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CRP No. 2540 of 2



R-2 Minor.rep.by natural guardian R1

Mr.S.Kamalesh Kannan
& Mr.S.Saisathyajith (For R3)

Mr.M.Balaji (For R4)

ORDER

The Civil Revision Petition has been filed to set aside the judgment and decree dated 15.07.2022 passed by the Hon'ble VI Additional City Civil Court, Chennai in C.M.A.No.12 of 2021, confirming the fair and decreetal order dated 22.12.2020 passed by the Hon'ble XV Assistant City Civil Court, Chennai in I.A.No.2 of 2020 in O.S.No.4545 of 2020.

2. Heard Mr.Mr.V.Raghavachari, learned Senior Counsel, for Mr.D.Shanmuganathan and Mr.C.Harsharaj, learned counsel, for the petitioner and Mr.N.Jothi, learned Senior Counsel, for Mr.B.Balaji, learned counsel for respondents 1 and 2; Mr.S.Kamalesh Kannan, learned counsel, for Mr.S.Saisathyajith, learned counsel for the 3rd respondent and Mr.M.Balaji, learned counsel for the 4th respondent.

3. The learned Senior Counsel appearing for the revision petitioner would submit that the first respondent herein had instituted a suit seeking permanent injunction as against the petitioner and respondents 3 and 4.



4. He would submit that the third respondent is his brother and the fourth respondent is his mother, and the property for which an injunction was sought for belonged to him. He would submit that the said suit had been filed by the first and second respondents, who are the wife and daughter of the third respondent, and hence they are his sister-in-law and niece. He would submit that in the said suit, an ad interim injunction was sought for, which came to be negated. Aggrieved by the same, the first respondent had preferred an appeal, and the Appellate Court, erroneously holding that the first and second respondents are entitled for protection of their shared household interest in the suit property, had granted the injunction mainly on the principles envisaged under the D.V.C Act.

5. He would further submit that the first and third respondents were married and after their marriage, they had been living in the suit schedule property along with the father and mother of the petitioner. As the relationship was not conducive, the father of the petitioner, in an attempt to diffuse the situation, had rented out a premises and the first and third respondents moved to the said premises and were living there. He would submit that even there, the first respondent had been creating nuisance, and that the first respondent had also been further educated by the petitioner's father and mother and had secured a lucrative job in the Education Department.



6. When that be so, the father of the petitioner, who had been taking care of the rents payable for the said residence, had died, the rents were initially taken care of by the petitioner. However, due to the attitude of the respondents 1 and 3, the owner of the property had directed them to vacate the premises.

7. He would submit that the respondents had vacated the premises and moved out to an unknown place, but had been attempted to trespass into the property of the petitioner, which had been settled in his favour by his father. The said attempts made by the first respondent had led to police complaints on either side, and immediately within a month, the present suit had been filed, claiming that she had been in possession of the property and is being attempted to be removed. He would further submit that after the discord between the family and the first and third respondents have settled outside the house arranged by his father, they had never lived in the suit property so as to claim any shared household right in the same, and the attempt by the first respondent is nothing, but a clear attempt to arm-twist the family to act as per her dictates.

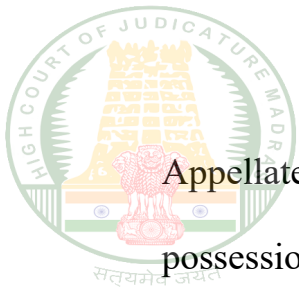
8. He would further submit that the first respondent had also filed D.V.C. proceedings in which the petitioner and his wife had also been added as parties, and by orders of the D.V.C. Court, they were held to be parties who are not necessary to the prosecution of the case and no notice was sent to them. He would further submit that after the application for injunction was dismissed, the



first respondent had also taken out an interim application in I.A. No.04 of 2021, seeking for grant of right of residence in the property belonging to the petitioner. While the said application was pending, the Appellate Court had reversed the order refusing the injunction.

9. He would submit that the trial Court had given a specific finding that the first respondent was not in possession of the property, and such finding had not been disturbed by the Appellate Court. But on the other hand, the Appellate Court had proceeded to reason its order based upon the shared household right, which was available with the first respondent as she had lived in the said premises. He would submit that an order of injunction could have been granted only if there is at least an iota of evidence to show that the first respondent had been in possession of the suit property in a manner known to law.

10. He would draw attention of this Court to the memo filed by the first respondent after the order of the Appellate Court came to be passed. Drawing attention to the said memo, he would submit that the first respondent had categorically indicated her intention to move into the suit schedule property on 30.07.2022, which itself would mean that the first respondent had never been staying in the said property in whatever right she claims. Having failed to prove that she had been in possession of the suit property, and having admitted that she intended to move into the suit schedule property only after the order of the



Appellate Authority, she cannot now claim that she continues to be in possession of the property for grant of an injunction in her favour.

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11. He would submit that the first respondent cannot be allowed to approbate and reprobate the facts to contend that she is in possession of the property for the purpose of obtaining injunction. That apart, he would submit that even assuming that she has a right of residence, the same can only be invoked as against the third respondent, who is her husband, and cannot be invoked against the suit property over which the petitioner alone has an independent right by virtue of the settlement deed executed in his favour by his father. He would submit that the first respondent had not challenged the settlement deed and, in any event, she would not have a right to challenge such a settlement executed by the petitioner's father in respect of property, which was independently purchased by him out of his own income.

12. The learned Senior Counsel would further submit that this is a clear attempt made by the first respondent to grab the property belonging to the petitioner and has a threat of D.V.C Act. Hence, he seeks indulgence of this Court.

13. The learned counsel appearing for the third respondent would also support the contentions raised by the learned Senior Counsel appearing for the



petitioner. He would submit that the first respondent had been harassing the third respondent both mentally and physically and had thrown him out of the matrimonial home as the first respondent, being financially well placed and is being employed in the Education Department. He would submit that the same was because of the conduct of his father, who had made the first respondent studied further and was also instrumental in securing her a position in the Education Department. He would further submit that the property had been allotted to his father by the Housing Board in the year 1983, and his father had consciously executed the settlement deed in favour of the petitioner, particularly in view of the conduct of the first respondent. The conduct of the first respondent had, in fact, disinherited him from the property belonging to his father, and his father had taken a conscious decision in executing the settlement deed in favour of his brother, who is the petitioner herein. He would further submit that from the year 2015 onwards, neither him nor the first respondent had ever lived in the suit schedule premises, and that the first respondent is now attempting to harass the family members.

14. Countering the said arguments, Mr.N.Jothi, learned Senior Counsel appearing for the respondents 1 and 2, at the outset, would submit that there is no dispute with regard to the relationship between the parties. He would submit that the first and third respondents were married and out of the wedlock, the second respondent was born. He would further submit that after the marriage



took place, the 4th respondent/mother-in-law had started to behave indifferently and had been subjecting the first respondent to both physical and mental cruelty, and that the third respondent was turning deaf to the cruelty meted out to the first respondent. He would further submit that the third respondent did not have a regular income and was always glued to the T.V without taking care of the first respondent and the second respondent.

15. He would submit that as the relationship had gone beyond bounds, the father-in-law, namely the father of the petitioner and the third respondent, advised the first respondent to take a house on rent and had advised the first and third respondents to reside in the said rented house, and he undertook to pay the monthly rents. After the demise of the father-in-law, the petitioner had paid the rent, but discontinued to pay the monthly rent from February 2020, and the first respondent had found it difficult to pay the monthly rent. In that scenario, the third respondent left the matrimonial home and started to live with his mother, who is living in the first floor of the suit schedule property, while the petitioner is living with his wife in the ground floor thereof.

16. Having no other option, the first respondent, along with the second respondent, moved to the first floor of the suit schedule property, where they were not permitted to reside, and were constrained to pitch a tent on the terrace of the first floor and reside there. They were not even allowed to use the



restrooms, and the gate was always kept locked and the dog unleashed, thereby making ingress and egress to the property difficult for them. Police complaints had also been filed in this regard. However, according to the first respondent, the petitioner and his wife, being influential, were threatening the lives of the first and second respondents.

17. He would submit that the third respondent has an equal right over the suit schedule property along with the petitioner, and therefore the first respondent has a right in the shared household over the suit schedule property. He would submit that the object of the Protection of Women from Domestic Violence Act is to ensure that a female is not subjected to domestic violence, either physical or mental, and also to protect her residential right in the matrimonial home or shared household, even though she does not have a title or ownership over such household.

18. Drawing attention to the definition of “domestic relationship”, he would submit that “shared household” would include not only the place where the parties presently reside but also a place where they had lived at any point of time in such domestic relationship, and would also include premises where family members had lived together as a joint family. He would submit that since the first respondent had lived in the matrimonial home after marriage and claims to have been dispossessed therefrom, giving rise to the cause of action, she



would be entitled to claim right of residence in the suit schedule property.

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19. In support of the said contentions, the learned Senior Counsel for the respondents 1 and 2, had also relied upon the following judgments:

(1) In the case of *Vandhana Vs. T.Srikanth and Krishnamachari*, reported in **2007 (5) CTC 679**;

(2) In the case of *M.Muruganandam and another Vs. M.Megala*, reported in **2011 (1) CTC 841**;

(3) In the case of *Sudhannya Vs. Umasankar Valsan, made in W.P.C.No.15331 of 2010 dated 07.09.2012 (Kerala High Court)*;

(4) In the case of *Pritiben Jiteshbhai Upadhyay Vs. Jiteshbhai Virendrabhai Upadhyay and Ors.*, reported in **2012 Criminal Law Journal 1187 (Gujarat High Court)**;

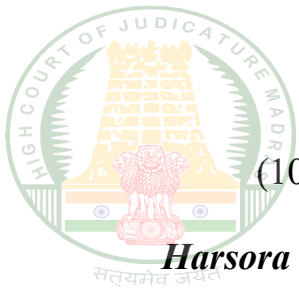
(5) In the case of *Saraswathy Vs. Babu*, reported in **(2014) 3 SCC 712**;

(6) In the case of *Smt.Sabana alias Chand Bai & Anr., Vs. Mohd.Talib Ali & Anr.*, reported in **2014 Cri.Law Journal 866 (Rajasthan High Court)**;

(7) In the case of *Shalini Vs. Kishor and others.*, reported in **(2015) 11 SCC 718**;

(8) In the case of *Krishna Bhattacharjee Vs. Sarathi Choudhury and another*, reported in **(2016) 2 SCC 705**;

(9) In the case of *Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and others*, reported in **2016 (4) CTC 314**;



(10) In the case of ***Hiral P.Harsora and others Vs. Kusum Narottamdas***

Harsora and others, reported in ***(2016) 10 SCC 165***;

(11) In the case of ***Vaishali Abhimanyu Joshi Vs. Nanasaheb Gopal***

Joshi, reported in ***(2017) 14 SCC 373***;

(12) In the case of ***Manish Jain Vs. Akanksha Jain***, reported in ***(2017)***

15 SCC 801;

(13) In the case of ***Manju Gupta Vs. Pankaj Gupta & Another***, reported

in ***2018 SCC ONLINE DEL 11337***;

(14) In the case of ***Kiran Patidar Vs. Sanjay Patidar and others***, reported

in ***(2020) 15 SCC 646***;

(15) In the case of ***Satish Chander Ahuja Vs. Sneha Ahuja***, reported in

(2021) 1 SCC 414;

(16) In the case of ***Chellam 2.S.Sowmya, Minor rep.by Mother and***

Natural Guardian Chellam Vs. 1.N.Srinivasan, 2.N.Sivakumar 3.Kaveri

Ammal, reported in ***2022(1) CTC 852***;

(17) In the case of ***S.Amalraj Vs. State.rep.by Inspector of Police***,

reported in ***2023(4) CTC 517***.

20. In reply, the learned Senior Counsel appearing on behalf of the petitioner, also relying upon a judgment of this Court in the case of ***Chellam Vs. N.Srinivasan*** reported in ***2022 1 CTC 852***, would submit that the judgment arose between the parties in a Transfer C.M.P. filed by the first and second

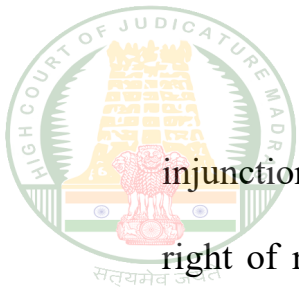


respondents as against the petitioner and respondents 2, 3 and 4. He would submit that a categorical finding had been given by the learned Judge that there is no relationship between the petitioner and the first respondent so as to claim that there exists a familial dispute between the parties. The learned Judge had also given a categorical finding that the property was purchased by the petitioner's father out of his own funds and cannot in any manner be said to be joint family property. Hence, he seeks indulgence of this Court.

21. I have considered the submissions made by the learned counsels appearing on behalf of the respective parties and have perused the materials available on record.

22. It is not in dispute that the matrimonial relationship between the first and third respondents did not fructify well except for the birth of the second respondent. Disputes had arisen between them, which had led to filing of an divorce petition, which is pending pending consideration before the Family Court, apart from D.V.C. proceedings pending before the designated Court, and the instant suit filed by the first and second respondents seeking for a permanent injunction, from dispossessing them without the due process process of law.

23. The trial Court had given a categorical finding that the first and second respondents were not in possession of the suit property for grant of an



injunction. However, the Appellate Court, considering the fact that they had a right of residence in the shared household, had granted injunction. It is to be noted that the Appellate Court had not disturbed the finding of fact rendered by the trial Court that the first and second respondents were not in possession. Detailed arguments were advanced by the learned Senior Counsel appearing on behalf of the petitioner and the learned counsel for the first respondent with regard to the right of the respondents to continue in possession.

24. In this context, it is to be noted that in the present revision, this Court is dealing with orders, arising out of a suit for bare injunction. The issue to be decided is as to whether the respondents 1 and 2 are in possession of the property. A finding that could be given by this Court on the same and the right of the first respondent, if any, to continue in possession would have a direct bearing on the suit out of which the present revision arises.

25. This Court can only come to a *prima facie* conclusion regarding balance of convenience and irreparable loss to the parties, while considering grant of an interim order, particularly one in the nature of injunction as sought for by the first respondent.

26. The first respondent had also instituted D.V.C. proceedings, wherein the designated Court had refused to issue notice to the petitioner and the fourth

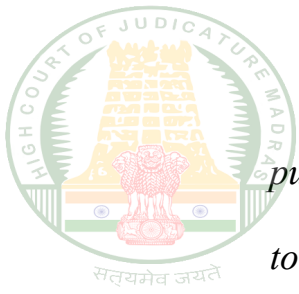


respondent. No challenge to the said refusal had been taken out by the first respondent. After the dismissal of an injunction application, the first respondent had also taken out an interim application seeking residential right as available under the provisions of the D.V.C. Act. It is now settled that similar relief, which could be sought under the D.V.C. Act, can also be sought in a suit before the competent Civil Court.

27. The first respondent, who had filed the said application pending the appeal, which was allowed in her favour and is the subject matter of the present revision petition, had filed a memo before the trial Court on 26.07.2022, which had been heavily relied upon by the petitioner to claim that she had never been in possession of the suit property. For better appreciation, the memo that had been filed is extracted hereunder:

MEMO FILED BY THE PLAINTIFF

“The plaintiff humbly submit that C.M.A.No.12 of 2021 filed by the plaintiff against the impugned order dated 22.12.2020 passed by this Hon’ble Court in I.A.No.2 of 2020 in O.S.No.4545 of 2020, stands allowed by the decretal and fair order passed by the Hon’ble VI Additional Judge, City Civil Court dated 15.07.2022. Hence, the plaintiffs are entitled to have their right of residence in the schedule house property. In



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pursuance of the Appellate Courts orders, the plaintiffs intend to move into the suit schedule property on 30.07.2022.

Furthermore, the plaintiff withdraws I.A.No.4 of 2021 in O.S.No.4545 of 2021 since C.M.A was allowed by the Hon'ble Appellate Court.

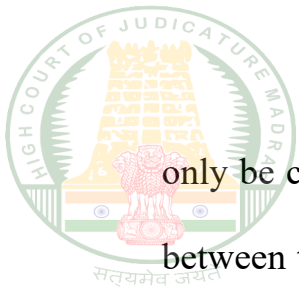
Dated at Chennai on this 26th day of July, 2022."

28. A reading of the said memo would indicate that the first respondent, in categorical and unequivocal terms, had expressed her intention to move into the suit schedule property on 30.07.2022, which would mean that as on 26.07.2022, namely the date of filing of the memo, she was not in occupation of the suit schedule property.

29. It was also brought on record before this Court that both the H.M.O.P. and the suit are at an advanced stage of disposal.

30. In that context, this Court is of the considered view that the parties could maintain *status quo* till disposal of the H.M.O.P. as well as the instant suit.

31. The reason for arriving at such conclusion is that the right of residence under the D.V.C. Act cannot be continued in perpetuity and could



only be continued till a decision is made with regard to the marital relationship between the parties, for which provisions are available under the Family Courts Act for protection of the rights of the parties by grant of alimony, maintenance and other incidental reliefs.

32. For the aforesaid reasons and the facts recorded above, the parties are directed to maintain *status quo* till the disposal of the suit in O.S.No.4545 of 2021.

33. This Court also requests the learned XV Assistant City Civil Court, Chennai, to dispose of the suit in O.S.No.4545 of 2020 as expeditiously as possible, but however not later than three (3) months from the date of receipt of a copy of this order. Similarly, the II Additional Judge, Family Court, Chennai, is also directed to dispose of H.M.O.P.No.3081 of 2020 as expeditiously as possible.

34. With the above said directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

05-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The XV Assistant City Civil Court, Chennai.
2. The VI Additional City Civil Court, Chennai.
3. The II Additional Family Court, Chennai.



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K.KUMARESH BABU, J.

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