

Vandhana Vs Srikanth, T. Krishnamachari and Jayanthi Krishnamachari

Court: Madras High Court

Date of Decision: Jan. 1, 2007

Acts Referred: Hindu Adoptions and Maintenance Act, 1956 " Section 3
 Protection of Women From Domestic Violence Act, 2005 " Section 17, 18, 2(f), 2(f), 2(s)

Hon'ble Judges: V. Ramasubramanian, J

Bench: Single Bench

Advocate: V. Raghavachari, V. Srimathi, V. Lakshminarayanan, for the Appellant; G.K.R. Pandian, C. Karunanithi, S. Sundarapandian, R. Sivakumar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

Pending suit for a permanent injunction restraining the defendants from disturbing or interfering with the plaintiff's

peaceful possession and enjoyment of the suit schedule property, the plaintiff has come up with the present application for an interim order of

injunction of similar nature. I have heard Mr. V. Lakshmi Narayanan, learned counsel appearing for the applicant/plaintiff and Mr. S.M.

Loganathan, learned counsel appearing for the respondents/defendants.

2. A marriage purportedly solemnised at the Venugopala Swamy Temple, Kakinada, East Godavari on 7.2.2007 between the applicant/plaintiff

and the first respondent/first defendant, was registered in the Office of the Marriage Registrar, Kakinada, Andhrapradesh, under The Hindu

Marriage Act. It appears that the members of the families of the applicant/plaintiff and the first respondent /first defendant also decided to have a

formal ceremonial social wedding on 18.6.2007. But on 14.6.2007, the respondents/defendants lodged a police complaint against the applicant

and her parents before the Commissioner of Police, Chennai and later before R.8, All Women Police Station, Vadapalani, claiming that the

applicant/plaintiff and her parents trespassed into the house of the respondents /defendants on 13.6.2007 with rowdy elements. Similarly, the

applicant/plaintiff also appears to have lodged a criminal complaint against the respondents/defendants herein.

3. In the meantime, the applicant/plaintiff has come up with the present suit, seeking the relief stated in paragraph-1 above and also seeking an

interim order of injunction to the same effect in the present application.

4. Mr. V. Lakshmi Narayanan, learned counsel appearing for the applicant/plaintiff contended that in view of the provisions of Section 2(f), 2(s)

and 17 of The Protection of Women from Domestic Violence Act, 2005, the applicant/plaintiff has a right to reside in the ""shared household"" with

the first respondent/first defendant. Learned counsel also contended that a legally wedded wife cannot so easily be thrown out from her

matrimonial home and relied upon the decisions of the Supreme Court in B.P. Achala Anand Vs. S. Appi Reddy and Another, and Ruma

Chakraborty Vs. Sudha Rani Banerjee and Another,

5. Per contra, Mr. S.M. Loganathan, learned counsel appearing for the respondents/defendants contended -

(a) that the status of the applicant/plaintiff as the wife of the first respondent/first defendant is itself in dispute in proceedings pending before the

Family Court and that therefore, the applicant/plaintiff may not be entitled to any protection;

(b) that there is absolutely no pleading or evidence to show that the applicant/plaintiff came into possession along with the first respondent, of the

suit schedule property after the marriage on 7.2.2007;

(c) that in order to invoke the protection granted under Central Act 43 of 2005, the applicant/plaintiff should have lived in the suit schedule

property along with the first respondent, without which, the suit property would not become a ""shared household"";

(d) that so long as her possession is not established to have been legally gained and her right to occupation not established, the applicant/plaintiff

cannot seek an injunction against a true owner; and

(e) that a case of trespass had actually been registered against the applicant/plaintiff in R.8, All Women Police Station, Vadapalani under orders of

this Court and the respondents/defendants, who are the true owners of the property, are now prevented from enjoying their own property.

6. Mr. S.M. Loganathan, learned counsel for the respondents/defendants relied upon the decision of this Court in Alagi Alamelu Achi vs. Ponniah

Mudaliar (1962 MLJ 383) for the proposition that a trespasser cannot be favoured with an injunction against the true owner. The learned counsel

also relied upon the decision of the Supreme Court in S.R. Batra and Another Vs. Smt. Taruna Batra, in support of his contention that the suit

schedule property would not come within the meaning of the term ""shared household"".

7. Since the rival contentions revolve around the provisions of the recently enacted The Protection of Women from Domestic Violence Act, 2005,

hereinafter referred to as ""the Act"", it is necessary to examine the historical background of the said Act, the objects and reasons for the said

enactment and the provisions contained therein. This Act was actually enacted with a view to implement the General Recommendation No. XII

(1989) of The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). India is a

signatory to CEDAW, having accepted and ratified it in June 1993.

8. Article 16 of the said Convention, which deals with measures to eliminate discrimination against women in matters relating to marriage and family

relations, reads as follows:- "Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations

and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of

the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education

and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where

these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property,

whether free of charge or for a valuable consideration.

9. Singapore, enacted the "Women's Charter" under Ordinance No. 18 of 1961, much ahead of CEDAW. The preamble to the said Act,

"Women's Charter" crystallised its objects as follows:-

An Act to provide for monogamous marriages and for the solemnization and registration of such marriages; to amend and consolidate the law

relating to divorce, the rights and duties of married persons, the protection of family, the maintenance of wives and children and the punishment of

offences against women and girls; and to provide for matters incidental thereto.

10. Part VII of the Women's Charter of the Statutes of the Republic of Singapore, deals with "Protection of Family". Section 64, which provides

the definition of various terms, used in Part VII of the said statute, defines the term "shared residence" as follows:-

shared residence"" means the premises at which the parties are, or have been, living together as members of the same household.

Section 65, which empowers the Court, to pass a Protection Order, against the commission of a family violence, includes within its ambit, the

protection of the right of occupation. Section 65 reads as follows:-

Protection Order

65.--(1) The Court may, upon satisfaction on a balance of probabilities that family violence has been committed or is likely to be committed against

a family member and that it is necessary for the protection of the family member, make a protection order restraining the person against whom the

order is made from using family violence against the family member.

(2) An application for a protection order may be made by the family member concerned or any person referred to in sub section (10).

(3) A protection order may be made subject to such exceptions or conditions as may be specified in the order and for such term as may be

specified.

(4) The Court, in making a protection order, may include a provision that the person against whom the order is made may not incite or assist any

other person to commit family violence against the protected person.

(5) A protection order may, where the Court is satisfied on a balance of probabilities that it is necessary for the protection or personal safety of the

applicant, provide for such orders as the Court thinks fit having regard to all the circumstances of the case, including any one or more of the

following orders:

(a) the granting of the right of exclusive occupation to any protected person of the shared residence or a specified part of the shared residence by

excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared

residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;

(b) referring the person against whom the order is made or the protected person or both or their children to attend counseling provided by such

body as the Minister may approve or as the Court may direct; and

(c) the giving of any such direction as is necessary for and incidental to the proper carrying into effect of any order made under this section.

(6) Except so far as the exercise by the person against whom a protection order is made of a right to the shared residence is suspended or

restricted, or prohibited or restrained, by virtue of an order made under subsection (5), such order shall not affect any title or interest that the

person against whom the order is made or any other person might have in the residence.

11. The concept of "shared residence" and the power of Courts to issue "Protection Orders", appears to have been introduced into the "Women's

Charter" (Chapter 353) of the Statutes of the Republic of Singapore under Amendment No. 30 of 1996, taking cue from CEDAW. Keeping in

mind these developments, the Protection of Women From Domestic Violence Act, 2005 was enacted as "an Act to provide for more effective

protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for

matters connected therewith or incidental thereto.

12. In the statement of objects and reasons, it is stated that the Bill seeks to provide among other things for the rights of women to secure housing.

Para-4(iii) of the statement of objects and reasons reads as follows:-

It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared

household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the

Magistrate.

13. Thus, Central Act 43 of 2005 appears to be in tune with the Singapore Model in so far as the issue of "shared residence" and the protection of

the right of occupation of the same are concerned. Section 17 of the Act which confers a right upon the women to reside in a shared household

reads as follows:-

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.

14. Since Section 17 confers a right upon every woman in a "domestic relationship" to reside in the "shared household", a woman seeking

protection u/s 17 has to establish that she was or is in a "domestic relationship" and that the right sought to be enforced is as against the "shared

household". In other words, to be entitled to protection u/s 17, a woman will have to establish two facts, namely (i) that her relationship with the

opposite party is a "domestic relationship" and (ii) that the house in respect of which she seeks to enforce the right, is a "shared household".

15. These two terms "domestic relationship" and "shared household" are defined in Sections 2(f) and 2(s) of the Act. Section 2(f) of the Act, defines

domestic relationship"" as follows:-

(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

Section 2(s) of the Act, defines a ""shared household"" as follows:-

(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.

16. Though the definition of the term ""shared household"" appearing in Section 2(s) of our Act, is more elaborate than the corresponding definition

of the term ""shared residence"" u/s 64 of the ""Women's Charter"" of the Statutes of the Republic of Singapore, the definition of the term ""domestic

relationship"" to which a shared household is correlated, appears to impose a condition viz., that the two persons in relationship ""must live or have at

any point of time, lived together in a shared household"". Therefore, ""the present act of living"" or ""the past act of having lived together"" in the shared

household, appears to be a necessary concomitant, inbuilt in the definition of the term ""domestic relationship"" u/s 2(f). But Section 2(s) makes a

place a ""shared household"", if the aggrieved person lives or at any stage has lived there in a ""domestic relationship"" either singly or along with the

respondent. Therefore, the apparent circumscription found in Section 2(f) is actually removed from its fetters u/s 2(s) of the Act, in the sense that

the word ""together"" appearing in Section 2(f) is replaced by the word ""singly or along with"" in Section 2(s). Consequently, there appears to be a

little contradiction between Sections 2(f) and 2(s) of the Act.

17. A clinical dissection of the definitions of the terms ""domestic relationship"" and ""shared household"" has become necessary in view of a very

peculiar dispute that has arisen in this case. The dispute is that though the applicant/plaintiff and the first respondent/first defendant got married on

7.2.2007, they did not either ""live"" or ""at any point of time lived together"" in the shared household of the first respondent/first defendant. The case

of the respondents/defendants is that after the marriage on 7.2.2007, the applicant/plaintiff trespassed into their house on 13.6.2007 resulting in the

respondents/defendants walking out of the house and lodging a criminal complaint on 14.6.2007. Therefore, it was contended by Mr. S.M.

Loganathan, learned counsel for the respondents/defendants that to be entitled to the protection guaranteed u/s 17 of the Act, the applicant/plaintiff

should satisfy the requirements of the definition of the terms ""domestic relationship"" and ""shared household"". In other words, if the applicant/plaintiff

cannot show that she lives or at any point of time lived together with the first respondent/first defendant in the ""shared household"", she would not be

entitled to invoke Section 17.

18. But such a construction of Sections 2(f) and 2(s) of the Act, in my considered view, will not be in tune with the object sought to be achieved

by the Act. As seen from the historical background of the Act, the Act was enacted with a view to implement the United Nations Convention,

ratified by India way back in 1993. As observed by the Supreme Court in *Githa Hariharan and Another vs. Reserve Bank of India and another*

(1999 (I) CTC 481 = 1999-2-L.W.723), any interpretation to a statutory provision should be in conformity with the International Conventions. In

paragraph-14 of the said judgment, the Supreme Court held as follows:-

14. The message of international instruments - Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (""CEDAW"")

and the Beijing Declaration, which directs all State parties to take appropriate measures to prevent discrimination of all forms against women is

quite clear. India is a signatory to CEDAW having accepted and ratified in June, 1993. The interpretation that we have placed on Section 6(a)

(supra) gives effect to the principles contained in these instruments. The domestic Courts are under an obligation to give due regard to International

Conventions and Norms for construing domestic laws when there is no inconsistency between them.

19. In a society like ours, there are very many situations, in which a woman may not enter into her matrimonial home immediately after marriage. A

couple leaving for honeymoon immediately after the marriage and whose relationship gets strained even during honeymoon, resulting in the wife

returning to her parental home straight away, may not stand the test of the definition of domestic relationship u/s 2(f) of the Act, if it is strictly

construed. A woman in such a case, may not live or at any point of time lived either singly or together with the husband in the ""shared household"",

despite a legally valid marriage followed even by its consummation. It is not uncommon in our society, for a woman in marriage to be sent to her

parental home even before consummation of marriage, on account of certain traditional beliefs, say for example, the intervention of the month of

Aadi. If such a woman is held to be not entitled to the benefit of Section 17 of the Act, on account of a strict interpretation to Section 2 (f) of the

Act that she did not either live or at any point of time lived together in the shared household, such a woman will be left remediless despite a valid

marriage. One can think of innumerable instances of the same aforesaid nature, where the woman might not live at the time of institution of the

proceedings or might not have lived together with the husband even for a single day in the shared household. A narrow interpretation to Sections

2(f), 2(s) and 17 of the Act, would leave many a woman in distress, without a remedy. Therefore, in my considered view a healthy and correct

interpretation to Sections 2(f) and 2(s) would be that the words "live" or "have at any point of time lived" would include within their purview "the

right to live". In other words, it is not necessary for a woman to establish her physical act of living in the shared household, either at the time of

institution of the proceedings or as a thing of the past. If there is a relationship which has legal sanction, a woman in that relationship gets a right to

live in the shared household. Therefore, she would be entitled to protection u/s 17 of the Act, even if she did not live in the shared household at the

time of institution of the proceedings or had never lived in the shared household at any point of time in the past. Her right to protection u/s 17 of the

Act, coexists with her right to live in the shared household and it does not depend upon whether she had marked her physical presence in the

shared household or not. A marriage which is valid and subsisting on the relevant date, automatically confers a right upon the wife to live in the

shared household as an equal partner in the joint venture of running a family. If she has a right to live in the shared household, on account of a valid

and subsisting marriage, she is definitely in "domestic relationship" within the meaning of Section 2(f) of the Act and her bodily presence or absence

from the shared household cannot belittle her relationship as anything other than a domestic relationship. Therefore, irrespective of the fact whether

the applicant/plaintiff in this case ever lived in the house of the first respondent/first defendant after 7.2.2007 or not, her marriage to the first

respondent/first defendant on 7.2.2007 has conferred a right upon her to live in the shared household. Therefore, the question as to whether the

applicant/plaintiff ever lived in the shared household at any point of time during the period from 7.2.2007 to 13.6.2007 or not, is of little

significance.

20. As a matter of fact, the applicant/plaintiff has taken a definite stand that after the marriage on 7.2.2007, both of them went out to several places

and that she lived with the first respondent/first defendant. Though this fact was disputed by the first respondent/first defendant, it becomes a

question of fact to be gone into at the time of trial. But as I have held already, even if the contention of the respondents/defendants is accepted that

the applicant/plaintiff never lived with the first respondent/first defendant in the shared household from 7.2.2007 till 13.6.2007, it did not make the

relationship any less than "a domestic relationship" nor did it make the shared household not one within the meaning of Section 2(s) of the Act.

Hence, I am unable to accept the contention of the learned counsel for the respondents/defendants with regard to the interpretation to Sections

2(f), 2(s) and 17 of the Act.

21. The decision relied upon by Mr. S.M. Loganathan in S.R. Batra and Another Vs. Smt. Taruna Batra, related to a case where the property

belonged to the mother-in-law. Therefore, the Supreme Court held in paragraph-22 of its judgment that the house in question cannot be said to be

a "shared household" within the meaning of Section 2(s) of the Act. But in the present case, the applicant/plaintiff has, filed a copy of the Sale Deed

dated 31.3.2004 registered as document No. 2051 of 2004 as document No. 5. The said Sale Deed discloses that the suit schedule property was

purchased jointly in the names of the first and third defendants. Therefore, the decision of the Supreme Court in S.B. Batra's case may not be

applicable.

22. The contention of Mr. S.M. Loganathan, learned counsel for the respondents/defendants that the status of the applicant /plaintiff as the wife of

the first respondent/first defendant is itself in dispute and that the possession gained by her on 13.6.2007 was unlawful and amounted to trespass,

cannot be accepted. The first respondent/first defendant has not disputed the factum of marriage solemnised at the Venugopala Swamy Temple,

Kakinada and the registration of the same under The Hindu Marriage Act. Though the respondents/defendants contend that the marriage took

place under dubious circumstances, the first respondent/first defendant has not filed a petition for declaring the marriage to be a nullity. On the

other hand, the first respondent/first defendant has filed only a petition for divorce. While a petition to declare a marriage as a nullity, would make

the very validity of a marriage shake in its foundation, a petition for divorce pre-supposes the existence of a valid and subsisting marriage as on

date. Therefore, the marriage between the applicant/plaintiff and the first respondent/first defendant is valid and subsisting as on date, as otherwise,

the first respondent/first defendant could not have filed a petition for divorce. Under such circumstances, the status of the applicant/plaintiff, as the

wife of the first respondent/first defendant cannot be in doubt, at least for the present. It is this status which has given her a right to live in the shared

household. Hence, her entry into the household is as a matter of right, whether the exercise of such right happened on 13.6.2007 or on any other

date, forcibly or otherwise. Therefore, I am unable to accept any of the contentions of the learned counsel for the respondents/defendants.

23. At last, Mr. S.M. Loganathan, learned counsel for the respondents/defendants contended that the first respondent/first defendant is even

prepared to pay a reasonable amount towards rent for any decent accommodation that the applicant/plaintiff may take, by way of an interim

arrangement, without prejudice to the rights of the respondents/defendants. This contention stems from the fact that the right of a woman to live in

the shared household was always considered to be a part of her right to maintenance.

24. It is pertinent to see that even before the advent of the Act, the right of a wife to reside in the matrimonial home, was recognised as part of her

right to maintenance, in so far as Hindus are concerned. In para-12 of its judgment in B.P. Achala Anand Vs. S. Appi Reddy and Another, the

Supreme Court laid down the law on the point as follows:-

A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate

residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is

compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be

defeated by the husband executing a Will to defeat such a right. (See Mulla: Principles of Hindu Law, Vol. I, 18th Edn., 2001, paras 554 and

555). The right has come to be statutorily recognised with the enactment of the Hindu Adoptions and Maintenance Act, 1956. Section 18 of the

Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of Section 3 of the Hindu Adoptions and Maintenance Act,

1956 as to include therein provision for residence amongst other things. For the purpose of maintenance the term "'wife'" includes a divorced wife.

25. After referring to various English decisions, on the right of a wife to stay in the premises taken on rent by her husband, even after he deserts

her, the Supreme Court held in paragraph-23 as follows:-

23. It has been held in India that right to maintenance arises out of the status as a wife and not by way of a contract or otherwise. In Sri Raja

Bommadevara Raja Lakshmi Devi Amma Garu Vs. Sri Raja B. Naganna Naidu Bahadur Zamindar Garu and Another, Spencer, Officiating C.J.,

stated: (AIR p. 757)

The obligation of a husband to maintain his wife is one arising out of the status of marriage. It is a liability created by the Hindu law, in respect of

the jural relations of a Hindu family. When there is no contract between the parties to a marriage, as among Hindus, a suit for maintenance is not a

suit based upon contract, but it is a suit arising out of a civil relation resembling that of a contract, which is specially provided for in Article 128 of

the Limitation Act." (Headnote)".

26. In paragraph-25 of the same judgment, the Supreme Court also invited a reference to a judgment of the Division Bench of the Bombay High

Court, which may be of interest, to decide the dispute on hand. Paragraph-25 of the aforesaid judgment of the Supreme Court reads as follows:-

25. *Abdur Rahim Undre (Dr.) vs. Padma Abdur Rahim Undre* (AIR 1982 Bomb 341) is a Division Bench decision of the Bombay High Court,

dealing with right to residence of a wife in the matrimonial home. The marriage between the parties was subsisting in law but had broken down

beyond repair. The husband filed a suit *inter alia* for injunction, restraining the wife from entering the matrimonial house. The Court held that an

injunction subject to certain terms and conditions could be granted. The parties, on account of seriously estranged relationship between them could

not be forced to live together. The flat was big enough to allow the parties to live there separately. The Court earmarked separate portions for the

husband and the wife to live separately and restrained the wife from entering the portion in occupation of the husband, who was an eminent

surgeon, so that he could have peace of mind to enable him to discharge his duties as a surgeon more efficiently. In addition, the husband was

directed to pay a certain amount of money by way of maintenance to the wife.

27. In *Ruma Chakraborty Vs. Sudha Rani Banerjee and Another*, a divorced wife sought to fight an order of eviction passed against her divorced

husband at the instance of the landlord of the premises. The Supreme Court held that she had no right to contest the pending eviction proceedings.

28. Therefore, the applicant/plaintiff certainly has a right to live in the shared household of the first respondent/first defendant, till the marriage is

dissolved in a manner known to law. Though the offer made by the learned counsel for the respondents/defendants to pay a reasonable amount

towards rent appears to be fair and reasonable, the right guaranteed under the Protection of Women from Domestic Violence Act, 2005, cannot

be negated by such offers, however reasonable they may be. From the development of the law on the point over the years culminating in the

aforesaid enactment, it appears that the right of a woman to live in the shared household, originally conceived as a part of her right to maintenance,

has enlarged with the advent of the Act. Such a statutory right cannot be rendered nugatory by asking the applicant/plaintiff to look for a rental

accommodation and demand payment of the rent from the first respondent/first defendant.

29. Therefore, I enquired with the learned counsel appearing on either side as to whether the suit property is capable of being segregated into two

portions, so that the applicant/plaintiff as well as the respondents/defendants can live in separate portions, till the disputes are resolved between

themselves. As a matter of fact, such a solution was prescribed by the Division Bench of the Bombay High Court in *Abdur Rahim Undre (Dr.) vs.*

Padma Abdur Rahim Undre (AIR 1982 Bomb 341) and the same has been quoted with approval by the Supreme Court in *B.P. Achala Anand*

Vs. S. Appi Reddy and Another, . But the learned counsel appearing on either side represented that as on date, the entire building is of a single unit

of accommodation, though with a ground floor and a first floor. Under such circumstances, the suit property cannot be divided into separate

portions as on date, to enable the parties to live in different portions of the shared household, till the legal proceedings conclude. In view of the

above, I am satisfied that the applicant/plaintiff has a statutory right and the same is to be protected by this Court. Therefore, the applicant/plaintiff

has a prima facie case. The balance of convenience is also in favour of the applicant/plaintiff. The applicant/plaintiff would suffer irreparable loss

and injury if the interim relief prayed for is not granted, leading to her forcible eviction from the shared household. Hence the applicant/plaintiff is

entitled an order of injunction as prayed for. Consequently, O.A. No. 764 of 2007 is allowed.