

(2011) 12 DEL CK 0089
In the Delhi High Court
Case No : CS (OS) No. 2034 of 2009

Pal Singh and Another	Vs	APPELLANT
Priyanka Singh and Another		RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

British Matrimonial Homes Act, 1967 — Section 17(1), 2
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2011) 12 DEL CK 0089

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : R.M. Sinha, for the Appellant;

Judgement

Manmohan Singh, J.—The plaintiffs have filed the present suit for permanent injunction restraining the defendants from forcibly visiting, entering, staying/ residing in the house of the plaintiffs i.e. House No.31, Gyan Kunj, Delhi-110092.

2. The defendant No.1 is the daughter-in-law of the plaintiffs and defendant No.2 is the father of defendant No.1. Defendant No.1 is the wife of Dr. Kushal Pratap Singh, who is the son of the plaintiffs and lives in U.S.A.

3. The brief facts of the case, as per the plaintiffs, leading upto the filing of the present case are that on 23.01.2007 the marriage of the defendant No.1 and Dr. Kushal Pratap Singh was solemnized at Noida, U.P. Thereafter, on 04.03.2007 the couple left for U.S.A and stayed there till 26.02.2009. During this period they visited India once from 01.11.2007 to 27.01.2008. In May, 2007 the plaintiffs had also visited U.S.A. and on 01.11.2007 they returned to India along with their son and defendant No.1. The defendant No.1 and Dr. Kushal Pratap Singh were having some problems in their marriage and could not live peacefully with each other in U.S.A., however, nothing was brought to the notice of the plaintiffs.

4. According to the plaintiffs, after the couple came to India on 26.02.2009, their son was staying with them while defendant No.1 was staying with her father,

defendant No.2. Thereafter, on 02.03.2009 their son made a report to the S.H.O of P.S. Shakarpur, Delhi-110092 apprehending false accusations from his wife, defendant No.1 against himself and his parents with the intention of entrapping them in a false case u/s 498-A or 406 of I.P.C. Thereafter, on 21.03.2009, their son, Dr. Kushal Pratap Singh went back to U.S.A. however, defendant No.1 stayed back in India.

5. It is averred in the plaint that Dr. Kushal Pratap Singh had twice arranged air tickets dated 26.07.2009 and 27.07.2009 for the defendant No.1 to return to U.S.A. but, she refused to go to. During 10.09.2009 to 19.09.2009, some emails were exchanged between the defendant No.1 and Dr. Kushal Pratap Singh and the elder son of the plaintiffs, the copies of the same have been filed with the plaint.

6. It is further stated that defendant No.2 was more aware of the dispute between the couple than the plaintiffs. The plaintiffs have come to know that the defendant No.2 had been threatening their son, Dr. Kushal Pratap Singh to leave U.S.A. at the earliest and come and settle in Delhi or otherwise face dire consequences. When defendant No.2 failed in pressurizing Dr. Kushal Pratap Singh to come back to live in Delhi, he started threatening the plaintiffs of entrapping them in a false case u/s 498-A or 406 of I.P.C. The defendants have also threatened the plaintiffs that when the plaintiffs return to India, the defendants will forcibly enter their house and start living there so as to pressurize Dr. Kushal Pratap Singh to leave U.S.A. and settle in Delhi. Hence the plaintiffs filed the present suit in October, 2007.

7. The matter was listed before the court for the first time on 30.10.2009 when summons were issued to the defendants but the defendants could not be served via registered post. Thus, they were served by way of publication. However, even after that, no one appeared on their behalf on the next date of hearing. Therefore, vide order dated 03.11.2011 the defendants were proceeded ex-parte.

8. The plaintiffs filed evidence bay way of an affidavit Ex.Pw-1/A of the plaintiff No.1. The statement of PW-1, i.e. the plaintiff No.1 was recorded on 01.12.2011. In examination -in-chief, the plaintiff No.1 has also relied on documents Ex. P-1 to P-6 (all photocopies) the details of the same are as follows:

- (i) Ex. P-1- The copy of the conveyance deed dated 06.04.2000.
- (ii) Ex. P-2- The copy of the report dated 02.03.2009 filed with the S.H.O. of P.S. Shakarpur by Dr. Kushal Pratap Singh.
- (iii) Ex. P-3- The copy of the email dated 10.09.2009 by the defendant No.1 to the son of the plaintiffs.
- (iv) Ex. P-4- The copy of the reply email dated 10.09.2009 sent by the son of the plaintiffs to defendant No.1.
- (v) Ex. P-5- The copy of the email dated 16.09.2009 with the true typed copy

sent by the defendant No.1 to the elder son of the plaintiffs.

(vi) Ex. P-6- The copy of the email dated 19.09.2009 with the true typed copy sent by the defendant No.1 to the elder son of the plaintiffs.

9. I have heard the counsel for the plaintiff and perused the affidavit and documents filed by the plaintiffs. The affidavit filed in ex-parte evidence has gone unrebutted the cross-examination of Shri Pal Singh was not conducted by the defendants. Therefore, the evidence of the plaintiff is taken as correct.

10. This Court in the case of Sardar Malkiat Singh v. Kanwaljit Kaur and Ors. RFA No. 183/2006 and CM No. 4575/2006, dated 12.03.2010 has referred to judgment of the Supreme Court in the case of S.R. Batra v. Smt. Taruna Batra : 2006 (4) Cri 433, in which the Supreme Court, while setting aside the judgment of the High Court, held as under:

13. 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.

It was further held:

22. 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".

23. No doubt, the definition of "shared household" in Section 2(s) of the Act is not very 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 society.

11. Relevant paras of Sardar Malkiat Singh v. Kanwaljit Kaur and Ors. (supra) read as under:

14. Regarding the findings on issue Nos.1,3,4 and 5, the law by now is well settled that the wife has no right of residence in a house held by the father-in-law and/or the mother-in-law. It was so held by the Hon"ble Supreme Court in Taruna Batra's case (supra), while delineating the definition of a "shared household", which, according to the Supreme Court, can only mean a house belonging or taken on rent by the husband or a house which belongs to a joint family of which the husband is a member. There is no dispute that the house in the present case neither belongs to nor is leased to the husband nor it belongs to the joint Hindu family of which the husband is a member.

16. In Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and Others, the

Supreme Court while observing that the Domestic Violence Act provides for a higher right in favour of a wife, in that, she not only acquires a right to be maintained, but also thereunder acquires a right of residence, clarified that the said right as per the legislation extends to joint properties, in which the husband has a share. In para-18 of the said judgment, it was stated thus:-

18. Maintenance to a married wife during subsistence of marriage is on the husband. It is his personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can only be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject matter of attachment nor during the lifetime of the husband his personal liability to maintain his wife can be directed to be enforced against such property.

12. In another judgment of the Division Bench in the case of Smt. Shumita Didi Sandhu Vs. Mr. Sanjay Singh Sandhu and Others, this Court has held that once the husband is alive, neither the father-in-law nor the mother-in-law has any duty to maintain the daughter-in-law, and the daughter-in-law has no right to reside in the property of her in-laws which is not a matrimonial home, nor a "shared house" and once the plaintiff is owner of the property and the suit premises is not matrimonial home and the husband of the defendant is living separately, the daughter-in-law would not have right to stay in the suit property.

13. Considering the circumstances of this case, I am of the view that the plaintiffs are entitled to the decree for permanent injunction restraining the defendants from forcibly visiting the house of the plaintiff by disturbing the life of the plaintiff and staying/residing with the plaintiffs in their house. Decree be drawn in the abovementioned terms. Suit and pending application, if any, stand disposed of. No costs.