

IN THE COURT OF THE ADDL. JUDICIAL MAGISTRATE OF I CLASS,
ANANTAPUR.

Present : Smt K.Vani, B.A., LL.B., Addl. Judicial Magistrate of I Class,
Anantapur.

Friday, the 17th day of February, 2012.

D.V. No. 22/2010

Between:-

Harijana Thodugu Mannala Savithramma,
Wife of Late Adishesaiah, aged years,
Resident of Voddupalli Village, Atmakur
Mandal, Anantapur.

.... Applicant/Petitioner.

And

1. Harijana Thodugu Mannala Vijaya Simha,
Voddupalli Village, Atmakur Mandal,
Anantapur.
2. Harijana Thodugu Mannala Peddakka,
Resident of Voddupalli Village, Atmakur
Mandal, Anantapur.
3. Varalakshmi, Resident of Voddupalli
Village, Atmakur Mandal, Anantapur.

.... Respondents.

This case is coming on 31-1-2012 for final hearing before me in the presence of Sri R.Krishna, Advocate for the petitioner and of Sri A.Suresh Kumar, Advocate for the respondents, upon hearing both sides, and on perusing the material on record and the matter having stood over for consideration till this day, and this Court made the following:-

ORDER

This petition is filed under Section 12 of Domestic Violence Act, 2005 on behalf of the applicant/petitioner against the respondents praying the court to grant orders by directing the Protection Officer to trace her joint family movable, immovable properties and to direct the Protection Officer to restore the possession of the above said portion to her and to restrain the respondents to enter the above said portion Under Section 18 of Protection or Orders, in the interest of justice.

2. The brief facts of the petition are as follows:

The applicant/petitioner submitted that she is the legally wedded wife of one Adisheshaiah. She and Adisheshaiah loved each other and got registered marriage against the wish and will of his parents. She lived together with her husband, along with her father in-law, the respondents namely Peddakka i.e., her mother in-law, Vijaya Simha i.e., her brother in-law and Varalakshmi i.e., her sister in-law for four years immediately after getting her marriage, in share household bearing No.4-71, Vaddupalli, Atmakur Mandal, Anantapur District. She lived together with her husband in a separate portion in the same premises of the said share hold, till her husband death i.e., 24-8-2007. After demise of her husband, she was pushed and kicked out of the said separate portion by the respondents. The respondents have concealed movable properties of the joint family and

denied her equal rights (her husband's equal share) in respect of joint family properties though she is entitled equal share in joint family movable and immovable properties as partition has not taken place between the said family members/legal heirs of her late father in-law. She has no shelter, food, clothing and she is unable to maintain herself though she is working as a daily wage labour. All these causing the mental torture, emotional distress, defame and damaging her claim, right, interest, title in her joint family properties. Hence, it is prayed the court to order by directing the Protection Officer to trace her joint family movable and immovable properties and direct the Protection officer to restore the possession of the above said portion to her and to restrain the respondents to enter the above said portion. Hence, the petition.

3. The respondents filed counter denying all the allegations made in the petition. He submitted that infact the marriage of the petitioner performed with Adisheshaiah without the blessings of the respondents. The petitioner and Adisheshaiah mutually attracted each other even before the marriage and eloped themselves and married together without the consent or blessings of the respondents. It is further submitted that from the date of marriage itself the petitioner and Adisheshaiah lived separately away from the respondents. They are invented and created a short story against the respondents with an evil intention to harass the respondents. The husband of the petitioner by name Adisheshaiah was died about 4 ½ years back. The

petitioner and Adisheshaiah not blessed with any children. At the time of marriage also the petitioner, her brother and father gave a complaint against the respondent No.1 and his father who is no more gave a complaint against the respondent No.1 and his father who is no more now, with false allegations. Infact the father of 1st respondent died with the said mental tension only. The 3rd respondent is the sister of 1st respondent and daughter of 2nd respondent living at Uravakonda with her husband and family. Infact she is no way connected to the affairs of the petitioner and her husband. But with a view to harass her added as a party to the proceedings. The marriage of the 3rd respondent was performed in the year 1990 and since then she is residing at Matrimonial home at Uravakonda. But the allegations made contra to this are absolutely false and invented one. The 2nd respondent is aged about 60 years and she is suffering with old aged problems. Infact she is not in a position to attend for her day to day activity. The allegations made contra to this are not correct. The allegation that the respondents used to harass the petitioner is absolutely false. As the petitioner residing away from the respondents since the date of her marriage the question of harassing by the respondents does not arise. All these discloses that the same are created one and there are no bonafidies in the petition. The respondents are residents of Oddupalli village and they have no sufficient financial assistance for their livelihood and so the allegations made contra to this are not correct. The respondents have no movable and immovable properties.

Even otherwise the petitioner is liberty to approach competent civil court for necessary relief filing of this petition is only to harass the respondents. Hence, the petition is liable to be dismissed and prayed the court to drop the proceedings against the respondents in the interests of justice.

4. On behalf of the petitioner, the petitioner herself was examined as P.W.1 and marked Exs.P.1 to P.5. On behalf of respondents R.Ws.1 and 2 were examined and Exs.D.1 and D.2 were marked.

5. Heard the arguments on both sides and perused the entire material on record.

6. Now the point for determination is:

(i) “ *Whether P.W.1 really subjected to domestic violence in the hands of the respondents* ”, and

(ii) “ *Whether the petitioner is entitled for the reliefs as prayed for ?* ”

7. **POINTS (i) and (ii) :-**

To prove her contention, the petitioner got herself examined as P.W.1 and exhibited Exs.P.1 to P.5. On the other side, the respondents examined R.W.1 and R.W.2 and also exhibited Exs.D.1 and D.2. As per the evidence of P.W.1 she is legally wedded wife of one Adisheshaiah and she and Adisheshaiah loved each other and got registered their marriage against the will and wish of their parents. She lived with her husband along with her father-in-law and other respondents namely Peddakka, Vijaya Simha and Varalakshmi for four years. In share

household bearing No.4-71, Vaddupalli, Atmakur Mandal, Anantapur District. She lived with her husband in a separate portion in the same premises till the death of her husband i.e., 24-8-2007. She further deposed that after demise of her husband she was pushed and kicked out of the said separate portion by the respondents. The respondents have concealed movable properties of joint family and denied her equal rights i.e., her husband's equal share in respect of her joint family properties. She has no shelter, food, clothing and unable to maintain herself. Now she is working as a daily wage cooli. The said points are causing mental torture, emotional distress, defame and damaging her claim, right, interest, title in her joint family properties and prays to give share house hold and share in the movable and immovable properties to restrain the respondents not to enter in the above portion.

8. On the other side, the respondent No.1 examined as R.W.1. He deposed that the allegations in the complaint are totally false, only 2nd and respondent is residing with him. The 3rd respondent is residing away from his family since the date of her marriage. He further deposed that the properties in Sy.No.6-1B to an extent of Ac.1.20 cents and Sy.No.4-C to an extent of Ac.5.10 cents of Madigubba Village belongs to exclusive property of her father Sangappa. The properties in Sy.No.310 to an extent of Ac.6.00 cents and in Sy.No.311 to an extent of Ac.4.00 cents of Karugunta village and also exclusive movable properties of his father. His father purchased

the said properties under registered sale deed dated.18-5-2001. The documents Nos. 4299 and 4305. The land in Sy.No.219 to an extent of Ac.15.00 cents and in Sy.No.198 to an extent of 1.60 cents of Talupur village are exclusive properties of his mother Peddakka. She purchased the same under registered sale deed dated.10-3-1983 under document No.2110. The house bearing No. 4/71 is also exclusive property of 2nd respondent as the vacant site was assigned by the Government her favour. The joint family has no right over said properties. R.W.1 further deposed that during life time of his father P.W.1 also filed a suit for partition against his father to her share in above properties. The said suit was dismissed by the Honourable Additional Senior Civil Judge, Anantapur and P.W.1 not taken any steps against those orders. R.W.1 further deposed that during life time of his father he is in a sound disposing state of mind executed a will dated. 27-12-2009 bequeathing his properties in his favour. His father died on 4-5-2010 . The said will is the last testament executed by his father in his life time. After death of his father the will was acted upon in pursuance of the will he became the absolute owner and the family does not have any rights over the same and there is no joint family. His father executed the will in the presence of H.Ramaiah and Yerriswamy who are attestors of the will and his father signed in the document in their presence and then they put their signatures in their presence his father . The said document was scribed by one Jagadeeswara Prasad, document writer and prays to dismiss the

complaint. The respondent marked Ex.D.1 is the unregistered will executed by Sangappa, dated.27-12-2009 and it is marked subject to objection and proof and relevancy. Ex.D.2 is certified copy of judgment in O.S.246/08, dated.9-11-2009.

9. The respondent No.2 was examined as R.W.2 who is attesor of executed will, executed by father of R.W.1. As per his evidence, the father of R.W.1 executed a will on 27-12-2009 bequeathing of properties in favour of R.W.1 in the presence of R.W.2 and also Yerriswamy who are the attestors. One Jagadeeswara Prasad prepared the registered will as per the instructions of Sangappa. After preparation of the said document the said Sangappa signed in their presence and they put their signatures in the presence of Sangappa and the document writer also signed. The said Sangappa died on 4-5-2010. The will acted upon. The said Sangappa executed a will in a sound disposing state of mind and out of his free will. The said will also marked, it is an unregistered document and marked subject to objection. Generally unregistered document cannot be marked otherwise impounded. But in this case it is marked subject to objection and one of the attestor also examined by R.W.2.

The counsel for the petitioner also relied on a decision reported in AIR 1997 Andhra Pradesh 53, Krishna Saran Shrivasthav his Lordship held,

Evidence led in case , must accord to pleadings and should not be extraneous to specific pleadings. It is well settled that evidence has to be tailored strictly according to the pleadings and cannot be a probing adventure in the dark giving surprise to the opposite party. No extraneous evidence can be looked into in the absence of specific pleadings of the parties.

In this case also the respondents not pleaded about execution of will by the father of R.W.1 and it is a surprise to adduce anything in their evidence those evidence cannot be looked into as there is no specific pleadings in their counter about execution of the will and the intention of pleadings is to intimate the party of the specific questions to be tried and the object would be defeated if either party were at liberty to prove facts essentially different from those stated on the record. The general rule which is followed by the courts is that decision of a case cannot be based outside pleadings of parties. So in this case in the pleading they have introduced a new story that execution of Ex.D.1 by the father of R.W.1. So it cannot be believable and it cannot be looked into.

10. As per the evidence of P.W.1 her marriage is love marriage performed with the deceased who is brother of R.W.1 and they set up a separate family in the same house till the death of her husband i.e., 24-8-2007. After demise of her husband she was pushed and get out of the said separate portion by the respondents. The respondents have concealed movable properties of joint family and denied her equal right in respect of

joint family properties. In this case we have to see whether there is real domestic violence against P.W.1 in the hands of the respondents.

11. As per Section 3 of Domestic Violence Act, domestic violence includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. The economic abuse includes:-

(a) deprivation of all or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

© prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

12. In this case as per the evidence of P.W.1 after death of her husband, the respondents necked her from the said house and also concealed movable properties of joint family and denied her share in the property. In this case P.W.1 not given property details with regard to joint family properties. During cross of P.W.1 also she deposed that she and her husband set up a separate family in the same house in another portion. 5 years back her husband died. After the death of her husband the said house was closed for 3 months. After completion of 3 months all respondents joined in the said house. But her mother in law not allowed her to stay in their said house. She further deposed that after the death of her husband all respondents harassed her. In this case however she has not given the details of movable and immovable properties. But as per her evidence there is a clear domestic violence in giving share to the P.W.1 which comes under economic abuse which she is entitled for the same. As per Ex.P.1 her husband died on 24-8-2007 till that time she lived with her husband in the same house. As per Ex.P.2 the family certificate given by Tahsildar, Anantapur. P.W.1 is wife of Adisheshaiah who is son of Sangappa. As per Ex.P.3 P.W.1's father-in-law died on 4-5-2010. In this case as per the

evidence of R.W.1 during life of her father i.e., Sangappa executed a will in his favour. Admittedly it is not registered, it is unregistered document executed in the presence of R.W.2. As per Ex.P.5 i.e., incidental report given by Project Director there is economic abuse by all the respondents by not allowing the P.W.1 into the house. On careful perusal of counter filed by the respondents, the respondent not averred about the execution of will by his father. So there is a clear rule that without pleadings any evidence adduced extra that evidence cannot be looked into. In the counter they have not mentioned about the execution of will by father of R.W.1 and it is a new story. It can be presumed that only after filing of counter it was introduced by the respondents. If really the said will was come into existence on 27-12-2009 what prevented the respondents to mention the same in their counter. In this case the something was not mentioned in the counter. So it can be presumed that it is after thought and Ex.D.1 is created one. On careful perusal of counter filed by them, the same is filed on 26-7-2011. But as per their evidence Ex.D.1 was come into existence on 27-12-2009 i.e., much earlier before filing their counter. As there is no averments about Ex.D.1 they cannot adduce evidence on that point and it cannot be looked into. As per Ex.P.4 i.e., Encumbrance certificates the land in S.No.311/1 an extent of Ac. 3.480 stands in the name of Sangappa. The S.No.310 an extent of Ac.6.520 stands in the name of Sangappa who is father in-law of P.W.1. As P.W.1 is wife of his son she is also entitled equal share as that of R.W.1. As

Ex.D.1 is created only for this case purpose, Ex.D.1 is not believable and it is a forged and created for this case purpose by R.W.1. As there is a clear evidence that there is economic abuse against P.W.1., P.W.1 proved that there is domestic violence against her in the hands of respondent.

13. In the result, the petition is allowed and all the respondents are restraining from dispossessing or disturbing the possession of P.W.1 from her share household where she shall reside with her husband and directed all the respondents to remove their shelter from the shared household and all the respondents and his relatives are restrained from entering into any portion of the share household and all the respondents are restrained from alienating or disposing off the shared household under Section 18 all the respondents are restrained from committing any act of domestic violence aiding or abetting therein or restrained to enter share household by P.W.1. Further they are restrained to attempt to communicate in any form, whatsoever with P.W.1. Further they are restrained alienating any assets or any movable properties. The respondents are further directed to give her share to P.W.1 as per schedule in the complaint under Section 19 of the Act. Further all the respondents are directed to pay compensation an amount of Rs.1,00,000/- to P.W.1 for the injuries including for mental torture or emotional distress caused by domestic violence by all the respondents.

Dictated to the Personal Assistant, transcribed by her, corrected and

pronounced by me in open Court, this the 17th day of February, 2012.

Additional Judicial Magistrate of I Class,

Anantapur.

Appendix of evidence

Witnesses examined for

Petitioner

1. P.W.1: H.T.M.Savithramma

Respondents

R.W.1: H.Vijaya Simha

R.W.2: H.Ramaiah

Exhibits marked for Petitioner

1. Ex.P.1: Death certificate of M.Adisheshaiah, dated. 2-7-2010.
2. Ex.P.2: Family members certificate of the M.Adisheshaiah, dated.8-7-2010.
3. Ex.P.3: Death certificate of M.Sangappa, dated.2-7-2010.
4. Ex.P.4: Encumbrance certificates 3 in number.
5. Ex.P.5: Enquiry Officer report, dated.30-5-2011.

Exhibits marked for Respondents

1. Ex.D.1: Will executed by Sangappa, dated.22-12-2009.
2. Ex.D.2: Certified copy of judgment in O.S.246/08, dated.9-11-2009.

A.J.M.F.C.

