

112

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 2230 of 2020

Date of Decision: 24.09.2020

Swati

-Petitioner

Vs

Shakuntala

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mohan Singla, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.

The case has been taken up for hearing through video-conferencing.

Petitioner has assailed the order dated 06.08.2020 passed by Additional District Judge, Sonipat vide which the petitioner was restrained from entering in the matrimonial home.

Plaintiff-respondent filed a suit along with an application under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of interim injunction against the defendant-present petitioner.

Plaintiff-respondent has averred that the defendant has threatened to dis-possess the plaintiff and her husband

from the suit property. Plaintiff-respondent is the owner of the suit property on the strength of registered sale deed dated 11.01.2017. Parties are involved in different criminal cases.

Marriage of the defendant-petitioner was solemnized with the son of the respondent on 30.04.2012. Petitioner has two children, but she is having matrimonial dispute with her husband i.e. son of the plaintiff-respondent. Plaintiff-respondent has pleaded that the defendant-petitioner has threatened to commit suicide and implicate the plaintiff-respondent and her family members in several false cases.

The trial Court vide order dated 04.07.2020 dismissed the application for interim injunction by observing that the house is a shared house under the Domestic Violence Act and the defendant-petitioner cannot be forcibly evicted from the same as her belongings are still lying there.

Feeling aggrieved against the order dated 04.07.2020 passed by Additional Civil Judge (Senior Division), Sonipat, plaintiff-respondent filed a civil miscellaneous appeal before the Additional District Judge, Sonipat.

The lower Appellate Court took cognizance of the issue on the strength of case law viz **Krishan Kumar vs Navneet, (2018) 2 RCR (Criminal) 219, Sunita vs Sat Narain, (2017) AIR (Punjab) 220, S.R. Batra and another vs Smt.**

Taruna Batra, (2007) 3 SCC 169, Sardara Ram vs Paramjit Kaur, (2018) 5 RCR (Criminal) 973 and Varinder Kaur vs Jitender Kumar, (2016) 4 RCR (Criminal) 861.

Evidently, the petitioner is the owner of the suit property having purchased the same vide registered sale deed dated 11.01.2017.

Learned counsel for the petitioner relies upon the documents viz phone bills, tax receipts of Municipal Corporation, documents pertaining to loan of DHFL etc. to contend that the property is in the name of husband of the petitioner. In the criminal case, a compromise was effected on 29.02.2020 in which plaintiff and her family members agreed that the defendant along with her husband and children would live on the first floor of the suit property, but on 01.03.2020, the defendant was abused and mis-behaved by the plaintiff and family members for which a complaint was made to the police. Thereafter, on 04.03.2020, defendant went to her parental house.

Learned counsel for the petitioner claimed the house to be a shared house. The controversy in respect of self-acquired property owned by parents-in-law has been settled by the Hon'ble Apex Court in **S.R. Batra and another vs Smt. Taruna Batra, (2007) 3 SCC 169.**

Husband of the petitioner is still alive. He has not been arrayed as party respondent in the present case. Allegations of the petitioner in respect of phone bills, tax receipts of Municipal Corporation and loan amount paid by her husband could have been established by the husband alone. Plaintiff is exclusive owner of the property in question being a self-acquired property.

In view of **Krishan Kumar vs Navneet's case (supra)** and **Varinder Kaur vs Jitender Kumar's case (supra)**, the parents-in-law of the self-acquired property are the real owners and the daughter-in-law has no right to claim it as shared house and has no right of residence in the self-acquired property of parents-in-law. The daughter-in-law cannot be allowed to live in the house of parents-in-law against their wishes.

While relying upon **S.R. Batra and another vs Smt. Taruna Batra, 2007(1) RCR (Criminal) 403** in **Suman vs Tulsi Ram 2015(1) RCR (Civil) 304**, it was held that daughter-in-law does not have any right of protection under Section 17 of the Act for the purpose of living in the house belonging to parents-in-law which is exclusively owned by them.

In **Hamina Kang vs District Magistrate (U.T.) Chandigarh and others, 2016(1) RCR (Civil) 976**, this Court

while interpreting the provisions of the Domestic Violence Act held in the following manners:-

“44. The Hon'ble Supreme Court in S.R. Batra v. Taruna Batra, (2007) 3 SCC 169, held that the wife could claim the right of residence in terms of Section 17(1) of the Act, only 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. It was held that the house which was the exclusive property of the mother-in-law could not be said to be a `shared household' entitling the daughter-in-law to claim a right of residence therein.

The Hon'ble Court negated the contention on behalf of the daughter-in-law that as per the definition, `shared household' would include a household where the aggrieved person lives or at any stage had lived in a domestic relationship. It was observed that if such submission is accepted it would lead to chaos, because in that event every place where the husband and wife had resided would be a shared household. The Hon'ble Court also observed that the definition of 'shared household' in Section 2(s) appears to be the result of clumsy drafting and that it had given it a sensible interpretation.

The pertinent observations of the Hon'ble Court are as under:

"24. Learned counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

25. We cannot agree with this submission.

26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. If

the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1) (f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's (sic) in-laws or other relatives.

29. As regards Section 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 2, mother of Amit Batra. Hence it cannot be called a "shared household".

30. No doubt, the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

*46. This decision has been reiterated by the Hon'ble Supreme Court in *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel*, (2008) 4 SCC 649. In this case, the Hon'ble Supreme Court adverted to the legal position that in terms of Sections 18 and 19 of the Hindu Adoption and Maintenance Act, 1956, liability in regard to maintenance of wife is upon her husband and only on his death does it become the liability of the father-in-law. In the context of the 2005 Act, it was observed that it*

provided a higher right in favour of wife, which extends to the joint properties in which the husband has a share. It was held that an order of maintenance against the husband can be executed only against the husband and his properties but not against the property of her mother-in-law.

The relevant observations in this context are as under:

"27. The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share.

28. Interpreting the provisions of the Domestic Violence Act this Court in S.R. Batra v. Taruna Batra held that even a wife could not claim a right of residence in the property belonging to her mother-in-law, stating: (SCC p. 173, paras 17-19)

"17. There is no such law in India like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

18. Here, the house in question belongs to the mother-in-law of Smt Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt Taruna Batra cannot claim any right to live in the said house.

19. Appellant 2, the mother-in-law of Smt Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.

47. Following these decisions, different High Courts have ruled that a residence belonging to the mother-in-law or father-in-law would not be a 'shared household' within the meaning of Section 2 (s) of the 2005 Act and that a daughter-in-law would have no right of residence therein in terms of Section 17(1) of the 2005 Act. Following cases may be usefully referred to : Ekta Arora vs. Ajay Arora and another, 2016(1) RCR (Criminal) 39, 2015 AIR (Delhi) 180, V.P.Anuradha vs. S.Sugantha alias Suganthi and others, 2015(4) RCR (Criminal) 631 and A.R.Hashir and others vs. Shima and others,

2015(5) RCR (Civil) 35.

48. The Delhi High Court in two decisions which were relied upon by the Ld. Counsel for the petitioner has distinguished the aforementioned decisions of the Hon'ble Supreme in the matter of the restricted meaning given to 'shared household' as not including a property wherein the husband does not have any right, title or interest. In Navneet Arora's case (supra), the decision of the Hon'ble Supreme Court in S. R. Batra's case was explained as having been rendered in the fact situation obtaining therein where Taruna Batra (the aggrieved daughter-in-law) and her husband Amit Batra had been residing on the first floor, whereas the mother-in-law, (the owner of the house in question) along with her husband were residing on the ground floor. The Court held that they were not residing as members of a 'shared household' as understood in the legalistic sense as the residence and kitchen were separate. It was concluded that S.R. Batra's case is only an authority for the proposition that under the 2005 Act, a wife is precluded from claiming the right of residence in a premises, not owned by the husband, where she has lived with her husband separately, but not as a member of the 'joint family' along with the relatives of the husband who own the premises. But if the couple live with the relatives of the husband as members of 'joint family' along with the relatives of the husband in premises owned by such relatives of the husband, then such residence would fall within the meaning of 'shared household' giving the wife the right of residence therein irrespective of the fact whether her husband has any right, title or interest therein. It was explained that living as 'joint family' meant living under one roof and having a common kitchen.

49. In Preeti Satija's case (supra), also the decisions in S.R. Batra and Vimalben Ajitbhai Patel, were held to have been rendered in a different context and it was observed that these decisions did not decide the question that despite the definition of 'shared household' enabling a wife the right of residence in premises not owned by the husband, she could not claim to live there.

57. Similarly, the judgment in Natasha Sood vs Chandigarh Administration, 2016 (1) RCR (Civil) 336: 2015 (4) PLR 521, is distinguishable. In that case, there was no pleading or evidence that the

house in question belonged to the father-in-law or mother-in-law. It was held that as the question as to whether the house in question is a 'shared household' or not, was yet to be determined, hence the order for ejection passed under the 2007 Act was quashed. In the present case it has already been concluded that the house in question is not 'shared household' qua the petitioner."

For the reasons recorded hereinabove, I find that the petitioner has no right of residence in the house in question under Section 17 of the Act for the purpose of living in the self-acquired property of the plaintiff-respondent.

In view of above, I do not find any justification to differ with the order dated 06.08.2020 passed by Additional District Judge, Sonapat.

This revision petition is accordingly, dismissed.

24.09.2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No