

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 05, 2008

Date of Order : September 30, 2008

CM(M) 105/2006

30.09.2008

Neetu Mittal ...Petitioner

Through: Ms. Radhika Chandrasekhar, Adv.

Versus

Kanta Mittal and Ors. ...Respondents

Through: Ms. Nandni Sahni, Adv. for R.1 and 2

Mr. Devendra Singh, Adv. for R.3

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT:

1. The petitioner is aggrieved by an order dated 4th January, 2006 passed by the learned Additional Senior Judge allowing an appeal of the respondent against order dated 24.5.2005 of Civil Judge dismissing an application under Order 39 Rule 1 and 2 CPC.
2. The respondents had filed a suit making petitioner, their son and in-laws of the son as defendants wherein they prayed for permanent injunction. An application under Order 39 Rule 1 and 2 was made that the petitioner and other respondents be restrained from forcibly and illegally entering into their house No. B-2/23, Phase-II, Ashok Vihar and from interfering with their peaceful living. The petitioner is wife of Sh. Vikas Mittal son of respondents, Smt. Kanta Mittal and Sh. Ram Kishan Mittal.
3. The learned Senior Civil Judge while allowing appeal observed that wife has a right to live in the matrimonial home after marriage but there was no specific definition of matrimonial home. However, matrimonial home was not just a building made of bricks and walls. It was a home/place comprising of sweetness of relations of family members and elders, full of blessing. In the matrimonial home, matrimonial rights and obligations are to be equally observed. Practically speaking, the residence of husband should be the home of the wife where both the spouses have equal right to reside.
4. The learned Senior Civil Judge found that in this case, the respondents were parents of Sh. Vikas Mittal and in-laws of Neetu Mittal (petitioner). They had separated from their son. The son had taken a flat in Rohini for his own residence and residence of his wife. The son and his wife had agreed to shift there on 10th May, 2005 under a compromise arrived at Police Station. However, the wife did not stay in the flat at Rohini. Her grievance was that flat was not habitable due to deficiency of fan, cooler, etc. Thereafter, she asserted that she had a right to live in her in-laws' house in Ashok Vihar and she wanted to forcibly live there which compelled respondents no. 1 and 2 to file the suit. The learned Senior Civil Judge found that the respondents were aged parents. They had shown by filing medical record that they were suffering from various ailments and at this age of their life they have a right to live peacefully at their home. Since the relations of petitioner were not cordial with them, there was every likelihood of breach of peace to the

detriment to their mental and physical health. Due regards have to be given to their rights. It was a admitted fact that the respondents and petitioner could not live together under one roof with peace and harmony. The common use of dining and one kitchen would create further problems and a situation may come when parties may everyday land up at Police station or in the Court, fighting on minor issues.

5. Learned Sr. Civil Judge also observed that the respondents (parents) even apprehend danger to their lives and dignity, as per the complaint made by them to the Police. Under these circumstances, the learned Senior Civil Judge allowed the application under Order 39 Rule 1 and 2 CPC and restrained the defendants (petitioner herein) from forcibly entering into their house and disturbing the peaceful possession of the respondents.
6. Counsel for the petitioner argued that the petitioner being wife of son of respondents no. 1 and 2 has a right to live in the matrimonial home and no injunction could legally have been issued by the learned Civil Judge. She referred to Protection of Women from Domestic Violence Act, 2005 and argued that the right of women to live in the shared household was to be protected by every Court and the house of in-laws was a shared household and a matrimonial home and she had a right to live there.

7. In S.R. Batra vs. Taruna Batra AIR 2007 SC 1118, Supreme Court observed as under:

"16. 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.

17. 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.

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27. 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 in-laws or other relatives.

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. 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 no.2, mother of Amit Batra. Hence it cannot be called a 'shared household'."

8. As observed by the Supreme Court, '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 dis-regards 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.
10. I therefore consider that the order passed by the learned Senior Civil Judge granting injunction does not suffer from any illegality and the petition is hereby dismissed.

September 30, 2008

SHIV NARAYAN DHINGRA J.