

Sushma Sharma Vs. Bimla Devi Sharma

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Court : Delhi

Decided On : Feb-11-2014

Judge : Valmiki J. Mehta

Appellant : Sushma Sharma

Respondent : Bimla Devi Sharma

Advocate for Pet/Ap. : Mr. M.K. Sablok

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RSA No.279/2013 11th February, 2014 % SUSHMA SHARMA Through:Appellant Mr. M.K. Sablok, Advocate. VERSUS BIMLA DEVI SHARMA Through: Respondent CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. By this Regular Second Appeal filed under Section 100 of Code of Civil Procedure, 1908 (CPC) challenge is laid to the two concurrent judgments of the courts below; of the trial court dated 20.7.2011 and the first appellate court dated 21.11.2013; by which the suit of the respondent/plaintiff/mother-in-law for permanent and mandatory injunction has been decreed against the appellant/defendant/daughter-in-law.

2. The courts below have relied upon the judgment of the Supreme Court reported as S.R. Batra & Anr. Vs. Smt. Taruna Batra (2007) 3 SCC169 which holds that a

daughter-in-law has no right of residence in the house of the mother-in-law or the father-in-law, and which house of the mother-in-law or the father-in-law is not a shared household with the daughter-in-law, so as to claim a right of residence therein by the daughter-in-law. I may also note that the Division Bench of this Court in the case of Shumita Didi Sandhu Vs. Sanjay Singh Sandhu & Ors. 174 (2010) DLT79(DB) has also followed the aforesaid judgment of the Supreme Court in the case of S.R. Batra (supra) and held that the daughter-in-law will not have a right of residence in the house of mother-in-law or the father-in-law. The relevant paras of this judgment in the case of Shumita Didi Sandhu (supra) are paras 40, 41 and 45 to 48 and the same read as under:

40. From this line of cases, it is apparent that the concept of maintenance, insofar as a Hindu lady is concerned, necessarily encompasses the provision for residence. Furthermore, the provision for residence may be made either by giving a lumpsum in money or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. 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.

41. In the light of the aforesaid principles, the appellant/plaintiff would certainly have a right of residence whether as a part of maintenance or as a separate right under the said Act. The right of residence, in our view, is not the same thing as a right to reside in a particular property which the appellant refers to as her 'matrimonial home'. The said Act was introduced, inter alia, to provide for the rights of women to secure housing and to provide for the right of the women to reside in

a shared household, whether or not she had any right, title or interest in such a household.

45. From the aforesaid provisions, it is clear that the expression "matrimonial home" does not find place in the said Act. It is only the expression "shared household" which is referred to in the said Act. "Shared household" is defined in Section 2(s) to mean 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. The 'shared household' also 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 word "household" has not been defined in the said Act, however, Black's Law Dictionary, 9th Edition defines 'household' in the following manner: household, adj. Belonging to the house and family; domestic. household, n. (14c) 1. A family living together, 2. A group of people who dwell under the same roof. Cf. FAMILY.

3. The contents of a house.

46. In contrast, the impression that we get by reading Section 2(s), which defines "shared household" is that the "household" which is referred to in the said provision, relates to the property and not just to the group of people who dwell under the same roof or the family living together. Therefore, we are of the view that the word "household" used in Section 2(s) actually means a house in the normal sense of referring to a property, be it a full-fledged house or an apartment, or some other property by any other description. This is also clear because the expression "household" has been referred to as a place where the person aggrieved lives or, at any stage has lived. It also refers to a property whether owned or tenanted or in which the aggrieved person or the respondent has any right, title, interest or equity. Therefore, in order to fall within the meaning of "shared household" as defined in Section 2(s), it is essential that the property in

question must be one where the person aggrieved lives, or at any stage, has lived in a domestic relationship, either singly or alongwith the respondent. It also includes such a property 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 of them or both jointly or singly have any right, title, interest or equity. It also includes a property 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 therein. The Supreme Court has already observed in S.R. Batra (supra) that the definition of "shared household" in Section 2(s) is not happily worded, but the courts have to give it an interpretation which is sensible and which does not lead to chaos in society. In this backdrop and in the facts and circumstances of the present case, the property in question cannot be considered to be a shared "household" because neither the appellant/plaintiff, nor her husband (defendant No.1) has any right, title or interest or equitable right in the same. The property may belong to defendant No.3 exclusively or to defendants 2 and 3 jointly, but it certainly does not belong to the defendant No.1 or the appellant/plaintiff. The position as it exists today also does not indicate even prima facie that the property in question is the property of a joint family of which the defendant No.1 is a member. Therefore, in our view, the property in question does not fall within the expression "shared household" as appearing in Section 2(s) of the said Act.

47. Section 17 of the said Act deals with the right of every women in a domestic relationship to reside in the shared household and, Section 17(2), specifically provides that such a woman 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. In other words, the wife can be evicted or excluded from the "shared household" after following the due procedure established by law and it is not an absolute right of the wife to reside in a "shared household". However, in the present case, we need to go into this aspect of the matter because Section 17 in itself would be inapplicable in view of the fact that the property in question cannot be regarded as a "shared household". The residence orders that may be passed under Section 19 are also subject to the Magistrate/court being satisfied that domestic violence has taken place. All the

residence orders also relate to a "shared household". Consequently, Section 19 would also not come in the aid of the appellant/plaintiff.

48. The learned Counsel for the appellant had also referred to single Bench decisions of the Kerala High Court and the Madras High Court in the cases of S. Prabhakaran (supra) and P. Babu Venkatesh Kandayammal and Padmavathi(supra) to indicate instances of cases where the Supreme Court decision in S.R. Batra (supra) was distinguished. Those decisions are single Bench decisions and that too of other high courts and are, therefore, of no precedential values insofar as this Bench is concerned. We feel that in view of the prima facie finding that the property in question does not belong to the appellant's/plaintiff's husband nor does he have any share or interest in the same, there is no question of the said property being regarded as a "shared household" in terms of Section 2(s) of the said Act. We also find that the expression "matrimonial home" is not at all defined in the said Act and the concept of the matrimonial homes as prevailing in England by virtue of the Matrimonial Homes Act, 1967 cannot be applied in India as pointed out in S.R. Batra (supra) and B.R. Mehta (supra). There is no doubt that the appellant/plaintiff has a right of a residence whether as an independent right or as a right encapsulated in the right to maintenance under the personal law applicable to her. But that right of residence does not translate into a right to reside in a particular house. More so, because her husband does not have any right, title or interest in the said house. As noted by the Supreme Court in the case of Komalam Amma (supra) as well as in Mangat Mal (supra), the right of residence or provision for residence may be made by either giving a lumpsum in money or property in lieu thereof. In the present case, we have noted earlier in this judgment that the learned single Judge had recorded that alternative premises had been offered to the appellant/plaintiff, but she refused to accept the same and insisted on retaining the second floor of the property in question claiming it to be her 'matrimonial home'.

(underlining added) 3. In view of the above, the legal position is well-settled, and accordingly no substantial question of law arises for this appeal to be entertained under Section 100 CPC.

4. The appeal is therefore dismissed, leaving the parties to bear their own costs.
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