

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

M.Cr.C. No.8158/2015

Rajendra and another

Vs.

Rekha W/o Late Dinesh & Ors.

Ms. Sudha Shrivastava, learned counsel for the applicants.
Shri Rishi Tiwari, learned counsel for respondents.

ORDER

(Passed on 02/12/2016)

This application under Section 482 Cr.P.C. is filed against the order passed by the learned Additional Sessions Judge, Sardarpur in Criminal Appeal No.235/2014 dated 05.08.2015 whereby the learned Additional Sessions Judge set aside the order passed by the learned Additional Chief Judicial Magistrate, Sardarpur, District Dhar in MJC No.44/2012 dated 16.08.2014 and allowed an application under Section 12 of Protection of Women from Domestic Violence Act, 2005, and issued various directions.

2. The present applicants are real brothers of husband of the

respondent No.1. Respondents No.2 and 3 are minor children of the respondent No.1. Husband of the respondent No.1 Dinesh died on 15.06.2007.

3. The respondent No.1 filed an application under Section 12 of Protection of Women from Domestic Violence Act before the Additional Chief Judicial Magistrate, Sardarpur. It was stated in the application that the respondent No.1 was married to Dinesh, brother of the present applicants, about 11 to 12 years prior to filing of the application in the year 2012. Respondents No.2 and 3 were born to them during the lifetime of her husband. Her father-in-law and father of the present applicants, Amolakchand, who died on 23.12.2004, executed a will in respect of three plots which, according to the respondent No.1 also included a factory on a plot measuring 25' x 50' including some machines, and another plot had house constructed on it, in which the respondent No.1 was residing alongwith her husband during the lifetime of her husband. After death of her husband, she was driven out of the house by the present applicants. They were refusing to give any share in the ancestral property.

4. It is admitted that a civil suit is pending against the present applicants and respondent No.1 in respect of the said property.

5. Before the learned Magistrate, the case of the present

applicants was that they were ready to give her 1/5th share in the ancestral property but not to pay any compensation or any other amount on her treatment as she is suffering from AIDS.

6. Learned Magistrate after discussing in detail the various provisions of Protection of Women from Domestic Violence Act dismissed the application on the ground that when the present applicants were ready to give her 1/5th of share, no domestic violence as defined under the Act is made out, and therefore, respondent No.1 was not entitled for any relief. The respondents went an appeal under Section 29 of the Act and the learned Additional Sessions Judge allowed the appeal and awarded Rs.50,000/- by way of compensation. The present applicants were prohibited to commit any domestic violence against the respondents. She was declared entitled to live in the ancestral property, as she was living during the lifetime of her husband and also the present applicants were directed to bear expenses of her medical treatment.

7. Aggrieved by this order, the present application is filed on the ground that since the year 2007, the applicants were residing separately. The respondent No.1 left the ancestral house and went to her parents house alongwith her belongings. The observations made by the appellate Court are

illegal. No domestic violence has been committed by the present applicants. The distance between the two villages where the present applicants and respondent No.1 are residing is about 150 km and it is not possible for the present applicants to commit any domestic violence against her. The respondents are living separately from 2007 and the application was filed only in the year 2012. The provisions of Protection of Women from Domestic Violence Act applies only against the husband of the women and not against father-in-law and other relatives.

8. I have gone through the record of the courts below and also the orders passed by both the courts below, I find that there is no illegality or irregularities committed by the learned Additional Sessions Judge while passing the order. It is apparent from the reply itself that till the year 2007 the respondent No.1 was residing with the present applicants in a common household. The property is an ancestral property belonging to father of the applicants as well as the husband of the respondent No.1, and therefore, at the time of death of her husband, she was having a share in the property. The learned Additional Sessions Judge awarded compensation of

Rs.50,000/- which is not much. Looking to the fact that the respondent No.1 and her two children are living with her, she is entitled to receive compensation from the ancestral property which is in possession of the present applicants. Similarly, she is also entitled for compensation for her treatment, as she is suffering from AIDS.

9. This apart, merely an offer by the present applicants that they are ready to give her 1/5th of share is not enough. She is claiming the title of the whole property on the basis of the will which is under litigation, and therefore, at this stage, she can only be provided the protection of shelter in the ancestral property and also the compensation and in this view of the matter, the learned Additional Sessions Judge rightly passed the order under the provisions of the Act and no interference is required.

10. As a result, in considered opinion of the Court, this application is devoid of any force and liable to be dismissed and dismissed accordingly.

(Alok Verma)
Judge