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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 20.08.2025

+ MAT.APP.(F.C.) 72/2024 & CM APPL.13366/2024 (for interim stay)

[REDACTED]

.....Appellant

Through: Ms. Priyanka Sinha, Advocate

versus

[REDACTED]

.....Respondent

Through: Mr. Manoj Kumar Duggal,
Advocate**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN****SHANKAR****J U D G M E N T (ORAL)****ANIL KSHETARPAL, J.**

1. The present appeal, filed under Section 19 of the Family Courts Act, 1984, challenges the order dated 05.12.2023 passed in CS No. 54/2023 captioned [REDACTED] [hereinafter referred to as 'the Civil Suit']. *Vide* the impugned order, Civil Suit was partly decreed in favour of the Respondent [Plaintiff before the Trial Court] by granting her possession in respect of property bearing [REDACTED] [REDACTED] [hereinafter referred to as 'the suit property'], along with mesne profits @ Rs. 1,500/- p.m. Additionally, the Appellant [Defendant before the Trial Court] was directed to hand over vacant and peaceful possession of the suit



property within a period of three months.

2. The brief facts leading to the present Appeal are that one late Mr. [REDACTED] husband of the Respondent, prior to his demise on 20.05.1997, bequeathed the suit property in her favour by way of a Will dated 11.05.1995. Consequently, the Respondent filed an Application for Probate bearing Probate Case no. 39/2009, which was subsequently allowed by the Probate Court on 20.07.2010, thereby granting the probate of Will dated 11.05.1995 *qua* the suit property and other moveable assets.

3. The Respondent, after obtaining a Probate/ Letter of administration, instituted a Civil Suit seeking eviction, possession and recovery of use and occupation charged along with mesne profits, in the suit property, against the Appellant. The case of the Respondent before Trial Court was that the Appellant, who is daughter-in-law of the Respondent, along with his son, was permitted by her to stay in the suit property, however, this permission to reside in the suit property stood revoked after the Respondent terminated the license *vide* a legal notice dated 23.11.2011 issued against the Appellant.

4. On the contrary, the Appellant contested the Civil Suit on account of being entitled to a right of residence in the suit property, by virtue of her being a legal heir, to the deceased father-in-law. Further, it was also her case that the Appellant is not the absolute owner of the suit property. Specifically, in the backdrop that the Appellant and her husband were not impleaded as parties to the probate proceeding instituted by the Respondent *qua* the suit property.

5. The Trial Court, upon appreciation of the evidence led by the parties, concluded that since the probate granted in favour of the



Respondent is a judgement in rem, and since no challenge has been made against such order of probate, the Respondent duly proved her ownership of the suit property. Further, it was also observed by the Trial Court that the Appellant had no right to reside in the suit property, particularly when the licence issued in her favour stood terminated by virtue of notice dated 23.11.2011.

6. Furthermore, it was also observed by the Trial Court that during her cross-examination, the Appellant admitted that she had not been residing in the suit property since 2012, and had been living at her parental house. As such, it was observed that since the Appellant had an alternative accommodation, therefore, she is not entitled to resist the eviction from the suit property.

7. Learned counsel for the Appellant has made two submissions in her favour, which are as follows:

- a. the suit property is a shared household, and therefore, the Appellant has a right of residence.
- b. the Appellant before the Trial Court led evidence to substantiate its contention with respect to domestic violence; however, the Trial Court overlooked the same.

8. In addition to the aforesaid, it is also contended by the learned counsel for the Appellant, that decree of mesne profits payable by her against the use and occupation of premises of the suit property shall be waived of. Particularly, on account of the Appellant being a widow.

9. *Per contra*, learned counsel for the Respondent submitted that the property belongs exclusively to her by virtue of the Will dated 11.05.1995 and the subsequent grant of probate/letter of administration on 20.07.2010, therefore, the Appellant has no right to remain in the



suit property. It is further submitted by the learned counsel for the Respondent that relief against shared household arrangement, as also claimed by the Appellant, remains active only until eviction is ordered in accordance with the law, post that such right becomes dormant. Additionally, he also contended that the Appellant has been residing in her parental home since 2012 and has locked the premises solely to harass the Respondent.

10. We have considered the rival submissions made by the learned counsel for the Parties. The core issue arising for determination in the present Appeal is whether the Appellant is entitled to continue residing in the suit property within the meaning of Section 17 of the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as the Act, 2005], which reads as under-

“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.”

Section 17, as reproduced above, culls out a substantive right of residence in favor of a woman to seek shelter within the shared household, whether or not any beneficiary or proprietary rights with respect to such property has been derived from domestic relationship. However, such right of residence contemplated under Section 17(1) of the Act, 2005 is not an absolute right conferred upon a woman, rather is limited to the extent of circumstances expressed under Section 17(2) of



the Act, 2005 thereby creating a restriction in the interest and/or right emanating from Section 17(1) of the Act, 2005.

11. By virtue of the embargo imposed under Section 17(2) of the Act, 2005, the legislative intent behind adding such limitation, in the opinion of this Court, is to make it manifestly clear that a woman seeking protection on the pretext of a shared household is restricted from claiming a right of residence as and when this right has been terminated by way of procedure established under law. To put it in other words, the intention behind this provision is purely to grant the right of residence as a protective measure, so as to exclude the possibility of a woman being removed from her matrimonial home at the whims and fancies of her in-laws. Accordingly, the protection under Section 17(1) of the Act, 2005 acts as a shield against unlawful dispossession of a woman, not as a sword to create proprietary rights, which would go beyond the intention, scope and ambit of the Act, 2005.

12. This Court in its judgement dated 28.07.2025, in Mat. App. (F.C.) 270/2025 captioned Smita Jina v. Amit Kumar Jina, has already dealt with the issue of right of residence claimed under Section 17 of the Act, 2005. Whilst providing an analysis on the restriction under Section 17(2) of the Act, 2005, this Court, has held that the right to reside in a shared household, though protected, is not indefeasible and is subject to lawful eviction or exclusion as per the due process of law.

13. In the present case, during the course of arguments, the attention of this Court was drawn towards Order dated 07.06.2019 passed by the learned Metropolitan Magistrate in Ct. Case no. 4475/2016(New), CC. No. 136/4/10(Old), wherein, on the basis of evidence produced before



it, the Appellant was recorded to have been residing in the suit property. Consequently, the learned MM, directed that the Appellant cannot be dispossessed from the suit property without following the due process of law.

14. Upon perusal of the order dated 07.06.2019, it is evident that a right of residence, as claimed by the Appellant, was exclusively recognized therein. However, on the contrary, perusal of the impugned order reveals that it was an admitted position of the Appellant before the Trial Court that she has not been residing in the suit property for past 13 years since 2012. Therefore, in view of this Court, upon careful examination of the aforestated observations made by Ld. MM and the Trial Court, the Appellant out of her own accord ceased to reside at her matrimonial home, i.e., the suit property, despite her right of residence being recognized.

15. Hence, the Appellant is not entitled to claim right of residence for two reasons. Firstly, it is upon her own volition that she stopped residing at the suit property as elaborated in the preceeding paragraph. Secondly, the right of residence provided under Section 17(1) of the Act, 2005 stood curtailed as soon as the Respondent, by way of a Civil Suit, followed by the Trial Courts Order upon careful examination of evidence produced by the Parties thereby, was considered to be the rightful owner of the suit property.

16. Therefore, in light of the aforestated circumstances and the statutory law deliberated upon, this Court finds no ground to interfere with the Order of the Trial Court. However, the learned counsel for the Respondent has graciously foregone the claim for mesne profits, keeping in view the fact that the Appellant is a widowed daughter-in-



law.

17. With these observations, the decree is hereby modified only to the extent of exempting the Appellant to pay the mesne profit. While the decree of eviction and possession is maintained, the decree awarding mesne profits is set aside.

18. Accordingly, the present Appeal along with pending application(s), if any, stands disposed of.

**ANIL KSHETARPAL
(JUDGE)**

**HARISH VAIDYANATHAN SHANKAR
(JUDGE)**

AUGUST 20, 2025/rk/ds/hr