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Court : Delhi

Decided On : Aug-07-2015

Judge : Suresh Kait

Appeal No. : CRL.M.C. No. 3497 of 2008

Appellant : Ekta Arora

Respondent : Ajay Arora and Another

Judgement :

Suresh Kait, J.

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seeks directions whereby setting aside the impugned judgment dated 25.08.2008 passed by the learned Additional Sessions Judge, Rohini Courts, Delhi, (ASJ) in Criminal Appeal No.27 of 2007 as far as order on residence is concerned. Consequently, seeks further directions to restore the order dated 29.09.2007 passed by the learned Trial Court in her favour.

2. The petitioner filed an application under Section 19 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as the said Act') on the ground that she had apprehension of dispossession from her matrimonial home bearing No.A-135, Shanker Garden, Vikas Puri, New Delhi.

3. It is pertinent to note that initially the aforesaid property was in the name of father-in-law of petitioner, late Sh. Rajinder Paul Arora. During his lifetime he bequeathed the property in question by Willdated 06.03.1987 whereby stated as under:-

So long I am alive I shall be and remain the sole owner of all my properties whether movable and immovable and shall have full and absolute power to dispose of any of my belongings. After my death, all my properties whether moveable or immovable shall vest in my wife Mrs.Kamal Arora for her lifetime and after her death all such properties shall pass on to my son Master Ajay Arora. Neither of my daughters shall be entitled to receive any of my assets after my death. However, marriage expenses of my unmarried daughter Miss Kavita Arora shall be met with out of the estate left by me. My wife Mrs.Kamal Arora shall also have right of maintenance out of the said estate.'

4. After hearing both the parties, learned Trial Court vide order dated 29.09.2007 opined as under:-

... Will executed by father of respondent No.1 in favour of the mother of respondent carefully, it is categorically mentioned in the Will that so long as executant is alive he shall remain sole owner of his property whether movable or immovable and she (sic) have full and absolute power to dispose of any of his belongings. After his death all his property whether movable or immovable shall vest in favour of his wife Smt.Kamal Arora for her lifetime and after her death all such property shall vest to his son Master Ajay Arora, therefore from the perusal of the Will it is itself very much clear that wife i.e. widow/mother of respondent No.1 is having only limited right in the property during her lifetime and after her death the property was automatically devolved to respondent No.1/husband of applicant. Therefore, in view of the Will the respondent No.1 is also having ownership rights in the property in question and on this ground the facts of the present case are entirely different from the facts cited in the case law. Therefore, I am of the view that case law cited above is not applicable to the facts of the present case as husband/respondent No.1 is also having rights in the property in question, hence wife is entitled to have residence orders against respondent No.1 in respect of

premises in question where the applicant is residing presently. In view of my above submissions, relief No.(b) is granted in favour of the applicant and restraining the respondents from dispossessing or in any other manner disturbing the possession of applicant from the portion in which she is residing presently in property in question i.e. A 135, Shanker Garden, Vikas Puri, New Delhi till final disposal of this case.'

5. Being aggrieved, respondent Nos.1 and 2, i.e., husband and mother-in-law of the petitioner respectively challenged the aforesaid order in Criminal Appeal No.27 of 2007 which was allowed on the issue of residence vide impugned judgment dated 25.08.2008 by learned ASJ, while observing as under:-

In the present case also the property No.A-135 Shanker Garden, Vikas Puri does not belong to appellant No.1. It was also not taken on rent by him nor it was a joint family property of which appellant No.1 was a member. The property in question belongs to appellant No.2, who is the mother of appellant No.1. On the basis of Will, appellant No.1 did not have any right in the property during the lifetime of his mother i.e. appellant No.2. The property will devolve upon the appellant No.1 only after the death of appellant No.2. Before that, appellant No.1 cannot claim any right or title in the property. Since the property in question belongs to appellant No.2, I am of the considered view that residence order could not have been passed by the learned M.M. in respect of that property in favour of respondent. Moreover, appellant No.1 has taken the rented premises for her living but she is not willing to join the company of her husband at that rented premises. In view of this discussions, the order of learned Trial Court suffers from illegality and same is set aside so far as the residence order is concerned.'

6. Learned counsel appearing on behalf of petitioner submitted that the learned Appellate Court erroneously held that respondent No.2 Smt.Kamal Arora is the absolute owner of the property mentioned above, and accordingly set aside the order passed by the learned Trial Court. In the Will, husband of respondent No.2 specifically stated that after his death all his property whether movable or immovable shall vests in his wife Smt.Kamal Arora for her lifetime and after her death, all such property shall pass on to his son, i.e., respondent No.1 Ajay Arora.

It is specifically mentioned that neither of his daughters shall be entitled to receive any of his assets after his death. His wife Smt.Kamal Arora shall also have right of maintenance out of said estate. Thus, it is wrongly held that the property in question is not the joint family property of which respondent No.1 is a member. However, the facts on record are otherwise. The property in question was absolutely owned by Sh.Rajinder Paul Arora, i.e., father-in-law of petitioner, who executed a Will on 06.03.1987 when he was living with his wife Smt.Kamal Arora and two children, i.e., Ajay Arora “ respondent No.1 and Smt.Kavita Nayyar, who were then unmarried in the said property. Even after death of Sh.Rajinder Paul Arora, Smt.Kamal Arora - respondent No.2 continued to live in the property with her two children, i.e., Ajay Arora and Kavita Nayyar. Subsequently, Kamal Arora got married her son Ajay Arora - respondent No.1 with petitioner on 06.09.1998 and petitioner had joined him at her matrimonial house at the property in question.

7. Learned counsel for petitioner further submitted that learned Appellate Court wrongly held that word vestgives ownership right of said property to respondent No.2, whereas it is simply possession of said property. The testator in the said Will secured rights of every one in clear terms. The testator of the Will categorically stated that, so long as I am alive, I shall be and remain the sole owner of my property and shall have full and absolute power to dispose any of my belongings. After my death, all properties which are movable or immovable shall vests in my wife Smt.Kamal Arora for her lifetime and after her death all such property shall pass on to my son Ajay Arora. Neither of my daughters shall be entitled to receive any of my assets after my death. My wife Smt.Kamal Arora shall also have the right of maintenance out of said estate. ?

8. Learned counsel further submitted that it is established that respondent No.2, wife of late Sh.Rajinder Paul Arora shall enjoy the property in her lifetime, thereafter it will devolve to respondent No.1, husband of petitioner herein, thus, share of the respondent No.1 is very much in the property. Therefore, the petitioner, being wife of respondent No.1, has right in the property in question. Since the said property is a shared-house', being the wife of respondent No.1, petitioner cannot be dispossessed from the said property.

9. To strengthen his arguments, learned counsel heavily relied upon the case of S R Batra and Another v Taruna Batra : 2007 II AD SC 491 wherein it has been held as under:-

19. Appellant No.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.'

10. On the other hand, learned counsel for respondents submitted that the learned Trial Court held erroneously that the respondent No.2 is having only limited right in the property during her life time and after her death the property would automatically devolve to respondent No.1, i.e., husband of petitioner.

11. Learned counsel for respondents also relied upon the decision of S R Batra and Another (supra), wherein it is held that shared householdonly means house belonging or taken on rent by husband or house which belonged to joint family of which husband is a member.

12. I have heard learned counsels for the parties.

13. The term shared householdhas been defined under Section 2(s) of the said Act which is reproduced 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 of 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'.

14. In the case of S R Batra and Another (supra), the Apex Court has extensively dealt with the legal position regarding the right of a daughter-in-law in a shared household under Section 17(1) of the DV Act, and held as under:-

17. There is no such law in India, like 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.

xxxx xxxxx xxxx

28. 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 ...

29. No doubt, the definition of shared household in section 2(s) of the Act is not 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 the society. ?

15. In S.R. Batra's case (supra), the property in question belonged to the mother-in-law and there also the defence taken by the daughter-in-law was that the said property was a joint family property and therefore she enjoyed a protection under Section 17(1) of Domestic Violence Act, 2005. However, the court took a view that daughter-in-law cannot claim any right in an accommodation which belongs to mother-in-law or the father-in-law as such an accommodation does not satisfy the test of share household accommodation as envisaged under Section 2(s) of the Domestic Violence Act, 2005.

16. The aforesaid view was reiterated by this Court in the case of Neetu Mittal Vs. Kanta Mittal reported in 152 (2008) DLT 691, wherein held as under:-

8. ... 'Matrimonial home' is not defined in any of the statutory provisions. However, phrase "Matrimonial home" refers to the place which is dwelling house used by the parties, i.e., husband and wife or a place which was being used by husband and wife as the family residence. Matrimonial home is not necessarily the house of the parents of the husband. In fact the parents of the husband may allow him to live with them so long as their relations with the son (husband) are cordial and full of love and affection. But if the relations of the son or daughter-in-law with the

parents of husband turn sour and are not cordial, the parents can turn them out of their house. The son can live in the house of parents as a matter of right only if the house is an ancestral house in which the son has a share and he can enforce the partition. Where the house is self-acquired house of the parents, son, whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout the life.

9. Once a person gains majority, he becomes independent and parents have no liability to maintain him. It is different thing that out of love and affection, the parents may continue to support him even when he becomes financially independent or continue to help him even after his marriage. This help and support of parents to the son is available only out of their love and affection and out of mutual trust and understanding. There is no legal liability on the parents to continue to support a dis-obedient son or a son which becomes liability on them or a son who dis-respects or disregards them or becomes a source of nuisance for them or trouble for them. The parents can always forsake such a son and daughter-in-law and tell them to leave their house and lead their own life and let them live in peace. It is because of love, affection, mutual trust, respect and support that members of a joint family gain from each other that the parents keep supporting their sons and families of sons. In turn, the parents get equal support, love, affection and care. Where this mutual relationship of love, care, trust and support goes, the parents cannot be forced to keep a son or daughter in law with them nor there is any statutory provision which compels parents to suffer because of the acts of residence and his son or daughter in law. A woman has her rights of maintenance against her husband or sons/daughters. She can assert her rights, if any, against the property of her husband, but she cannot thrust herself against the parents of her husband, nor can claim a right to live in the house of parents of her husband, against their consult and wishes. ?

17. In the case of Shumita Didi Sandhu Vs. Sanjay Singh Sandhu and Ors. reported in 174 (2010) DLT 79 (DB), the Division Bench of this Court took a view

that a property which neither belongs to husband nor is taken on rent by him, nor is a joint family property in which husband is a member, cannot be regarded as shared household and, therefore, the daughter-in-law has no right to claim right to stay in such a property, which belongs to either the father-in-law or mother-in-law. The Hon'ble Division Bench also held that the right of residence which a wife undoubtedly has does not mean right to reside in a particular property and it is only in that property in which the husband has a right, title or interest that wife can claim residence and that too if no other commensurate accommodation is provided by the husband. The following paragraphs from the said judgment are reproduced as under:-

40. 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 lump sum 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. 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. ?

18. In the case bearing CS(OS) No.2995/2011, titled as Mr. Barun Kumar Nahar Vs. Parul Nahar and Ors., decided on 05.02.2013, the Coordinate Bench of this Court held as under:-

29. One can also not lose sight of the fact that none of the statutes which deal with the rights of a married woman in India, be it The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Hindu Adoption and Maintenance Act, 1956; The Protection Of Women From Domestic Violence Act, 2005 or The Code Criminal Procedure, 1973 confer any right of maintenance including residence for the married woman as against the parents of the husband. To illustrate, Sections 24 and 25 of The Hindu Marriage Act, 1955 provides for the wife's right to pendent lite maintenance and Permanent Alimony only against her husband. Section 17 (1) of Domestic Violence Act, 2005 gives protection to the wife where 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 within the meaning of Section 2(s) of the said Act. Section 18 of The Hindu Adoption and Maintenance Act, 1956 enumerates the right of a Hindu wife to be maintained by her husband during her life time. Section 125 of the Criminal Procedure Code, 1973 provides for monthly maintenance to wife, irrespective of her religion, if she has no source of income or means to maintain herself against her husband. The wife's right to maintenance which includes her residence in a commensurate property is, thus, only against the husband. Marriage is a social union of two persons called spouses that establishes rights and obligations between them. The concept of Matrimonial Home has evolved with the passage of time. The concept hails from the law of England under the Matrimonial Homes Act, 1967. There is no such absolute statute in India, like the British Matrimonial Homes Act, 1967, which clearly stipulates that the rights which may be available under marriage laws can only be as against the husband and not against the father-in-law or mother-in-law. However, it is quite discernible that the spouses in wedlock, are obliged to take care of each other and in case of any inter-se dispute; one can claim his right with respect to maintenance only against the other and not against the other family members. With the transient course it has been observed that with the advent of various women friendly laws, empowering the women with

equal rights as that of a man/ husband, the remedy of women to ask for maintenance or to claim her right in the residence in a commensurate property is only restricted to her husband and not against her parents in law. A woman 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. This means that she can assert her rights, if any, only against the property of her husband and cannot claim a right to live in the house of her husband's parents without their wishes and caprice. Law permits a married woman to claim maintenance against her in-laws only in a situation covered under section 19 of The Hindu Adoption and Maintenance Act, 1956. i.e. after the death of the husband and that too when she is unable to maintain herself out of her own earnings etc. It would not be abominable to say that even the parents/ parents in law at the fag-end of their lives, deserve to live a blissful, happy and a peaceful life, away from any tautness or worries. ?

19. Coming back to the case in hand, undisputedly, initially petitioner was living with respondents at aforesaid property. Thereafter, respondent No.1 and petitioner started living in a rented accommodation. Moreover, the property in question neither belongs to the respondent No.2, nor taken on rent and it was not a joint family property of which respondent No.1 was a member.

20. Bare reading of the Willtranspires that after death of husband of respondent No.2, said property will be vested in respondent No.2. Perusal of the same reveals that it is nowhere stated that respondent No.2 has limited right only to live therein. Moreover, it is nowhere stated in the Willthat the respondent No.2 would not dispose of the property. Therefore, during her lifetime, she is absolute owner of the property in question. However, if she dies intestate, certainly it will devolve upon respondent No.1, husband of petitioner herein. Moreover, it is specifically mentioned in the Willthat neither of daughters of late Sh. Rajinder Paul Arora shall be entitled to receive any of his assets after his death.

21. Considering the facts noted above, it is clear that during the lifetime of respondent No.2, she is the absolute owner of the property in question and till

then, said property cannot be held as a shared household'.

22. In view of the above discussion and on the basis of the Will', the petitioner has no right in the property during the lifetime of her mother- in-law, i.e., respondent No.2 herein. The property will devolve upon respondent No.1 only after her death. Before that, the petitioner cannot claim any right or title in the property. Therefore, I am of the considered opinion that the order dated 25.08.2008 passed by the learned ASJ, whereby the order on residence dated 29.09.2007 passed by the learned Trial Court was set aside, does not suffer from any illegality or perversity.

23. Therefore, finding no merits in the instant petition, same is accordingly dismissed.

Crl.M.A.No.12985/2008(Stay)

Dismissed as infructuous.

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