THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 26.10.2010

\+ **FAO (OS) 341/2007**

SHUMITA DIDI SANDHU ..... Appellant

versus

SANJAY SINGH SANDHU & OTHERS ..... Respondents

Advocates who appeared in this case:
For the Appellant : Mr Akhil Sibal with Mr Salim Inamdar
For the Respondents : Mr Chetan Shrma, Sr Advocate with Mr S.S. Jauhar and Mr P.K. Dey

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MS JUSTICE VEENA BIRBAL

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 the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

1. This appeal raises interesting issues with regard to the concepts of 'matrimonial home' and 'shared-household' and also concerning the right of residence of a wife in the matrimonial home, shared-household or some other place.

2. This appeal is directed against the judgment and / or order dated 02.07.2007 passed by a learned single Judge of this court in IA Nos.291/2005 and 8444/2005 in CS(OS) 41/2005. The suit had been filed by the appellant against her husband, Mr Sanjay Singh Sandhu (defendant No.1), her father-in-law, Mr Hardev Singh Sandhu (defendant No.2) (since

deceased) and her mother-in-law, Mrs Shiela Sandhu (defendant No.3). During the pendency of the suit as also the said applications, the appellant's father-in-law (the said defendant No.2) passed away and his legal representatives, being his widow (Mrs Sheila Sandhu), son (Mr Sanjay Singh Sandhu), daughter, Mrs Zoya Mohan and another daughter (Mrs Tani Sandhu Bhargava), were brought on record.

3. In the said suit, the appellant / plaintiff had sought the following reliefs:-

> "(a) Grant a decree of permanent injunction restraining the Defendant Nos. 1, 2 and 3 from committing themselves or through their agents / representatives acts of violence and intimidation against the plaintiff;
>
> (b) Grant a decree of permanent injunction restraining the Defendant Nos. 1, 2 and 3 and their agents / representatives from forcibly dispossessing the Plaintiff out of her matrimonial home without due process of law;
>
> (c) Grant any other / further relief / relief (s) as may be deemed fit and proper under the facts and circumstances of the case."

4. In IA No.291/2005, the appellant / plaintiff sought an interim order restraining the defendants from dispossessing her from her 'matrimonial home', which, according to her, was the property at 18-A, Ring Road, Lajpat Nagar-IV, New Delhi. It is her case that she was occupying the first floor of the said property and there was imminent danger of her being dispossessed from the said portion of the said property without following the due process of law. IA No.8444/2005 was filed by the appellant / plaintiff seeking interim orders restraining the defendants from creating any third party rights in the said property. The said applications

were dismissed by the learned single Judge by virtue of the impugned order dated 02.07.2007. The learned single Judge was of the view that the plaintiff could not claim any right to stay in the said property as it did not belong to her husband (defendant No.1), but it belonged to her parents-in-law. Taking note of the statement under Order 10 of the Code of Civil Procedure, 1908 made by the defendant No.2 that the defendants have no intention to throw out the plaintiff from the first floor of the said property, which is occupied by her, without following the due process of law, the learned single Judge ordered that the said defendants would be bound by the statement. However, the learned single Judge clarified that this would not prevent the defendants 2 and 3 from taking recourse to law for dispossessing the plaintiff.

5. The learned single Judge in paragraph 9 of the impugned judgment and / or order observed as under:-

> "There is no dispute that the suit property belongs to the defendant Nos. 2 and 3. The plaintiff's husband, namely, the defendant No.1 has no share and / or interest in the same."

Again in para 9 of the impugned judgment / order, the learned single Judge observed that:-

> "The question for prima facie consideration is as to whether the plaintiff has any right to stay in the suit property in which her husband has no right, interest or share and belongs to her father-in-law and mother-in-law. Incidental question for determination is as to whether it could be treated as matrimonial home of the plaintiff?"

6. The learned single Judge, it is obvious from the aforesaid extracts, proceeded on the basis that the said property belonged to defendant Nos. 2 and 3, that is, the father-in-law and the mother-in-law and that there was no dispute with this proposition. Consequently, relying on the Supreme Court decision in the case of ***S.R. Batra v. Taruna Batra*****: 2007 (3) SCC 169**, he observed that the ratio of the said Supreme Court decision was clearly that the daughter-in-law has no legal right to stay in the house which belongs to her parents-in-law. The learned single Judge observed that the legal position which emerged was that the husband had a legal and moral obligation to provide residence to his wife and, therefore, the wife was entitled to claim a right of residence against her husband. He further observed that if the house in question where she lived after marriage belonged to her husband, the same could certainly be treated as a matrimonial home. Furthermore, if the house in question belonged to a Hindu undivided family in which her husband was a co-parcener, even that house could be termed as a matrimonial house. But, where the house belonged to the parents-in-law in which the husband had no right, title or interest and the parents-in-law had merely allowed their son alongwith the daughter-in-law to stay in the said house, it would amount to mere permissive possession on the part of the daughter-in-law and would not give her any right to stay in the said house inasmuch as the same would not be her matrimonial home.

7. The learned single Judge also noted that there was a serious dispute as to whether the property could, at all, be termed as a matrimonial home. He referred to the pleadings from which it, *prima facie*, appeared that the appellant / plaintiff lived in the said property from the date of her marriage in 1994 till 1996 when she moved out to Defence Colony as her relations with the defendants had become strained. Interestingly, her husband (defendant No.1) also joined her and started residing with her in Defence Colony, which was a rented accommodation. In 1999, the appellant / plaintiff and her husband (defendant No.1) returned to the said property and resided in the first floor. Serious allegations have been hurled by the plaintiff as well as the defendant No.1 against each other with regard to their chastity. There is also an allegation that the defendant No.2 married another lady sometime in 2004 and that she had moved into the said property. It was alleged that because of these incidents, the appellant / plaintiff left the property in 2004. Of course, she re-entered the first floor of the said property on 10.10.2004 at 2.30 a.m. It is because of this circumstance, that the learned single Judge was prima facie of the view that there was some credence in the allegations of the defendants that the appellant / plaintiff had forced her entry into the said property on 10.10.2004 at an odd hour. Another circumstance which may be noted is that the appellant / plaintiff had also taken a flat in Mumbai for the period December 1999 to November 2000 and that the lease of the flat was in her name and she had stayed there for three-four months and her husband had also joined her. It is because of these circumstances that the learned single Judge was of the view that there

was a serious dispute as to whether the suit property could, at all, have been termed as a matrimonial house, particularly when the appellant / plaintiff had left the said property in the early part of 2004 and had, prima facie, forcibly entered the same on 10.10.2004.

8. Anyhow, the main thrust of the reasoning adopted by the learned single Judge was that the daughter-in-law (appellant/plaintiff) cannot claim any right to stay in the said property inasmuch as the said property belonged to her parents-in-law. This conclusion is based on the said decision of the Supreme Court in the case of ***S.R. Batra*** *(supra)*.

9. Mr Akhil Sibal, the learned counsel appearing on behalf of the plaintiff raised three points of attack insofar as the impugned decision is concerned. His first and main point was that the learned single Judge had proceeded on the basis that there was no dispute that the property belonged to the defendants 2 and 3. He submitted that the plaintiff had nowhere admitted the defendants 2 and 3 to be the sole and exclusive owners of the said property. Consequently, the learned counsel submitted that since the very premise was wrong, the conclusion based on such premise was obviously erroneous. He also submitted that because the said premise was faulty, the decision of the Supreme Court in the case of ***S.R. Batra*** *(supra)* would not be applicable to the facts and circumstances of the present case.

10. The second point of attack was that the learned single Judge had erred in holding that the appellant / plaintiff, could not, as a matter of law,

claim any right in the property of the mother-in-law. He submitted that the plaintiff / appellant had a right of residence and that this proposition was not correct. The third point of attack was that since the learned single Judge had decided that in law, the appellant / plaintiff could not claim any right in the property of the mother-in-law, the suit as such had virtually been dismissed without returning any conclusive findings or recording any satisfaction on the factual aspects at all. He, therefore, submitted that this was a fit case for remand, after the impugned order was set aside.

11. Elaborating on the first aspect of the matter, that the appellant / plaintiff had not admitted the defendant Nos. 2 and 3, jointly or the defendant No.3 by herself, to be the exclusive owner(s) of the said property, Mr Sibal drew our attention to the pleadings of the parties and, in particular, to the written statements filed on behalf of the defendant Nos.1, 2 and 3. Referring to para 3 of the written statement of the defendant No.1, Mr Sibal pointed out that the stand taken is that the said property belonged to defendant No.3 (the mother-in-law). However, in paragraph 17 of the same written statement, a somewhat different statement has been made to the following effect:-

> "… The suit property lawfully belongs to the parents of the defendant No.1 and the plaintiff has no claim whatsoever in the said suit property."

Again, in para 21 of the written statement of the defendant No.1, it is stated as under:-

> "… the matrimonial house of the parties will be the residence of the husband i.e. defendant No.1 and not the house / property of the parents of the husband i.e. defendant No.2 and 3 to whom the suit property belongs. The suit property is the self acquired property of the defendant No.2 and 3 and no person except the defendant No.3 has any right, title or interest in the suit property. The matrimonial home of the plaintiff thus will be the house in which her husband i.e. defendant No.1 resides who has his residence in Dehradun and not in the suit property."

12. Mr Sibal submitted that from the aforesaid averments made in the written statement, the defendant No.1 has taken conflicting stands. At one place, the defendant No.1 has stated that the property belongs to his mother (defendant No.3) and not to the plaintiff and at other places he has stated that it belongs to his parents, i.e., both defendant Nos.2 and 3.

13. Referring to the written statement of the defendant No.2, Mr Sibal submitted that the defendant No.2 claimed the said property to have been built from his personal earnings and also on the basis of the loan which he had taken from LIC. He referred to the following averments in paragraph 6 of the written statement:-

> "6. That the correct facts in brief imperative for the proper adjudication of the present matter are that the house at 18A, Ring Road, Lajpat Nagar was built from the personal earnings of defendant No.2 and also the loan which he had taken from LIC. The defendant No.2 was living on the ground floor with his wife, defendant No.3 and three unmarried children. The plaintiff and the defendant No.1 got married in the year 1994. After the marriage, the plaintiff and the defendant No.1 lived with defendants no.2 and 3 in the ground floor of their house. Thereafter, in the year 1996, the plaintiff and the defendant No.1 left the said premises at Lajpat Nagar and took a separate residential premises for their living in C-461,

> Defence Colony, New Delhi which remained their residential premises till 1999. The said house was taken on lease by plaintiff and defendant No.1 and all the payments for rent and were duly reflected in defendant No.1's Bank statement for the said period. Thereafter plaintiff and defendant No.1 had been living at different places from time to time. For the last few years plaintiff and defendant no.1 started living in defendant No.1's house in Dehradun or at times at the First Floor of the suit property with permission of defendants no.2 & 3. Whenever they stayed at Lajpat Nagar House even though they maintain separate kitchen. Defendant No.2 had been paying all electricity and water charges including payment to security guards and other related expenses. For the said reasons the first floor at Lajpat nagar house belonging to defendant No.3 was never considered to be matrimonial home of plaintiff and defendant No.1."

The defendant No.3, in paragraph 11 (preliminary objections) of her written statement, has categorically stated that the suit property is the self acquired property of the defendant No.3 and no person except the defendant No.3 has any right, title or interest in the suit property. In para 2 (parawise reply on merits), the defendant No.3 once again stated that she was the true and legal owner of the suit property and the defendant No.2 and 3 have been in possession of the suit property.

14. In view of the averments made in the said written statements, Mr Sibal submitted that the stand of the defendants is unclear. At one point, they claim that the property belongs to the defendant Nos.2 and 3 and at other points they claim that the property belongs to defendant No.3 exclusively. Thus, according to Mr Sibal, the shifting stands are indicative of the ulterior designs of the defendants to oust the appellant / plaintiff from her matrimonial home.

15. He then referred to para 21 of the replication, where, for the first time, the plaintiff raised the plea that the said property was not the self-acquired property of the defendants 2 and 3 and also denied that no person except the defendant No.3 had any right, title or interest in the suit property. It was, therefore, contended by Mr Sibal that there was a dispute with regard to the ownership of the suit property. Continuing further, Mr Sibal referred to the Order X statement made under the Code of Civil Procedure, 1908 by the defendant No.2, where once again, the said defendant took a different stand that the property bearing No.18-A, Ring Road, Lajpat Nagar, Delhi had been bought by his wife, Mrs Sheela Sandhu out of her own income and that the perpetual lease deed was executed by DDA in her favour.

16. Mr Sibal also submitted that an application being IA No.8442/2005 had been filed by the appellant / plaintiff under order 6 Rule 17, CPC seeking amendment of the plaint. One of the amendments sought was the introduction of para 12-B, wherein the plaintiff proposed to allege that the defendant No.3, in collusion with the other defendants, had transferred part of the above said property in the name of defendant No.4 falsely claiming this to be her absolute property, knowing fully well that the said property was the joint ancestral property and by making false averments regarding possession and consideration. In other words, the appellant / plaintiff sought to take, inter alia, the plea of joint ancestral property by virtue of the said amendment application. Mr Sibal said that that application is pending and is yet to be disposed of. He submitted that the learned single

Judge ought to have disposed of the application for amendment prior to passing the impugned order. This, according to him, is another reason as to why the impugned order ought to be set aside and the matter be remanded to the learned single Judge for a fresh consideration.

17. There was also some controversy with regard to a status quo order dated 08.01.2005. But, we need not go into that aspect of the matter. The main thrust of the arguments advanced by Mr Sibal was that the foundation on which the learned single Judge had premised his conclusions was itself faulty inasmuch as the learned single Judge, assumed that there was no dispute that the suit property belonged to the defendants 2 and 3 in which the appellant's / plaintiff's husband had no share or interest. He submitted that he has been able to show, *prima faice*, that there was a dispute as to whether the defendants 2 and 3 or the defendant No.3 alone was the exclusive owner of the said property and that the issue as to whether it was a joint family property also needed to be looked into. Therefore, the decision in the case of ***S.R. Batra*** *(supra)* would not be applicable to the facts and circumstances of the present case, because, in the Supreme Court decision, the position with regard to ownership, being that of the mother-in-law, was undisputed.

18. Referring to the following decisions, Mr Sibal submitted that the property in question was the matrimonial home of the appellant / plaintiff and she had a right to reside therein and, therefore, she was entitled to an

order restraining the defendants from dispossessing her and / or creating any third party interest therein:-

1) ***Kavita Gambhir v. Hari Chand Gambhir & Another*: 162 (2009) DLT 459**;

2) ***Appasaheb Peerappa Chandgade v. Devendra Peerappa Chandgade and Ors.***: **2007 (1) SCC 521**;

3) ***Komalam Amma v. Kumara Pillai Raghavan Pillai & Others:*** **AIR 2009 SC 636**;

4) ***Mangat Mal (Dead) & Another v. Punni Devi (Dead) and Others*: 1995 (6) SCC 88**;

5) ***S.R. Batra & Another v. Taruna Batra*: 2007 (3) SCC 169**;

6) ***S. Prabhakaran v. State of Kerala*: 2009(2) RCR(Civil) 883**;

7) ***P. Babu Venkatesh Kandayammal and Padmavathi v. Rani*:** [CRL. R.C. Nos.48 and 148 of 2008 and M.P. Nos. 1 of 2008 decided on 25.03.2008].

19. Mr Chetan Sharma, the learned senior counsel, appearing for the respondent No.3, submitted that the present appeal is merely academic because the learned single Judge has virtually decreed the suit. He submitted that one of the reliefs claimed in the suit was to permanently injunct the defendants from forcibly dispossessing the plaintiff out of her matrimonial home "without due process of law". He submitted that this relief has already been granted by the learned single Judge by virtue of the impugned order, whereby he directed as under:-

> "19. In view of the above, insofar as the right of the plaintiff to stay in the suit property is concerned, she cannot claim any such right as the property belongs to her parents-in-law. However, statement of defendant No.2 was recorded by the Court under Order X CPC where he stated that he or his wife had no intention to throw her out of the premises in question without due process of law.

> Therefore, while dismissing the applications of the plaintiff, it is ordered that the defendant Nos.1 and 2 shall remain bound by the said statement. This, however, would not prevent the defendants to take recourse to the law for dispossessing the plaintiff."

20. Mr Chetan Sharma further submitted that at the time when IA Nos. 291/2005 and 8444/2005 were being argued and which ultimately came to be disposed of by the impugned order, the appellant / plaintiff did not press for hearing of the amendment application. Consequently, she cannot now be permitted to submit that the said amendment application ought to have been decided prior to the said IA Nos.291/2005 and 8444/2005. He further submitted that the appellant / plaintiff did not press for any additional issue with regard to the title in respect of the said property. Referring to the Supreme Court decision in ***Om Prakash Gupta v. Ranbir B. Goyal*****: 2002 (2) SCC 256**, Mr Sharma submitted that the rights of the parties stand crystallised on the date of institution of the suit and subsequent events are not to be taken into account unless the three circumstances referred to therein arise. The said three circumstances are:-

(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

21. Mr Chetan Sharma fully supported the impugned judgment and contended that there was no infirmity in the same and, therefore, did not call for any interference. He submitted that the case of the appellant / plaintiff was that there was no abandonment of the matrimonial home and that she had a right to live in the matrimonial home even if it belonged to her in-laws. Earlier, the High Court decision in the case of ***Taruna Batra v. S.R. Batra & Another*: 116 (2005) DLT 646** had been relied upon by the appellant / plaintiff as observed in the impugned order itself, but the Supreme Court decision in ***S.R. Batra*** *(supra)* reversed the decision of the High Court and sealed the fate of the appellant / plaintiff. Mr Chetan Sharma also referred to a decision of a learned single Judge of this court in the case of ***Neetu Mittal v. Kanta Mittal & Others*: (2008) 106 DRJ 623** by way of persuasive value to submit that under the Protection of Women from Domestic Violence Act, 2005, there is no concept of matrimonial home. On the other hand, the concept is of a 'shared house-hold'. In that case, the learned single Judge, after referring to and relying upon the decision of the Supreme Court in ***S.R. Batra*** *(supra)* held that a daughter-in-law has no right to live in the house belonging to her parents-in-law.

22. Mr Chetan Sharma also submitted that in the present case, the said property cannot be regarded as the matrimonial home because, first of all, the appellant / plaintiff left the house in 1996 when she went to reside in Defence Colony. Her husband, the defendant No.1 also left the said property and resided with her in Defence Colony. Secondly, the appellant /

plaintiff resided in Dehradun and, thirdly, she resided in Mumbai and then in 2004, she once again left the said property, only to re-enter the same on 10.10.2004 at 2.30 a.m. He referred to the order X, CPC statement of the appellant / plaintiff, wherein she stated that she had married the defendant on 05.11.1994 and that she had shifted to Defence Colony in June, 1996 and remained there till March, 1999. She then stated that she was forced to leave her matrimonial home in 2004. She also admitted that she took a flat in Bombay during the period December 1999 till November, 2000 and that the lease of the Bombay flat was in her name and that she was in Bombay for three to four months and that her husband had joined her later on. She also admitted to her going to Pakistan in January 2004 and staying there for six days alongwith a number of other persons. Thereafter, she went to Pakistan again on 12.04.2004 to 24.05.2004 with a women's organization. She also admitted that during the period February 2004 till 09.10.2004, no formal complaint was lodged by her.

23. According to Mr Sharma, the Protection of Women from Domestic Violence Act, 2005, would come into play only when domestic violence takes place. This is not a case of domestic violence as there has been no whisper of any violence during February 2004 to 10.10.2004 when the appellant / plaintiff re-entered the said property at 2.30 a.m. He submitted that apart from this not being a case of domestic violence at all, the appellant / plaintiff having come to learn that the defendant No.3 was interested in disposing of the said property, wanted to put an impediment in

the sale so as to extract some money from the defendants. For all these reasons, Mr Sharma contended that the appeal be dismissed.

24. Let us first deal with the submission of the learned counsel for the appellant that the foundation of the learned single Judge's decision that there was no dispute that the suit property belongs to defendant Nos. 2 and 3 was itself faulty and, therefore, the entire decision is liable to be set aside. It is true that the learned single Judge had proceeded on the basis that there was no dispute that the suit property belonged to defendants 2 and 3 and even the question which was taken up for *prima facie* consideration by the learned single Judge, as would be apparent from paragraph 9 of the impugned order, was founded on the understanding that the appellant's husband (defendant No.1) had no right, title or share in the said property and that the said property belonged to the appellant's father-in-law and mother-in-law. We have already noticed above that the learned counsel for the appellant was at pains to attempt to demonstrate that the appellant / plaintiff nowhere admitted that the said property belonged to her father-in-law and mother-in-law or to her mother-in-law exclusively. He had also pointed out that there is no admission by the appellant / plaintiff that her husband (defendant No.1) did not have any right, interest or share in the said property. The learned counsel for the appellant had drawn our attention to the written statements filed by the defendants as also the replication filed by the appellant / plaintiff and the Order X CPC statement of the defendant No.2.

25. On going through the relevant portions of the said documents, it appears that the defendant No.1 took the stand that the said property belonged to his mother (defendant No.3). However, in the very same written statement, the defendant No.1 had also stated that the said property belonged to defendant Nos. 2 and 3 and that it was their self-acquired property. In the very same paragraph (para 21 of the written statement of the defendant No.1), it is again stated that no person except the defendant No.3 has any right in the said property. The defendant No.2 in his written statement stated that the said property was made from his personal earnings and from a loan taken from LIC. However, in his Order X CPC statement, the defendant No.2, took a different stand and stated that the property was bought by his wife (defendant No.3) out of her own funds. The defendant No.3, however, took a clear stand in her written statement that the said property was her self-acquired property and no person except her had any right, title or interest in the same. She stated that while she was the true and legal owner of the said property, her husband (defendant No.2) and she were in possession of the suit property.

26. It does appear from the averments made in the written statements of the defendant Nos. 1 and 2 that there is a shift in the stand taken with regard to the ownership of the said property. The defendant No.1 had taken the stand that the property belongs to his mother (defendant No.3) and that no person except the defendant No.3 had any right, title or interest in the same. However, he has also averred that the said property belonged to

defendants 2 and 3. A similar ambivalence is discernible in the stand taken by the defendant No.2 in his written statement and his order X CPC statement. However, this much is clear that none of the defendants have stated that the appellant's husband (defendant No.1) had any right, title or interest in the said property. There is only some lack of clarity in the pleadings with regard to the exclusivity of ownership of the defendant No.3. In other words, there is a degree of ambiguity, particularly on the part of defendant No. 2 as to whether the defendant No.3 is the sole and exclusive owner of the said property or whether it also belongs to the defendant No.2. However, there is no confusion with regard to the stand that the said property does not at all belong to the appellant's husband (defendant No.1).

27. In the replication, as pointed out earlier, the appellant / plaintiff has sought to introduce a new dimension to the case by making an allegation that the said property is not the self-acquired property of the defendant Nos.2 and 3. The appellant / plaintiff had also filed an amendment application under Order 6 Rule 17, CPC to introduce new para 12 B in the plaint where she has taken the plea of joint ancestral property. However, as pointed out above, the appellant did not press for a decision on this application at the time when IA Nos. 291/2005 and 8444/2005 were being argued before the learned single Judge. In any event, the plea of joint ancestral property has been sought to be introduced only by way of an amendment to the plaint after the defendants had filed their written statements. It cannot be said as to whether the amendment, which has been sought, will be allowed by the

learned single Judge or not. Therefore, as on the date on which the learned single Judge passed the order, there did not exist any plea of joint ancestral property in the pleadings of the parties. Furthermore, what is important is to examine the stand taken by the appellant / plaintiff in the plaint which unfortunately had not been alluded to by the learned counsel for the appellant. In para 2 of the plaint, it is merely stated that the property bearing No.18-A, Ring Road, Lajpat Nagar-IV, is the matrimonial home of the plaintiff since 1994 and that she is currently residing in the first floor of the said property and the defendants are living on the ground floor due to strained relations between the parties.

28. In paragraph 8 of the plaint, it is alleged:-

> "The defendant Nos. 2 and 3 permitted the Defendant No.1 to live with "Chinu" in the matrimonial home of the Plaintiff with ulterior motives of driving the Plaintiff from the matrimonial home."

From the said averment, it is discernible that even as per the appellant's / plaintiff's understanding, the said property, which the plaintiff was regarding as her 'matrimonial home' belonged to defendant Nos. 2 and 3 and the defendant No.1 only had permission to live in the same.

29. In para 12 of the plaint, it has been averred that the plaintiff feared for her life and was filing the suit to protect her rights "in her matrimonial home". The plea taken was that she feared that she would be "summarily thrown out without due process of law". It was also stated that:-

> "… the defendants are trying to sell the house. They have already taken possession of a house being 201, Jor Bagh, New Delhi for their residence."

30. Two things are clear from the averments made in the plaint. The first is that it is nowhere alleged in the plaint by the appellant / plaintiff that the said property, which the appellant / plaintiff was referring to as her matrimonial home belonged to or was owned by her husband (defendant No.1). In fact, there is no averment in the plaint that the defendant No.1 had any right, title or interest or share in the said property. There is no averment that the property did not belong to the defendant No.3 exclusively. As pointed out above, it can be inferred that the appellant / plaintiff was of the view that the property actually belonged to the defendant Nos. 2 and 3. The other point which emerges from the averments contained in the plaint is that the suit was filed to protect her rights in her 'matrimonial home' as she feared that she would be summarily thrown out without due process of law inasmuch as she had learnt that the defendants were trying to sell the house. It is in this context that the prayer (b) of the plaint, which seeks the grant of a decree of a permanent injunction restraining the defendants from forcibly dispossessing the plaintiff out of her "matrimonial home" without due process of law, gains importance and significance.

31. Thus, looking at the totality of the circumstances and the pleadings as well as the order X, CPC statements, it cannot be said that the learned single Judge was off the mark when he observed that there is no dispute that the suit property belongs to the defendant Nos. 2 and 3.

Therefore, the first point of attack that the conclusion of the learned single Judge was founded on a wrong premise, falls to the ground.

32. In order to examine the other points urged by the learned counsel for the appellant to the effect that the conclusion of the learned single Judge that the appellant / plaintiff could not claim any right in the property of the mother-in-law was erroneous and that the learned single Judge in so holding had virtually dismissed the suit itself without recording any satisfaction on the facts, it would be necessary for us to consider the decisions cited at the bar as also the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the said Act'). We shall first examine the decision of the Supreme Court in the case of ***Mangat Mal*** *(supra)* wherein a question arose as to whether the right of maintenance of a Hindu lady, includes the right of provision for residence. The Supreme Court held as follows:-

> "19. Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provisions for food and clothing and the like and take into account the basic need for a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1)."

33. Next, we refer to the decision of the Supreme Court in ***B.P. Achla Anand v. S. Appi Reddy and Another***: **2005 (3) SCC 313**, which is a decision which was relied upon by a learned single Judge of this court in the case of ***Kavita Gambhir*** *(supra)*, which in turn, was referred to by the learned counsel for the appellant. In ***B.P. Achla Anand*** *(supra)*, in the context of a deserted wife continuing in possession of a property in which her husband was a tenant, the Supreme Court observed that there was no precedent, much less a binding authority, from any court in India dealing with such a situation. However, the Supreme Court noticed that English decisions could be found. The following passage from Lord Dening's Book – The Due Process of Law – was quoted by the Supreme Court:-

> "A wife is no longer her husband's chattel. She is beginning to be regarded by the laws as a partner in all affairs which are their common concern. Thus the husband can no longer turn her out of the matrimonial home. She has as much right as he to stay there even though the house does stand in his name. … Moreover it has been held that the wife's right is effective, not only as against her husband but also as against the landlord. Thus where a husband who was statutory tenant of the matrimonial home, deserted his wife and left the house, it was held that the landlord could not turn her out so long as she paid the rent and performed the conditions of the tenancy."

34. After considering several other decisions, under English law, the Supreme Court noted the Matrimonial Homes Act, 1983 applicable in England. The preamble of that Act stated that it was an Act to consolidate certain enactments relating to the rights of a husband or wife to occupy a dwelling house that has been a matrimonial home. The Supreme noted that one of the several rights expressly provided for by the Matrimonial Homes

Act, 1983 in England was that so long as one spouse had a right to occupation, either of the spouses could apply to the court for an order requiring the other spouse to permit the exercise of that right. The Supreme Court observed as under:-

> "32. In our opinion, a deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions : first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. In other words, such a wife would be entitled to raise all such pleas and claim trial thereon, as would have been available to the tenant himself and no more. So long as, by availing the benefit of the provisions of the Transfer of Property Act and Rent Control Legislation, the tenant would have been entitled to stay in the tenancy premises, the wife too can continue to stay exercising her right to residence as a part of right to maintenance subject to compliance with all such obligations including the payment of rent to which the tenant is subject. This right comes to an end with the wife losing her status as wife consequent upon decree of divorce and the right to occupy the house as part of right to maintenance coming to an end.
>
> 33. We are also of the opinion that a deserted wife in occupation of the tenanted premises cannot be placed in a position worse than that of a sub-tenant contesting a claim for eviction on the ground of subletting. Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of eviction attributable to default or neglect of himself. We are inclined to hold - and we do so - that a deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and

> inhere in the wife so long as she continues in occupation of the premises. Her rights and obligations shall not be higher or larger than those of the tenant himself. A suitable amendment in the legislation is called for to that effect. And, so long as that is not done, we, responding to the demands of social and gender justice, need to mould the relief and do complete justice by exercising our jurisdiction under Article 142 of the Constitution. We hasten to add that the purpose of our holding as above is to give the wife's right to residence a meaningful efficacy as dictated by the needs of the times; we do not intend nor do we propose the landlord's right to eviction against his tenant to be subordinated to wife's right to residence enforceable against her husband. Let both the rights co-exist so long as they can."

35. However, in ***B.P. Achla Anand*** *(supra)*, the appeal filed by Smt. Achla was dismissed because, in the meanwhile, a decree for dissolution of marriage by divorce based on mutual consent had been passed. The Supreme Court noted that it was not the case of Smt. Achla Anand, the appellant, that she was entitled to continue her residence in the tenanted premises by virtue of an obligation incurred by her ex husband to provide residence for her as part of maintenance. Consequently, the Supreme Court held that she could not, therefore, be allowed to proceed with the appeal and defend her right against the claim for eviction made by the landlord.

36. The third decision of the Supreme Court in this line is that of ***Komalam Amma*** *(supra)*. In that decision, the Supreme Court took a view similar to that in ***Mangat Mal***'s case *(supra)* that maintenance, in the case of a Hindu lady, necessarily must encompass a provision for residence. The Surpeme Court reiterated that the provision for residence may be made either by giving a lump sum in money or property in lieu thereof. It may

also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure.

37. The final decision in this line of cases is that of the Supreme Court in ***S.R. Batra*** *(supra)*. The facts before the Supreme Court in ***S.R. Batra*** *(supra)* are somewhat similar to those in the present case and it would, therefore, be instructive to refer to them in some detail. Taruna Batra married Amit Batra and started living with him in the second floor of the house belonging to Amit Batra's mother. It was not disputed that the said house at B-135, Ashok Vihar, Phase-I, Delhi belonged to Taruna Batra's mother-in-law and not to her husband Amit Batra. Cross divorce petitions were filed by Taruna Batra and Amit Batra and because of this discord, Smt Taruna Batra shifted to her parents residence. She alleged that later on, when she tried to enter B-135, Ashok Vihar, she found the main entrance locked and consequently she filed a suit for mandatory injunction to enable her to enter the house. However, before any order could be passed in the said suit, Smt Taruna Batra, alongwith her parents, allegedly broke open the locks and entered the said property. Another aspect was that Amit Batra had shifted to his own flat in Mohan Nagar, Ghaziabad before the said litigation had ensued. In the said suit, the trial Judge granted temporary injunction restraining the appellants therein from interfering with the possession of Smt Taruna Batra in respect of the second floor of the said property. In appeal, the Senior Civil Judge, Delhi, by his order dated 17.09.2004, held that Smt Taruna Batra was not residing in the second floor of the premises in question

and that her husband Amit Batra was not living in the said property and the matrimonial home could not be said to be a place where only a wife was residing. He also held that Smt Taruna Batra had no right to the properties other than that of her husband and consequently dismissed the temporary injunction application. Thereafter, a petition under Article 227 of the Constitution of India was filed before the Delhi High Court whereupon a learned single Judge of this court held that the second floor of the property in question was the matrimonial home of Smt Taruna Batra and he further held that even if her husband Amit Batra shifted to Ghaziabad that would not make the Ghaziabad home the matrimonial home of Smt Taruna Batra. On this reasoning, the learned single Judge of this court, held that Smt Taruna Batra was entitled to continue to reside in the second floor of B-135, Ashok Vihar as that was her matrimonial home. The Supreme Court disagreed with the view taken by the learned single Judge of this court. Referring to an earlier decision in the case of ***B.R. Mehta v. Atma Devi and Others*****: 1987 (4) SCC 183**, the Supreme Court observed "whereas in England the rights of the spouses to the matrimonial home are governed by the Matrimonial Homes Act, 1967, no such right existed in India".

38. A reference was made to the following observations in B.R. Mehta (supra):-

> "… it may be that with change of situation and complex problems arising it is high time to give the wife or the husband a right of occupation in a truly matrimonial home, in case of the marriage breaking up or in case of strained relationship between the husband and the wife."

However, the Supreme Court in ***S.R. Batra*** *(supra)* observed that the aforesaid extract was merely an expression of hope and it did not lay down any law and that it was only the legislature which could create a law and not the court. The Supreme Court further held:-

> "17. 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.
>
> 18. 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.
>
> 19. Appellant No. 2, the mother-in-law of Smt. Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement."

39. Thereafter, the Supreme Court considered the provisions of the said Act and particularly the concept of a "shared household" under Section 2(s) of the said Act as also the provisions of Sections 17 and 19(1) thereof and repelled the argument that since Smt Taruna Batra had lived in the property in question in the past, therefore, the said property was her 'shared household'. The Supreme Court observed as under:-

> "26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned

> Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.
>
> 27. It is well settled that any interpretation which leads to absurdity should not be accepted."

The Supreme Court finally held as under:-

> "29. 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'.
>
> 30. 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."

40. From this line of cases, it is apparent that the concept of maintenance, insofar as a Hindu lady is concerned, necessarily encompasses the provision for residence. Furthermore, the provision for residence may be made either by giving a lumpsum in money or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Insofar as Section 17 of the said Act is concerned, a wife would only be entitled to claim a right of residence in a "shared household" and such a 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 which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a "shared household". Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to them both, in which the husband has no right, title or interest, cannot be called a "shared household". The concept of matrimonial home, as would be applicable in England under the Matrimonial Homes Act, 1967, has no relevance in India.

41. In the light of the aforesaid principles, the appellant / plaintiff would certainly have a right of residence whether as a part of maintenance or as a separate right under the said Act. The right of residence, in our view, is not the same thing as a right to reside in a particular property which the appellant refers to as her 'matrimonial home'. The said Act was introduced, inter alia, to provide for the rights of women to secure housing and to provide for the right of the women to reside in a shared household, whether or not she had any right, title or interest in such a household.

42. Let us now look at the relevant provisions of the said Act. They are:-

> "**2. Definitions**. – In this Act, unless the context otherwise requires,
>
> (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
>
> xxxx xxxx xxxx xxxx

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

xxxx xxxx xxxx xxxx

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

43. Chapter IV of the said Act deals with the procedure for obtaining orders or reliefs. The said chapter comprises of Sections 12 to 29. Section 12 provides for the making of an application to a Magistrate seeking one or more of the reliefs under the Act. Section 17 relates to the right to reside in a "shared household". Section 18 prescribes the protection orders which the Magistrate may pass on being prima facie satisfied that domestic violence has taken place or is likely to take place. Section 19 contemplates the residence orders that may be passed by the Magistrate on being satisfied that domestic violence has taken place. Since the said provisions of Sections 17, 18 and 19 are relevant, they are set out in full hereinbelow:-

"17. Right to reside in a shared household. – (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic

relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. Protection orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from–

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order –

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the

respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

> (7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.
> (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to."

44. Another important provision is Section 23 which empowers the Magistrate to grant interim and ex parte orders on the Magistrate being satisfied that an application, *prima facie*, discloses that the respondent is committing or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence. The *ex parte* order may be passed on the basis of affidavits of the aggrieved person in terms of, inter alia, Sections 18 and 19 against the respondent. Section 26 of the said Act prescribes that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent, whether such proceeding was initiated before or after the commencement of the said Act.

45. From the aforesaid provisions, it is clear that the expression "matrimonial home" does not find place in the said Act. It is only the expression "shared household" which is referred to in the said Act. "Shared household" is defined in Section 2(s) to mean a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent,

or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity. The 'shared household' also includes such a household which may belong to the joint family, of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. The word "household" has not been defined in the said Act, however, Black's Law Dictionary, 9th Edition defines 'household' in the following manner:-

> "**household**, adj. Belonging to the house and family; domestic.
> **household,** n. (14c) **1.** A family living together, **2**. A group of people who dwell under the same roof. Cf. FAMILY. **3.** The contents of a house."

46. In contrast, the impression that we get by reading Section 2(s), which defines "shared household" is that the "household" which is referred to in the said provision, relates to the property and not just to the group of people who dwell under the same roof or the family living together. Therefore, we are of the view that the word "household" used in Section 2(s) actually means a house in the normal sense of referring to a property, be it a full-fledged house or an apartment, or some other property by any other description. This is also clear because the expression "household" has been referred to as a place where the person aggrieved lives or, at any stage has lived. It also refers to a property whether owned or tenanted or in which the aggrieved person or the respondent has any right, title, interest or equity. Therefore, in order to fall within the meaning of "shared household" as

defined in Section 2(s), it is essential that the property in question must be one where the person aggrieved lives, or at any stage, has lived in a domestic relationship, either singly or alongwith the respondent. It also includes such a property whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either of them or both jointly or singly have any right, title, interest or equity. It also includes a property which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest therein. The Supreme Court has already observed in ***S.R. Batra*** *(supra)* that the definition of "shared household" in Section 2(s) is not happily worded, but the courts have to give it an interpretation which is sensible and which does not lead to chaos in society. In this backdrop and in the facts and circumstances of the present case, the property in question cannot be considered to be a shared "household" because neither the appellant / plaintiff, nor her husband (defendant No.1) has any right, title or interest or equitable right in the same. The property may belong to defendant No.3 exclusively or to defendants 2 and 3 jointly, but it certainly does not belong to the defendant No.1 or the appellant / plaintiff. The position as it exists today also does not indicate even *prima facie* that the property in question is the property of a joint family of which the defendant No.1 is a member. Therefore, in our view, the property in question does not fall within the expression "shared household" as appearing in Section 2(s) of the said Act.

47. Section 17 of the said Act deals with the right of every women in a domestic relationship to reside in the shared household and, Section 17(2), specifically provides that such a woman shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law. In other words, the wife can be evicted or excluded from the "shared household" after following the due procedure established by law and it is not an absolute right of the wife to reside in a "shared household". However, in the present case, we need to go into this aspect of the matter because Section 17 in itself would be inapplicable in view of the fact that the property in question cannot be regarded as a "shared household". The residence orders that may be passed under Section 19 are also subject to the Magistrate / court being satisfied that domestic violence has taken place. All the residence orders also relate to a "shared household". Consequently, Section 19 would also not come in the aid of the appellant / plaintiff.

48. The learned counsel for the appellant had also referred to single Bench decisions of the Kerala High Court and the Madras High Court in the cases of ***S. Prabhakaran*** *(supra)* and ***P. Babu Venkatesh Kandayammal and Padmavathi****(supra)* to indicate instances of cases where the Supreme Court decision in ***S.R. Batra*** *(supra)* was distinguished. Those decisions are single Bench decisions and that too of other high courts and are, therefore, of no precedential values insofar as this Bench is concerned. We feel that in view of the prima facie finding that the property in question does not belong

to the appellant's / plaintiff's husband nor does he have any share or interest in the same, there is no question of the said property being regarded as a "shared household" in terms of Section 2(s) of the said Act. We also find that the expression "matrimonial home" is not at all defined in the said Act and the concept of the matrimonial homes as prevailing in England by virtue of the Matrimonial Homes Act, 1967 cannot be applied in India as pointed out in ***S.R. Batra*** *(supra)* and ***B.R. Mehta*** *(supra)*. There is no doubt that the appellant / plaintiff has a right of a residence whether as an independent right or as a right encapsulated in the right to maintenance under the personal law applicable to her. But that right of residence does not translate into a right to reside in a particular house. More so, because her husband does not have any right, title or interest in the said house. As noted by the Supreme Court in the case of ***Komalam Amma*** *(supra)* as well as in ***Mangat Mal*** *(supra)*, the right of residence or provision for residence may be made by either giving a lumpsum in money or property in lieu thereof. In the present case, we have noted earlier in this judgment that the learned single Judge had recorded that alternative premises had been offered to the appellant / plaintiff, but she refused to accept the same and insisted on retaining the second floor of the property in question claiming it to be her 'matrimonial home'.

49. We must emphasise once again that the right of residence which a wife undoubtedly has does not mean the right to reside in a particular property. It may, of course, mean the right to reside in a commensurate

property. But it can certainly not translate into a right to reside in a particular property. In order to illustrate this proposition, we may take an example of a house being allotted to a high functionary, say a Minister in the Central Cabinet and who resides in the same house alongwith his wife, son and daughter-in-law. It is obvious that since the daughter-in-law and son reside in the said house, which otherwise is a government accommodation allotted to the father-in-law, the same could be regarded as the house where the son and daughter-in-law live in matrimony. Can the daughter-in-law claim that she has a right to live in that particular property irrespective of the fact that the father-in-law subsequently is no longer a Minister and the property reverts entirely to the Government? Certainly not. It is only in that property in which the husband has a right, title or interest that the wife can claim residence and that, too, if no commensurate alternative is provided by the husband.

50. In view of the foregoing discussion, no interference is called for with the impugned order and we also feel that the learned single Judge has amply protected the appellant / plaintiff by directing that she would not be evicted from the premises in question without following the due process of law. The appeal is dismissed. The parties shall bear their respective costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

October 26, 2010
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