

Savitri Devi Vs. Manoj Kumar and anr

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Court : Delhi

Decided On : Sep-18-2013

Judge : Jayant Nath

Appellant : Savitri Devi

Respondent : Manoj Kumar and anr

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on :

12. 08.2013 Judgment Pronounced on:

18. 09.2013 + CS(OS) 910/2011 SAVITRI DEVI Through Plaintiff Mr.Biswajit Swain, Advocate with Mr.Vikram Singh, Advocate Versus MAnot KUMAR & ANR Through Defendant Mr.Rakesh Dahiya, Advocate for D-2 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

1. The present suit is filed by the plaintiff for possession of the property being 1st Floor, House not T-279, Indira Colony, Narela, Delhi as per the rough site plan, Annexure P 1 and for mandatory injunction. Defendant No.1 is the son and defendant No.2 is the daughter-in-law of the plaintiff. As per the plaint, both the defendants are illegally and unauthorisedly occupying the first floor of the suit property comprising of four rooms, open space, one kitchen and two bathrooms and balconies.

2. It is stated that the father-in-law of the plaintiff executed a Will dated 15.05.2006 in favour of the plaintiff whereby he bequeathed the suit property at Narela admeasuring 217 sq. yards and agricultural and residential property situated at village Singhu, Delhi. The father-in-law expired on 01.01.2007 and subsequent thereto, the plaintiff became absolute owner of the suit property. The plaintiff with her husband and children is residing at the ground floor of the suit property.

3. The plaint further states that the marriage of defendants No.1 and 2 was solemnized on 23.02.2008. After the marriage, the plaintiff permitted user of first floor accommodation (suit property) to the defendants for their residential purpose. Thereafter, defendant No.2 got employment as a clerk in the District & Sessions Court at Sonapat. On account of irreconcilable differences between the defendants, defendant No.1 filed a petition for divorce seeking divorce from defendant No.2. It is stated that defendant No.2, thereafter, lodged a false and frivolous FIR being FIR No.21 dated 04.09.2010 in Mahila Police Station, Sonapat against defendant No.1 and also falsely implicated the plaintiff and her husband. The husband of the plaintiff was arrested and released from custody after about two weeks. The plaintiff was granted anticipatory bail. Defendant No.2 has also filed a case under the provisions of Protection of Women from Domestic Violence Act, 2005 against the plaintiff and her husband. Hence, the present suit has been filed for recovery of possession of the suit property.

4. Defendant No.1 has filed his written statement. In the said written statement, he has stated that the present suit is not maintainable against him as he is neither residing in the suit property nor he is in possession of the suit property. He has stated that he is residing in some rented accommodation at Rohini.

5. Defendant No.2 has also filed her written statement. She has stated in the said written statement that the present suit is a collusive suit between the plaintiff and defendant No.2. It is further stated that the plaintiff has no locus to file the present suit because she does not have a valid title to the suit property. It is stated that the Will dated 15.05.2006 propounded by the plaintiff is either forged or a manipulated document and in any case, the plaintiff is required to prove the alleged Will in accordance with law. It is further stated that the plaintiff has never applied for

probate. It is further stated that defendant No.2 has a right in the suit property.

6. This matter was heard on 15.03.2013 when it was directed that the only question which arises in the present suit is as to whether defendant No.2 has any right to reside in the suit property on the plea of the same being her matrimonial house. It was held that the said issue does not require any evidence and arguments can be heard on this issue straightway. The contention of defendant No.2 that an issue be framed as to the validity of the Will on the basis of which the plaintiff claims title was rejected inasmuch as defendant No.2 is not a natural heir of Sh. Hukum Chand and thus, defendant No.2 has no locus to challenge the Will of Sh. Hukum Chand. It was also noted that none of the legal heirs of Sh. Hukum Chand have challenged the said Will. Hence, it was held that no issue needs to be framed as to the validity of the Will.

7. On 19.07.2013, it was clarified that the said issue as stated in the order dated 15.03.2013 shall be treated as a preliminary issue. On the request of the learned counsel for defendant No.2, the matter was adjourned to 07.08.2013 for arguments on the preliminary issue.

8. I have heard arguments of the learned counsel for the parties.

9. Learned counsel appearing for the plaintiff has argued that the defendants were allowed to reside in the suit property by the plaintiff after their marriage. Thereafter the marriage has broken down and defendant No.1 has, on his own will, as per his own written statement, moved out of the suit property. It is, hence, submitted that defendant No.2 has no right whatsoever to continue to reside in the suit property and hence, the present suit is liable to be decreed. It is further submitted that in any case, after defendant No.2 got a job in the Court of District and Sessions Judge, Sonapat, she has moved out of the said house and she is no longer residing in the said house. However, it is submitted that a decree in favour of the plaintiff is necessary in the present suit as defendant No.2 keeps changing her stand and is likely to, even otherwise, interfere with the possession of the plaintiff unless a decree is passed.

10. Learned counsel for the plaintiff relies upon various documents to support the contention that defendant No.2 has abandoned the possession of the suit premises and she is merely contesting the present suit to harass the plaintiff. Learned counsel points out to order dated 08.11.2011 passed by M.S. Dweivedi, Special Executive Magistrate, Outer District, Delhi in the proceedings under Section 107/150 Cr.P.C. where a statement of defendant No.2 was recorded that she is not residing in Narela since the kalandra has been made. On the basis of this statement, it was recorded that there is no question of apprehension of breach of peace and proceedings were dropped. Reliance is also placed on the order of Sh.Rakesh Kumar Yadav, JMIC, Sonapat dated 03.05.2012 in an application filed by defendant No.2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005. In the said order, the court has on the basis of the report of the protection officer and the documents placed on record noted that the petitioner (defendant No.2 herein) is in employment of Additional District and Sessions Judge, Sonapat and has taken no temporary/permanent permission to leave the station meaning thereby either she has not maintained her headquarter or she has never resided at Narela. On the basis of the facts, the court concluded that the petitioner (defendant No.2 herein) is not entitled for an interim relief of residence order as well as protection order as she is residing at the relevant time at Sonapat. The Court also noted the report of the Protection Officer which states that previously defendant No.2 has been committing cruelty upon the plaintiff herein by locking the entire portion of the house whereby sometimes the plaintiff and her husband were not able to use the toilet at night. It is also stated that defendant No.2 was taking contradictory stands in different proceedings. It is also pointed out that against the said order dated 03.05.2012 passed by Sh.Rajesh Kumar Yadav, JMIC, Sonapat, defendant No.2 preferred a Criminal Revision in the Court of Sh. Sukrm Pal, Additional Sessions Judge, Sonapat. The revision petition was also dismissed. The relevant court has declined to grant relief of residence order or protection order to defendant No.2.

11. On the other hand, learned counsel appearing for defendant No.2 has stressed that as the present suit is based on title, hence the plaintiff has to prove the Will first and then only she can proceed further in the matter. It is further stated that the present suit is barred under Section 26 of the Protection of Women from Domestic

Violence Act, 2005. It is further stated that under Section 17 of the said Act defendant No.2 has a right to reside in the suit property.

12. Learned counsel for the plaintiff has in rebuttal relied upon the following judgments:(i) S.R. Batra and Anr. vs. Taruna Batra, (2007) 3 SCC 16.(ii) Sardar Malkiat Singh vs. Kanwaljit Kaur, 2010 (

168) DLT 52.(iii) Neetu Mittal vs. Kanta Mittal & Ors., 2008 (

106) DRJ 622.(iv) Kavita Chaudhri vs. Evenet Singh and Anr., 188(2012) DLT 75.(v) Shumita Didi Sandhu vs. Sanjay Singh Sandhu & Ors., 174 (2010) DLT 7.(vi) Raj Kumari vs. Preeti Satija & Anr., 2012 (193) DLT 22.It is contended by the learned counsel that under the Protection of Women from Domestic Violence Act, defendant No.2 has no right to reside in the suit property in which her husband has no right, title or interest. The provisions of the Protection of Women from Domestic Violence Act do not cover the property owned by the mother-in-law as in the present case. Regarding the issue of Will, he submits that this issue already stands concluded in view of order dated 15.03.2013 passed by this Court against which no appeal has been filed by defendant No.2.

13. I not decide the preliminary issue framed.

14. Regarding the title of the plaintiff to the suit property, in my view, this issue is squarely settled by order of this Court dated 15.03.2013. This Court categorically held that as defendant No.2 is not a natural heir of Sh. Hukum Chand, the executor of the Will in favour of the plaintiff, she has no locus to challenge the Will of Sh. Hukum Chand. Para 4 to 6 of the said order reads as follows:4. The counsel for the defendant No.2 who is the daughter-inlaw of the plaintiff has argued that issue be framed as to the validity of the Will on the basis of which the plaintiff claims title to the property.

5. The defendant No.2 has not set-up any other right to the said first floor save the right of residence therein as her matrimonial house. It is stated that thought divorce proceedings between defendant No.2 and the defendant No.1 are pending but till the defendant No.2 continues to be married, the defendant No.2 has a right

to reside in the said house.

6. As far as the first argument of the defendant No.2 is concerned, the defendant No.2 is admittedly not a natural heir of Sh. Hukum Chand and thus the question of the defendant No.2 having any locus to challenge the Will of Sh. Hukum Chand in favour of the plaintiff does not arise. The counsel for the plaintiff on enquiry informs that none of the other legal heirs of Sh. Hukum Chand have challenged the said Will and proceedings for mutation of the house in the name of the plaintiff are underway. It is thus felt that no issue needs to be framed as to the validity of the Will. Hence, in my view, as far as the contention of defendant No.2 regarding the title of the plaintiff is concerned, the above order is conclusive.

15. Even otherwise, the father-in-law of the plaintiff, Sh. Hukum Chand passed away on 01.01.2007. Till date none of the natural legal heirs of Sh. Hukum Chand have challenged the Will of Sh. Hukum Chand. Even otherwise, the defendants were residing after their marriage in 2008 on account of permissive possession given by the plaintiff. In view of Section 116 of the Evidence Act, defendant No.2 is even otherwise estopped from challenging the title of the plaintiff. Accordingly, the said contention of defendant No.2 pertaining to title of the plaintiff to the suit property is rejected. The plaintiff has a right to file the present suit.

16. The next issue raised by defendant No.2 is her rights under the Protection of Women from Domestic Violence Act (hereinafter referred to as Domestic Violence Act). Defendant No.2 has strongly relied upon Section 17 of the Domestic Violence Act to state that she has a right of residence in the suit property. Section 17 of the Domestic Violence Act reads as follows: 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.

Shared household is defined in Section 2(s) of the Domestic Violence Act and reads as follows:

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 alongwith 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.

17. The Honble Supreme Court interpreted the said Section 17 in the case of S.R. Batra and Anr. vs. Taruna Batra (supra). In fact, the Court held that if the contentions, which are identical to the contentions raised by defendant No.2 herein, are accepted, grave consequences would follow. This proposition is noted in para 26 of the said judgment which reads as follows: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 dozen of places e.g. with the husbands father, husbands 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 husbands relatives will be shared households and the wife can well insist in living in all these houses of her husbands 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.

18. Regarding interpretation of Section 17 of the Domestic Violence Act, the Court in para 29 held as follows: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.

19. In the case of Shumita Didi Sandhu vs. Sanjay Singh Sandhu & Ors (supra), the Division Bench of this Court has in relation to Section 17 of the Domestic Violence Act held as follows:⁴⁰. Insofar as Section 17 of the said Act is concerned, a wife would only be entitled to claim a right of residence in a shared household and such a 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 which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a shared household. Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to them both in which the husband has no right, title or interest, cannot be called a shared household. The concept of matrimonial home, as would be applicable in England under the Matrimonial Homes Act, 1967, has no relevance in India.

20. To the same effect are the judgments of this Court in the case of Sardar Malkiat Singh vs. Kanwaljit Kaur (supra), Neetu Mittal vs. Kanta Mittal & Ors. (supra), Kavita Chaudhri vs. Evenet Singh and Anr. (supra), and Raj Kumari vs. Preeti Satija & Anr.(supra).

21. In fact, the facts of the case in Raj Kumari vs. Preeti Satija & Anr. (supra), are almost akin to the facts of the present case. In that case also the suit was filed for eviction and possession by the mother-in-law against her daughter-in-law and son. The mother-in-law had become the owner of the property in view of the registered Will of her husband whereby her husband had bequeathed the entire suit property to the plaintiff therein. In the said judgment, the court has noted in para 14 that the Will has not been challenged by the defendant or any third party despite more than three years having lapsed from the date of filing of the written statement. The suit was in that case also decreed in favour of the mother-in-law.

22. In view of the above legal position, the contention of defendant No.2 regarding her rights under the Protection of Women from Domestic Violence Act cannot be accepted. Her reliance on Section 17 of the said Act, to claim a right to reside in the suit property is misconceived inasmuch as admittedly her husband has no

rights whatsoever in the suit property. The property neither belongs to defendant No.1 nor is taken on rent by him nor is a joint family property of which defendant No.1 is a member. The said property cannot be regarded as a shared household as defined under Section 2(s) of The Domestic Violence Act. Defendant No.2 has no rights to the suit property. Her rights for maintenance etc. against defendant No.1 are not issues in the present suit. There is no averment or submission regarding any such proceedings having been initiated by defendant No.2.

23. The last contention of the learned counsel for defendant No.2 is that the present suit is barred under Section 26 of the Domestic Violence Act. Section 26 of the Domestic Violence Act reads as follows:- 26. Relief in other suits and legal proceedings.-(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act. (2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief. A bare perusal of the above Section shows that there is no bar on the jurisdiction of a civil court to try the present matter. On the contrary, Section 26 permits a civil court, family court or criminal court to give relief as available in Sections 18, 19, 20, 21 and 22 of the Domestic Violence Act. Hence, there is no merit in the said contention of defendant No.2.

24. It may also be noted that defendant No.2 has approached the appropriate court under Section 12 of the Domestic Violence Act. However, the court has declined her any relief of residence order or protection order. Learned counsel for defendant No.2 has contended that a petition against the said orders is pending before the Punjab and Haryana High Court.

25. Even otherwise, it appears that defendant No.2 is taking contradictory stands. A perusal of the documents relied upon by the learned counsel for the plaintiff

shows that she has herself claimed to have left the suit premises and is staying with her parents in Sonapat. In the statement before M.S. Dweivedi, Special Executive Magistrate on 08.11.2011, she has stated that she is not residing in the suit property. Similarly, the concerned court dealing with her application under Section 12 of the Protection of Women from Domestic Violence Act has concluded that in view of the fact that defendant No.2 is employed in the office of Additional District and Sessions Judge, Sonapat she could not have left station without prior permission. The said documents show that defendant No.2 is employed with the court of Additional District and Sessions Judge, Sonapat. She has to take prior permission before leaving headquarter. She has, admittedly, not taken any such permission. Hence, it is clear that there is merit in the contention of the learned counsel for the plaintiff that she has abandoned the suit premises and is not staying in Sonapat.

26. Accordingly, it is clear that defendant No.2 has no right whatsoever to reside in the suit property. The preliminary issue is answered accordingly.

27. Keeping in view the above discussion, it is appropriate that a decree be passed in favour of the plaintiff. Hence, a decree of possession is passed in favour of the plaintiff and against defendant No.2 for the suit property. A decree of injunction is also passed in favour of the plaintiff and against defendant No.2 restraining the said defendant No.2 from disturbing the possession of the plaintiff over the suit property. The plaintiff shall also be entitled to costs. All pending applications also stand disposed of. JAYANT NATH, J.

SEPTEMBER 18 2013/rb

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