

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

Present :: **Smt. B.Vani Sree,**  
Judl. Magistrate of I Class,  
Special Mobile Court, Ongole.

Monday, this the 16<sup>th</sup> day of April, 2018

**D.V.C.No. 1 of 2014**

Between:

1. Challa Mahalakshmi W/o Babu Rao, 30 years,  
R/o Maddipadu village, Prakasam District. ....Petitioner  
and

1. Challa Babu Rao S/o Raja Rao, 34 years,  
2. Challa Hymavathi W/o Raja Rao, 50 years,  
3. Challa Raja Rao S/o Ammaiah, 55 years,  
4. Challa Kishore S/o Raja Rao, 26 years,  
5. Nukathoti Anitha W/o Babu Rao, 28 years,  
All are R/o Maddipadu village and mandal. ....Respondents

**(The case against the Respondent No.3 has been abated  
on account of his death)**

This case coming on 11-04-2018 for final hearing before me in the presence of Sri K.Theppalneddu, Advocate for petitioner, and of Sri G.Nagi Reddy, Advocate for respondents having stood over for consideration till this day, this Court delivered the following:

**// O R D E R //**

1. This is the petition filed under section 12 of the Protection of the Women from the Domestic Violence Act, 2005, by the petitioner(wife) against the respondents alleging that the petitioner has been subjected to domestic violence at the hands of the respondents, and thereby she has claimed the reliefs of protection order under section 18, residence order under section 19, and monetary reliefs(maintenance) under section 20(c) of the Protection of the Women from the Domestic Violence Act, 2005.

2. The factual matrix of the case of the petitioner as set out in the petition in brief is that she is the legally wedded wife of the respondent No.1, and their marriage was performed on 16-11-1997; that the respondents No.2 to 5 are the parents, brother and sister of the respondent No.1; that at the time of their marriage the parents of the

petitioner have presented with cash, gold ornaments and household articles; that the petitioner is blessed with one son and one daughter out of the said wedlock; that the respondent No.1 on the instigation of other respondents has subjected the petitioner to domestic violence for additional dowry from her parents, and indiscriminately beat her; that due to unbearable harassment of the respondents by the petitioner, the petitioner has lodged police complaint against the respondents, due to which the respondent have necked out the petitioner and her two children from her matrimonial house; that the government has granted DKT patta in favour of the petitioner in respect of the property in Sy.No.214 of Maddipadu for an extent of Ac.0-03 cents and issued declaration and possession certificate; and that the petitioner has been dispossessed the petitioner from the possession for her property, therefore, this petition has been filed.

3. The respondents has filed counter and denied the material averments of the petition, but admitted that his marriage with the petitioner was performed on 16-11-1997, and submitted that no dowry was presented to the respondent No.1; that the respondents never harassed the petitioner; that the petitioner has also filed criminal case in CC No.273/2010 U/sec. 498-A of the Indian Penal Code against the respondents; that the petitioner filed MC No.11/2010 and the same has been allowed by this Hon'ble Court by granting monthly maintenance @ Rs.1,000/- to the petitioner; that on 26-06-1995 the respondent no.2 had purchased the vacant site from one Bapthla Venkateswarlu, and constructed a house with the help of government; that the respondent No.2 has been paying the all the taxes to the government; that respondent No.2 is in possession and enjoyment of the said house; that the petitioner is living separately from the year 2008; and that the complaint has not been filed

as mandatory Format No.II and Sec.5 and 7 of the Domestic Violence Act, 2005, therefore, prayed this Court to dismiss the petition.

4. On the side of the petitioner, the petitioner herself examined as PW1 apart from examining PW2 and PW3 on her behalf and got marked Ex.P1 to Ex.P3 through PW3.

5. On the said of the respondents, the respondent No.1 himself examined as RW1 and respondent No.2 herself examined as RW2, and no documents have been exhibited on their behalf.

5. Heard the arguments on both sides.

6. Perused the material on record.

7. **Points for determination:**

*i) Whether the petitioner is entitled to the reliefs claimed by her in the petition?*

*ii) To what relief/reliefs ?*

8. **Point No1:-**

The learned respondents counsel has argued that the respondent No.2/Ch.Hymavathi, who is the mother in law of the petitioner had purchased Ac.0-03 cents of land in Sy.No.214 of Maddipadu village from the wife of one Pentrala Ankamma w/o Punnaiah in the year 1995. The evidence of PW2 clearly reveals that the respondent No.1 is having one house with two portions; that the respondents are residing in the southern side portion of the said house; that the northern side portion of the said house is vacant; that the northern portion of the said house has been constructed by the Government that was funded by the Housing Corporation and the government had also issued DK patta in respect of the said portion in the name of the petitioner; that the southern portion of the said house has been constructed by the Government and DK patta in respect of the said portion has been issued in the name of the respondent

No.2; and that the respondent did not allow the petitioner to reside in the northern side portion. In his cross-examination PW2 has admitted that he do not know that R2 purchased the said vacant house site from Pentrala Ankamma. Further evidence of RW1 before this Court that his house is in the name of his mother and the same was purchased by his father with his retirement benefits and it is constructed in two portions and in one portion he himself, and another portion his brother has been residing. Further he deposed that the government did not issue any land in favour of the petitioner and she did not construct any house. But in his cross-examination RW1 has clearly admitted that Ex.P3/true copy of extract of stage wise acquittance in favour of the petitioner by department reveals that one portion is on behalf of his mother and another portion is on behalf of the petitioner. The evidence of RW2 has testified before this Court that she had purchased 7 cents of vacant site from one Bapatla Venkateswaralu with his own expenses and she construed a house in the said site with her own expenses. But in her cross-examination RW2 has categorically admitted that she had constructed one house with her own expenses and another house has been constructed under Indiramma Padhakam; that she do not know whether the petitioner had constructed a house under Indiramma padhakam or not. Hence, there are discrepancies in the evidence of RW1 and RW2, as RW1 has stated the said site purchased by his father with his retirement benefits, and RW2 has stated that she had purchased the said site from one Bapatla Venkateswarlu with his own expenses. The learned respondent counsel has argued that the said site purchased by RW2 from one Pentrala Ankamma W/o Punnaiah in the year 1995. But RW2 did not produce any documentary proof before this Court to prove that she had purchased the said land in her name with her own expenses. But RW1 and RW2 did not produce any single scrap of documentary proof before this Court to prove his alleged defence. Hence,

the evidence of RW1 and RW2 is an unbelievable versions and untrustworthiness.

9. Further the crucial evidence of PW3 is the Assistant Engineer, AP housing Corporation, Maddipadu mandal, has testified before this Court that their department had sanctioned a house to the petitioner in the year 2008 under Indiramma Phase-2 scheme and the construction commenced in the year 2009; that the basement of the house of the petitioner was constructed in the month of June, 2009, and in that month their department had given 1<sup>st</sup> installment to the petitioner under Ex.P1 to Ex.P3; that the house of the R2/RW2 is situated towards the southern side of the house of the petitioner; that their department had also given financial assistance and technical assistance to RW2; that the petitioner has mortgaged her house property before the their department by depositing Ex.P2, and she cannot alienate the same as her house has been constructed with the assistance of the Government funds; that Ex.P2 was granted in favour of the petitioner in the year after continuous possession of the site by the petitioner for 13 years. PW3 has admitted in his cross-examination that as per Ex.P1 at column No.30, the patta/possession certificate issuance date in kept blank, and at column No.31 the survey number and patta number column is also kept blank; that the column No.38 in Ex.P1 about the date of documentation is also blank. Further PW3 has admitted in his cross-examination that Ex.P1 is the application of the petitioner as such the said columns No.30, 31 and 38 are kept blank; that the details with respect to the documents submitted by the petitioner and also the names of witnesses column in the enclosure of Ex.P1 is not filled; and as on today the petitioner has not cleared the loan amount. Therefore, the evidence of PW3 coupled with Ex.P1 to Ex.P3 are undoubtedly proves that the house situated for an extent of Ac.0-03 cents in the Sy.No.214 of Maddipadu village stands in the name of the petitioner.

Hence, the petitioner has placed sufficient material before this Court to prove that the petitioner is the absolute rightful owner of the house sanctioned to her by the government under DK Patta for an extent of Ac.0-03 cents in the Sy.No.214 of Maddipadu village.

**Read section 17 of the Protection of Women from Domestic Violence Act, 2005: Right to reside in 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.*

**Read section 19 of the Protection of Women from Domestic Violence Act, 2005:- Residence orders:-** *1) while disposing of any application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order. 8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.*

Therefore, in view of foregoing discussion this Court holds that the petitioner is entitled to reside her own house as she is the absolute rightful owner of the house sanctioned to her by the government under DK Patta for an extent of Ac.0-03 cents in the Sy.No.214 of Maddipadu village.

10. The learned respondents counsel has further argued that the petitioner has violated of Rule 6(1) of the the Domestic Violence Rules and hence, this petition is not maintenance.

**See section 37 of the Protection of Women from Domestic Violence Act, 2005:- Power of Central Government to**

**make rules.** In exercise of the powers conferred under section 37 of the Protection of Women from Domestic Violence Act, 2005, the Central Government makes rules under Rules 6 :- Application to the Magistrate:-

(1) Every application of the aggrieved person under section 12 shall be in Form-II or **as nearly as possible thereto.** Hence, from the perusal of the aforesaid provision of law, it is clear that it is not imperative for the court to file Form-II. Further **see section 12 of the Protection of Women from Domestic Violence Act, 2005:-** An applicant/complainant can be filed before the Court either by an aggrieved person or by a Protection Officer or any other person on behalf of the aggrieved person. In this way section 12(1) does not contemplated that such application should invariably be accompanied by a report from a protection officer. On perusal of proviso appended to the provision, it appears that before passing any order on the application, it is obligatory on the Court to take into consideration any report received by it from the protection officer or the service provider. Neither it is obligatory to the Court to call such report nor it is necessary that before issuance of the notice to the respondents it was obligatory for the court to consider the report. However, if any report from the protection officer is available before the Court that shall taken into consideration, but the law does not impose pre-condition for the Court to call for a report from the protection officer. Further under section 23 of the **Protection of Women from Domestic Violence Act:- Power to grant interim and ex parte order.** As it may deemed just and proper, based only on the affidavit of the aggrieved person. The basic objective in enacting the act is to secure various rights to a women living in matrimony or in a relationship akin to matrimony, or any domestic relationship. Domestic Violence, is, perse, not a criminal offence, but is defined extensively and comprehensively to include various conditions. The women expose to such Domestic Violence is given the right to move

to Court for any relief outline in the section 12 of Domestic Violence Act. Hence, the argument advanced on behalf of the respondents do not hold any water.

11. The learned respondents counsel has relied upon the decision reported in **2013 Cri. L.J 3164** between **Smt. Meenakshi Jatav & others Vs. Dr. Seema Sehar & others**, wherein is held that *the accused sister and their husbands resided at different places then that of complaint – No specific allegation made against against under sec.12 of Act as to commission of domestic violence against the complainant*. The facts of the present case on hand, and the facts of the decision relied upon by the respondents are different and with due respect not followed.

12. The learned respondents counsel has relied upon another decision reported in **2013 Cri.L.J 3592** between **Smt. Vijaya Vasant Sawant Vs. Ms. Shubhangi Shivling Parab and Ors**, wherein it is held that *wife was staying away from the husband for more than four years prior to filing of complaint- Apparently filing of complaint was a counter blast to divorce proceedings initiated by husband*. In the present case on hand, RW1 has categorically stated in his chief examination that he put up separate family and they lived happily for about 7 years Further RW1 has admitted in his cross-examination that nearly 10 years back the petitioner went away from his house. Further RW2 has deposed before this Court that after the marriage of RW1 with PW1 they resided about one year at Maddipadu in her house, and after that she do not know where they are residing; that since 18 years they are living separately. RW2 in her cross-examination has admitted that after the marriage the petitioner they lived jointly for about one year only, and after that they resided separately in another portion of her house for about 10 years. Therefore, RW1 and RW2 have testified two different versions regarding the period of residing PW1 along with them and separately, hence, her evidence is unbelievable

revision. Hence, the facts of the present case on hand, and the facts of the decision relied upon by the respondents are different and with due respect not followed.

13. The learned respondents counsel has relied upon another decision reported in **2007(2) SCJ 3** between **SR Batra and another Vs. Smt. Taruna Batra** wherein it is held that *it was exclusive property of mother of husband – Hence, it could not be called a shared household.* Admittedly, the argument raised by the respondent is true, but in the present case RW2, who is the mother-in-law of PW1. RW2 has testified before this Court that she had purchased 7 cents of vacant site from one Bapatla Venkateswarlu with his own expenses and she constructed a house in the said site with his own expenses; that about 10 years back she constructed the said house. In her cross-examination RW2 has admitted that she constructed on house with her own expenses and another house is constructed under Indiramma padakam; that she do not know whether the petitioner constructed a house under Indiramma padakam or not; that after the marriage of the petitioner they lived about one year only joint after that they resided separately in another portion of her house for about 10 years. Further RW1 has deposed before this Court that the house is in the name of his mother and the same was purchased by his father with his retirement benefits. The respondents counsel posed question to PW2, that RW2 purchased the said vacant house site from one Pentrala Ankamma W/o Punnaiah in the year 1995. To prove the same the respondents did not produce any document before this Court that the said house is in the name of RW2. Therefore, in view of foregoing discussion this Court finds that the version of RW1 and RW2 is an unbelievable version, and furthermore on perusal of Ex.P1 to Ex.P3 and the evidence of PW1 to PW3 it is crustal clear that PW1 has successful proved her right over the house property sanctioned to her by the government under DK

Patta for an extent of Ac.0-03 cents in the Sy.No.214 of Maddipadu village, and the respondent No.1 was necked out the petitioner along with her children from her said house. Hence, the facts of the present case on hand, and the facts of the decision relied upon by the respondents are different and with due respect not followed.

14. Therefore, the petitioner is entitled to relief of residence in the house sanctioned to her by the government under DK Patta in the Sy.No.214 of Maddipadu village under Ex.P2. This point is answered accordingly.

15. **Point No.2:-**

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

1. the respondents is prohibited from causing any domestic violence to the petitioner in any manner as described under section 18 of the Protection of the Women from Domestic Violence Act, 2005;
2. the respondent No.1 is directed to hand over the house sanctioned to her by the government under DK Patta in the Sy.No.214 of Maddipadu village under Ex.P2, as the petitioner is the absolute rightful owner of the said house, and not to dispossess her from the said house or in any other manner to not to disturb the possession of the petitioner from her said house; and
3. the respondent No.1 is directed to pay Rs.5,000/- to the petitioner towards costs of this petition.

*Dictated to the Stenographer of this Court, transcribed by him, corrected and pronounced by me in open Court, this the 16<sup>th</sup> day of April, 2018.*

Sd/- B.Vani Sree,  
Judicial Magistrate of I Class,  
Spl. Mobile Court, Ongole.

//APPENDIX OF EVIDENCE//  
-: WITNESSES EXAMINED :-

For Petitioners  
PW1: Ch.Mahalakshmi  
PW2: N.Chennaiah  
PW3: K.Srinivasa Rao

For Respondent:  
RW1 : Ch.Babu Rao  
RW2 : Ch.Hymavathi

// DOCUMENTS MARKED //

For Petitioner:

Ex.P1 : Application of the petitioner for sanction of a house.

Ex.P2 : DK patta in respect of the site assigned in the name of the petitioner

Ex.P3 : True copy of extract of stage wise acquittance in favour of the petitioner.

For Respondents: - Nil-

Sd/- B.Vani Sree,  
Judicial Magistrate of I Class,  
Spl. Mobile Court, Ongole.

// True copy //

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