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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09th August, 2021
Date of decision: 24th August, 2021

\+ **RSA 14/2021 & CM APPLs. 3964/2021, 3966/2021, 21708/2021**

AARTI SHARMA & ANR. ..... Appellants
Through: Mr. Zahid Ali, Advocate.
versus
GANGA SARAN ..... Respondent
Through: Mr. Ashok Kumar Tiwari, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through video conferencing.

2. The present second appeal has been filed challenging the impugned order dated 16th November 2019, passed by the ld. ADJ (North-east), Karkardooma Courts, Delhi (hereinafter, *"first Appellate Court"*) in ***RCA DJ No. 46/19***, arising out of the initial order of the ld. SCJ, (North-east), Karkardooma Courts, Delhi (hereinafter, "*Trial Court"*) dated 18th April 2019, in ***Suit No. 148/16***. The trial court had allowed the application under Order 12 Rule 6 of the CPC, and decreed the suit. The First Appellate Court, dismissed the appeal challenging the said judgement/decree passed by the Trial Court.

3. The background to the present second appeal is that the Plaintiff/Respondent in the suit Sh. Ganga Saran *(hereinafter `Plaintiff')*, who is the father of Appellant No.2, filed a suit against his son and daughter-in-law i.e., Sh. Vinay Kumar and Ms. Aarti Sharma, respectively

(hereinafter `Defendants'). The reliefs sought in the suit before the Trial Court, are as under:

> *i. Pass a decree of permanent injunction in favour of the plaintiff and against the defendant, their attorney, successor, assignee, legal heirs, associates etc. thereby restraining them from disposing-off the suit property No. A-65, Gali No.03, A-Block, Rama Garden, Delhi-110094, which is more specifically shown in red colour in site plan attached.*
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> *ii. Pass a decree of mandatory injunction in favour of the plaintiff and against the defendants, their attorney, successor, assignee, legal heirs etc. thereby directing them to remove themselves from the suit Property and hand over peaceful vacant possession of the same to plaintiff in respect of property bearing No. A-65, Gali No.3, A-Block, Rama Garden, Delhi-110094, as more specifically shown in red colour in site plan attached.*
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> *iii. Pass a decree of future/pendent-lite damages/mesne profits @ Rs. 8,000/- p.m. from the dated of filling present petition till suit property is vacated and peaceful possession is handed over to plaintiff.*
>
> *iv. Any other relief as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants, in the interest of justice."*

4. The case of the Plaintiff in the suit is that he is the owner of the property bearing No. A-65, Gali No.3, A-Block, Rama Garden, Delhi, (hereinafter, *"suit property")* as shown in the site plan. In view of various disputes between him and his son/daughter-in-law, he sought permanent and mandatory injunction, damages seeking vacant and peaceful possession of

the suit property and removal of his son and daughter-in-law. Damages and *mesne* profits were also sought by the Plaintiff in the suit.

5. In the written statement before the Trial Court, the case of the Defendants, was that the suit property was purchased from the joint family fund. The said property is stated to have been purchased out of the funds generated by the sale of the earlier property which was originally registered in the name of the mother i.e., the wife of the Plaintiff, and upon her demise in 2007, the said property had devolved upon the husband i.e., the Plaintiff, as also their children, i.e., the Defendants. Thus, it was claimed in the Written Statement that as the suit property was bought using the funds that were generated out of the sale of the earlier property, to which the son had a right, it does not exclusively belong to the Plaintiff.

6. Vide order dated 18th April 2019, the Trial Court examined the matter and arrived at the following findings:

> *"(a) Thus, in order to succeed under Order 12 Rule 6 CPC, the admissions by the defendant must be clear, unequivocal and unambiguous.*
>
> *(b) The plaintiff Sh. Ganga Saran is admittedly the father of defendant no. l and father-in-law of defendant no. 2.*
>
> *(c) The plaintiff has claimed to be the owner of the said property i.e. A-65, gali no.3, A Block, Rarna Garden, Delhi measuring 100 Sq. Yards having purchased the same from Ram Prakash. The plaintiff has filed property documents in the nature of GPA, agreement to sell, receipt, will and possession letter with affidavit, all dated 26.12.2011. The site plan has also been filed.*
>
> *The defendants have admitted that the property documents are in the name of the plaintiff. What is*

disputed though is the ownership of the plaintiff over the property.

The contention of the defendants is that the said property was purchased by the plaintiff from the funds generated through the sale of another property bearing no.A-1/103, Gali no.2, Nehru Vihar, Delhi-110094 and through funds given by defendants. The property bearing No. A-1/103, Gali No. 2, Nehru Vihar, Delhi-110094, was owned by Smt. Pushpa Devi (wife of plaintiff and mother of defendant no.1) who executed GPA in favour of the plaintiff, who then sold the said property to one Sh. Ganga Prasad. From the proceeds of the sale, the new property no. A-65, gali no.3, A Block, Rama Garden, Delhi measuring 100 Sq. Yards, was purchased in the name of the plaintiff. The sale of the property and the consequent purchase of the other property as stated above was a mark of respect to the plaintiff and with mutual assurances that property would be considered to be of the plaintiff, defendant no.1 and Vijay Kumar Tiwari.

The said contention of the defendants cannot be accepted as firstly the property bearing no. A-65, gali no.3, A Block, Rama Garden, Delhi measuring 100 Sq. Yards, is admittedly in the name of the plaintiff. Secondly, even if defendants contributed in purchase of the said property, they would not become the co-owners of the said property. Thirdly, the property documents in favour of plaintiff in respect of property no. A-65, gali no.3, A Block, Rama Garden, Delhi measuring 100 Sq. Yards, or GPA in respect of property no. A-1/103, Gali no.2, Nehru Vihar, Delhi-110094, in favour of plaintiff or its subsequent sale by plaintiff through GPA dated 24.12.2011 are not disputed nor the said documents held to be invalid in any proceedings in any court of law. In fact,

defendants admit that the documents were not challenged at the time of their execution. The said documents are the only documents in respect of the properties. Thus, it has to be held that plaintiff is the owner of the property of the bearing no. A-65, gali no.3, A Block, Rama Garden, Delhi measuring 100 Sq. Yards. If the property is in name of plaintiff, then in law, simply by stating that it was meant to be owned by all including defendants, it cannot be said defendants are co-owners/joint owners of the property.

(d) The plaintiff has claimed that he has permitted defendants to reside in one room set with kitchen on ground floor of property bearing no. A-65, gali no.3, A Block, Rama Garden, Delhi measuring 100 Sq. Yards, as licensee and the same is depicted in red colour in the site plan. The defendants being son and daughter-in-law of the plaintiff have to be held to be licensee of the plaintiff in respect of the said suit property and the license has been terminated by the plaintiff.

(e) The contention of the defendants that they cannot be removed from the house/suit property because the suit property is the shared house-hold and as members of the joint family property is not tenable as defendant no.2 can claim her rights from her husband i.e. defendant no.1 only and not from her father-in-law/plaintiff, who has no duty to provide residence to either son or daughter-in-law. The reference may also be held to the judgment of Hon'ble Supreme Court of India in S. R. Batra and Anr. vs. Smt. Taruna Batra. 1(2007) SLTl.

(f) In ***Nopany Investment (P) Ltd Vs. Santokh Singh (HUF), 2008 (2) SSC 728****, it was held that filing of suit is itself a notice to quit on the tenant and therefore, no notice to quit under Section 106 T.P. Act is necessary to enable the landlord to get*

the decree of possession. The requirement of the present ease is lesser as defendants are claimed to be licensee and not tenant in the property.

(g) Thus, all the defendants have not denied in their written statement regarding, the existence of property documents of thy suit property in the name of the plaintiff and admissions of defendants in written statement and defendant No.1 & 2 being the son and daughter-in-law of the plaintiff and considering the ratio of ***Nopany Investment*** *(supra), there is every reason to allow the request for judgment on the basis of admissions under Order 12 Rule 6 CPC.*

(h) In view of the above discussion, the plaintiff has shown himself to be the owner of the property bearing no. A-65, gali no.3, A Block, Rama Garden, Delhi measuring 100 Sq. Yards, and defendants are residing in a portion of the suit property i.e. one. room set with kitchen on ground floor of property bearing no. A-65, gali no.3, A Block, Rama Garden, Delhi measuring 100 Sq. Yards as shown in red colour in the site plan, in the capacity of the licensee of the plaintiff. All the ingredients under Order 12 Rule 6 CPC are satisfied. Accordingly, oral application under Order 12 Rule 6 CPC is allowed and suit for mandatory injunction directing defendants to remove themselves from the suit property i.e. one room set with kitchen on ground floor of property bearing no. A-65, gali no.3, A Block, Rama Garden, Delhi measuring 100 Sq. Yards as shown in red colour in the site plan, and hand over the possession of the same to the plaintiff, is decreed.

Decree-sheet be accordingly prepared. No order as to cost."

7. The Trial Court recognized that the Plaintiff was the exclusive owner of the said property and the son and daughter-in-law i.e., the Defendants were merely licensees. Accordingly, a decree was passed in favour of the Plaintiff in his application under Order 12 Rule 6 of CPC.

8. The said order was appealed by the Defendants before the first Appellate Court, which confirmed the findings of the Trial Court in the following terms:

> *"12. As was also rightly noted by Ld. Trial court, contention of the defendants that they cannot be removed from the suit property because suit property is shared household and as members of the joint family property is not tenable as defendant no.2 could claim her rights from her husband i.e. defendant no.l and not from her father in law who has no duty to provide residence to either son or daughter in law. Reference was made to the judgment of* ***Hon'ble Supreme Court in S.R. Batra & Anr.*** *Vs.* ***Smt. Taruna Batra 1 (2007) SLT1.***
>
> *13. The documents as available on record categorically point out towards the ownership of the plaintiff with regard to the subject premises and the status of the defendants in the suit property as licensee being son and daughter in law of the plaintiff which license could be revoked with the conveying of intention by plaintiff seeking vacation of the defendants from the subject premises.*
>
> *14. The unequivocal and unambiguous admission that the property was owned by plaintiff and there being no challenge to the documents executed in favour of plaintiff till now, the legal position which emerges on record regarding the plaintiff being the absolute owner of the suit property and his son i.e. appellant no. 1 having no right, title and*

> *interest therein. Appellant no.1 had been occupying the suit property being son of plaintiff and after the marriage, appellant no.2 joined the company of her husband i.e. appellant no.1. Son and daughter in law acquire no legal right to occupy the self-acquired property of the parents or parents in law as the case may be, against their consent and wishes. Mere denial of the defendants/appellants contrary to the documentation available on record and their admission with regard to property being in name of the respondent, no triable issue qua that aspect remained to be adjudicated and Ld. Trial court thereby did not err in considering the matter for disposal under order 12 Rule 6 CPC."*

9. It is this order of the first Appellate Court that has been challenged by the Defendants in the present second appeal.

10. There are two issues that have arisen in the present case. The first issue concerns with condonation of delay of 342 days, in filing the present second appeal. The second issue concerns with the merits of the matter.

Submissions of the parties

I. Condonation of delay in filing the appeal

11. On behalf of the Appellants/Defendants, Mr. Ali, ld. Counsel submits that the impugned order of the first Appellate Court was passed on 16th November 2019. An application for a certified copy of the said order was filed on 9th December 2019 and the same was received only on 13th January 2020. He submits that thereafter, the lockdown, on account of the COVID-19 pandemic, commenced on 24th March 2020. Accordingly, he submits that the period post 15th March 2020 to 14th March 2021 ought to be excluded while calculating the limitation period on account of the judgment of the

Supreme Court dated 8th March 2021, in ***Suo Moto Writ Petition (Civil) No. 3 of 2020***, titled ***In Re: Cognizance for extension of limitation***. He submits that since present second appeal was filed on 25th January 2021, thus, the appeal is within limitation. He further submits that in any case, the delay is not to the tune of 342 days due to the order of the SC, and considering the pandemic, as also the fact that the delay is not very long, he prays for the delay to be condoned and the appeal to be admitted, as substantial questions of law arise in the matter.

12. Mr. Tiwari, ld. counsel appearing for the Plaintiff, on the other hand, submits that the delay is not liable to be condoned because the delay is of more than 300 days in the present case. The order of the Supreme court in ***In Re: Cognizance for extension of limitation (supra)***, directing that the period between 15th March 2020 and 14th March, 2021 would be excluded while calculating limitation, would not apply in the present case as the limitation expired prior to 15th March 2020. Accordingly, he submits that the delay is not liable to be condoned.

II. <u>On the merits of the present second appeal</u>

13. Mr. Ali, ld. Counsel for the Defendants firstly submits that the property is a joint family property and was purchased from joint funds. He relies upon the written statement filed before the Trial Court to canvass the said proposition. He submits that funds for purchasing the said property were generated out of the sale of a property bearing no. A-1/103, Gali No. 2, Nehru Vihar, Delhi, which was originally in the name of the mother. The mother unfortunately expired, and the son had become one of the legal heirs of the mother. He submits that the General Power of Attorney (hereinafter

"GPA"), in favour of the Plaintiff, in respect of the first property which was sold, had already expired and could not have been used after the death of the mother. He accordingly submits that the son had a share in the first property, which generated funds for the purchase of the suit property, and hence, he cannot be evicted in this manner.

14. Mr. Ali, ld. Counsel, secondly submits that one of the Defendants, being the daughter-in-law of the Plaintiff, even if is assumed that the suit property belongs to the Plaintiff, the said premises is a *`shared household'* and her matrimonial home. To canvass the same, he submits that the parties were living in a joint premises, and the kitchen was also common. Accordingly, she would not be liable to be evicted in view of the judgments of the Supreme Court in ***Satish Chandra Ahuja v. Sneha Ahuja., [2020 (11) SCALE 476]***, as also ***Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors., [2020 (14) SCALE 210]***.

15. Finally, Mr. Ali submits that this was not a case of passing of a decree under Order XII Rule 6 of CPC, inasmuch as the question as to the nature of the property would require evidence to be led before the Trial Court. He therefore submits that until the question of joint-property was not decided, the Trial Court could not have directed the eviction, and the same ought not to have been upheld by the Appellate Court.

16. Mr. Tiwari, ld. Counsel for the Plaintiff, however, refutes these submissions. He firstly submits on the ownership of the property, that in the written statement before the Trial Court, the clear stand of the Defendants is contrary to what is being currently argued. He submits that it is, in effect, admitted in the written statement that the Plaintiff may be the absolute owner of the suit property in question, however, the Defendants, are in a

domestic relationship with the Plaintiff. He further submits that the question concerning the contribution of jewelry towards the purchase of the suit property by the Defendants, has also been discussed by the Trial Court in paragraph 6 & 7 of its judgment/decree, and at best the same can be a case of borrowing. However, the same would not amount to a contribution in the purchase of the suit property. He further submits that the fact that the Plaintiff was working at Delhi Cloth Mills, which is an established company, is not disputed, nor is the execution of the GPA in favour of the Plaintiff disputed. Further, no suit, claiming any rights in respect of the suit property has ever been instituted by the Defendants before any court.

17. In response to the argument on *`shared household'*, Mr. Tiwari, ld. counsel for the Plaintiff, submits that the impugned order dated 16th November, 2019 in paragraphs 9 & 10, has considered the said defence which has been raised by the Defendants, and has thereafter upheld the decree in favour of the Plaintiff. He submits that the judgments of the Supreme Court in ***Satish Chandra Ahuja (supra)*** and ***Smt. S. Vanitha (supra)*** are not applicable to the present case. He submits that in both these cases there were disputes between the husband and the wife. In those cases, the husband and wife had an estranged relationship, and the daughter-in-law was alleging domestic violence against the husband. He submits that to the contrary, in the present case, both the husband and wife are cooperating with each other, and they have jointly the first appeal as also the present appeal. There is no matrimonial discord between the husband and the wife, and even at the time of filing of the appeal, both were residing together. Under these circumstances, he submits that both the above-mentioned judgments for the Supreme Court would not be applicable to the present case. Thus, the

submission of Mr. Tiwari, ld. Counsel is that these two judgments of the Supreme Court in ***Satish Chandra Ahuja (supra) and S. Vanitha (supra)*** would apply only in cases of domestic violence and when the daughter-in-law is estranged from the husband, which is not the case in the present appeal.

18. Mr. Tiwari, ld. Counsel, finally submits that the execution of the decree was also sought and in March 2021, the Defendants have already vacated the suit premises. He accordingly submits that thus the execution of the decree no longer survives.

19. In Rejoinder, Mr. Zahid Ali, ld. Counsel for the Defendants, submits that the fact that the son and daughter-in-law are residing together, and are not estranged, would not make any difference in the position of law. He submits that the concept of `*shared household'* would apply to the daughter-in-law irrespective of whether the son and daughter-in-law are living together or not. The submission of the Plaintiff that in cases where the husband and wife are living together, the Protection of Women from Domestic Violence Act, 2005 (hereinafter, *"DV Act")* will not apply, is vehemently controverted.

20. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Satish Chandra Ahuja (supra)*** to argue that in the said judgment, there is no observation to the effect that if the husband and the wife are living together, the right of the wife under the DV Act, to claim '*shared household*' and the right to reside, can be taken away. Reliance is also placed on the judgment of the Supreme Court in ***S. Vanitha (supra)*** to argue that even in the said judgment, the daughter-in-law had not specifically filed a complaint under the DV Act, and the said judgment further explains the

right to reside in detail, to the effect that even if the son and daughter-in-law are living together or if the son continues to live with the daughter-in-law, the right of the daughter-in-law to reside in the matrimonial home cannot be defeated.

Analysis and Findings:

I. On Condonation of delay in filing the appeal

21. ***CM Appl. 21708/2021*** **and** ***CM Appl. 3966/2021*** are applications that have been filed on behalf of the Defendants, seeking condonation of delay in filing the present second appeal. The impugned order in this case was passed on 16th November, 2019. The Defendants applied for a certified copy on 9th December, 2019, which was received on 13th January, 2020. As per the Supreme Court order in ***In Re: Cognizance for extension of limitation (supra)***, the period of 15th March, 2020 till 14th March, 2021 is to be excluded while calculating the limitation period, in light of the COVID-19 pandemic. Accordingly, after deducting the period during which the certified copy was to be issued by the Court, the limitation of 90 days to file the present second appeal, has not expired prior to 15th March, 2020. The appeal was filed on 25th January, 2021, which is within the period excluded by the Supreme Court's order.

22. Considering these facts, there is no delay in filing the present appeal. However, the Defendants have filed these applications by way abundant caution. Accordingly, the delay, if any, in filing the present appeal stands condoned. Applications are disposed of.

II. On the merits of the present second appeal

23. This court has heard ld. counsels for the parties from time to time, and has perused the record. The ld. Counsel for the Appellants/Defandants has placed vehement reliance on the judgments recently delivered by the Supreme Court on the issue of *'shared household'* in the context of the DV Act. The fact that the Plaintiff is the owner of the suit property is not disputed. However, some arguments have been raised in respect of how the Plaintiff got ownership of the property. Primarily however, as a question of law in this second appeal, the only submission urged is in respect of the suit property being a *'shared household'* or matrimonial home for the daughter-in-law. Thus, before dealing with the merits of the matter, it is necessary to consider the judgments cited by the ld. Counsels for the parties.

Case laws

24. In ***Satish Chandra Ahuja (supra)*** the Supreme Court was dealing with a dispute between in-laws and son on the one hand, and the daughter-in-law on the other hand. There were various cases pending between the son and the daughter-in-law, including a divorce petition under Section 13 (1A) of the Hindu Marriage Act, 1955, and an application under Section 12 of the DV Act alleging severe emotional and mental abuse. A suit for injunction was filed by the father-in-law against the daughter-in-law without impleading the son. The daughter-in-law, who was having marital disputes with her husband, had in her defence claimed that the New Friends Colony residence, which was her matrimonial home, would be a '*shared household*' in terms of Section 2 (s) of the DV Act, and accordingly she could not be evicted from the same. The Trial Court had passed a decree of eviction under Order 12 Rule 6 of CPC, against the daughter-in-law, in the said suit. The said order of the Trial Court was appealed against, by the daughter-in-

law, and the High Court had set aside the decree passed by the Trial Court and remanded the matter for fresh adjudication. The High Court had refrained from determining as to whether the premises of the father-in-law would be a '*shared household'* or not and had remanded the matter for trial. The said decision of the High Court was challenged before the Supreme Court. The Supreme Court, in this background, gave the following findings:

i) The definition of '*shared household'* under Section 2(s) of the DV Act, is an exhaustive definition.

ii) The '*shared household'* could belong to any relative of the husband, with whom the daughter-in-law may have lived.

iii) The Supreme Court also held that the right to residence, as provided to the daughter-in-law under Section 19 of the DV Act, is not an indefeasible right, and hence the Court has to balance the rights of the parties.

25. The observations of the Supreme Court are as under:

> "*83. Before we close our discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by High court in paragraph 56 adequately balances the rights of both the parties."*

26. The Supreme Court further went on to observe that the claim of the Defendant that the suit property is a '*shared household'*, ought to have been considered by the trial Court. It held that a decree under Order 12 Rule 6 is discretionary and not a matter of right. It further held that the proceedings under the DV Act and the civil suit are independent proceedings and the order passed by the Magistrate in a DV Act proceeding would be of evidentiary value in the suit, but of a limited nature, as the issues raised in the civil suit are to be determined by the trial Court. Finally, the Supreme Court observed that relief under the DV Act can be sought in any legal proceeding, including a Civil Court. Family Court or a Criminal Court by the aggrieved person. The said observations of the Supreme Court are as under:

> "*93. As per Section 26, any relief available under Sections 18, 19, 20, 21 and 22 of the Act, 2005 may also be sought in any legal proceeding, before a civil court, family court or a criminal court being the aggrieved person. Thus, the defendant is entitled to claim relief under Section 19 in suit, which has been filed by the plaintiff. Section 26 empowers the aggrieved person to claim above relief in Civil Courts also.*
> *xx"*

27. After analysing the law to the facts of the case, the court upheld the judgment of the High Court, setting aside the decree under Order 12 Rule 6 of the CPC and remanding the matter for fresh adjudication.

28. In the case of ***S. Vanitha (supra),*** the dispute arose between both the in-laws on the one hand, and the daughter-in-law, on the other. The son was also impleaded as a party. The in-laws, in the said case, had preferred an

application under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter, "*Senior Citizens Act*)" and sought eviction of their daughter-in-law and grand-daughter. The authorities under the Senior Citizens Act directed the Defendant/ daughter-in-law in the said case, to vacate the premises. The same was upheld by the Division Bench of the Karnataka High Court, which held that the remedy of the daughter-in-law to seek maintenance and shelter, lies only against the husband i.e., the son, and accordingly the eviction order was valid. This judgment of the Karnataka High Court was challenged before the Supreme Court. The Supreme Court considered the right of residence given to the daughter-in-law, under the provisions of the DV Act, as also the relevance of the provisions of the Senior Citizens Act.

29. The Supreme Court held that the intention of the legislators would be to read the said two legislations harmoniously, as both deal with the salutary aspects of public welfare and interest. It held that the Senior Citizens Act cannot have an overriding force in all situations irrespective of competing entitlements of a women in a '*shared household'*, as the same would defeat the purpose of the DV Act. The provisions of both the Acts cannot be ignored and have to be harmoniously construed. The relevant observations of the Supreme Court are as under:

> "*… The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a*

> *shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.*"

30. The Supreme Court further observed that both these legislations are special legislations. Section 3 of the Senior Citizens Act cannot override and nullify other provisions of law, including Section 17 of the DV Act. Applying the said law to the facts, the Supreme Court then emphasized upon the series of transactions in respect of the subject property from which the daughter-in-law was to be evicted. The Supreme Court observed that the said property was originally bought in the name of the son, just a few months before the marriage, and was sold a few years later at the same price to the father-in-law. The father-in-law then gifted the property to the mother-in-law, after divorce proceedings were initiated between the son and the daughter in law. The daughter-in-law had also filed proceedings for maintenance under the Hindu Marriage Act. In the said background of the two proceedings filed by the son and the daughter-in-law against each other, the application under the Senior Citizens Act came to be filed by the father-in-law. In that context the Supreme Court held as under:

> "*….A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse (Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act 2005.*"

31. The Supreme Court, thereafter, restrained the in-laws from evicting the daughter-in-law for a period of one year, in order to enable her to avail of her remedies in accordance with law. The operative portion of the judgement in ***Smt. Vanitha (supra)*** reads:

> *"For the above reasons, while allowing the appeal, we issue the following directions:*
>
> *i) The impugned judgment and order of the Division Bench of the High Court of Karnataka dated 17 September 2019 affirming the order of eviction against the appellant shall stand set aside with the consequence that the order of the Assistant Commissioner ordering and directing the appellant to vacate the suit premises shall stand set aside;*
>
> *ii) We leave it open to the appellant to pursue her remedies under the PWDV Act 2005. For that purpose, it would be open to the appellant to seek the help of the District Legal Services Authorities and if the appellant does so, all necessary aid and assistance shall be furnished to her in pursuing her legal remedies and rights;*
>
> *iii) IA 111352/2020 for restoration of the electricity connection is allowed by directing the Fourth respondent to take all necessary steps for restoration of the electricity connection to the premises within a period of two weeks from the receipt of a certified copy of this judgment. The Fourth respondent shall also continue to pay the electricity dues in future; and*
>
> *iv) In order to enable the appellant to pursue her remedies under the PWDV Act 2005, there shall be an order and direction restraining the respondents from forcibly dispossessing the appellant, disposing of the premises or from creating any right, title and interest in favour*

> *of any third party in any manner whatsoever for a period of one year, to enable the appellant to pursue her remedies in accordance with law. The appellant is at liberty to move the Court to espouse her remedies under the PWDV Act 2005 for appropriate orders, including interim protections."*

32. Previously, in ***Vinay Verma vs. Kanika Pasricha and Ors., 265 (2019) DLT 211,*** this Court had the opportunity to examine both the Senior Citizens Act as also the DV Act, and had laid down certain guidelines to be followed by Courts, in order to strike a balance between the said two acts. The said guidelines read as under:

> "*1. The court/tribunal has to first ascertain the nature of the relationship between the parties and the son's/ daughter's family.*
>
> *2. If the case involves eviction of a daughter in law, the court has to also ascertain whether the daughter-in-law was living as part of a joint family.*
>
> *3. If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son- in-law from their premises. In such circumstances, the obligation of the husband to maintain the wife would continue in terms of the principles under the DV Act.*
>
> *4. If the relationship between the parents and the son are peaceful or if the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the in-laws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the*

> *daughter-in-law from their property, an alternative reasonable accommodation would have to be provided to her.*
>
> *5. In case the son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life and also put the property to use for their generating income and for their own expenses for daily living.*
>
> *6. If the son has abandoned both the parents and his own wife/children, then if the son's family was living as part of a joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-in-law, however, for a reasonable period they would have to provide some shelter to the daughter-in-law during which time she is able to seek her remedies against her husband."*

Applicability of the law to the facts

33. The facts of the present case show that the suit before the Trial Court was instituted by the Plaintiff against both his son and his daughter-in-law. Undisputedly, the Plaintiff is not in a good financial condition, and in fact was required to avail of legal-aid, to be able to pursue the suit before the Trial Court.

34. The suit property was purchased by the Plaintiff on 26th December, 2011. His son got married in the year 2005 and both the son and daughter-in-law started living in the suit property on the ground floor. Several disputes arose amongst the said family members, which, according to the Plaintiff, were due to the interference of the family members of the daughter-in-law, including the mother and the brothers of the daughter-in-law. The Plaintiff is stated to have suffered various severe medical problems

including a stroke and paralysis. The Plaintiff's mother i.e., the grand-mother of the son- is 85 years old and is also handicapped. She is living with the Plaintiff.

35. The Plaintiff had filed various complaints with the ACP, Bhajanpura, on 27th June, 2006, 10th June, 2006, 2nd April, 2008, 21st July, 2010, 22nd July, 2010 and 30th July, 2010, alleging humiliation, agony and threats by the Defendants. An application under the Senior Citizens Act was also filed by the Plaintiff in 2015, but no orders were passed in the same. The Plaintiff then disowned his son and got a publication issued to this effect on 27th December, 2015.

36. The Defendants, i.e., the son and daughter-in-law are employed. The daughter-in-law is a teacher and the son works as a sales agent in a showroom. The Defendants are stated to have threatened the Plaintiff that they would implicate him in a dowry case.

37. In the joint written statement filed by Defendants, their case is that the first house bearing House No. A-1/103, Gali No. 2, Nehru Vihar, Delhi-94, belonged to the Plaintiff's wife i.e., the mother of the son. The said property was purchased in December, 1981, by the mother who was earning by stitching and doing other odd household jobs. It is further their case that there was a mutual understanding that the said property would be partitioned, and accordingly a Registered General Power of Attorney was executed by the mother in favour of the Plaintiff, with this mutual understanding. After the unfortunate demise of the mother, the Plaintiff on 24th December 2011, sold the said house, and it is stated that with the money received from the said sale, he bought the suit property. According to the Defendants, the clear intention while effecting the said sale and purchase,

was that the Plaintiff and the son, along with his brother would be co-owners of the suit property, inspite of the same being in the name of the Plaintiff. The submission is that the mere registration of the GPA in favour of the Plaintiff in respect of the first house, does not confer all rights in his favour, and as the said first house was a joint property, of which the son was a legal heir, the suit property which is stated to have been bought using the funds generated out of the said sale, ought to be deemed to be co-owned by the son and the Plaintiff. It is accordingly, argued in the written statement that the son had 1/3rd share in the property as the Plaintiff was the *Karta* of the joint and undivided Hindu family.

38. Without prejudice to all the above submissions, it was pleaded in the written statement before the Trial Court that the Defendants and the Plaintiff have a domestic relationship, so the right of residence of one of the Defendants, i.e., the daughter-in-law, in the '*shared household'* is unfettered according to the DV Act, and cannot be taken away. An allegation of domestic violence by the brother-in-law as also the Plaintiff has also been levelled in the said written statement, on behalf of the daughter-in-law.

39. The Trial Court, vide order dated 18th April, 2019, has held that admittedly the Plaintiff is the owner of the suit property. It further held that even if the Defendants have contributed to the purchase of the said property, the same would not entitle them to be co-owners. It held that none of the documents of sale are disputed, and merely to argue that the property ought to have been co-owned by the Defendants also, would not create co-ownership. Due to the existence of property documents which was admitted by the parties, the decree for mandatory injunction was passed on the application under Order 12 Rule 6 of CPC.

40. In the order passed by the Appellate Court, the Appellate Court has also held that the admission of ownership of the suit property in favour of the Plaintiff, is unambiguous and unequivocal. The relevant portion of the said order reads as under:

> "*14. The unequivocal and unambiguous admission that the property was owned by plaintiff and there being no challenge to the documents executed in favour of plaintiff till now, the legal position which emerges on record regarding the plaintiff being the absolute owner of the suit property and his son i.e. appellant no.1 having no right, title and interest therein. Appellant no.1 had been occupying the suit property being son of plaintiff and after the marriage, appellant no.2 joined the company of her husband i.e. appellant no.1. Son and daughter in law acquire no legal right to occupy the self acquired property of the parents or parents in law as the case may be, against their consent and wishes. Mere denial of the defendants/appellants contrary to the documentation available on record and their admission with regard to property being in name of the respondent, no triable issue qua that aspect remained to be adjudicated and Ld. Trial court thereby did not err in considering the matter for disposal under order 12 Rule 6 CPC."*

41. The suit filed by the Plaintiff is one for permanent and mandatory injunction, *pendente lite* damages and mesne profits. The pleadings in the plaint clearly shows that this is not a case which invokes the provisions of either Senior Citizens Act or DV Act. The Plaintiff filed the suit on the strength of his ownership of the suit property. His case is that his son and his daughter-in-law are licensees in the property, as he had permitted them

to live there. For various reasons, disputes have arisen between him and his son's family, due to which, in the suit, he sought a mandatory injunction to remove them from the suit property.

42. A perusal of the written statement also shows that the case set up by the Defendants is one of contribution in the purchase of the property or an understanding amongst the family members, that the property would be co-owned. However, the ownership of the Plaintiff and the documents that exist in favour of the Plaintiff are not in dispute and are admitted on record.

43. Insofar as the allegations relating to the sale of the earlier Nehru Vihar property, which was in the name of the mother, is concerned, no challenge in respect of the same has ever been raised by the Defandants. The sale of the said property and thereafter the purchase of the suit property by the Plaintiff in 2011, in his own name, has also not been objected to. There is no document on record to show the existence of an HUF, of which, the Plaintiff is alleged to be the *Karta*.

44. The second plea of *'shared household'* appears to have clearly been put up on behalf of the daughter-in-law, as a faint plea, and as an argument of last resort. The following are the pleadings in the written statement to canvass the argument of *'shared household'*:

> "*Further it is respectfully submitted that in case the Hon'ble Court is of the view that the defendant no.1 is not the co-owner of the said property and the plaintiff is the absolute owner of the suit property then it is respectfully submitted that the defendants have lived as members of joint family property in domestic relationship with the relatives of the defendant no.1 in the suit property and house no.A-1/103, Gali No.2, Nehru Vihar, Delhi-94, so the right of the defendants to residence of*

> *the suit property/shared house hold is unfettered and cannot be taken away. In case the defendants are to be vacated from the said shared house hold then the plaintiff has to secure same level of accommodation for the defendants as enjoyed by them in the shared house hold or pay rent for the same.*
>
> *xxx*
>
> *Further both the defendants were working hard but due to health problems could not earn as much as Vijay. The plaintiff heard the abuses and came and told the defendant no.2 that he was already dissatisfied with the dowry gifted in her marriage and since long also the financial contribution by the defendants in the family funds was not sufficient."*

45. The above allegations cannot be looked at in an isolated manner and have to be read with context of the plaint and the written statement. These pleas are very generalised in nature, and clearly appear to be pleas which are taken to highlight the domestic problem within the family members rather than to set up a case under the DV Act. Admittedly, there are no complaints that have been preferred against the father-in-law and there are no cases filed or pending under the DV Act, or any other legislation at the instance of the daughter-in-law. Remote allegations against the brother i.e., the *devar*, in the written statement, would not result in a finding of *'shared household'*, where the daughter-in-law, by herself, would have to be given a right of residence.

46. At this stage, it is trite to mention that the reliance by the Trial Court as well as the first Appellate Court on the judgment in ***S.R. Batra v. Smt. Taruna Batra, 1 (2007) SLT 1*** was, in fact, completely misplaced in the

facts of this case. The present is a civil suit filed by the father against his son and daughter-in-law, between whom there is no marital discord or estrangement. The father is merely seeking to evict both his son and daughter-in-law, on the strength of his ownership of the suit property.

47. The submissions based on ***S. Vanitha (supra)*** and ***Satish Chandra Ahuja (supra)*** would, therefore, have no applicability in the present case, as this is not a suit where the daughter-in-law pleads and claims the right of residence, against the father-in-law, independent of her claims against her own husband. In fact, there are no claims against the husband whatsoever. The husband is a co-Appellant in this appeal, and was a co-Defendant before the Trial Court, who the Plaintiff wanted to evict.

48. In any case, the submission of the Defendants, relying on ***S. Vanitha (supra)***, is that specific proceedings under the DV Act need not be initiated. While there is no doubt about this proposition, in the opinion of this Court, all cases of family disputes cannot be characterised as cases under the DV Act. In ***S. Vanitha (supra)***, there were various proceedings which were pending both between the husband and wife, and the wife and the in-laws, under various legislations. Divorce proceedings had been initiated, dowry harassment proceedings were initiated against the mother-in-law and spouse, maintenance proceedings had been initiated and even proceedings under the Senior Citizens Act were filed. Although, the settled position of law is that proceedings under the DV Act are not required and the same can also be raised as defence in the suit, the basic requirements of the said Act ought to be satisfied. The present is not a case where the case set up is one under the DV Act, involving domestic violence.

49. While the DV Act is a social welfare legislation granting protection to women who are victims of domestic violence, every dispute amongst family members cannot be converted into a dispute under the DV Act. The same ought not to be allowed to happen, as it may cause unintended misuse of the provisions of the said Act creating turmoil within families, especially when there is no matrimonial dispute whatsoever between husband and the wife, i.e., son and daughter-in-law. The provisions of the DV Act cannot be used as a ploy by the son, to either claim a right in his father's property or continue to retain possession of the father's property, on the strength of his wife's right of residence. A civil dispute relating to ownership of property cannot be converted, in this manner, into a case under the DV Act, as the same would amount to be an abuse of the beneficial provisions of the DV Act, by stretching it over and beyond its purpose and ambit.

50. The following peculiar facts arising in this case, deserve to be highlighted:

(i) The ownership of the Plaintiff in the suit property is not in dispute.

(ii) The sale of the property of the mother, which took place in 2011, was never challenged by the Defendants.

(iii) The purchase of this suit property in the name of the Plaintiff was never challenged by the Defendants.

(iv) There is no complaint of Domestic Violence raised by the daughter-in-law before any forum. In fact, to the contrary, the Plaintiff has filed complaints against his son and daughter-in-law with police repeatedly, alleging ill-treatment and abuse.

(v) The Defendants i.e., the son and daughter-in-law are living together peacefully. The written statement before the trial court was filed jointly. The first appeal was also filed jointly, and so is the present second appeal. There is no estrangement or marital discord between them.

(vi) The order passed in the application under Order XII Rule 6 CPC has also been executed and the Defendants have already moved out of the suit property and are living in alternate premises.

Therefore, the facts of this case are clearly distinguishable from the facts in ***Satish Chandra Ahuja (supra)*** and ***Smt. Vanitha (supra)***.

51. Accordingly, under the facts and circumstances of this case, this Court is of the opinion that the judgments of the Trial Court and the first Appellate Court do not warrant interference in these proceedings. However, insofar as the reliance on the judgment in ***SR Batra (supra)*** is concerned, it is clear that the said judgment is not applicable to the facts of the case, and has in any case been overruled by the judgment in ***Satish Chandra Ahuja (supra).*** The reliance on the said judgment was uncalled for both by the Trial Court as well as the Appellate Court.

52. The present Appeal is accordingly dismissed, in the above terms, with no order as to costs.

PRATHIBA M. SINGH
JUDGE

AUGUST 24, 2021
mw/dk/Ak/AD