

IN THE COURT OF THE CIVIL JUDGE AND JMFC BAGEPALLI.
PRESENT

Sri. PRAVEEN R.J.S,
B.A. LL.B,

CIVIL JUDGE & JMFC, BAGEPALLI

DATED THIS THE 23RD DAY OF AUGUST 2017

D.V.C.No.6/2016

- Complainant/ s :
1. Smt.Vimala
W/o Gangadhara A
Aged about 29 years,
House hold
Mittemari village
Kasaba hobli,
Bagepalli taluk,
Chickballapur district.
 2. Hari Priya
D/o Gangadhara
Aged about 4 years,
Studying in LKG
 3. Vishnavi
D/o Gangadhara
Aged about 1 ½ years,

Petitioners 2 and 3 are residing with their
mother Petitioner No.1

[Represented by Sri. B.N.Dathathreya,
advocate]

-VS-

- Respondent/s :
1. Gangadhara A
S/o Ashwathappa
Aged about 33 years,

Working as driver,

2. Ashwathappa
S/o Pedda Annayappa
Aged about 55 years,
Manager,
Srinivasa Kalyan Mantapa,
3. Lalithamma
W/o Ashwathappa
Aged about 48 years,
House wife
4. Murali
S/o Ashwathappa
Aged about 31 years,
Agent LIC of India,
5. Raju
S/o Ashwathappa
Aged about 29 years,
Assistant to Food inspector,
Taluk office,
Chickballapur.

All are residing at Krishna Talkies road, Ganigara Beedi, Chickballapur town and taluk.

[Represented by Sri. K.M.H,
Advocate]

ORDER ON MAINTAINABILITY OF THE COMPLAINT

The present complaint has been filed by the wife of the first respondent seeking monetary and other reliefs from this Court. The respondents who have appeared before the Court have raised

issues regarding the maintainability of the present petition, primarily on two grounds, firstly that the complainants No.2 and 3 being the children of the first Complainant are not aggrieved persons under the Definition of "aggrieved person" as defined under the Act and secondly that Respondents No.2 to 5 who are the father, mother and brothers of the first respondent are residing separately and as such there is no concept of shared house hold as defined under the Act and as such the complaint against Respondent No.2 to 5 is misconceived and as such the complaint is in itself not maintainable.

2. I have heard the arguments on both sides on this question.

3. The point that would arise for my consideration are as under:

1) Whether the respondents have made out a ground for dismissal of the complaint as not maintainable?

4. My answer to the above point is in the Negative for the following:-

REASONS

5. In order to pass an order on maintainability, the second of

the contentions raised would be addressed first. Section 2 (s) of Protection of Women from Domestic Violence Act 2005 reads as under:-

“ Section 2 (s) of The Protection of Women From Domestic Violence Act 2005 :- “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.”

A perusal of the said definition would lay bare the fact that a shared house hold would be one where the person aggrieved presently lives or at any stage has lived in the domestic relationship either singly or along with the respondent. Therefore, it is clearly evident that the person aggrieved is not required to share a household with the respondents as on the date of filing the complaint. It would be sufficient if even at an earlier point of time in the past the Complainant has shared such a house hold with the respondents. The definition further does not state as to the duration for which such a house hold is required to be shared.

This can only mean that even if such a house hold was shared by the aggrieved person for a single day the same would come under the definition of shared house hold and as such the contention of the learned counsel for the respondent that the Respondents No.2 to 5 are not necessary parties to the present complaint cannot be accepted. In fact the definition under Section 2 (s) would further indicate that a shared household would mean 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 signally in any right, title, interest or equity and includes such a house hold which may belonged to joint family of which the respondent is member, irrespective of whether respondent or the aggrieved person has any right, title or interest in the shared house hold.

6. In the present case the specific averment made by the Complainant at para No.4 is that after the marriage the respondent took the first petitioner to his marital house and that for a few days they lived happily and that thereafter the first respondent along with Respondent No.2 to 5 started ill-treating

the petitioner. Therefore at this stage, it is apparent that the Complainant has at some point of time shared a household with the respondents. The documents placed by Respondent No.1 to contend that Respondent No.2 to 5 are residing separately from the first respondent cannot be accepted for the reason that the definition is not confined to living in shared house hold at the present point of time, but is vast enough to indicate living in a house hold even at some point in the past. Therefore such a contention of the respondents cannot be accepted.

7. In so far as the primary contention urged by the respondents that the complainants no.2 and 3 being the minor children are not entitled to maintain the present complaint along with the first Complainant, the Act defines an aggrieved person at Section 2 (a) and the same reads as under:-

" Section 2 (a) of The Protection of Women From Domestic Violence Act 2005 :- "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent"

8. It would be profitable to note the provisions of Section 20 (1) (d) of the Act:-

"Section 20 (1) (d) of The Protection of Women From Domestic Violence Act 2005: - The maintenance for the

aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 [2 of 1974] or any other law for the time being in force.”

Therefore it is apparent from the provisions of the Act is that the aggrieved person is entitled to seek for maintenance even as regards her children and in this regard, Section 20 (1) (d) empowers the Court to pass an order of maintenance to the children of the aggrieved person in addition to an order under Section 125 of Cr.P.C or any other law for the time being in force. The natural corollary therefore is that the children are also beneficiaries under the said Act. The Act further does not per se or the children from filing a complaint along with an aggrieved person. There being no express bar in the Act, merely for the reason that the children have filed the present complaint along with their mother, this court cannot dismiss the complaint as being not maintainable and as such the contentions alleged by the respondents are required to be rejected.

9. The learned counsel for the respondents would place reliance upon the ruling of the Hon'ble Orissa High Court in the case of Sadananda –vs- Nandita, 2016 (1) DMC 566 [Ori]. To

contend that the in-laws i.e. Respondent No.2 to 5 are not required to be arrayed as parties to the present complaint. Firstly, the respondents have not placed the said judgment before this Court and have merely placed reliance upon a report of the said judgment reported in some commentary. Be that as it may, even according to the said report since there was no averment in the complaint as to why the in laws had been made parties the Hon'ble Court had an occasion to quash the proceedings as the against in-laws. In the present case as discussed supra at Para No. 5 the complainant has made specific and direct allegations against the Respondent No. 2 to 5 as regards the domestic violence meted out to her. Therefore the said ruling cannot be taken advantage of by the respondents. Accordingly I hold that the present complaint in its present form is maintainable. Hence, I answer the above point in the Negative and I proceed to pass the following :-

ORDER

The complaint in its present form is maintainable.

Call on 30-8-2017.

[Dictated to Stenographer directly on Computer, corrected by me and then pronounced in the open court on this the 23rd day of August 2016].

(PRAVEEN R.J.S)

Civil Judge & JMFC,
Bagepalli.