$~11

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th August, 2018

\+ Crl.M.C. 2082/2016 & Crl.M.A. 8823-24/2016

MANJU GUPTA ..... Petitioner

Through: Mr. Bharat Bhushan Bhatia & Mr. Vivek Singh, Advs.

versus

PANKAJ GUPTA & ANR ..... Respondents

Through: Ms. Vijay Lakshmi, Adv. for R-1.

Mr. Saurabh Bhargav, Mr. Khoda Apa & Ms. Shwetha Sharma, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was married to Pankaj Gupta (the first respondent) on 06.12.1985 and they have a male child Pranav Gupta as part of family. Concededly, the parties had lived in a portion of property bearing no. 47/35, Punjabi Bagh West, New Delhi for some time. Concededly again, the marriage ran into rough weather and this resulted in an estranged relationship and matrimonial dispute, eventually resulting in a petition (CC No. 66/1/2014) being filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 by the petitioner impleading the said husband Pankaj Gupta and

his father Prem Prakash Gupta (the second respondent herein). In the said proceedings, the petitioner also claimed right of residence, referring in this context to the above-mentioned property, describing it as the "shared household". The property in question concededly stands in the name of the second respondent (the father-in-law).

2. The Metropolitan Magistrate, by order dated 01.03.2016, declined to grant any relief in the nature of right to residence in respect of a portion in the above-mentioned property, referring in this context to the litigation in various cases, primarily one in the civil court. The petitioner challenged the said order in the court of Sessions by Crl. Appeal No. 14/2016 which was dismissed by order dated 21.04.2016.

3. Feeling aggrieved, the present petition was filed invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Article 227 of the Constitution of India. The petitioner, reiterating her case, states that she has a right to continue to reside in the portion of the above-mentioned property notwithstanding the fact that it stands in the name of the father-in-law (second respondent), asserting that she has been permitted the use and occupation of room in the said property by the second respondent by way of a "family arrangement" and that further in light of the fact that her husband (the first respondent) would have a right of succession in the property.

4. The short and simple issue which needs to be addressed is as to whether the property in question or any portion thereof can be

described in the given facts and circumstances to be a "shared household".

5. The expression "*shared household*" is described in the Protection of Women from Domestic Violence Act, 2005 by Section 2(s) as under:-

> "*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 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".*

6. It is conceded at the bar that the right of residence under the above-mentioned special legislation can be claimed and pressed only against the husband and not against the father. It is inherent in the above-mentioned definition of "shared household" that the person against whom the right of residence is claimed qua the household described as such should have a right, title or interest therein. In this view, the right of the petitioner to continue to live in or enjoy the occupation of a portion of the above-mentioned property is only through her husband i.e. the first respondent.

7. In above context, it is pertinent to note, as has also been the basis of the decision of the two courts below, that the first respondent had been proceeded against by the second respondent by civil suit no. 210/2001 seeking relief in the nature of decree of possession/eviction in which the first respondent was the defendant. The said suit was decreed by the court of Additional District Judge in favour of the second respondent on 31.08.2002. It is clear from the material on record to confirm that the first respondent, as the judgment debtor in the said decree, had challenged it by regular first appeal no. 792/2002 before this Court but the said appeal was dismissed by judgment dated 30.11.2011. It is also conceded that the first respondent had also preferred SLP (Civil) 19361/2012 before the Supreme Court, but the same was dismissed by order dated 24.07.2012.

8. On the other hand, the first respondent had brought a civil suit (no. 2653/95) seeking relief in the nature of decree of partition of the above-mentioned property. The said suit came to be dismissed by judgment dated 25.07.2012, no appeal having been preferred against the said decision, it having consequently become final and binding between the parties.

9. In 2011, the petitioner as the next friend of her son Pranav Gupta had instituted another suit – CS (OS) no. 598/2011 – for the relief of partition against the second respondent in respect of the said very property. The said civil suit was dismissed by order dated 06.05.2013. An appeal (RFA 102/2013) was preferred against the said decision, it was withdrawn and dismissed accordingly by order dated

03.02.2016. The matter, as far as the claim of the grandson against the second respondent is concerned, has rested there.

10. Though the second respondent has taken out execution proceedings (execution case 15/2013) pursuant to the decree of possession in civil suit no. 210/2001, the same have been pending in the concerned forum. It appears that the petitioner had filed some application in the nature of objections seeking stay of the execution proceedings which application/objection was dismissed by order dated 24.08.2013. The said order was also challenged in the revisional forum by Rev. Petition no. 155/2013, but it was withdrawn and dismissed accordingly on 19.08.2014.

11. Against the above backdrop, the contentions raised by the petitioner that she has a right to continue to live in a portion of the above-mentioned property cannot survive. The claim of her husband through whom she claims the right of residence in his property has already been repelled by the civil court twice, once in the partition suit and second time in the suit for partition brought by the first respondent himself. The claim brought through her son has already been rejected, the suit for partition having already been dismissed.

12. It is clear from the averments of the petitioner herself, she has been permitted to use a portion of the property by the second respondent. This averment may be assumed to be correct. But, then it is clear from the averment itself that what was allowed was only a permissive user. The petitioner cannot force herself on the owner of

the property, particularly when she has no vested or legal right to claim residence in his property.

13. The judgments reported as *Navneet Arora vs. Surender Kaur & Ors.* in FAO (OS 196/2014, decided by a division bench of this Court on 10.09.2014, and *Smt. Preeti Satija vs. Smt. Raj Kumari & Anr.* in RFA (OS) 24/2012, decided by another division bench of this Court on 15.01.2014, do not assist the petitioner in the present case in view of the ruling of the Supreme Court in *S.R. Batra vs. Taruna Batra (2007) 3 SCC 169*, particularly, the observations in para 29 of which read as under:-

> "*As regards Sec. 17 (1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant no.2, mother of Amit Batra. Hence it cannot be called a 'shared household'."*

14. The petition and the applications filed therewith, therefore, are dismissed.

15. The interim orders are vacated.

R.K.GAUBA, J.

AUGUST 30, 2018/nk