

CONCEPT OF MATRIMONIAL HOME

AN ISSUE which is gaining significance in the context of matrimonial reliefs and rights is that of matrimonial home. Very often, when the marriage is broken and the parties are emotionally wrecked, the only compulsive factor which dissuades them to go to the court is the house in which they have lived and the absence of an alternative shelter. Generally, the recalcitrant spouse insists on living in the same house simply to harass the partner. Thus the marriage hangs in a state of limbo and, along with that, the parties too are left to a state of constant misery.

Of late such situations are on the increase. If it is the wife, she may have more than one reason to cling to her matrimonial home without a matrimonial life. She may have no other place to go; she may be scared of social stigma, and worse, it may be a sheer desire to harass the husband. In some cases, the house in which they have been living might legally belong to her and so there is no question of her leaving it. In the case of husband, amongst the most common reasons, one is that the house may belong to him or be under his tenancy; so why and where should he go. The question, therefore, arises: Can a wife turn out her husband or can a husband turn out his wife from the house legally?

The verdict of the Supreme Court in *B.R. Mehta v. Atma Devi*¹ is bound to have far reaching effects on the issue. The question before the court was whether under proviso (h) of section 14(1) of the Delhi Rent Control Act 1958,² allotment of a house to a wife, a government employee, in all circumstances disentitled her husband, the tenant, to retain tenanted premises. The additional rent controller, rent control tribunal and even the High Court held that the husband, against whom the landlord had filed an eviction suit, was disentitled to retain the disputed premises as, with the wife's getting government accommodation, he had acquired vacant possession of the residence under the proviso. The Supreme Court on appeal, however, reversed the judgment. A reference was made to *Revti Devi v. Kishan Lal*³ in which the Delhi High Court held that the mere occupation of a new residence by the tenant without any legal right to do so would not be covered by the proviso. It further said:

If he goes to stay in the house of his wife, legally speaking, he has no right as such to stay and can be turned out from the house at any time by its legal owner, namely, the wife. There was no law according to which the husband and the wife could be deemed to be one person.

1. A.I.R. 1987 S.C. 2220.

2. The section provides one of the grounds for eviction as: "the tenant has built, acquired vacant possession of, or been allotted a residence; . . ."

3. 1970 Ren. C.J. 417 (Del).

Therefore, where proviso (h) required that the tenant himself should acquire vacant possession of another residence before he can become liable to eviction, *the effect of its language cannot be whittled down by arguing that proviso (h) would apply even if it is not the tenant himself but his wife...were to acquire such other residence.*⁴

The Supreme Court agreed with these observations and held that the wife's house was not the matrimonial home over which the husband could have a right, domain or occupation.

Now that more and more women are holding government jobs and entitled to government accommodation and also going in for purchase of private property, the judgment is bound to have repercussions on matrimonial relationships. Suppose a wife buys a house and the family lives there, can she, in case of strained relations, obtain an eviction order against the husband? And similarly, can a wife be evicted from her husband's house? Where does the party, who has no alternative accommodation, go? Also, in this context, it is important to note that there are rules which say that in applications for purchase of land or house an undertaking has to be given that the spouse does not own any property. Thus, if a wife has a property, the husband cannot apply and, if the husband has one, the wife cannot buy another. How should one reconcile such rules with the practical realities of life?

The concept of matrimonial home needs to be clarified. Logically speaking, the home where both the parties have been living during coverture should be the matrimonial home. After divorce, how their common assets are to be viewed and divided is a different matter. In the present case the parties were said to be living under strained relationship for sometime no doubt, but the judgment conveys that the husband has no right over the wife's house. The judgment of the Delhi High Court is even more categorical on this point.

*Kusum**

4. Quoted in *B.R. Mehta v. Atma Devi*, *supra* note 1 at 2223. (Emphasis added)

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