-section (2) deals with an aggrieved person which is defined in Section 2(a) of the DV Act in the context of domestic violence, sub-section (1) of Section 17 is a right conferred on every woman in a domestic relationship irrespective of whether she is an aggrieved person or not. In other words, every woman in a domestic relationship has a right to reside in the shared household even in the absence of any act of domestic violence by the respondent.”

10. Ms. Gupta further submitted that since the appellant has a right to live in the “shared household” by virtue of her marriage, the suit property is the “shared household” and the appellant cannot be evicted except save in accordance with the procedure established by law.

11. She firstly submitted that the suit property is a “shared household” by virtue of the property being owned in the nature of HUF and by virtue of such HUF holding, the appellant also has an ownership right in the household. She contended that the suit property was inherited by way of acquisition through proceeds of an ancestral property.

12. Without prejudice to the first contention, she maintains that even if the property is not owned under the HUF and the appellant does not have title over the suit property, she is protected by the decision in *Prabha Tyagi (supra)*, wherein, the Supreme Court has observed that the expression “joint family” cannot mean to be understood in the strict confines of Hindu Law, rather the same is applicable to every woman in India irrespective of her religious affiliation and/or social background.

13. She further placed reliance on the decision of this Court in *Ambika Jain v. Ram Prakash Sharma*², to contend that the right to shelter is one of the most essential rights which has to be extended to a helpless wife, irrespective of the fact that she bears any title or interest in the said household.

14. Assailing the impugned order, the learned counsel for the appellant asserted that this Court in *Ambika Jain (supra)* has held that as per the provisions of the DV Act, an aggrieved person may be evicted only by “procedure established by law”. A decree of a Trial Court decided solely on the basis of “title documents” which fails to consider the statutory right of residence granted under the DV Act is not to be considered as an eviction as per “procedure established by law”.

15. The second limb of the argument raised by the appellant is that the suit for eviction against her is filed under collusion and wholly against the provisions of the DV Act. To support this assertion, learned counsel for the appellant has placed on record certain observations made by the learned Trial Court and a catena of precedents where tests for indicating collusion were illustrated.

Furthermore, she asserts that the impugned civil suit, initiated by respondents nos. 1 and 2, in which the appellant and her husband were named as defendant nos.1 and 2, respectively, was a collusive action orchestrated by her in-laws and the husband.

16. According to the learned counsel, respondents nos.1 and 2, are seeking to execute the impugned judgment and decree against the appellant only and not against respondent no.3 i.e., her husband. She placed reliance on the observation of the learned A.D.J *vide* order dated 13.11.2018 in the impugned civil suit, wherein, the Trial Court had observed a scope of collusion based on the conflict in the assertion of the in-laws and the husband. The learned ADJ had noted that the husband of the appellant, i.e. respondent no.3, by way of affidavit had admitted that the rent receipts were prepared by him and despite the existence of rent receipts, no rent was paid.

17. Learned counsel further placed reliance on the decision in the case of ***Kavita Gambhir v. Harish Chand Gambhir & Anr***³, wherein, this Court has observed that the non-impleadment of husband of the appellant by in-laws is a fraud played by the respondents on the right of the daughter-in-law to reside in her matrimonial home.

18. The appellant seeks to rely on the indicators and tests provided in catena of judgments to indicate collusion on behalf of all the respondents.

19. Learned counsel further submitted that the appellant is a victim of domestic violence and a victim cannot be punished by being evicted or by being provided an alternate accommodation.

20. Thus, the principal contentions of the learned counsel for the appellant are that the appellant is a member of the joint family, the suit

property is a “*shared household*”, the respondents are acting in collusion and seeking to evict her and lastly, given that the learned Trial Court has not considered the rights of the appellant under the DV Act, her right to be evicted only in accordance with the “*procedure established by law*” is violated.

21. *Per contra*, Mr. Pratyush Chiranjan, learned counsel appearing for the respondents, vehemently opposed the aforementioned submissions and contended that the suit property does not fall under the category of “*shared household*” on multiple grounds. The primary contention raised by the learned counsel was that the appellant was only a “permissive user” by virtue of the license and once the license is revoked, the petitioner must vacate the said premises.

22. Refuting the contention of the appellant on her right to claim a “shared household” by virtue of a subsisting marriage, learned counsel for the respondents placed reliance on the decision in the case of ***Smt. Saraswati Devi v. Sh. Ganga Ram Sharma & Anr***⁴ to contend that in the absence of a complaint under DV Act, the said provisions do not apply and the question of “shared household” does not arise. The relevant extract relied upon by the learned counsel is reproduced as under:-

“16. As stated earlier, in the facts of the present case, there is no question of any conflict between the two enactments because at the time when the Respondents had approached the competent forum under the Senior Citizens Act, no case under the DV Act has been filed by the Appellant, therefore, the order of the Ld. District Magistrate ordering for the eviction of the Appellant; that of the Ld. Divisional Commissioner affirming the eviction order; and the impugned order of the Ld. Single Judge cannot be faulted, keeping in mind the aims and objectives of the Senior Citizens Act and its accompanying rules as amended from time to time. It

would be pertinent to mention also that at this juncture, the Respondent No. 1 is bereft of any support and seeks only the right to reside in his property peacefully, he should not be subjected to the trials and tribulations thrown at him by the Appellant herein.”

23. Learned counsel also placed reliance on the decision in the case of **Smt Darshana v. Govt. of NCT of Delhi & Ors.**⁵, wherein, this Court has observed that when the daughter-in-law has no right, title and interest in the premises, she cannot insist on residing in the suit property, especially in view of a deteriorated relationship between the parties. He further relied on the decision rendered in **Sunny Paul v. State of NCT of Delhi & Ors.**⁶, wherein, two male children were evicted for physical cruelty against their elderly parents.

24. Learned counsel further placed on record a copy of the W.P. (Crl.) 1312/2013 alleging occurrence of physical cruelty, wherein, he submitted that this Court has earlier granted liberty to the respondents to seek protection from the concerned Station House Officer (SHO).

25. Countering the submissions of the appellant on the assertion that the property is an HUF property, learned counsel for the respondents relied upon the decision in **Shanti Sarup Dewan v. UT, Chandigarh**⁷, wherein, it was held that in order to establish that a property belongs to a joint family, it must be conclusively established that the joint family had sufficient nucleus under Hindu law at the time of acquisition of the said property and in the absence of a conclusive determination that the property belongs to a “joint family”, the right to reside in a “shared household” does not arise.

26. Furthermore, learned counsel for the respondents seeks to infer through facts that it took over five years for respondent no.1 to

⁵ 2018 SCC OnLine Del 11641

⁶ 2017 SCC OnLine Del 7451

⁷ 2013 SCC OnLine P&H 20369

complete the construction of the house from the date of acquisition of the suit property land and such a long period of construction is indicative of house being constructed through self-acquired means.

27. Responding to the allegations of collusion, learned counsel for the respondents submitted that respondent no.3 has already vacated the said premises and is currently residing in another location. Based on the assertion that respondent no.3 is residing in a different location and the marriage still subsists with the husband of the appellant, being still alive, he indicates that any relief for residence/accommodation/maintenance to the appellant should be directed against her husband and not her in-laws.

28. Learned counsel further laid down emphasis on the license/permissive user theory and asserted that the son has already vacated the premises post revocation of the license and the daughter-in-law is not ready to vacate. He submitted that the appellant has been provided multiple properties as alternate accommodation and has been offered to choose an alternate reasonable accommodation of her own choice, but she is not vacating the suit property.

29. In his oral submissions, learned counsel for the respondents pleaded that the respondents are ready to pay advance rent of two years for the property chosen by the appellant for her alternate accommodation. He further affirms that the son of respondent nos.1 and 2 has already been disowned and is residing elsewhere owing to eviction and acrimonious relationship in general.

30. I have heard the learned counsels appearing on behalf of the parties and have perused the record.

ANALYSIS

31. The appellant seeks to assail the impugned judgment and decree, *inter alia*, on the ground that the learned Trial Court has erred in ignoring that the suit property is a “*shared household*” and is being used jointly by all the parties therein. The appellant further avers that she had come to the suit property in her marriage procession-“*Doli*” and the said suit property was being jointly used by all the parties including both respondent nos.1 and 2 and their children i.e., respondent no. 3 herein, the son of respondent nos.1 and 2 and the husband of the appellant.

32. In light of the rival contentions advanced by the parties and in light of the impugned judgment and decree would show that the primary issue which falls for consideration in the present Regular First Appeal pertains to whether the entitlement of the appellant to reside in the respondents’ property emanates from her status of a licensee/permissive user which is terminable on revocation of the license, or she is entitled to reside in the suit property by virtue of her status as the daughter in law of the respondents and the suit property being a “*shared household*” by virtue of her marriage. The appellant has raised this specific contention in her written statement to the plaint before the learned Trial Court, however, the said issue was not framed, or considered by the Court while deciding the suit in question. The learned Trial Court has held that the appellant is only a permissive user and the license to stay is deemed to be revoked by virtue of the civil suit for eviction filed by the respondents.

33. Before advertng to the merits of the case at hand, the Court deems it significant to refer to the case of *Malluru Mallappa v.*

Kuruvathappa⁸ to get a flavour of law relating to the scope of a first appeal under Section 96 of the CPC. In the said case, the Supreme Court noted that the expression “appeal” has not been defined in CPC. *Black's Law Dictionary* (7th Edn.) defines an appeal as “a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority”. Perhaps, it is a judicial examination of the decision by a higher court of the decision of a subordinate court to rectify any possible error in the order under appeal.

34. Further, reliance is placed on the decision in the case of **Hari Shankar v. Rao Girdhari Lal Chowdhury**⁹, wherein, it was observed that a first appeal carries with itself a right of rehearing on law as well as on facts. Thus, it is a settled position of law that an appeal is a continuation of the proceedings of the original court and thus, the first appellate court is required to address itself on all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all the issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions. [See: **Santosh Hazari v. Purushottam Tiwari**¹⁰, **Madhukar v. Sangram**¹¹, **B.M. Narayana Gowda v. Shanthamma**¹², **H.K.N. Swami v. Irshad Basith**¹³ and **Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar**¹⁴]

⁸ (2020) 4 SCC 313

⁹ AIR 1963 SC 698

¹⁰ (2001) 3 SCC 179

¹¹ 2001) 4 SCC 756

¹² (2011) 15 SCC 476

¹³ (2005) 10 SCC 243

¹⁴ (1980) 4 SCC 259

35. Accordingly, most of the things which may be undertaken by the Trial Court may also be undertaken in the Regular First Appeal, including but not limited to determining a case, remanding a case, framing issues and referring them to trial, to take on record or to direct to take on record additional evidence. In light of the scope of a first appeal, as delineated in Section 96 and Section 107 of the CPC, this Court deems it fit to determine the case.

36. Having briefly traversed through the scope of Regular First Appeal, the Court now proceeds to consider the issues raised in the present appeal on merits.

37. On the question of whether the suit property is an HUF or self acquired, the arguments advanced have been considered. The appellant has not placed any document or evidence on record which indicates that the suit property is self acquired. It was contended by the appellant that the suit property may have been self acquired, but the acquisition was done through the proceeds of sale of a property acquired by the father of respondent no.1. Moreover, learned counsel for the appellant seeks to argue that there are no salary statements or proof indicating income in favour of the respondent no.1 so as to acquire the said property. Thus, in essence, learned counsel has sought to argue that the property is HUF by virtue of its acquisition out of proceeds of ancestrally inherited wealth. Against this position, the respondents have produced on record a conveyance deed in favour of respondent no.1 indicating self acquisition. The oral argument of the respondents that the house on the suit property was constructed over a period of 5 years and thus, the construction was done through the income earned by respondent no.1 is also considered. Moreover, the learned counsel for the respondents relied on ***Gulab Singh v. Dal***

Chand Lowadia¹⁵, wherein, this Court held that HUF is a specific creation of law which comes into being when a member throws property into common hotch-potch or if the property is inherited by a male from his parental ancestors before passing of the Hindu Succession Act, 1956. In view of the unquestioned conveyance deed in favour of the respondents and lack of any evidence led by the appellant in support of the assertion that the property is a HUF, the appellant has not satisfied the Court as to how the suit property could be categorised as being held by an HUF. Thus, the Court deems it fit to uphold the view of the learned Trial Court on the ownership of the suit property.

JOINT FAMILY UNDER THE DV ACT

38. Given that the suit property is presumed to be self-acquired, the next question which falls for consideration is whether the daughter-in-law has a right to “*shared household*” in a property self-acquired by respondent no.1/father-in-law. . In order to answer this issue, the phrase “*joint family*”, as used in the DV Act must be understood in its unique context. In the considered opinion of the Court, the expression “*joint family*” under the DV Act cannot be construed to carry the same meaning as understood in Hindu Law. Rather, the expression is used in a *sui generis* legislation which is applicable to every woman in India irrespective of her religious affiliation and/or social background as held in **Prabha Tyagi** (*supra*). The relevant portion of the said decision is extracted as under:-

“50. In our view, the DV Act is a piece of civil code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective

protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship. Therefore, the expression “joint family” cannot mean as understood in Hindu Law. Thus, the expression “family members living together as a joint family”, means the members living jointly as a family. In such an interpretation, even a girl child/children who is/are cared for as foster children also have a right to live in a shared household and are conferred with the right under sub-section (1) of Section 17 of the DV Act. When such a girl child or woman becomes an aggrieved person, the protection of sub-section (2) of Section 17 comes into play.

51. In order to give an expansive interpretation to the expression “every woman in a domestic relationship shall have the right to reside in shared household”, certain examples by way of illustrations have been discussed above. However, those illustrations are not exhaustive and there could be several situations and circumstances and every woman in a domestic relationship can enforce her right to reside in a shared household irrespective of whether she has any right, title or beneficial interest in the same and the said right could be enforced by any woman under the said provision as an independent right in addition to the orders that could be passed under Section 19 of the DV Act; also an aggrieved woman who has the right to reside in the shared household is protected by sub-section (2) of Section 17 of the DV Act.”

39. Thus, the test to determine whether an aggrieved person is a part of the joint family is to see whether the said person resides or has been residing jointly with the other members of the family in a shared household and in a manner which is indicative of a domestic relationship, irrespective of any title or interest in the property. Undeniably, the appellant is a member of the “joint family” under the DV Act irrespective of whether the household is a HUF or a self-acquired property held by any of the respondents and thus, cannot be excluded from the “shared household” except in accordance with the procedure established by law.

APPLICABILITY OF DV ACT

40. The next question for consideration is, whether the appellant is protected by the provisions of the DV Act. That no complaint under the DV Act has been filed is the source of this query. Admittedly, the learned counsel for the parties have submitted that there exists no complaint on record against the respondents under the DV Act. The learned counsel for the appellant has placed on record multiple complaint letters addressed to the SHO alleging violence, cruelty and harassment. However, it is seen that in the case of the appellant, the complaints to the SHO were not proceeded further and no action was initiated based on those complaints. Learned counsel for the respondents submitted that in the absence of any action taken or prosecution initiated, mere complaints do not conclusively indicate proof of any cruelty or harassment. Learned counsel for the respondents indicated a direction passed in W.P. (Crl.) 1312/2013, wherein, the respondents filed a petition alleging cruelty. However, it is discernible that the said petition was dismissed as withdrawn and the directions of this Court in granting liberty to the respondents to seek protection from the concerned SHO could not be termed as a reflection on merits. Thus, nothing has been placed on record by either party which could conclusively determine infliction of any physical cruelty.

41. Based on this submission, the respondents have relied on the decision of *Saraswati Devi* (*supra*) to contend that in the absence of a complaint, the protections provided in the DV Act do not accrue and thus, provisions of the DV Act cannot be considered. However, the Court is of the opinion that the decision in *Saraswati Devi* (*supra*) primarily sought to balance the rights of both the parties therein, and

eviction of the daughter-in-law was carried out under the complaint alleging violation of the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is not a pronouncement on the proposition that a daughter-in-law cannot claim the right of residence/shared household merely because no proceedings were instituted under the DV Act. In furtherance, the decision of the Apex court in ***Prabha Tyagi (supra)*** affirms the right of every woman in a domestic relationship to reside in a shared household and observes that any woman, whether being a wife, daughter-in-law, sister or any other relationship, is entitled to a shared household by virtue of a “domestic relationship”. Any narrow view of the matter would be counter-productive and against the spirit of the welfare legislation i.e., DV Act.

42. Insofar as the decision in ***Sunny Paul (supra)*** is concerned, where the sons of the senior citizens were evicted for cruelty, the Court is of the opinion that none of the documents submitted by either party herein has conclusively determined an occurrence of physical cruelty.

43. On the aspect of eviction directed in ***Smt. Darshana (supra)***, wherein, a daughter-in-law was evicted, it is evidently seen that the factual matrix in the said case is distinct when compared to the case at hand by virtue of the divorce proceedings between the appellant daughter-in-law and her husband therein. In the current set of facts, there is nothing on record which would indicate that the matrimonial relationship has ceased to exist or divorce proceedings are underway. Moreover, in the present case, the appellant has not sought maintenance, compensation or any such relief to indicate that she

seeks to end the matrimonial relationship. Thus, the said decision would be inapplicable in the given factual scenario.

**COLLUSION BETWEEN THE PARENTS-IN-LAW &
HUSBAND**

44. The next limb of the appellant's case is that respondent nos.1 and 2 are in collusion with respondent no.3 and are only seeking to evict the appellant by not executing the eviction order against respondent no.3.

45. According to the appellant, the facts that need to be put to scrutiny are that the husband of the appellant i.e., respondent no.3 was earlier married to another individual and after the breakdown of the first marriage, respondent no.3 got married with the appellant on 10.07.2000. The same remains to be an admitted fact by respondent nos.1 and no.2 herein as per the plaint filed in the impugned judgment and decree.

46. Furthermore, in his deposition, the plaintiff/respondent no.1 i.e., the father-in-law of the appellant in proceedings dated 15.01.2018, in terms of question number 25, has admitted that *vide* a newspaper publication dated 08.07.1996, he has debarred his son from all movable and immovable properties. Post such debarment/disowning, respondent no.3 solemnized the marriage with the appellant herein and her *doli* had reached the suit property in possession of respondent no.1 and respondent no.2.

47. In ***Kavita Gambhir v. Harish Chand Gambhir & Anr***¹⁶, this Court has observed that non-impleadment of the husband of the appellant by the in-laws is a fraud played by the respondents on the

right of the daughter-in-law to reside in her matrimonial home. The relevant paragraphs of the said decision are reproduced herein for reference:-

“22. In any case, even though the plaintiffs' son had shifted to NOIDA before the filing of the present suit it cannot be said that he had surrendered the possession of the property in his occupation to his parents resulting in the cessation of that house as being the matrimonial home of the defendant. He continued to be in occupation thereof through his wife whom he had brought to that house after marrying her and also through his children. He having not done so the plaintiffs cannot claim that their son had surrendered the property which he was occupying along with his family with their permission as a gratuitous licensee. In this regard a useful reference can be made to a judgment of the Hon'ble Supreme Court in the case of B.P. Achala Anand v. S. Appi Reddy, (2005) 3 SCC 313. There a case was instituted against the husband by his landlord for his eviction from the tenanted premises. The tenant did not contest the petition effectively and left the tenanted premises and settled somewhere else but left behind his wife in the tenanted premises with whom his relations were strained. The landlord took the plea that since his tenant had surrendered the tenanted premises his wife had been left with no interest or right to remain in the premises. While dealing with that plea of the landlord and finally rejecting the same, the Supreme Court referred to some English decisions wherein it was held that if a tenant leaves the tenanted premises and settles somewhere else but leaves behind his wife, with whom his relations were strained, to stay in the tenanted premises he would still be considered to be in possession of the tenanted premises through his wife. The relevant portions of the judgment of the Supreme Court dealing with the rights of a Hindu wife to stay in her matrimonial home even when the husband goes away to live separately are reproduced below:

“2. The facts which are either not disputed, or, are, at this stage, beyond the pale of controversy, may briefly be noticed. The appellant Smt. B.P. Achala Anand (hereinafter ‘Smt. Achala’ for short) was the legally wedded wife of H.S. Anand-respondent No. 2. Their relationship got estranged so much so that in the year 1983 H.S. Anand deserted his wife Smt. Achala. The matrimonial home was a tenanted premises owned by respondent No. 1. H.S. Anand left behind his wife with the children in the tenanted premises and walked away to reside in a lodge.....

5. On 28.11.1991, the landlord served a notice upon the tenant H.S. Anand and initiated proceedings for eviction

from the suit premises.....The tenant-H.S. Anand appeared in the Court of Small Causes and defended the suit. However, it seems that on account of strained relationship between him and his wife and, further as he had discontinued his residence in the tenanted premises, he was not serious in contesting the suit and consequently, in the event of a decree for eviction being passed, the family members including the appellant-Smt. Achala, the deserted wife, ran the risk of being thrown away from the tenanted premises which happened to be the matrimonial home. Briefly stating these facts, the appellant moved an application under Order 1 Rule 10 of the Code of Civil Procedure (for short "the Code") seeking her own impleadment in the eviction proceedings so as to defend against the eviction. The trial Court, by order dated 30.1.1993, rejected the application.

12. Having said so generally, we may now deal with the right of a wife to reside in the matrimonial home under personal laws. In the factual context of the present case, we are confining ourselves to dealing with the personal law as applicable to Hindus as the parties are so. A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection.....

14. Any precedent, much less of a binding authority, from any Court in India and dealing with a situation as we are called upon to deal with is not available. At least, none has been brought to our notice. However, English decisions can be found. Lord Denning states in the Due Process of Law (London, Butterworths, 1980, at page 212)—“A wife is no longer her husband's chattel. She is beginning to be regarded by the laws as a partner in all affairs which are their common concern. Thus the husband can no longer turn her out of the matrimonial home.....Moreover it has been held that the wife's right is effective, not only as against her husband but also as against the landlord.....’

15. In Old Gate Estates, Ltd. v. Alexander, [1949] 2 All E.R. 822: [1949] W.N. 431, a statutory tenant living with his wife in a flat which constituted the matrimonial home left the premises following a quarrel with his wife, and purported to surrender them to the landlords by agreement. His wife remained in occupation with the use of his furniture. On the wife's refusing to quit the premises, the husband gave her written notice revoking any authority which she might have from him to occupy the flat. In proceedings by the landlords against the tenant and his wife for possession, the Court held that the tenant had not given up possession, as he remained

in occupation through his wife and furniture,.....

The reason is because the wife has a very special position in the matrimonial home.....He is not entitled to tell her to go without seeing that she has a proper place to go.....

16. Their Lordships referred to and applied the dictum of Lord Greene, M.R., in Brown v. Draper, [1944] 1 All E.R. 246: [1944] K.B. 309, where the facts were somewhat similar. A husband was the tenant of a house on a weekly tenancy. As in this case, he left the house in a dispute with his wife, and his wife and child remained in occupation of the house with the use of his furniture and he continued to pay rent. He received notice to quit from the landlord and he then stopped paying the rent, but he did not revoke his leave to the wife to reside in the house nor did he remove his furniture. Later, the landlord brought proceedings against the wife for trespass and at the hearing, the husband, who was not made a party to the proceedings, gave evidence that he had no interest in the house. It was held by the Court of Appeal that the husband was still in possession of the house.....

17. Applying the law propounded in Brown v. Draper (supra) and in Old Gate Estates Ltd. v. Alexander (supra), the Court of Appeal held in Middleton v. Baldock, [1950] 1 All England Law Reports 708 : 66 T.L.R. (Pt. 1) 650, that where a husband had deserted his wife and the wife remained in the matrimonial home, she was lawfully there and the husband remained in occupation through her.....

33.....Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of eviction attributable to default or neglect of himself. We are inclined to hold—and we do so—that a deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises. Her rights and obligations shall not be higher or larger than those of the tenant himself. A suitable amendment in the

legislation is called for to that effect. And, so long as that is not done, we, responding to the demands of social and gender justice, need to mould the relief and do complete justice by exercising our jurisdiction under Article 142 of the Constitution. We hasten to add that the purpose of our holding as above is to give the wife's right to residence a meaningful efficacy as dictated by the needs of the times; we do not intend nor do we propose the landlord's right to eviction against his tenant to be subordinated to wife's right to residence enforceable against her husband. Let both the rights co-exist so long as they can." (emphasis supplied)

23. This judgement of Supreme Court also supports the view which I have already taken that it is not necessary that if the husband settles down somewhere else after leaving the matrimonial home of his wife that house where the wife is left behind would cease to be her matrimonial home. So, unless the plaintiffs obtain a decree of possession against their son they cannot get back the possession from his wife and consequently it has to be held that this suit is liable to fail for non-joinder of a necessary party. It is well settled now that the defect of non-joinder of a necessary party is fatal.

48. It is imperative to observe that the husband may reside in multiple places as a tenant or licensee or in any capacity whatsoever and his wife shall automatically get the right to reside in such place as long as the jural relationship of husband-wife continues. This position by default does not indicate that both husband-wife must be staying in a particular house for it to be labelled as the matrimonial home of the wife.

49. Reliance can also be placed on the decision in the case of ***Shammi Nagpal v. Sudhir Nagpal***¹⁷, wherein, the Bombay High Court has observed that the expression 'matrimonial home' would signify the domicile where persons live together actually or constructively, as man and wife. Moreover, assuming that respondent no.3 has actually left the premises as is the case of the respondent

nos.1 to 3 and by virtue of respondent no.3 surrendering the house, he is not impleaded in the suit for execution of the decree for eviction, the caution sounded by the Court in **Kavita Gambhir** (supra) comes into effect. The Court, in **Kavita Gambhir** (supra) had applied the constructive possession theory and held that even if the husband in his physical capacity has vacated the suit property, it cannot be inferred that he had surrendered the possession of the property in his occupation to his parents, thereby resulting in cessation of that house as being the matrimonial home of the defendant. In actuality, he continues to be in occupation thereof through his wife whom he had brought to that house after marrying her and also through his children.

50. This Court in **Kavita Gambhir** (supra) placed reliance on the authoritative pronouncement in the case of **B.P. Achala Anand v. S. Appi Reddy**¹⁸, wherein, the Supreme Court has held that a wife cannot be deprived of her residence when her tenant-husband has left his wife to the peril of eviction and held that a deserted wife and her children living in her matrimonial home occupy a position akin to that of an heir of the tenant-husband as long as the matrimonial relationship exists. The existence of matrimonial relationship and constructive or actual possession of the matrimonial home are essential ingredients in an inquiry of this nature. And above all, the Court must approach such issues with a robust common sensical approach by being alive to the societal realities and common course of natural events. The right to a household, accruing in favour of the wife by virtue of the DV Act or otherwise, is a reflection of the cherished fundamental right to human dignity, which forms part of the golden principles of the Constitution. Therefore, the standard of deprivation must be a high standard.

**EFFECT OF DISOWNING OF HUSBAND/SON ON THE
RIGHT TO SHARED HOUSEHOLD OF THE WIFE**

51. In the given facts, it was admitted by respondent no.1 in his deposition that he has disowned his son earlier. Interestingly, such “disowning” did not act as a legal bar in taking the son back and getting him married to the appellant in the same suit property and subsequently publishing another advertisement of disowning.

52. Considering the factual matrix in the aforecited case, the Court observes that the strategy of “*disowning*” sons, as done twice by the respondent herein, does not have a dispositive legal effect of breaking all legal ties. *Per se*, it could not be made the basis to deprive a wife from living in her matrimonial home, especially when the said home was the place where she actually started living after marriage. Moreover, in the event of death of the parents, the property of the parents would by default devolve on the son/sons so disowned. Thus, in the absence of a deed of relinquishment or other formal deed of partition of the family or separation between the members, it has been observed that such “*disowning*” is a fraud and the Courts should be cautious in denying statutory rights to wives on the basis of such practices.

53. In ***Roma Rajesh Tiwari v. Rajesh Dinanath Tiwari***¹⁹, the Bombay High Court has observed that when the husband asserts that he has left the suit property and is residing elsewhere, such assertion has to be substantiated. It was further observed that it has become a routine defence taken by the husbands that they have shifted the residence.

54. Even in the current set of facts, there is nothing authoritative placed on record to show that respondent no.3 has shifted his residence. In ***Roma Rajesh Tiwari (supra)***, the Court observed with regard to the veracity of the claim of the husband vacating the house that *“Not a single document to that effect is produced on record to show that he has taken those premises in New Bombay on rent or he has purchased them. Neither the Ration Card, Electricity Bill, Gas Bill etc., not an iota of document is produced on record to show that he has shifted his residence. Therefore, it is clear that, this ploy is adopted by the respondent just to deprive the appellant from her rightful claim to reside in the ‘shared household’.”*

55. In the given facts, neither the husband of the appellant nor her in-laws have brought anything on record to substantiate the claim that the husband vacated the suit property. Infact, the counsel for the respondents has argued that the husband of the appellant occasionally visits the suit property to meet his children. Furthermore, in view of the Supreme Court’s decision in ***B.P. Achala Anand (supra)***, the husband is deemed to continue to stay in the suit property by virtue of his legally wedded wife and children continuing to stay in the suit property.

56. Furthermore, the learned Trial Court has opined the possibility of collusion between the husband and in-laws, based on the statement of the husband of the appellant through an affidavit on the payment of rent and the actual purpose of rent receipts. Therefore, the possibility of collusion between respondent no.3 and respondent nos.1 and 2 cannot be ruled out.

57. In light of the determination of collusion between respondent nos.1 and 2 with respondent no.3, the conventional practice, as

established through a catena of judgments including *Vinay Varma v. Kanika Pasricha*²⁰, is to provide an alternative reasonable accommodation to the daughter-in-law. The responsibility/liability for maintenance of the alternate accommodation is incident upon both the in-laws and the husband jointly and severally, especially if they were living as part of a joint family. In *Vinay Varma (supra)*, this Court further observed that in such cases of collusion between respondents, the son i.e. the husband, either simply does not appear in the proceedings or refuses/fails to provide maintenance to the wife.

PROCEDURE ESTABLISHED BY LAW

58. The next question for consideration is, whether the appellant has been evicted *in accordance with the procedure established by law*.

59. It has already been observed that no conclusive determination of violation of either the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 or the DV Act could be arrived at on the basis of mere complaints and legal actions taken by both the parties. The purported complaints or proceedings have either not been investigated or were dismissed as withdrawn.

60. On the question of whether the statutory rights of the appellant were violated through the order of eviction, the rival submissions have been made on balancing The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the DV Act. The primary contention is that in the absence of any determination of violation of rights of either party, legality of the direction for eviction solely on the basis of title of one party, without considering the statutory rights of the other party, is

not sustainable. This Court finds itself in agreement with the said contention.

61. This Court in *Ambika Jain (supra)* has expressly observed that as per the provisions of the DV Act, where an aggrieved person may be evicted only by “*procedure established by law*”, such eviction does not include a decree of a Trial Court decided solely on the basis of “title documents” and in non-consideration of her statutory rights granted under the DV Act. The expression “procedure established by law” is not unknown to the legal discourse. In fact, it has been the subject matter of a considerable constitutional discourse in India. Suffice to observe that the procedure contemplated in the law ought to be just, fair and reasonable. If the procedure adopted by a Court tramples upon the statutory rights of any party, or overlooks such rights, it could not be termed as just, fair and reasonable.

62. Before parting, the Court deems it appropriate to examine the legal position as expounded in a decision rendered by this Court in RFA 832 of 2018 titled as *Ravneet Kaur v. Prithpal Singh Dhingra*. It is fleshed out from the analysis of the said decision that the right of residence of the daughter-in-law in an established “*shared household*” is not an indefeasible right and the daughter-in-law can be evicted subject to being provided a suitable alternate accommodation. It was further noted that a strained frictional relationship between the parties would be relevant to decide the eviction of daughter-in-law. Thus, the primary legal position that can be extrapolated from the aforesaid discussion is that the daughter-in-law indeed has a right to reside in the shared household perforce, and the onus is on the other party to establish that there is a fact so grave that the statutory right of the daughter-in-law has to be defeated.

63. However, unlike the case of *Ravneet Kaur (supra)*, in the case at hand, no such material that conclusively determines occurrence of any physical or mental cruelty is placed on record. Furthermore, on consideration of the factual scenario in both the cases, the subject property is relatively smaller in the case of *Ravneet Kaur (supra)*, whereas in the present case, the subject property has a sufficient space to live without interfering into each other.

CONCLUSION

64. It is a matter of record that the learned Trial Court has not taken into consideration the statutory rights of the appellant under the DV Act, despite such rights being specifically agitated, and has solely directed eviction based on the ownership of the suit property and on the license theory. Thus, this Court is satisfied that the eviction order by the learned Trial Court does not fall under the ambit of “*procedure established by law*” and it has taken a narrow view of the matter.

65. Given that the learned Trial Court has failed to consider the statutory rights of the appellant, the impugned judgment and decree dated 07.05.2019 and 16.05.2019, respectively, are hereby set aside.

66. In view of the above, the appeal stands allowed and is disposed of alongwith the pending application(s). No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 07, 2024/p