

DELHI HIGH COURT JUDGEMENT

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 27, 2010

Date of Order: 13th August, 2010

CrI. M.C. No.3878/2009

13.08.2010

VIJAY VERMA

Through: Mr. K.K. Manan, Mr. Tarun Goomber, Mr. Nipun Bhardwaj, Mr. Pankaj Mandiratta and Mr. Ashish George, Advocates.

..... Petitioner

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versus

STATE N.C.T. OF DELHI & ANR.

Through: Mr. Sunil Sharma, APP for the State. Mr. Sunil Sethi, Mr. Sumit Sethi & Mr. B.C. Mishra, Advocates for R-2.

..... Respondents

JUSTICE SHIV NARAYAN DHINGRA

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 judgment should be reported in Digest? Yes.

JUDGMENT

1. This petition has been filed under Section 482 Cr. P.C. assailing order of learned A.S.J. dated 7th September, 2009, upholding the order of learned M.M. dated 11th July, 2009.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner herein had filed an application under Section 12 of Protection of Women from Domestic Violence Act making her brother and his wife as respondents. She sought an interim order from the Court of M.M. for immediate residence rights and police protection so that she could stay at premises No. A-181, Defence Colony, Delhi, whenever she visited India. The petitioner is a permanent resident of USA and is living in USA since year 2000. She came to India on a visit on 15th July, 2008 and alleged that when she went to her parental house on 16th July, 2008, she was not allowed to enter her parental house and hence the application.

3. Learned MM in her order observed that in this case the petition was more in a nature of claiming right in the property. The whole dispute seemed to be property dispute between the parties and there was no ground to pass an interim order of residence. The learned ASJ upheld this contention in appeal.

4. It is not disputed that father of the petitioner is not alive. Property No. A-181, Defence Colony, New Delhi, was owned by the father of the petitioner and respondent No. 2. Petitioner claimed right in the property alleging that she had a right in her father's property whereas respondent No. 2 relied upon a Will executed by father bequeathing his rights and share in the property in favour of his grandson. The respondent also relied upon an affidavit earlier executed by the petitioner showing that she had received her share in the property. It is also not disputed that a suit for partition titled as "Indra Warman Vs. Kishan Kumar Verma", being CS(OS) No. 2137 of 2006, filed by the sister of petitioner was pending in the High Court wherein the petitioner was one of the defendants and the petitioner herself also filed a suit for partition in the High Court being CS(OS) No. 2028 of 2009, titled as "Vijay Verma Vs. Kishan Kumar Verma & Ors."

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5. Filing of a petition under Protection of Women from Domestic Violence Act by the petitioner taking shelter of domestic relationship and domestic violence needs to be considered so that this Act is not misused to settle property disputes. Domestic relationship is defined under the Act in Section 2(f) as under: “(f) ‘domestic relationship’ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

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6. A perusal of this provision makes it clear that domestic relationship arises in respect of an aggrieved person if the aggrieved person had lived together with the respondent in a shared household. This living together can be either soon before filing of petition or ‘at any point of time’. The problem arises with the meaning of phrase “at any point of time”. Does that mean that living together at any stage in the past would give right to a person to become aggrieved person to claim domestic relationship? I consider that “at any point of time” under the Act only means where an aggrieved person has been continuously living in the shared household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property. However, “at any point of time” cannot be defined as “at any point of time in the past” whether the right to live survives or not. For example if there is a joint family where father has several sons with daughters-in-law living in a house and ultimately sons, one by one or together, decide that they should live separate with their own families and they establish separate household and start living with their respective families separately at different places; can it be said that wife of each of the sons can claim a right to live in the house of father-in-law because at one point of time she along with her husband had lived in the shared household. If this meaning is given to the shared household then the whole purpose of Domestic Violence Act shall stand defeated. Where a family member leaves the shared household to establish his own household, and actually establishes his own household, he cannot claim to have a right to move an application under Section 12 of Protection of Women from Domestic Violence Act on the basis of domestic relationship. Domestic relationship comes to an end once the son along with his family moved out of the joint family and established his own household or when a daughter gets married and establishes her own household with her husband. Such son, daughter, daughter-in-law, son-in-law, if they have any right in the property say because of coparcenary or because of inheritance, such right can be claimed by an independent civil suit and an application under Protection of Women from Domestic Violence Act cannot be filed by a person who has established his separate household and ceased to have a domestic relationship. Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a shared household. Only a compelled or temporarily going out by aggrieved person shall fall in phrase ‘at any point of time’, say, wife has gone to her parents house or to a relative or some other female member has gone to live with her some relative, and, all her articles and belongings remain within the same household and she has not left the household permanently, the domestic relationship continues. However, where the living together has been given up and a separate household is established and belongings are removed, domestic relationship comes to an end and a relationship of being relatives of each other survives. This is very normal in families that a person whether, a male or a female attains self sufficiency after education or otherwise and takes a job lives in some other city or country, enjoys life there, settles home there. He cannot be said to have domestic relationship with the persons whom he left behind. His relationship that of a brother and sister, father and son, father and daughter, father and daughter-in-law etc survives but the domestic relationship of living in a joint household would not survive & comes to an end.

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7. This meaning of domestic relationship has sense when we come to definition of domestic violence and the purpose of the Act. The purpose of the Act is to give remedy to the aggrieved persons against domestic violence. The domestic violence can take place only when one is living in shared household with the respondents. The acts of abuses, emotional or economic, physical or sexual, verbal or nonverbal if committed when one is living in the same shared household constitute domestic violence. However, such acts of violence can be committed even otherwise also when one is living separate. When such acts of violence take place when one is living separate, these may be punishable under different provisions of IPC or other penal laws, but, they cannot be covered under Domestic Violence Act. One has to make distinction between violence committed on a person living separate in a separate household and the violence committed on a person living in the shared household. Only violence committed by a person while living in the shared household can constitute domestic violence. A person may be threatening another person 100 miles away on telephone or by messages etc. This may amount to an offence under IPC, but, this cannot amount to domestic violence. Similarly, emotional blackmail, economic abuse and physical abuse can take place even when persons are living miles away. Such abuses are not covered under Domestic Violence Act but they are liable to be punished under Penal laws. Domestic Violence is a violence which is committed when parties are in domestic relationship, sharing same household and sharing all the household goods with an opportunity to commit violence.

8. I therefore consider that the application filed by the petitioner under Section 12 of Domestic Violence Act was not at all maintainable. The petitioner had settled her separate house in America, her Passport was issued in America, she is doing job in America, she was adult and able to take care of herself, take her own decisions. She decided to live in America after leaving her parents here. If she has any right in her father's property, she has already filed a suit for partition. An application under Section 12 of Domestic Violence Act was nothing but a gross misuse of the Act and I consider that she was rightly denied the interim relief of residence in the property left by her father. The petition is hereby dismissed.

August 13, 2010

SHIV NARAYAN DHINGRA, J.
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