

(2012) 01 KAR CK 0001

Karnataka High Court

Case No: Criminal Revision Petition No. 1211 of 2010

M.N. Puttaraju @ Raju and Veda
Murthi

APPELLANT

Vs

Sulochana

RESPONDENT

Date of Decision: Jan. 5, 2012

Acts Referred:

- Protection of Women from Domestic Violence Act, 2005 - Section 12, 17 (1), 2 (f)

Hon'ble Judges: V. Jagannathan, J

Bench: Single Bench

Advocate: V.B. Shivakumar, for the Appellant; M.S. Nagaraja, Advocate for R-1 to 3 in CrI. R.P. No. 1211/2010 and for R-1 and 2 in CrI. R.P. No. 1212/2010, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V. Jagannathan

1. These two petitions arise out of one and the same judgment of the lower appellate court in CrI. A. Nos. 626 and 627/2009. The order of the trial court dismissing the petition filed by the respondents herein was reversed by the lower appellate court and hence these petitions by the aggrieved respondents in the trial court. The respondents in CrI. R.P. No. 1212/2010 filed a miscellaneous petition before the trial court in CrI. Misc. No. 545/2008 and it was u/s 12 of the Protection of Women from Domestic Violence Act, 2005 ("the Act" for short) and likewise, the respondents in CrI. R.P. No. 1211/2010 also filed a petition u/s 12 of the Act, which was registered as CrI. Misc. No. 546/2008. In the petitions so filed by the respondents before this court, the relief of maintenance was sought along with other reliefs and the trial court clubbed both the miscellaneous applications and passed a common order dismissing the petitions filed u/s 12 of the Act. The appeals preferred by the respondents in CrI. A. Nos. 626 and 627/2009 came to be dismissed

by the lower appellate court by its common judgment and the revision petitioners before this court were directed to pay maintenance of Rs. 2,000/- per month to the respective respondents herein.

2. I have heard learned counsel for the parties and perused the impugned judgment and the other material on record.

3. Learned counsel Shri V.B. Shivakumar for the revision petitioners submitted that the lower appellate court ought not to have interfered with the order passed by the trial court and the trial court has considered the material placed before it and arrived at the conclusion that the respective respondents before this court have stated in their evidence that they have been living separately and since the death of their respective husbands and, therefore, the trial court, taking this into account as well as the observations made by this court in Crl. P. No. 3771/2008, held that the respondents herein have failed to prove that they were in domestic relationship with the petitioners herein and therefore, the question of Section 2(f) of the Act becoming applicable to the case of the respondents does not arise. The trial court also took note of the other material placed by the petitioners and has rightly dismissed the applications filed u/s 12 of the Act.

4. It is, therefore, contended that the lower appellate court has proceeded to pass the impugned judgment only on the reasoning that the respondents also have a right in the property and, therefore, until a final partition takes place in the suit, the respondents have to be given the maintenance. This reasoning, it is submitted by learned, counsel for the petitioners, is totally erroneous and in the guise of filing an application u/s 12 of the Act, the respondents cannot be given any share in the property and if the reasoning given by the lower appellate court has to be accepted, then, there would be no occasion for filing a partition suit.

5. The further submission made is that, it is admitted by the respective respondents before the trial court that, after the death of their respective husbands, they have been living separately and the property in question viz., Siddalingeshwara Traders, does not belong to the respondents but on the other hand, it is the first petitioner viz., M.N.Puttaraju, runs the said provision stores in the capacity of the owner of the business and the premises itself is a rented building and, therefore, the question of the respondents claiming a right in the shared household does not arise.

6. Relying on the decisions reported in [D. Velusamy Vs. D. Patchaiammal](#), and (2007)3 SCC 169, the submission made by the learned counsel for the petitioners is that, in order to claim a right to live in the property in question, it has to be established that the property belongs to the husband or it should have been a joint family property in which the husband was a member and, in the instant case, no such evidence is place before the trial court by the respondents herein and, therefore, the lower appellate court committed a serious error in reversing the order of the trial court. The judgment of the lower appellate court, therefore, cannot

be sustained either on facts or in law and hence, the petitions be allowed and the order of the trial court be restored.

7. On the other hand, learned counsel Shri M.S. Nagaraja for the respondents argued that the respondents, along with their husbands and the petitioners herein were all residing together in the same house hold and following the death of their respective husbands, the petitioners before the trial court were dispossessed of the right to stay in the shared house hold and though the respondents are staying separately, that will not take out the case from the purview of Section 2(f) of the Act. it is also submitted that the petitioners have deprived the respondents of their right over the joint family property and, therefore, the lower appellate court was justified in directing maintenance to be paid at Rs. 2,000/- per month, Hence, no interference is called for.

8. In the light of the aforesaid submissions put forward and the decisions referred to whether the judgment of the lower appellate court can be held to be sustainable in law is the point for consideration.

9. A careful reading of the reasons assigned by the trial court would go to show that the trial court has considered all the materials placed before it and has observed that the respective petitioners before the trial court, who were examined as P.W. 1 in the two cases, have admitted that they have been living separately ever since the death of their respective husbands. This court, while disposing of Crl. P. No. 3771/2008, has also observed at paragraph-6 that prima facie, the parties have been living separately and this is evident from the very address furnished to the cause title to the petitions before this court i.e., Crl. P. Nos. 3771 and 3772/2008.

10. Apart from the above, the respondents herein have not been able to place any material before the trial court to show that the shop premises viz., Siddalingeshwara Traders, actually belongs to them or to their respective husbands but, on the other hand, it is the specific case of the petitioners herein that the said shop Siddalingeshwara Traders is in the name of petitioner Puttaraju. Such being the position in respect of Siddalingeshwara Traders, it is not possible to accept the contention of the respondents" counsel that the said stores run by first petitioner Puttaraju is the joint family property of the respective husbands of the respondents herein.

11. The Apex Court in the case of [S.R. Batra and Another Vs. Smt. Taruna Batra](#), , has rejected the contention put forward before it that as the respondent before it had lived in the property in question in the past, the said property, therefore, becomes her shared household. The Apex Court went on to observe at paragraph-26 of the decision thus:

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 grandparents, 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 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.

Again at paragraph-29, the Apex Court has made the following observations:

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 2, mother of Amit Batra. Hence it cannot be called a "shared household".

12. In the case on hand also no material is placed before the trial court by the respondents to show that the shop or store in question viz., Siddalingeshwara Traders, belongs to the joint family of the parties and therefore, the question of the said shop or stores being called as a shared household will not arise. As the material on record has been properly considered by the trial court and the respondents herein also having admitted before the trial court that they have been living separately since the death of their respective husbands, the lower appellate court, therefore, could not have granted any relief merely because, on some future date, the respondents may claim a right in the shop premises in a partition suit. If the respondents have any right in respect of the shop premises, the suit filed by the respondents would take care of their interest. But, that is not a ground for the lower appellate court to hold that as no partition is effected, the stores in question will have to be deemed as a joint family property. No such conclusion can be drawn in the absence of the respondents placing material before the court to show-that the stores in question is a joint family property and that their husbands had a share in the said property. For the aforesaid reasons, the petitions are allowed and the judgment of the lower appellate court is set aside and that of the trial court stands restored.