

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 660 OF 2011

PRABHAT KUMAR ANDLEIGH Appellant (s)

VERSUS

DEEPA ANDLEIGH Respondent(s)

(With appln(s) for stay, permission to file additional documents

Date: 08/01/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE M.Y. EQBAL

For Appellant(s) Mr. Harshvir Pratap Sharma, Adv.
Mr. K.S. Rana, Adv.
Mr. B.P.Gupta, Adv.

For Respondent(s) Mr. Anil Kumar Jha, Adv.
Mr. Santosh K.Sethi, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

|(Shashi Sareen)
|Court Master

|(Veena Khera)
|Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 660 OF 2011

|PRABHAT KUMAR ANDLEIGH |...| Appellant(s) |

| Versus |

|DEEPA ANDLEIGH |...| Respondent(s) |

O R D E R

This appeal by special leave arises out of an order dated 10.11.2009 passed by the High Court of Delhi in Criminal Miscellaneous Application No. 11480 of 2009 whereby the High Court has directed that the order passed by the Metropolitan Magistrate permitting the respondent-wife to reside in House No. 320, Palm Meadows-II, R.Narayanapura Village, K.R.Puram, Bangalore be given effect to.

Metropolitan Magistrate, Dwarka, it appears, made an order on 23.09.2009 in an application filed by the respondent-wife granting right of residence to the wife in the property mentioned above during the pendency of a Section 12 petition pending before the Magistrate.

Aggrieved by the said order, the husband preferred an appeal before the Learned Additional and Sessions Judge at Dwarka. An application seeking ad interim stay of the direction issued by the Magistrate was also filed in the

said appeal. While the appeal and application for stay were pending before the Appellate Court, the respondent wife appears to have filed Crl. Miscellaneous Application No. 11480 of 2009 before the High Court of Delhi seeking a direction from the High Court to permit the Magistrate to give effect to the order passed by her. The necessity to file the said application it appears arose on account of the fact that the order granting right of residence passed by the Magistrate had made execution of the said order subject to the permission of the High Court before whom the appellant-husband had filed Criminal Miscellaneous Application 3949 of 2008 for quashing of the petition under Section 12 of the Protection of the Women from Domestic Violence Act and the proceedings initiated on that basis.

The High Court noticed that the house in question was owned by the wife to the extent of 50% share in the same. The High Court, therefore, directed that even independent of the right to residence granted to her by the Magistrate the wife had a right to occupy and reside in the property in question. Permission to execute the order was accordingly granted by the High Court at the same time making it clear that the observation made by the High Court in its order shall not influence the Session Judge hearing the appeal against the order of the Magistrate. It is that order passed by the High Court which the appellant-husband has assailed in the present appeal.

We have learned counsel for the parties at some length and perused the record. We see no reason to interfere with the order passed by the High Court. In the ordinary course, the order passed by the Magistrate granting the right of residence could have been executed by the Magistrate without much ado but since the order granting the said right was made enforceable subject to the permission of the High Court it became necessary for the respondent-wife to apply for grant of such permission. The Magistrate in turn appears to have made the order executable subject to the permission of the High Court only because Crl. Misc. Application No. 3949 of 2009 filed by the husband questioned the maintainability of main petition under Section 12 filed by the respondent-wife and the proceedings initiated on that basis. On the merits of the controversy the High Court rightly noticed that the property in question is owned in equal proportion by the two spouses. Consequently the wife's right to occupy the property as joint owner could not be disputed even independent of the order passed by the Magistrate. At any rate the wife is said to be residing with her widowed mother in Delhi only because she was pushed out of the house which she owned jointly with her husband. The order passed by the High Court granting permission to make the order passed by the Magistrate cannot therefore be found fault with.

Learned counsel for the appellant argued that since the appeal filed by the husband against the order passed by

the Magistrate is still pending the observation made by the High Court were likely to foreclose the matter to his prejudice. The High Court has taken care of that apprehension by specifically providing in the order that the observation made by it shall not influence the Appellate court in deciding the main appeal pending before it. Although it is unnecessary to do so yet to allay the apprehension of the appellant we too make it clear that nothing stated by the High Court or by us in this order shall stand in the way of husband in raising all such contentions as may be open to him in law and on fact before the Appellate Court in the appeal preferred by the husband. Before parting we may like to mention that the parties are senior citizens. The husband is nearly 67 years while the wife is 63 years old. The marriage itself is around 40 years old. We have in vain tried to bring about a reconciliation between the two spouses but were unable to make any significant headway. Even so we are hopeful that if a proper effort is made by the Magistrate and the appellate court with or without the assistance of the mediation centre in Dwarka, the parties may be able to amicably settle their dispute. We hope and trust that the Magistrate and the Appellate Court before whom the appeal filed by the husband is pending keep this aspect in mind as and when the matter comes up before them.

With the above observation, the appeal fails and is dismissed. No costs.

.....J.
(T.S.THAKUR)

.....J.
(M.Y.EQBAL)

New Delhi,
January 08, 2013