

**Writ Petition No.109 of 2017.**

**12.04.2017:-**

Shri Rajendra Samdani, learned counsel for the petitioner.

Shri Ajay Jain Giriya, learned counsel for the Respondent Nos.1 to 4.

None for the Respondent No.5, though served  
Heard on the question of admission.

**O R D E R**

**THE** petitioner has filed the present petition being aggrieved by order dated 20.12.2016 passed by 10<sup>th</sup> Additional District Judge, Ujjain by which the appeal under Order XLIII Rule 1 of CPC was partly allowed.

[2] Facts of the case are as under :-

(a) The petitioner is a wife of Respondent No.5, by virtue of their marriage held on 09.12.2011. The Respondent Nos.3 and 4 are father-in-law and mother-in-law and the Respondent Nos.1 and 2 are grand father-in-law and grand mother-in-law of the plaintiff. Undisputedly the suit house is a two storied having House No.2/30, Bharatpuri, Ujjain is of the ownership of the Respondent No.1. The petitioner and all other Respondents are jointly residing in the said house by virtue of relationship between each other.

(b) The plaintiff filed the suit for declaration and permanent injunction against the Respondents that the Respondents be restrained from forcibly dispossessing her from the said house and further restrained not to interfere in her possession. She has alleged that after the marriage, she was harassed by the Respondents for demand of dowry. She

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gave a birth of daughter which made them unhappy as they wanted a son. They are interested in second marriage of the Respondent No.5 to get more dowry. She has lodged a FIR against them under Sections 498-A and 506/34 of IPC. She is residing in the said house as daughter-in-law with her daughter and all of them has left the house long back and entire house is in her possession. The Respondents are not giving maintenance amount to her.

(c) Along with the plaintiff, the plaintiff filed an application under Order XXXIX Rule 1 & 2 of CPC seeking temporary injunction in the nature of protection of her possession during the pendency of the suit. After notice, the defendants filed the written statement denying the allegations made therein and simultaneously levelled various counter allegations against the plaintiff. It is stated that the house belongs to the Respondents No.1 and 2 and the plaintiff being the daughter-in-law cannot claim any right over the properties of in-laws. The plaintiff is threatening them for their false implication in the criminal case. She has also initiated the proceedings under Domestic Violence Act.

(d) After hearing both the parties, learned Trial Court vide order dated 11.07.2016 has rejected the application for temporary injunction. The Court has recorded the finding on all the three issues that the plaintiff has no *prima-facie* right of residence in the said house. Since the plaintiff is in possession of the house and the

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defendants have filed the counter claim, therefore, if injunction is not granted, that would not affect her interest. The balance of convenience was also not found in her favour.

(e) Being aggrieved by the order dated 11.07.2016, the plaintiff filed appeal under Order XLIII Rule 1 of CPC. After notice the defendants/Respondents appeared along with a Map of the house and submitted that the portion marked in “red colour” is in possession of the plaintiff and she can be permitted to continue to reside in the said area. The possession of the plaintiff cannot be treated into the entire house. She cannot claim the right over the property of father-in-law. The learned first appellate Court vide order dated 20.12.2016 has partly modified the impugned order and permitted the plaintiff to reside in the area marked as “red colour” and the defendants were restrained not to interfere in her peaceful possession directly or through servant or agent during the pendency of the suit.

(f) Being aggrieved by the order dated 20.12.2016, the petitioner preferred the present petition on the ground that she is in possession of the entire house. The Respondents themselves left the house and now she cannot be dispossessed from the house. The Respondents themselves have admitted before the Family Court that the plaintiff is in possession of the entire house and not permitting the Respondent Nos.1 and 2 to enter into the house.

[3] Shri Rajendra Samdani, learned counsel on behalf of the petitioner vehemently argued that the learned first appellate Court has travelled beyond its jurisdiction by granting partial interim relief; whereas the plaintiff is entitled for temporary injunction to the effect that she is in possession of entire house and the Respondents be restrained not to interfere in her possession in the entire house.

[4] Per contra, Shri Ajay Jain, learned counsel on behalf of the Respondent Nos.1 to 4 submits that the order passed by the learned first appellate Court is very reasonable. The plaintiff is residing only in the limited portion of the house which is marked in the red colour. She cannot claim possession in the entire house as a matter of right which admittedly belongs to the Respondent Nos.1 to 4.

[5] It is not disputed that the entire house bearing House No.2/30, Bharatpuri, Ujjain is owned by the defendant No.1 who is grand father-in-law of the plaintiff. The Respondent No.3 is a son of Respondent No.1 and the Respondent No.5, husband of the plaintiff, is the grand-son of the Respondent No.1. So long father and grand-father are alive, the Respondent No.5 has not right in the property, therefore, the plaintiff being wife of the Respondent No.5 cannot claim any right over the property. She has a right to reside in a shared household belonging to her husband only. Being a daughter-in-law the plaintiff has not right as against

her father-in-law to occupy any portion of said property. The High Court of Delhi in the case of Mr. Barun Kumar Nahar v/s Parul Nahar, passed in CS (OS) 2795/2011 dated 05.02.2013, while deciding application under Order XXXIX Rule 1 & 2 of CPC, held as under :-

**“29. One can also not lose sight of the fact that none of the statutes which deal with the rights of a married woman in India, be it The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Hindu Adoption and Maintenance Act, 1956; The Protection Of Women From Domestic Violence Act, 2005 or The Code Criminal Procedure, 1973 confer any right of maintenance including residence for the married woman as against the parents of the husband. To illustrate, Sections 24 and 25 of The Hindu Marriage Act, 1955 provides for the wife's right to pendent lite maintenance and Permanent Alimony only against her husband. Section 17 (1) of Domestic Violence Act, 2005 gives protection to the wife where 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 within the meaning of Section 2 (s) of the said Act. Section 18 of the Hindu Adoption and Maintenance Act, 1956 enumerates the right of a Hindu wife to be maintained by her husband during her life time. Section 125 of the Criminal Procedure Code, 1973 provides for monthly maintenance to wife, irrespective of her religion, if she has no source of income or means to maintain herself against her husband. The wife's right to maintenance which includes her residence in a commensurate property is, thus, only against the husband. Marriage is a social union of two persons called spouses that establishes rights and obligations between them. The concept of Matrimonial Home has evolved with the passage of time. The concept hails from the law of England under the Matrimonial Homes Act, 1967. There is no such absolute statute in India, like the British Matrimonial Homes Act, 1967, which clearly stipulates that the rights which may be available under marriage laws can only be as against the husband and not against the father-in-law or mother-in-law. However, it is quite discernible that the spouses in wedlock, are obliged to take care of each other and in case of any inter-se dispute; one can claim his right with respect to maintenance only against the other and not against the other family members. With the transient course it has been observed that with the advent of various women friendly laws, empowering the women with equal rights as that of a man/husband, the remedy of women to ask for maintenance or to claim her right in the residence in a commensurate property is only restricted to her husband**

and not against her parents in law. A woman 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. This means that she can assert her rights, if any, only against the property of her husband and cannot claim a right to life in the house of her husband's parents without their wishes and caprice. Law permits a married woman to claim maintenance against her in-laws only in a situation covered under section 19 of the Hindu Adoption and Maintenance Act, 1956 i.e. after the death of the husband and that too when she is unable to maintain herself out of her own earnings etc. It would not be abominable to say that even the parents/parents in law at the fag-end of their lives, deserve to live a blissful, happy and a peaceful life, away from any tautness or worries.

30. In the light of the aforesaid legal position the defendant No.1, being a daughter-in-law of the plaintiff, has no right as against the plaintiff i.e. her father-in-law, to occupy any portion of the subject property, which is his self-acquired property.”

[6] The Respondent Nos.1 to 4 themselves offered that the plaintiff along with her daughter can reside in one room attached lat-bathroom and dressing room which is marked in red colour. The learned first appellate Court has not committed any error while granting such a relief to the plaintiff. Being a daughter-in-law she cannot claim possession over the entire house as she has no legal right as held by the High Court of Delhi in the case of Mr. Barun Kumar Nahar (supra).

[7] Therefore, I do not find any illegality or infirmity in the order passed by the learned 10<sup>th</sup> Additional District Judge, Ujjain on 20.12.2016.

[8] The petition is hereby **dismissed**.

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**JUDGE**

**(AKS)**