

IN THE COURT OF THE JUDICIAL MAGISTRATE OF I CLASS,
SPECIAL MOBILE COURT, ONGOLE.

Present :: **Sri Kumar Vivek,**
Judl. Magistrate of I Class,
Special Mobile Court, Ongole.

Wednesday, this the 17th day of June, 2015.

D.V.C.No. 10 of 2014

Between:

1. Boddu Anjali W/o late Teja, 28 years,
Abedkar Nagar, Tangutur.
 2. Boddu Poorna Prabhakar, 4 years,
being minor represented by his mother
Boddu Anjali
-Petitioners

and

1. Boddu Annapurnamma W/o Prabhakar Rao, 56 years,
 2. Boddu Prabhakar Rao S/o Basavaiah, 62 years,
 3. Boddu Mariyamma W/o Mohan Rao, 40 years,
 4. Boddu Manoghna D/o Mohan Rao, 19 years,
 5. Boddu Mounika D/o Mohan Rao, 25 years,
All are resident of Abedkar Nagar, Tangutur.
-Respondents

This case coming on 16-04-2015 for final hearing before me in the presence of Sri Ch.Pratap Kumar, advocate for petitioner, and of Sri K.Venkataeswarlu, and Sri J.Anjaiah, advocates for respondents having stood over for consideration till this day, this Court delivered the following:

// ORDER //

1. This is the petition filed under section 12 of the Protection of the Women from the Domestic Violence Act, 2005, by the petitioners against the respondents alleging that the petitioner no.1 has been subjected to domestic violence at the hands of the respondents after the death of her husband late B.Himateja, and thereby they have claimed reliefs of protection order, monetary reliefs, and residence order.

2. The factual matrix of the case of the petitioners as set out in the petition in brief is that the parents of the petitioner no.1 have presented 15 sovereigns of gold ornaments, cash of Rs.2,00,000/- and house hold articles worth Rs.1,00,000/- to the respondents at the time of her marriage; that the said cash and gold ornaments were taken by the respondent no.2 after the marriage; that the respondent no.2 has taken Rs.3,00,000/- from the parents of the petitioner no.1 at the time of marriage of his daughter; that after the death of B.Himateja the petitioners have been residing in the house of late B.Himateja; that the respondents no.1 and 2 have harassed the petitioner no.1 after the

death of late B.Himateja; that on number of occasions the respondents have attempted to kill the petitioners and once they have poured kerosene on the petitioner no.1 with a view to kill her, and the petitioner no.1 has lodged police complaint against the respondents; that after two months the respondent no.1 along with the respondent no.3 to 5 and the husband of the respondent no.3 have beaten the petitioner no.1, and the petitioner no.1 has lodged police complaint against them; that after 10 days the respondents and the son-in-law of the respondents no.1 and 2 by name B.Suresh under the influence of alcohol on 10-12-2011 have abused the petitioners and also warned her to leave their house before dawn, else to kill them; that on 07-12-2011 the respondents along with their other relatives have abused and beaten the petitioner no.1, and the petitioner no.1 has lodged police complaint against the respondents; that after the death of late B.Himateja the respondents have failed to take care of the petitioners and they did not handover the cash and gold ornaments of the petitioner no.1; and that the respondent no.2 has filed civil case against the petitioner no.1 and her relatives and did not return her cash and gold ornaments in spite of agreeing before the mediators to return the cash and gold ornaments, therefore, this petition has been filed.

3. The respondent no.2 has filed counter and the same has been adopted by the respondent no.1, 3 to 5 and the respondents besides denying the material averments of the petition have submitted that the father of the petitioner no.1 was not having financial capacity to give cash and gold ornaments as alleged by the petitioners; that the husband of the petitioner late B.Himateja was minor at the time of her marriage, and the marriage of the petitioner no.1 and late B.Himateja was not arranged by the elders and their marriage was not informed to the respondents or their relatives; that the respondent no. 1 and 2 have come to know about the marriage of the petitioner no.1 with late B.Himateja after seven months of their marriage and under such circumstance giving of the dowry of cash of Rs.2,00,000/- and gold ornaments weighing 15 sovereigns to the respondent no.2 do not arise; that the petitioner no.1 and B.Himateja never resided with the respondents at any point of time and that they

have lived together at Hyderabad and Agraharam of Ponnalur mandal, and for some time at Muttukuru, on account of employment of late B.Himateja; that after the death of late B.Himateja the petitioner no.1 went to the house of her parents and never resided along with them, and the respondent no.3 to 5 are residing separately and they never resided along with the respondent no.1 and 2; that the respondent no.2 is a retired employee, and he gave Rs.3,00,000/- to B.Himateja from his retirement benefits on humanitarian grounds; that the petitioners has filed police complaint against the respondents under sections 323, 506 and 509 r/w 34 of the Indian Penal Code after the death of late B.Himateja to only harass and threaten the respondents, and the police complaint given by the petitioner no.1 to the Tangutur police station has been referred as 'false' by the police concerned; that the petitioners has threatened the respondents to dispossed from the self acquired property from the respondent no.2, and that the respondent no.2 has filed OS 16/2012 on the file of hon'ble Senior Civil Judge Court, Ongole, and obtained interim injunction order against the petitioner no.1 and her parents; that the petitioner no.1 has filed this petition to take revenge against the respondents; that the respondent no.1 and 2 are aged persons and they are living on the monthly pension that itself is magged, and the respondent no.2 has constructed a house after availing loan from the State Bank of India, Tangutur, and to he has repay the loan; that the respondent no.1 and 2 are incurring Rs.5,000/- towards medical expenditure; that the respondent no.1 and 2 are not able to maintain themselves and they are not in position to maintain the petitioners; and that there is no joint family or joint family property or joint family responsibility between the petitioners and the respondent no.1 and 2, and prayed this Court to dismiss the petition.

4. On the side of the petitioners the petitioner no.1 examined herself as PW1. On the said of the respondents the respondent no.2 examined as RW1 and one of the neighbor of the respondent no.1 and 2 by name K.Srinivas Rao has been examined as RW2. No documents have been exhibited on either side.

5. Heard the arguments in advanced on behalf of both sides.

6. Perused the material on record.

7. **Points for determination:**

- i) Whether the petitioners are entitled to the reliefs claimed by them in the petition?*
- ii) To what relief/reliefs ?*

8. **Point No1:-**

The evidence of PW1 before this Court is that on 25-05-2003 her marriage was performed with the son of the respondent no.1 by name B.Himateja at Tangutur; that at the time of their marriage her parents have given cash of Rs.3,00,000/- to her in-laws towards dowry and marriage expenses, and gold ornaments weighing 15 sovereigns; that after the marriage she joined the company of her husband at the house of her in-laws, and she and her husband led happy marital life; that out of their wedlock she has given birth to a male child(petitioner no.2) on 25-02-2007; that one year after their marriage on the request of her in-laws her father has given cash of Rs.3,00,000/- for the purpose of performing the marriage of sister of her husband; that during the life time of her husband, her husband was working as a security guard at Shamshabad airport, Hyderabad; that her husband died on 13-02-2010; that after the death of her husband her in-laws have been harassing her and demanding her to go away from the matrimonial house, and they never took care of her as well as of the petitioner no.2; that due to unbearable torture at the hands of her in-laws she gave police complaint in the year 2011 and the same is pending before this Court; that the respondents have been harassing her and abusing her in filthy language for leaving her matrimonial house; that she has filed present petition seeking cash of Rs.6,00,000/- and gold ornaments weighing 15 sovereigns, and also protection and residence order to her and her child at the house of her in-laws. PW1 admits during the course of her cross-examination that prior to 28-10-2002 their marriage was registered at the office of District Registrar, Ongole, as their marriage is a love marriage; that she resided along with her husband at Hyderabad where he was working; that her husband died at Hyderabad while he is working at Hyderabad; that the house situated at Tangutur is self acquired property of the respondent no.2; and that the respondent no.2 has filed civil case against her for bare injunction restraining her from entering into his house that is in the name of the respondent no.1, and

temporary injunction has also been granted in the said case. PW1 has stated during the course of her cross-examination that the respondents have again performed her marriage after 8 months of their marriage; and that her parents are agriculturists. PW1 has denied suggestions during the course of her cross-examination that on 28-10-2002 her in-laws have only arranged reception function and they did not perform their marriage; that she never resided along with her in-laws, and she resided along with her husband at different places of employment of her husband; that after the death of her husband she went to the house her parents and resided there till filing of this petition; and that her parents do not have any capacity to give dowry, and her parents never gave any dowry in her marriage as her marriage is a love marriage.

9. The evidence of RW1 before this Court is that PW1 is his daughter-in-law, and her marriage with his son is love marriage; that after 7 months of their marriage he came to know about their marriage, and later they celebrated the reception function; that no dowry was presented by the parents of PW1; that his son by name B.Himateja was born in the month of July, 1983; that PW1 and her son never reside along with them; that PW1 stayed along with his son on account of employment of his son; that in the month of February, 2010, his son expired due to ill-health while he was undergoing treatment; that after the death of his son PW1 never resided along with them; that he performed the marriage of his daughter with his own income; that he gave Rs.3,00,000/- to his son out of his retirement benefits in the year 2007; that after the death of his son PW1 has filed two criminal cases against him and other respondents out of which one case has been referred as false by the police and the another case has ended in their acquittal on merits; that he is having a house and except the said house he do not have any immovable properties; that he has filed civil suit against PW1 seeking bare injunction as PW1 has tried to trespass into his house; that he is drawing monthly pension @ Rs.17,000/-; and that he and the respondent no.1 are not keeping good health and they are incurring Rs.5,000/- towards medical expenses. RW1 has stated during the course of his cross-examination that the name of his grandson is John Kevin; that the name ceremony of his grandson

was done by a pastor; that he has incurred the expenses of name ceremony of his grandson; that he has performed the reception of PW1 and his son after 7 months of their marriage; that the marriage of his son with PW1 was performed at Singarakonda of Addanki mandal; that at present PW1 has been residing in his house at the first floor along with his grandson; that he do not maintain PW1 and his grandson; and that he is having objection for residence of PW1 and his grandson in his house. RW1 admits during the course of his cross-examination that he is not taking care of the wellbeing of PW1. RW1 has denied suggestion during the course of his cross-examination that after the death of his son he along with other respondents have been harassing PW1 with an intention to oust her and his grandson from his house; and that the petitioners are entitled to all the reliefs claimed by her in the petition.

10. It is the version of RW2 that he is having acquaintance with PW1 and the respondents for 20 years; that the marriage of PW1 and the son of the respondent no.1 and RW2 by name B.Himateja was performed against the wish and will of the respondent no.1 and RW1; that after the marriage of PW1 and her husband have resided at Agraharam and later they have shifted their family to Muttukuru and Hyderabad on account of employment of her husband; that PW1 and her husband never lived along with the respondents at any point of time, and they never took care of the respondent no.1 and RW1; that at the time of marriage the age of PW1 was above 25 years and her husband was a minor; that in the month of February, 2012 PW1 and her henchmen have forcibly occupied one of the portions of the no use of the respondent no.1 and RW1 and she has been leading her life with illegal elements of the society; that RW1 is a retired employee and the respondent no.1 and RW1 are surviving on the pension of RW1 and they are suffering with chronic disease, and the respondent no.3 and 4 are having separate families and they never resided with PW1 and the respondent no.1 and 2. RW2 has stated during the course of his cross-examination that the house of the respondents is situated opposite to his house; that he attended the reception function hosted by the respondent no.1 in respect of the marriage of PW1 and her husband that was held at Tangutur; that PW1 and her son are

residing at the house of the respondents on the 1st floor; that the respondents are not providing any maintenance of PW1 and her son, and that the respondent no.1 and 2 are running a Church at Pakala village.

11. The admitted facts of this case is that PW1 is the wife of the late B.Himateja who is son of the respondent no.1 and 2; that the petitioner no.2 is son of PW1 and late B.Himateja and grandson of the respondent no.1 and RW1; that PW1 and the petitioner no.2 has been residing on the first floor of the self acquired house of RW2; and that the respondents are not maintaining PW1 and the petitioner no.2.

12. The version of PW1 before this Court is that after the death of her husband late B.Himateja her in-laws have started to harass her to force her to leave her matrimonial house and in that connection the respondents no.3 to 5 have also abused her in filthy language. The subjection of PW1 to domestic violence to coerce her to go away from the house of RW2 by the respondent no.1 and RW2 has not been challenged during the course of her cross-examination by the respondents even by way of giving any suggestion to the *contra*. *Per contra* the respondents have given a suggestion to PW1 during the course of her cross-examination that the respondents no.3 to 5 are residing at their respective houses, and they have never harassed her, but except giving said suggestion nothing has been elicited by the respondents during the course of cross-examination of PW1 that the respondent no.3 to 5 did not subject to PW1 to domestic violence to force to leave her matrimonial house. Even otherwise separate residence of the respondent no.3 to 5 from the house of the respondent no.1 and RW1 by itself is not convincing ground to believe that the respondent no.3 to 5 cannot come to the house of the respondent no.1 and RW2 from their house where PW1 and the petitioner no.2 have been residing, and subject PW1 to domestic violence to compel her to leave her matrimonial house. RW1 states during the course of his cross-examination that he is having objection for the residence of PW1 and the petitioner no.2 at his house. It lend support to the version of PW1 that the respondents do not like that PW1 and the petitioner no.2 shall reside in the house of RW1 and in that connection she was subjected to

domestic violence by the respondents. The evidence of PW1 regarding her subjection to domestic violence by the respondents only to force her to leave her matrimonial house along with the petitioner no.2 has withstood incisive cross-examination, and the evidence of PW1 prove that she was subjected to domestic violence by the respondents for the purpose of forcing her to left her matrimonial house.

13. PW1 has testified before this Court that at the time of her marriage her parents have given cash of Rs.3,00,000/- to her in-laws as dowry and the marriage expenses, and also gold ornaments weighing 15 sovereigns and later after one year of her marriage on the request of RW1 her father has given hand loan of cash of Rs.3,00,000/- for performing the marriage of her sister-in-law, and the same may be returned to her. The evidence of RW1 before this Court is that no dowry was presented by the parents of PW1, and that with his own income he has performed the marriage of his daughter. It is not in dispute that the marriage of PW1 with B.Himateja is love marriage. The contention of the petitioners is that again on 28-10-2002 the marriage of PW1 was performed with late B.Himateja by the respondent no.1 and RW1 and on the said occasion her parents have presented dowry of cash and gold to the respondent no.1 and 2. The contention of the respondents is that on 28-10-2002 they have only performed the reception function and not the marriage ceremony of PW1 and late B.Himateja. When the marriage of PW1 and late B.Himateja is a love marriage and the same has been registered before the District Registrar, Ongole, prior to 28-10-2002, there is no occasion of demanding alleged dowry by the respondent no.1 and RW1 from the parents of PW1 at the time of their alleged marriage on 28-10-2002. Moreover, no evidence has been adduced by the petitioners to prove that on 28-10-2002 the marriage of PW1 with late B.Himateja was again performed by the respondent no.1 and RW1. Furthermore the parents of PW1, who are said to have been presented the alleged cash and gold as dowry as well as to have given hand loan of Rs.3,00,000/- to RW1 to perform the marriage of sister-in-law of PW1, has not been examined by the petitioners on their side to prove that the dowry of said cash and gold has been given to the respondent

no.1 and RW1 at the time of their marriage on 28-10-2002 as dowry, and after one year of their marriage Rs.3,00,000/- was also given to RW1 for performing the marriage of the sister-in-law of PW1. Thus, it is held that the petitioners have failed to prove the alleged presentation of dowry to the respondent no.1 and RW1 by the parents of PW1, and also alleged advancement of hand loan of Rs.3,00,000/- to RW1 by the father of PW1, hence petitioners are not entitled to any direction to the respondents seeking their return.

14. The evidence of PW1 is that the respondent no.1 and RW1 did not take her care and also of the petitioner no.2. Admittedly RW1 is not taking care of well being of PW1, and the respondents are not providing any maintenance to PW1 and the petitioner no.2. The maintenance of the married wife during the subsistence of the marriage is on the husband. The obligation of father-in-law to maintain her daughter-in-law arises only when the husband has died. In the instant case it is not in dispute that the husband of PW1 is no more alive and that PW1 has been neglected to be maintained by RW1. Therefore, RW1 is liable to maintain PW1. There is no requirement of law that a grandfather is under an obligation to maintain his grand child when the mother of said child is alive. Therefore, RW1 is not liable to maintain the petitioner no.2.

15. The petitioners are claiming residence order in the house of the respondent no.2. Admittedly the petitioners has been residing on the first floor of the house of the RW1. Thus the petitioners are not entitled to any relief of residence order.

16. The learned counsel for the respondents has placed relied upon the authority reported in *2013(1)ALD (Cri.) 634(AP) between Buravilli Siva Madhuri vs. Buravilli Satya Venkata Lakshmana Rao and others*, and argued that PW1 has lodged police complaint under section 498-A of the Indian Penal Code against the respondents on the very same allegations as in this petition and the petitioners have filed this petition only to involve all the relatives of her husband in the domestic violence case, as such this petition is liable to be dismissed on the said ground. The respondents did not choose to exhibit copy of the police complaint

admittedly filed by PW1 against the respondents to show that the allegations of PW1 against the respondents in the said police complaint are identical the averments of this petition. Sans exhibition of such police complaint it cannot be held that petitioners has lodged police complaint on the very same allegations has been pleaded by them in this case. Therefore, the facts of the instant case and the facts of the authority relied by the respondents *supra* are different as such the *ratio* of the authority laid down in the judgment referred *supra* with the due respect is not followed.

17. Considering the current rate of inflation and the status of PW1 this Court deem it proper that monthly maintenance @ Rs.3,000/- shall be payable by the RW1 to the petitioner no.1, that will be just and proper. The petitioners have contested this case as such the petitioners are awarded costs of Rs.3,000/- that is payable by the respondents. This point is answered accordingly.

18. Point No.2:-

In view of my finding in point no.1 the petition is allowed in part granting following reliefs to the petitioners.

1. the respondents are prohibited from causing any domestic violence to the petitioners in any manner as described under section 18 of the Protection of the Women from Domestic Violence Act, 2005;
2. the respondent no.2 is directed to pay monthly maintenance @ Rs.3,000/- to the petitioner no.1, on or before 10th of every succeeding month from the date of this order, from the coparcenary property, if any, in the possession of the respondent no.2 in which the petitioner no.1 has not obtained any share;
3. the respondents are directed to pay Rs.3,000/- to the petitioners towards costs of this petition.

Dictated to the Personal Assistant, transcribed by him, corrected and pronounced by me in open Court, this the 17th day of June, 2015.

Sd/- Kumar Vivek,
Judicial Magistrate of I Class,
Spl. Mobile Court, Ongole.

//APPENDIX OF EVIDENCE//

-: WITNESSES EXAMINED :-

For Petitioners
PW1: B.Anjali

For Respondent:
RW1: B.Prabhakar
RW2: K.Srinivasa Rao

// DOCUMENTS MARKED //

For Petitioner: -Nil-

For Respondents: - Nil-

Sd/- Kumar Vivek,
Judicial Magistrate of I Class,
Spl. Mobile Court, Ongole.

// True copy //

Judicial Magistrate of I-Class,
Spl. Mobile Court, Ongole.