

Sadhu Singh and ors. Vs. Narinder Kaur

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Court : Delhi

Decided On : Oct-16-1995

Reported in : 1995IVAD(Delhi)486; 60(1995)DLT638

Judge : Manmohan Sarin, J.

Acts : Hindu Adoptions and Maintenance Act - Sections 18(1)

Appeal No. : Civil Revision Appeal No. 924 of 1994

Appellant : Sadhu Singh and ors.

Respondent : Narinder Kaur

Advocate for Pet/Ap. : V.B. Andley,; Rajinder Mathur and; N.J. Sharma, Advs

Judgement :

Manmohan Sarin, J.

(1) This petition raises an interesting question regarding the rights, if any, of an estranged daughter-in-law, to continue to occupy the premises belonging to her father-in-law, even though her husband has moved out of the said premises and is residing separately.

(2) The respondent one Mrs. Narender Kaur, was married to Dr. M.S. Chopra son of petitioners 1 and 2, on 31.1.1988. He is a Doctor employed with Delhi

Administration. The respondent Along with her husband, after the marriage resided at House No. A-2/B-180-A, Mig Flats, Paschim Vihar, New Delhi, which belonged to her father-in-law, petitioner No. I herein. The respondent who is a Home Science Teacher was initially posted in Ambala and used to come to Delhi every week and resided in the matrimonial house. Thereafter, the respondent was transferred to Faridabad, and she used to come to Delhi daily.

(3) It is the respondent's case that her husband at the instigation of the petitioner, left the matrimonial house and even filed a petition for divorce against the respondent. The petitioners namely father-in-law, mother-in-law, and sister-in-law of the respondent attempted to dispossess the respondent from the matrimonial home. The respondent filed a suit for permanent injunction seeking to restrain the petitioners from dispossessing her from the premises in suit and interfering with her possession. The respondent alleged cruelty on her by the in-laws for bringing insufficient dowry and forcible attempts to dispossess her. She says petitioners occupied one room on 10.5.1994 and attempted to dispossess her.

(4) The petitioners in the Trial Court denied that the respondent was in possession and stated that she had been staying as a daughter-in-law, allegations of cruelty were also denied. It was averred that respondent was neither having exclusive possession of any portion of the suit property nor had any legal right. The Trial Court disbelieved the respondent on her claim that she was in possession of entire property, except the one room alleged to have been forcibly occupied by petitioners. The Trial Court held that the respondent's claim for living in the suit premises, was based on it being the matrimonial home. It might have been the matrimonial home, but did not remain so with the husband of the respondent moving out and taking up residence in the Government flats at Model Town, Delhi. The Trial Court held that the respondent had no legal right to the property in suit and she could not forcibly live with her parents-in-law, when the husband was living separately. The Civil Judge held that the respondent did not have a prima fade case and prayer for injunction was declined.

(5) The respondent filed an appeal before the Additional Senior. Sub Judge. The Appellate Court held that the Trial Court fell in error in entering upon an elaborate

enquiry, while all that was required to be seen at the initial stage, was whether triable issues were raised. On an appreciation of documents on record, the Appellate Court concluded that the respondent was in physical possession and her possession should be protected during the trial of the suit. The Appellate Court held that based on the pleadings, the case of the petitioner appeared to be that physical occupation of part of the premises by respondent was admitted, but the occupation was claimed as illegal. Further that the question whether it was the matrimonial home or not, need not be considered in depth at this stage. In any case respondent after marriage had lived in the premises in suit as matrimonial home. It was held that if interim injunction as sought, was declined, the respondent would be put to hardship and irreparable injury would be caused to her.

(6) Learned Counsel for the petitioner assailed the order on the following grounds:-

(i) The respondent had no legal right, title or interest in the suit property. The respondent's occupation along with her husband i.e. petitioner's son after the marriage, was in the nature of permissive user. It did not confer any right, title or interest in the property on the respondent. The house was owned and belonged exclusively to petitioner No.1. The user occupation by the respondent cannot be taken as lawful possession of the respondent. It was not exclusive possession. (ii) The son of the petitioner Nos. 1 and 2, i.e. husband of the respondent had shifted from the premises in suit and established his independent residence at Model Town, Delhi. The premises in suit, therefore, could no longer be considered, the matrimonial home of the respondent. (iii) The petitioners under law have no obligation to maintain and provide residence to the respondent in view of the fact that the respondent's husband is alive. The obligation to maintain, including provision of residence under Section 18(1) of the Hindu Adoptions and Maintenance Act, is that of the husband during his life time.

(7) Counsel for the appellant, therefore, submitted that in the instant case the respondent did not have a prima facie case, which would have entitled her to an injunction. Mere occupation by the respondent which was in the nature of permissive user as a daughter-in-law after marriage would not make it a case of lawful or settled possession. Reliance was placed on the case reported at :

AIR1972 Delhi84 , Shashi Kapoor v. Subhash Kapoor and Others. This is a case where the plaintiff sought an interim injunction on the ground that he was holding the property as a member of the joint family, but failed to place on record prima facie evidence that the property belonged to the joint family. The Court while declining the relief of injunction, held that mere possession was not enough for issuance of an interim injunction when the factum of prima facie being in lawful possession, has got to be established. It was held that to claim an injunction or an interim injunction on the basis of actual physical possession, the plaintiff can succeed only if there is prima facie evidence of the plaintiff being in lawful possession. It was found prima facie that the plaintiff was not in possession of the house in his own right as a member of joint Hindu family. Applying the ratio of the above judgment Mr. Andley submitted that in the present case the respondent had failed to establish any legal right or to show that her occupation was lawful. There being no prima facie case, the question of balance of convenience and irreparable injury, would not arise. Reliance was also placed on the Full Bench decision of the Delhi High Court : AIR1978 Delhi174 , Chandu Lal v. M.C.D.. This was a case where the Court held that the Mcd continued to be in legal possession and the petitioner merely being in exclusive possession of the Kiosk, would not make it a case of tenancy, It was held that a bare licensee, having no interest in the property could not maintain an action for restraint against dispossession. It was held in this case that before invoking the jurisdiction of the Court to seek temporary injunction the applicant is bound to show that there is a legal right and there has been an invasion of the same.

(8) Counsel for the petitioner rightly submitted that the respondent having failed to show a legal right, her occupation of the property in suit, was unlawful and there was no justification to grant the reliefs sought. It would be pertinent at this stage, to observe that though the petitioner No. 1 may not have a legal duty, nevertheless he had a moral duty as head of a Hindu family to provide maintenance and support to the respondent/daughter-in-law. Reference may be made in this connection to the observations made in the judgment of Mehmood, J. in Janki v. Nand Ram and Others, wherein it was inter alia observed that by marriage a woman ceases to belong to her parental family and becomes member of the husband's family. The head of a Hindu family is bound morally if not legally, to

provide maintenance and support for members of the family. These observations were made by the Court while dealing with the claim for maintenance by Hindu widow on her brother-in-law, in respect of self-acquired property of the father-in-law, that had fallen in the hands of brother-in-law. The moral duty of the father-in-law was held to be transposed as a legal duty in the hand of the brother-in-law. In the facts of instant case since the petitioner No. 1 is the father-in-law and the property is self-acquired one, it is at best only his moral duty.

(9) Counsel for the respondent asserted that the respondent was admittedly in possession of the part of the premises in suit and was residing there. It was stated. that the respondent has no other residential place except the premises in suit and the helpless woman is sought to be thrown on road without any shelter. Further that the parents of the respondent had already expired. Counsel relied on case reported at : 43(1991)DLT570 , Babu Lal v. D.D.A : AIR1986 Delhi27 , Smt. Shakuntla v. Sh. Hira Nand Sharma 6- Ors. : 57(1995)DLT534 Kamlesh Shanna v. Bhu Dev Gaur, : AIR 1989 SC2097 Krishna Rant Mahate v. Shobha Venkat Rao. The above cases are cited in support of the plea that even a trespasser was entitled to remain in possession, unless dispossessed or evicted in accordance with law. Counsel submitted that when the possession of even a trespasser is protected and he was not liable to be evicted except in due course of law and was entitled to defend his possession even against the rightful owner, the respondent's case was on a far better footing. It was urged that Appellate Court had granted the injunction in accordance with Law.

(10) The respondent admittedly had not asserted any legal right or the basis for her continued occupation of the premises in suit. In fact it is her own case, that she had resided and was residing in the premises in suit by virtue of her being the daughter-in-law of the petitioners. The possession which a trespasser is entitled to defend against the rightful owner is settled possession extending over sufficiently long period and acquiesced in by the true owner. In Puran Singh v. State of Punjab, 1975 Supp Scr 299 the Supreme Court observed that 'there is no special charm or magic in the words 'settled possession' nor it is a ritualistic formula which can be confined in a strait jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the

right under the criminal law to defend his property against even by the true owner. It would be reiterated that the possession must be within the knowledge either express or implied, of the owner or without any attempt at concealment and which contains an element of animus possedendie. In the instant case, it would appear that the respondent had not asserted any exclusive possession except in June 1994, when according to the respondent the petitioners threatened to dispossess her. It was then that the suit for permanent injunction was filed. The respondent therefore, did not have a prima facie case and her occupation, it would appear may not fall within settled possession. Assuming that the respondent's occupation was settled possession and a lawful one, even then I am of the view that on the facts of this case the respondent is not entitled to the grant of equitable and discretionary relief on account of the reasons and factors mentioned hereinafter.

(11) Conscious of the moral duty which stood cast upon the petitioner as head of a Hindu family to provide maintenance and support to the respondent/ daughter-in-law even though estranged from family, I had impressed upon the petitioner that arrangements ought to be made for provision of residence for the respondent. This was also felt necessary to provide security and shelter to a single woman having estranged relations with her husband and family. The petitioners initially offered to pay a sum of Rs. 1200.00 per month to enable the respondent to seek separate residential accommodation for herself till the divorce was granted. During the Court proceedings the petitioners finally agreed to provide the following:-

(i) A sum of Rs. 1500.00 per month would be paid to the respondent to enable the respondent to take on rent alternate premises for her residence. (ii) The said payment would continue till there was a final decree of divorce. (iii) The petitioner's son would become confirming party to the settlement and in case of any default, the pending divorce proceedings would be stayed. (iv) The respondent in default of payment would be entitled to restitution i.e. to re-occupy the portion in her occupation, in the premises in suit. (v) The petitioners shall give an undertaking not to transfer, let out or part with possession the portion of premises in suit in occupation of the respondent till the divorce was finally granted. (vi) In the alternate, the petitioner's son i.e. respondent's husband would provide a room in the accommodation allotted to him at Model Town, Delhi for the residence of

respondent.

Counsel for the petitioner further submitted that in view of their estranged relationship and the accusations made against the petitioners, it was in mutual interest to avoid acrimony and tension, that the respondent should shift from premises in suit.

(12) The offer made by the petitioners was put to the respondent and her Counsel, who declined to accept the same. Respondent instead demanded a substantial sum of Rs. 2 lacs for vacating the room in her occupation in premises in suit. It may be noticed that the respondent herself is a teacher and is earning and had not claimed any maintenance as yet from the petitioner's son.

(13) I am of the view that the offer made by the petitioners, who were under no legal obligation to maintain or provide residence to the respondent was a fair one. The respondent is acting in an unfair manner, to exploit the situation and the factum of her occupation of a part of the petitioners' property. The compassion and sympathy for a married woman, having matrimonial problems cannot at the same time be permitted to be converted into a vehicle of exploitation. The respondent's conduct itself is such as disentitles her from the equitable relief of injunction.

(14) The Trial Court acted with material irregularity in not noticing that in the instant case far from establishing a prima facie case, the respondent had not even pleaded or asserted any legal right. It was not the respondent's case that the property in suit is joint family or that there is a legal obligation on the petitioners to provide her residence. Such an obligation is that of her husband. The respondent is entitled to seek and claim residence from him. In the instant case a reasonable offer made for provision of separate residence to the respondent was spurned by her purely for exploiting the situation and extracting a huge sum of money from the petitioners/in-laws. Respondent's conduct is such as disentitles her from the discretionary relief of injunction. The revision is, therefore, allowed and the injunction granted by the Appellate Court is vacated. However, the status quo order granted shall continue for a period of three months to enable the respondent to find alternate accommodation for herself. The respondent's occupation of a part of the suit premises cannot be treated as lawful possession. The Appellate Court

erred in treating the respondent's permissive occupation that any legal right as lawful possession and settled possession which could be protected by the grant of injunction. Moreover, as already observed by me the respondent's conduct is such as it disentitles her from the injunction. The appeal is, therefore, allowed and the injunction granted by the Trial Court is vacated. However, the petitioners would not disturb her occupation in premises in suit for three months to enable her to find alternate accommodation for her.

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