



2025:DHC:9960



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RFA 589/2015****SANGEETA**

.....Appellant

Through: Mr. Manish Kapoor, Adv.
versus**HITESH KUMAR**

.....Respondent

Through: Mr. Aman Dhyani, Ms. Kanchan
Semwal and Ms. Somya Gupta, Advs.**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****JUDGEMENT**

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13.11.2025

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908 (“CPC”), has been filed on behalf of the appellant/defendant/wife, i.e., Ms. Sangeeta, challenging the judgment and decree dated 26th May, 2015 (“**impugned judgment**”), passed by the Additional District Judge (“**ADJ**”)-06, West, Tis Hazari Courts, Delhi in *Suit No. 581/2014*, titled as “*Sh. Hitesh Kumar Versus Ms. Sangeeta*”.
2. By way of the said suit, the respondent/plaintiff/husband, i.e., Mr. Hitesh Kumar, had sought possession of the suit property, i.e., property bearing No. B-6, Shani Bazar Road, Uttam Nagar, New Delhi - 110059, *admeasuring 65 sq. yards*, along with damages and *mesne* profits.
3. The Trial Court, *vide* the impugned judgment, has granted a decree of possession of the suit property in favour of the respondent and has further awarded damages @ Rs. 3,000/- per month, from the date of institution of the suit till vacation of the suit property by the appellant.
4. The facts of the case are that the parties herein were earlier married to



each other, and their marriage was duly solemnized on 11th September, 2000. Out of the said wedlock, one son was born on 29th July, 2006. The plaintiff and the defendant lived together from 11th September, 2000 to 29th April, 2007.

5. The respondent had purchased the suit property from one Shri Harbans Lal, through a registered Sale Deed dated 09th August, 2005, executed in the name of respondent.

6. On account of certain differences between the parties, the respondent initiated divorce proceeding bearing *HMA No. 76/2010* under Section 13(1)(ia) of the Hindu Marriage Act, 1955, against the appellant, which ultimately led to divorce being granted *vide* judgment dated 21st July, 2010. Aggrieved thereby, the appellant preferred an appeal bearing *MAT. APP. No. 103/2010*, which was dismissed by the Division Bench of this Court *vide* judgment dated 18th February, 2013.

7. Thereafter, the *SLP (C) No. 17059/2013*, filed by the appellant herein before the Supreme Court, challenging the judgment of the Division Bench upholding the decree of divorce, was also dismissed by the Supreme Court *vide* order dated 11th March, 2016. Moreover, *Review Petition (C) No. 2869/2016*, filed by the appellant herein, was also dismissed by the Supreme Court *vide* order dated 19th July, 2016. Additionally, the appellant herein also filed a *Curative Petition (C) 53/2017* against the aforesaid order dated 19th July, 2016 passed in review petition, which was further dismissed by the Supreme Court *vide* order dated 21st February, 2017. Thus, the divorce granted in favour of the respondent has been upheld by the Supreme Court and has attained finality.

8. On account of the dispute between the parties, the respondent, who



was no longer living with the appellant, and had moved out of the suit property, sent a legal notice dated 17th August, 2010 to the appellant, requesting her to handover the vacant and peaceful possession of the suit property and also, to pay damages and *mesne* profits @ Rs. 8000/- per month for unauthorised use and occupation of the suit property. Since, the appellant did not handover the possession of the suit property, the respondent herein filed *Suit No. 581/2014* for recovery of possession, damages and *mesne* profits, against the appellant herein.

9. The Trial Court, on the pleadings of the parties, framed the following issues on 01st August, 2014:

“1. Whether plaintiff is entitled for possession of suit property bearing no. B-6, out of Khasra no. 74/19, situated at Village Hastal, Abadi known as Uttam Nagar, New Delhi-110059 presently known as B-6, Shani Bazar, Uttam Nagar? OPP

2. Whether the plaintiff is entitled for arrears of damages @ Rs. 8000/- P.M. w.e.f. September to October 2010? OPP

3. Whether the plaintiff is entitled for damages / mesne profit @ Rs. 8,000/- P.M. from the date of institution of present suit till its realization / possession is handed over? OPP

4. Whether defendant is co-owner in the suit property? OPD

5. Relief.”

10. Before the Trial Court, the respondent herein examined himself as *PW-1* and the appellant examined herself as *DW-1*.

11. As per the pleadings, documents and evidence on record, the facts that emerge are that the respondent purchased the suit property *vide* Sale Deed dated 09th August, 2005, which is duly registered with Sub-Registrar II, Janakpuri, Delhi *vide* Registration No. 22293, in additional Book No. 1, Volume No. 13073, from pages 96 to 102. The said Sale Deed has been



exhibited as *Ex. PW 1/2*.

12. The suit property was purchased for a sale consideration of Rs. 80,000/- (Rupees Eighty Thousand), for which, the respondent had taken a loan of Rs. 1,00,000/- (Rupees One Lakh) from the Delhi Co-operative Commercial Thrift and Credit Society Limited (“**Co-operative Society**”). The appellant, in her written statement filed before the Trial Court, has also admitted that the respondent herein had borrowed the said sum of Rs. 1,00,000/- (Rupees One Lakh) from the Co-operative Society and had purchased the property only for a sum of Rs. 80,000/- (Rupees Eighty Thousand) from the erstwhile owner. Thus, the fact which is clearly established is that the registered Sale Deed, *Ex. PW-1/2*, was executed only in favour of the respondent, and the suit property stands exclusively in the name of the respondent.

13. The registered Sale Deed, *Ex. PW-1/2*, *prima facie*, is presumed to be a valid legal document, having been executed lawfully. Further, the validity of the said document has not been challenged by the appellant herein. Reference may be made to the judgment passed in ***Prem Singh and Others Versus Birbal and Others***, (2006) 5 SCC 353, wherein, the Supreme Court has held as under:

“xxx xxx xxx

27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.

xxx xxx xxx”

(Emphasis Supplied)



14. Moreover, the appellant has admitted that the respondent is the owner of the suit property during the course of her cross-examination, wherein, she has stated as follows:

“xxx xxx xxx

*....I am not aware if the petitioner is the owner of the property bearing No. B-6, Shani Bazar. **It is correct that the petitioner is the owner of the property B-6 Shani Bazar,** vol. I gave money for the purchase of the said plot. It is wrong to suggest that I did not give any money for the purchase of the house....*

xxx xxx xxx”

(Emphasis Supplied)

15. Thus, from the evidence and documents on record, it is established that the respondent is the exclusive owner of the suit property by way of a duly registered Sale Deed. The appellant has admitted the fact of the Sale Deed being executed in favour of the respondent in the written statement filed before the Trial Court, in the following manner:

“xxx xxx xxx

*7. **That the contents of Para no.7 of the plaint are admitted upto the extent that the property was purchased from Shri Harbans Lal and the Sale Deed was executed on 09.08.2005, duly registered with the office of Sub-Registrar.** However, it is once again pertinent to mention here that the defendant herein being an Hindu wife performed her duties and not insisted to induct her name in the Sale Deed and despite the fact the property was purchased by joint funds, **the sale deed was only executed in the name of the plaintiff.***

xxx xxx xxx”

(Emphasis Supplied)

16. It has also been established that the loan amount of Rs. 1,00,000/- (Rupees One Lakh) had been taken by the respondent in his own name, which already stands fully re-paid. The admission by the appellant in this regard in the written statement filed before the Trial Court, reads as under:



“xxx xxx xxx

8. That the contents of Para no.8 of the plaint are wrong and denied. It is denied that the plaintiff is the absolute and exclusive owner of the suit property. It is further denied that the same has been purchased by him from his own funds and sources. It is submitted that the property was purchased by the joint funds and the contribution of the answering defendant in purchasing the property is already explained in the on-going paras. The same is not repeated here for the sake of brevity. However, it is admitted that the loan was obtained by the plaintiff. In this regard, it is submitted that the property purchased by the plaintiff and defendant was only of Rs.80,000/-. However, the plaintiff herein obtained a loan of Rs.1 Lakh from the Delhi Co operative Commercial Thrift & Credit Society Ltd. and also withdrawn a sum of Rs.2,50,000/- approx from the GPF which was deposited by the plaintiff and the defendant as per the scheme that the plaintiff will, deposit his salary in GPF to enable him to purchase the property and the defendant will look after all the expenditures. Hence indirectly the amount which was withdrawn by the plaintiff from the GPF was the joint property of both the plaintiff and the defendant. Furthermore, only a sum of Rs. 80000/- was spent by the plaintiff on the purchasing of the suit property and the rest of the Amount plaintiff had kept for himself. It is denied that the plaintiff has repaid the loan amount. It is submitted that the defendant had made the payment of some loan installment from her own account and the rest of the loan was also paid by both plaintiff and the defendant as they were living as husband and wife and they were sharing everything in common. It is further denied that the plaintiff after purchasing the property made the renovation and alteration in the suit property on his own account. It is submitted that the same had been done by jointly by the plaintiff and the defendant.

xxx xxx xxx”

(Emphasis Supplied)

17. The mere fact that the appellant has made certain payments towards the instalments for repayment of the loan amount or has been staying in the suit property, does not establish the joint ownership of the appellant in the suit property. Notably, as per the validly executed Sale Deed, the title of the suit property is recorded in the name of the respondent, which would consequently vest the ownership in his name. In this regard, it is pertinent to note that a Division Bench of this Court, in the case of **Mania Ghai Versus**



Nishant Chander, 2025 SCC OnLine Del 5928, while dealing with a matrimonial appeal, has held that claim on the husband's property must rest on the proof of meaningful and substantial contribution, and in the absence of such contribution, the ownership of the property rests with the titleholder of the property. Relevant paragraphs of the said judgment are reproduced as under:

“xxx xxx xxx

14. In fact, before the learned Family Court, the Appellant admitted that the subject property exclusively belongs to the Respondent. Her sole assertion was that, as a homemaker engaged in managerial, healthcare, and domestic responsibilities, she enabled the Respondent to pursue gainful employment and thereby directly contributed to the acquisition of family assets.

15. In the Appeal too, the following Pleadings make it apparent that there was nothing to substantiate the claim of the Appellant. Para 3.14 of the Appeal reads as follows:—

“3.14 That the Appellant has equal right over the suit property, as the Appellant being the wife, though she did not make any direct financial contribution, she played a vital role in managing the household chores and managing day-to-day affairs of the family without giving any inconvenience to the Respondent. The Appellant has sacrificed her dreams and spent her entire life towards her family and children.”

16. We are of the considered opinion that a matrimonial relationship is not merely a social arrangement but a legally recognised partnership that embodies the essence and fruits of marriage. It is a joint enterprise built on the common endeavour of both spouses, whose contributions, whether financial, emotional, or domestic, are integral to the stability and welfare of the family.

17. However, it must be clarified that mere residence of the wife in the matrimonial home, cannot, by itself, vest her with an indefeasible right of ownership over properties standing in the husband's name. A legitimate and enforceable claim to the husband's property must rest on proof of meaningful and



substantive contribution. In the absence of such proof, ownership remains with the titleholder, subject of course to statutory or equitable exceptions.

xxx xxx xxx”

(Emphasis Supplied)

18. The Trial Court has given a categorical finding on the basis of evidence and documents on record that the respondent had purchased the property from his own funds. The Trial Court has rightly come to the conclusion that the suit property was purchased out of loan amount taken by the respondent. This Court finds no reason not to accept the finding of the Trial Court that the instalments paid to the Co-operative Society by the appellant towards the repayment of some portion of the loan was based upon a mutual understanding between the appellant and the respondent, and cannot be termed as an amount paid as consideration towards purchase of the suit property. The findings of the Trial Court, in this regard, are reproduced as under:

“xxx xxx xxx

23. *The court has to answer the question whether the defendant has contributed towards the purchase of the suit property or not. Whether she is co-owner of the suit property or not. On the perusal of evidence on record it is clear from the document Ex. PW 1/2 that suit property was purchased for a sum of Rs. 80,000/-. The plaintiff has deposed in his examination in chief that he has spent the entire consideration amount from his own funds and after availing the loan facilities from Delhi Cooperative Commercial Thrift and Credit Society Ltd.*

24. *The defendant has admitted in her written statement that plaintiff has borrowed a sum of Rs. 1 Lac from the Delhi Cooperative Commercial Thrift and Credit Society Ltd. The defendant has also admitted in her WS that plaintiff has purchased the suit property only for a sum of Rs. 80,000/-.*

25. *So, the inference of evidence as on record can be safely drawn that it is the plaintiff who has paid a sum of Rs. 80,000/- to the erstwhile owner for the purchase of the suit property out*



of loan amount of Rs. 1 Lac. The defendant has paid the installment of Rs. 3,900/- on 06.01.2006, Rs. 9,520 on 07.02.2006 and Rs. 6,055 on 05.07.2006 from her own account to the Cooperative Society'. The amount which has been paid by the defendant to the Co-operative society is the installment against the loan as availed by the plaintiff. The installments which has been paid by the defendant to the Delhi Cooperative Commercial Thrift and Credit Society Ltd. may be a mutual understanding between the plaintiff and defendant but a fact which is certainly proved on record is that it was the plaintiff who has paid the consideration to the erstwhile owner at the time of purchasing of the suit property. The amount of three installments being paid by the defendant may be a loan from the defendant to the plaintiff or it may be for mutual understanding. This amount cannot be termed as the amount being paid as consideration. So, it is proved on record that it is the plaintiff who has purchased the suit property from his own funds.

26. Since the document Ex. PW1/2 i.e. sale deed is in the name of plaintiff so the defendant cannot claim any right in the suit property as co-owner. Even otherwise, the plea of the defendant is also barred under Benami Transaction Act.

27. One another defence which has been taken by the defendant is that she is residing in the suit property along with minor child of plaintiff as well as of her and she has right to reside in the suit property. Legally speaking, under the general law the legal rights in the suit property is of the plaintiff. The right to reside in the suit property may be availed by the defendant through legal remedy available to her. But here in the present suit she cannot take this plea because this court has to decide the legal right of the plaintiff.

28. So far as the plea of the defendant that there was mutual understanding between her and the plaintiff that she will spend money towards household expenditure and plaintiff will save more money to purchase immovable property is also not sustainable because it may be an internal arrangement between the plaintiff and defendant but certainly it cannot be presumed that the defendant has spent any money towards the purchase of the suit property because the suit property was purchased for a sum of Rs. 80,000/- and plaintiff has borrowed a sum of Rs. 1 Lac from Delhi Cooperative Commercial Thrift and Credit Society Ltd.

xxx xxx xxx”

(Emphasis Supplied)



19. This Court finds no error in the aforesaid findings recorded by the Trial Court, on the basis of the documents and evidence on record. The impugned judgment is based on cogent reasoning, and the findings therein cannot be said to be perverse or contrary to law. Accordingly, this Court sees no reason to interfere with the view taken by the Trial Court.

20. The appellant has further claimed her right over the property by raising the plea of “shared household”. However, the said plea is also not tenable and cannot be accepted. The concept of “shared household” has been explained by the Supreme Court in the case of *Prabha Tyagi Versus Kamlesh Devi*, (2022) 8 SCC 90, in the following manner:

“xxx xxx xxx

32. The expression “shared household” in relation to the definition of “domestic relationship” as per the definition in Section 2(s) 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 household 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”. The definition of shared household is thus an inclusive one.

xxx xxx xxx

36. It is necessary to appreciate the importance and significance of the right of every woman in a domestic relationship to reside in a shared household. As already noted, the expression “shared household” is expansively defined in Section 2(s) of the DV Act but the expression contained in Section 17, namely, “every woman in a domestic relationship shall have the right to reside in the shared household irrespective whether she has any right, title or beneficial interest in same”, requires an expansive interpretation. In this context, Harbhajan Singh v. Press Council of India [Harbhajan Singh v. Press Council of India, (2002) 3 SCC 722 : AIR 2002 SC 1351] could be relied upon wherein (at SCC p.



727, para 9), Cross on “Statutory Interpretation” (Third Edn., 1995) has been relied upon as follows:

“Thus, an “ordinary meaning” or “grammatical meaning” does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used.”

xxx xxx xxx

39. As already noted, a domestic relationship means a relationship between two persons who live or have at any point of time, lived together in a shared household. The relationship may be by : (i) consanguinity, (ii) marriage or, (iii) through a relationship in the nature of a marriage, (iv) adoption or (v) are family members living together as a joint family. The expression “domestic relationship” is a comprehensive one. Hence, every woman in a domestic relationship in whatever manner the said relationship may be founded as stated above has a right to reside in a shared household, whether or not she has any right, title or beneficial interest in the same. Thus, a daughter, sister, wife, mother, grandmother or great grandmother, daughter-in-law, mother-in-law or any woman having a relationship in the nature of marriage, an adopted daughter or any member of joint family has the right to reside in a shared household.

xxx xxx xxx”

(Emphasis Supplied)

21. Therefore, every woman in a domestic relationship has a right to reside in a “shared household”, whether or not she has any right, title or interest in the property. Nonetheless, the said right conferred to reside in the “shared household”, cannot be considered to be absolute in nature. The right to reside in a “shared household” is not indefeasible and is subject to lawful eviction or exclusion, as per due process. Thus, holding that the provision relating to right of a woman to reside in a “shared household” does not create a proprietary right in favour of such a woman, and does not include lawful civil proceedings, such as those for partition, possession or eviction,



if instituted in accordance with law, a Division Bench of this Court in the case of *Smita Jina Versus Amit Kumar Jina, 2025 SCC OnLine Del 5226*, has held as follows:

“xxx xxx xxx

19. The next issue that arises for consideration is the Appellant's plea that the suit property constitutes her matrimonial home and a “shared household” within the meaning of Section 17 of the PWDV Act. Section 17 of the PWDV Act reads as under:

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.

A plain reading of the provision confers upon every woman in a domestic relationship the right to reside in the shared household, irrespective of whether she has any right, title or beneficial interest in the same. However, this right to residence is not absolute in nature. Sub-section (2) of Section 17 of the PWDV Act clarifies that such a woman shall not be evicted or excluded from the shared household except in accordance with the procedure established by law. The combined reading of sub-sections (1) and (2) makes it clear that the right to reside in a shared household, though protected, is not indefeasible and is subject to lawful eviction or exclusion as per due process. The provision does not create a proprietary right in favour of the aggrieved person, nor does it preclude lawful civil proceedings such as those for partition, possession or eviction, if instituted in accordance with law.

xxx xxx xxx”

(Emphasis Supplied)

22. It is equally true that once a marriage stands dissolved by way of a valid decree of divorce, the domestic relationship between a husband and wife comes to an end. Consequently, the substratum upon which the right of residence is founded no longer survives, unless a contrary statutory right is



shown to persist. Thus, a Division Bench of this Court in the case of *Kuldeep Kaur Versus Swaran Kaur Through LR's*, 2025 SCC OnLine Del 5593, has held as follows:

“xxx xxx xxx”

26. *The Hon'ble Supreme Court in Satish Chander Ahuja v. Sneha Ahuja*, (2020) 11 SCC 770, clarified that a woman may assert her right of residence in a “shared household” even where the property is neither jointly owned nor rented by the husband, so long as she has lived there in a domestic relationship. The Court emphasized that the term “shared household” must receive a purposive interpretation to advance the object of the PWDV Act. Similarly, in *Prabha Tyagi v. Kamlesh Devi*, (2022) 8 SCC 90, it was held that the protection of residence may extend even beyond the husband's lifetime, provided the household was indeed a shared one during the subsistence of the relationship. These pronouncements underscore that the foundation of the right lies in the existence of a domestic relationship, and that such protection is not automatically extinguished by the absence of proprietary rights or by the demise of the husband.

27. Nonetheless, the statutory protections under Section 17 of the PWDV Act are firmly anchored in the existence of a “domestic relationship.” Section 2(f) of the PWDV Act defines a domestic relationship as 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 a relationship in the nature of marriage. Once the marriage stands dissolved by a valid decree of divorce, the domestic relationship comes to an end. Consequently, the substratum upon which the right of residence is founded no longer survives, unless a contrary statutory right is shown to persist.

xxx xxx xxx”

(Emphasis Supplied)

23. In the present case, the divorce decree was passed *vide* judgment dated 21st July, 2010, which has subsequently been upheld by the Supreme Court. Thus, the parties have been divorced since the year 2010 and the domestic relationship between the parties is no longer in existence. Accordingly, the respondent-husband was within his right to seek recovery of possession of the suit property, by validly instituting the suit proceedings



in accordance with law. This Court finds no error in the decree of possession passed in favour of the respondent-husband, which is based on the documents and evidence on record. Thus, the findings of the Trial Court on Issue nos. 1 and 4, are upheld.

24. As regards Issue nos. 2 and 3, relating to grant of *mesne* profits and damages, this Court takes into consideration the admission made by the respondent-husband that some portion of the loan amount, as taken by him for purchase of the suit property, was paid by the appellant herein.

25. Perusal of the evidence on record manifests that it is an admitted fact that the appellant had also paid instalments towards the repayment of some portion of the loan from her own account to the Co-operative Society. As per the case of the appellant-defendant in the Evidence Affidavit, *Ex. DW-1/A*, she, in particular, had paid instalments of Rs. 3,900/- on 06th January, 2006, Rs. 9,520/- on 07th February, 2006 and Rs. 6,055/- on 05th July, 2006 from her own account to the Co-operative Society, towards repayment of the loan amount. The factum of certain amount of loan having been paid by the appellant is also admitted by the respondent-plaintiff in his cross-examination, relevant portions of which, are extracted as below:

“xxx xxx xxx

.....*It is correct that I had taken a loan for the purpose for purchasing a house in which the respondent is residing from co-operative society as well as from my GPF account. **The amount of loan used to be paid from my account as well as from the account of respondent as well. All these things were being done with the consent of each other. It is correct that both of us have spent amount for the purchasing the house vol. She spent a little amount for paying the loan only. It is correct that Ex. PW-1/R-1 is the proof of joint account of me and the respondent**.....*

xxx xxx xxx”

(Emphasis Supplied)



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26. Perusal of the aforesaid deposition of the respondent makes it apparent that there is admission on the part of the respondent that the appellant had repaid some portion of the loan amount, which was used for purchase of the suit property. This Court further takes note of the nature of relationship between the parties, i.e., earlier, they were married and that the residence of the appellant in the suit property was permissive in nature, to begin with. Further, the appellant had been living in the suit property during the subsistence of the marriage between the parties, along with the respondent and their only son, before the respondent moved out of the suit property on account of differences between the parties.

27. Thus, considering all the afore-noted factors, the evidence on record, and in the overall conspectus of the facts and circumstances of the present case, the finding of the Trial Court as regards *mesne* profits/damages, cannot be sustained. Accordingly, the finding of the Trial Court with respect to Issue nos. 2 and 3, is hereby set aside.

28. The present appeal is partly allowed and disposed of, in the aforesaid terms.

**MINI PUSHKARNA
(JUDGE)**

NOVEMBER 13, 2025/KR