

(2000) 08 DEL CK 0033

In the Delhi High Court

Case No : IA No. 1990 and 4241 of 2000 in Suit No. 387 of 2000

Anu Seth and Others

APPELLANT

Vs

Rohit Narain Seth and Others

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Citation : (2000) 7 AD 135 : (2000) 87 DLT 486 : (2000) 2 DMC 505 : (2000) 55 DRJ 310 : (2001) 1 RCR(Civil) 40

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Arun Khosla and Ms. Manisha Singh, for the Appellant; Mr. Sanjay Gupta, Ms. Varsha and Mr. D.R. Thadani Advs., for the Respondent

Judgement

Mukul Mudgal, J.—The plaintiff No.1 is the wife of defendant No.1 and the plaintiffs 2 and 3 are their children. Defendant Nos. 2 and 3 are the parents, and defendant No. 6 is the brother, defendant No. 4 is the uncle, defendant No. 5 is the aunt, defendant No. 8 is the cousin of defendant No.1. It is the plaintiff's case that plaintiff No. 1 was married to defendant No.1 and stayed in the matrimonial home at 6A, Jantar Mantar Road, New Delhi for 8 years. The plaintiff No.1 has further averred in the plaint that owing to matrimonial disharmony, she left the matrimonial home Along with plaintiffs 2 and 3 and took shelter in her parents' house on 13th August 1999. The plaintiff No.1 has further stated that she is being denied the access to the matrimonial house by the defendants and consequently seeks a decree for permanent injunction restraining the defendants from obstructing the ingress and egress of the plaintiffs to her matrimonial home i.e. at 6 A, Jantar Mantar, New Delhi. The plaintiff No.1 has further pleaded that she is seeking access only to the suite marked blue in the site plan in which she was residing with plaintiffs 2 and 3 and defendant No.1 and this portion of the HUF bungalow at 6A, Jantar Mantar Road was earmarked for their family i.e. the plaintiff and defendant No.1.

2. The suit has been resisted by defendant No.1 by pleading that the plaint is

founded on false premises. The plaintiff's relief, if any, is to file proceedings u/s 9 of the Hindu Marriage Act for restitution of conjugal rights. Further reliance has been placed on the bar contemplated in Section 41(h) of the Specific Relief Act. The defendant No.1 has referred to the plaint where the plaintiff has made several scandalous and defamatory remarks. The defendant No.1 further submits that the conduct of the plaintiff No.1 disentitles her to any interim relief. However, the main plea raised by the defendant No.1 is that the plaintiff No.1 made the stay of the defendant No.1 so unbearable that the defendant No.1 left the house of his parents and is no more residing there and is in any event not the owner of the bungalow in respect of which the injunction is being sought. It is further stated that he has shifted to his sister's house at 141, Sunder Nagar, New Delhi and, Therefore, the relief for injunction is infructuous in any event.

3. The plea taken on behalf of defendants 2 to 8 is that the plaintiff No.1 was not forced to leave the house and she left the same on her own accord.

4. Learned counsel for defendants 2 to 8 has relied on the judgment of the Hon'ble Supreme Court in Smt. Saroj Rani Vs. Sudarshan Kumar Chadha, to contend that the concept of conjugal rights is wide and includes enjoyment of living together. It is, Therefore, pleaded that the plea which seeks the injunction in the present suit clearly falls within the meaning of conjunctly rights covered by Section 9 of the Hindu Marriage Act and no suit as framed can lie. The learned counsel has also relied upon the judgment reported as Mahua Biswas (Smt) Vs. Swagata Biswas and Another, to contend that matrimonial disputes should be taken to matrimonial courts. The learned counsel has relied upon the certain pleadings of the plaint wherein scandalous and defamatory remarks have been pleaded against the husband, defendant No.1, and the other defendants. For deletion of these remarks, the defendants have filed a separate application is No. 3128 of 2000, which is being dealt with separately. It has further been pleaded that the plaintiff No.1 does not want to come and live in the house but wants only the right of free ingress, egress and use of the premises and the motive behind the relief claimed in the suit is to harass the defendants by having the right of ingress and egress and to use the premises so as to create further trouble for them as was done on 13th August 1999 by calling the police. It is further stated that no relief can be granted against the defendants as the premises in question belongs to defendants 2 and 4 and the defendant No.1 and the plaintiff No.1 no right whatsoever in the said bungalow. In this regard reliance has been placed on the judgment of this Court in Sardar Sudhir Singh Vs. Narinder Kaur 1995(6) DLT 638 to contend that the daughter in law has no right to the property of her father in law. It is further stated that defendant No.1 is not living in the suit premises at Jantar Mantar Road any more and the relief sought for cannot be granted and the said bungalow is not her matrimonial home. It is Therefore stated that since the permanent injunction claimed cannot be granted, the question of a temporary injunction being granted cannot arise. It has further been stated that the plaintiff No.1 left the house on 13th August 1999 and did not attempt to come back till 25th January 2000. It has also been

stated that there is no balance of convenience in her favor as the plaintiff No.1 is staying with her parents who are very well to do and who can conveniently support the plaintiffs. It is also denied that the irreparable loss will be suffered by the plaintiffs.

5. The main dispute in the present application for interim relief is as to whether the plaintiff can seek a relief of an injunction to enable her to have access to what was her matrimonial home.

6. It is not in dispute that prior to August 1999 the plaintiff No.1 and the defendant No.1 had resided in the suit premises as husband and wife for a period of about 8 years. Thus, till the date the plaintiff No.1 left and/or was ousted from the said premises, the portion of the bungalow, shown blue in the site plan, was certainly her matrimonial home. The real question which now arises in the present case is that in case the plaintiff No.1 seeks access to her matrimonial home which was a portion of the joint family property, can she be denied such access by defendant No.1 and other defendants on the ground that defendant No.1 is no longer residing in the said house as the house in question belongs to defendants 2 and 4. The present situation is such that defendant No.1 is not now residing in the house at Jantar Mantar Road. It has been vehemently contended by the learned counsel for the plaintiff that the departure of defendant No.1 from the said premises is occasioned by the filing of the suit and the knowledge of the issue of notice by this Court. However, in my view it is not necessary to determine this plea at this stage as the defendant No.1 is in fact not residing at 6 A, Jantar Mantar Road.

7. The crucial question is as to whether the relief in respect of the matrimonial house available to the wife can be frustrated by the husband, defendant No.1, by shifting his residence to his married sister's house to deny the plaintiff No.1 the relief of ingress and egress to the matrimonial home.

8. I am of the view that the plaintiffs' rights vis-a-vis what is said to be her matrimonial home in the Jantar Mantar house, averred by plaintiff No.1 which according to defendant Nos. 2 and 4 is their house, will be determined at the final hearing of the suit. I am at present only concerned with the plea whether the rights of the wife can be frustrated/defeated by the departure of the husband from what was the matrimonial home and she be given any interim relief pending the hearing of this suit.

9. The defendant No.1 after service of the notice upon him had, Therefore, taken a plea that the relief, if any, which the plaintiff No.1 could be entitled to cannot now be granted to her in view of the fact that defendant No.1 has left what was the erstwhile place of residence and has started staying with his married sister. It is unusual for a brother to stay with her married sister, particularly in a Hindu Family. This Court is, Therefore, faced with a situation where a relief which the plaintiff could be granted on the Court being satisfied cannot now be granted in view of the action taken by defendant No.1. It is the plea of the learned counsel

for plaintiff No.1 that the defendant No.1 was aware of this suit pending in this Court as is clear from the difficulty with which he could be served. It is not necessary to go into this question at this stage. However, it is clear that the time of the departure of the defendant No.1 from his residence, 6A, Jantar Mantar Road, is rather significant and the coincidence of the shifting of the defendant No.1 around the time the suit was filed cannot easily be explained. Even in the written statement the defendant No.1 has not clearly stated the date of his shifting. He has merely stated that since January this year he has been living with his sister.

10. The suit was taken up first on 23rd February, 2000 when notice was issued and on 8th March, 2000 fresh notice was issued. On 6th April, 2000, defendant No. 2 was present in person and accepted notice on his own behalf. The Court is, Therefore, faced with the situation where even if the Court was convinced that the plaintiff was entitled to an injunction the order sought for in this suit cannot at present be granted due to this action of shifting of residence by the defendant No.1.

11. The learned counsel for the plaintiff has relied upon the English Law as laid down in *Garasz Vs. Garazz*, reported as 1969(3) All. E. R. 822, as well as the following judgment 1952(1) All. E.R. 1307, 1955(1) All. E.R. 445 and 1953(1) All .E.R. 556. These judgments, according to him, upheld the wife's right to occupation of the matrimonial home. He has further relied upon Matrimonial Homes Act 1967 which gives an innocent wife in occupation a right not to be evicted except by order of the court and if not in occupation a right by the order of the court to enter into and occupy the house. Learned counsel further states that even in an emancipated society like England such rights are given to the wife. Therefore, women in India are entitled to greater protection in view of their social status. He has further stated that the preliminary objection that the plaintiff No.1 not being the natural guardian of plaintiff Nos.2 and 3 and, Therefore, the suit is not maintainable cannot survive in view of the judgment in *Ms. Githa Hariharan and Another Vs. Reserve Bank of India and Another*, . The above plea of the plaintiff No.1 is correct and the suit cannot be dismissed in view of the aforesaid judgment of the Hon"ble Supreme Court which lays down that the mother too can be a natural guardian of minor children even though the father was alive.

12. I am of the view that due to the peculiar facts of the present case in which the right of defendant No.1 in the Jantar Mantar Court have not yet been determined, the occasion for invocation of the above principle of the English Law does not arise at the present stage particularly when the defendant No.1 is no longer in occupation of the Jantar Mantar house, which the plaintiff claims is the matrimonial home.

13. The learned counsel for defendant No.1 strongly relied upon the judgment of this Court in *Sadhu Singh and Others Vs. Narinder Kaur*, , to contend that nature of a permissive user as a daughter in law after marriage would not make the

possession of the daughter in law lawful. In the aforesaid case the learned Single Judge of this Court held that the father in law had only the moral duty and not legal duty to provide maintenance and support to the respondent daughter in law. The Court held that the obligation to provide residence is that of her husband. Further it is significant that in the aforesaid judgment the Court held that the wife was entitled to seek and claim the residence from the husband. The relevant observations are in para 14 of the judgment, which reads as follows:

"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."

14. Insofar as this judgment is concerned while it may prima facie appear to be against the plaintiff it infact partly supports the case of the plaintiff No.1 because this Court held that the wife was entitled to seek and claim residence from the husband. Relying upon the law laid down by the aforesaid judgment while the issue whether the plaintiff can claim residence in the Jantar Mantar Road house can be determined at the time of final hearing of the suit, there is a legal obligation on the part of the husband to provide a residence to plaintiff No.1, the wife, by the husband, defendant No.1. The need of the wife to have access to a matrimonial home is however imminent. This right is not covered by the restitution of conjugal rights available u/s 9 of the Hindu Marriage Act, particularly, in the peculiar facts of the present case. Accordingly the law laid down by the judgment in Saroj Rani and Mahua Biswas, (supra) could not apply to the present case.

15. I am, Therefore, of the view that the rights of a wife cannot be defeated in this manner by the husband by shifting the residence to his married sister's houses. It is not in dispute that prior to plaintiff No.1's leaving the matrimonial home in August 1999, the parties were residing at 6A, Jantar Mantar Road, New Delhi and treated the portion of the house where they were staying as their matrimonial home. The defendant No.1 cannot avoid his responsibility to provide a matrimonial home to the plaintiff No.1 by shifting his residence. This stratagem and device of avoiding and evading marital responsibility cannot be countenanced by a Court. He is bound in law to provide a matrimonial home to the plaintiff No.1. However, if he creates a situation by which such relief cannot

be granted at present, I am clearly of the view that he should be directed to provide sufficient monetary support to the plaintiff No.1 so that she can rent a house for herself and her children which will be the matrimonial house of the couple. Of course the defendant No.1 will also be entitled to residence in such a house. Considering the social and comfortable financial status of the defendants as well as the defendant No.1 a comfortable house should be provided to the plaintiffs. In this view of the matter I am clearly of the view that defendant No.1 should be directed to pay a sum of Rs. 20,000/- per month to the plaintiff with effect from 1st September 2000 so that she can set up a matrimonial home for the parties.

16. Insofar as the plea of restitution of conjugal rights is concerned. I am of the view that the present suit is not for the restitution of conjugal rights per se but infact merely seeks access to the matrimonial house. Consequently the plea as to the maintainability of this suit due to the availability of Section 9 proceedings under the Hindu Marriage Act would not come to the aid of the defendant No.1 at this stage of the suit.

is 4241/2000

17. This is an application (IA No. 4241 of 2000) under Order VI Rules 2 and 16 read with Section 151 of the Civil Procedure Code, filed on behalf of defendant No.2 seeking the striking down of the averments contained in paragraphs 5 to 21 of the plaint. It is stated by defendant No. 2 that the averments in paras 5 to 21 are false, scandalous and defamatory and have no connection or relevance with the relief claimed and are also likely to cause prejudice and embarrassment to the defendants, particularly, the defendant No. 2.

18. Order VI Rule 16 CPC relates to the striking out of amendment of pleading by the Court at any stage of the the proceedings. The said provision reads as under:

"VI(16). Striking out pleadings The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court."

Para 5(a) of the plaint reads as under :-

5(a) That defendant No. 2 & 3, the parents in law of the plaintiff No.1, had strained relations because of their respective philander us ways and extra marital relationships, as conveyed to the plaintiff No.1 by defendant No.1 and other member of the family.

Needless to say that the parents-in-law of the plaintiff No.1 were not on talking terms and lived in separate bed rooms at the said Bungalow, but bowing to the dictates of social expediency they did appear together in public on select

occasions.

19. Having gone through the above pleadings and the pleas of the applicant, I am of the view that the pleadings in paragraph 5(a) are prima facie, scandalous and defamatory. In the context of the relief claimed in the plaint i.e. an injunction restraining the defendants from causing obstruction to the plaintiff's access to her matrimonial home, the above pleadings are entirely unnecessary and indeed scandalous and vexatious. The said pleadings, Therefore, do not directly or indirectly relate to the relief claimed by the plaintiff.

20. In view of the above the pleadings contained in paragraph 5(a) of the plaintiff are ordered to be struck off and the plaintiff No.1 is directed to file the amended plaint within one week from today.

21. Accordingly is 4241/2000 stands disposed of.

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22. List the suit for further proceedings before the Joint Registrar on 18th October 2000.