



2025:DHC:6421-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 28.07.2025

Judgment pronounced on: 05.08.2025

+ MAT.APP.(F.C.) 270/2025, CM APPL. 44851/2025, CM APPL. 44852/2025 & CM APPL. 44853/2025

SMITA JINA

.....Appellant

Through: Mr. Rajat Bhalla, Adv. with
Appellant in Person

versus

AMIT KUMAR JINA

.....Respondent

Through: Mr. Ajay Kumar Chopra, Mr.
Mudit Talesara, Mr. Samarth
Talesara and Ms. Nandita
Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeal has been filed by the Appellant under Section 19(1) of the Family Courts Act, 1984 challenging the order dated 17.04.2025 [hereinafter referred to as "Impugned Order"] passed by the Ld. Principal Judge, Family Court, Patiala House Courts, New Delhi [hereinafter referred to as "Family Court"] in CS(OS) 22/2023 captioned *Amit Kumar Jina vs. Smita Jina*, whereby an application under Order XII Rule 6 of the Code of Civil Procedure,



1908 [hereinafter referred to as “CPC”] filed by the Respondent (Plaintiff before the Family Court) was allowed and it was held that both, the Appellant (Defendant before the Family Court) and the Respondent, are entitled to an equal half share i.e. 50% each in the property bearing no. C-5/18, 2nd Floor, Grand Vasant, Near DPS, Vasant Kunj, New Delhi [hereinafter referred to as “suit property”].

FACTUAL MATRIX:

2. The brief facts leading to the present Appeal, as pleaded, are that the marriage between the parties was solemnized on 30.01.2005 in accordance with Hindu rites and ceremonies at Bhilai, Chhattisgarh. Thereafter, the parties relocated to London, United Kingdom, on 30.07.2006, where they resided together for nearly eight years and subsequently acquired British nationality. Out of the said wedlock, a female child was born on 30.11.2009, who remains in the care and custody of the Appellant. During the subsistence of marriage, the parties jointly purchased the suit property by virtue of a Sale Deed dated 28.06.2010 [hereinafter referred to as “Sale Deed”], duly registered on 01.07.2010 with the Office of the Sub-Registrar, New Delhi. The purchase was funded through a joint housing loan of Rs.2,00,00,000/- obtained from the State Bank of India, Bhilai, with the Appellant’s father acting as a Guarantor. The Appellant had initially contributed GBP 58,000 (approximately Rs.50,00,000/-) towards the purchase of the suit property, and that the parties have continued to service the EMI’s towards the home loan in equal proportion. Thereafter, the parties, along with their minor daughter, returned to India on 31.07.2014. On account of growing matrimonial



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discord, the parties started living separately since 30.07.2020. Subsequently, a series of legal proceedings were initiated between the parties. The Appellant filed a Complaint Case No. 11/2023 under the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as “PWDV Act”], before the Ld. Metropolitan Magistrate, Mahila Court, Patiala House Courts, New Delhi, which is presently pending adjudication. The Respondent instituted guardianship proceedings bearing GP No. 28/2023 *inter alia* seeking custody of their minor daughter which is also pending adjudication.

3. It is in the aforesaid background that the Respondent sought partition of the suit property, which, according to the Appellant, constitutes her only matrimonial home and continues to be the residence of the Appellant along with the minor daughter. Upon completion of pleadings in the said suit, the Respondent filed an application under Order XII Rule 6 of the CPC, seeking a judgment on the basis of alleged admissions made by the Appellant in her written statement.

4. In parallel, both parties also instituted divorce proceedings by filing cross-petitions under Section 13(1)(ia) of the Hindu Marriage Act, 1955, [hereinafter referred to as “the HMA”], which culminated in a common judgment and decree dated 20.03.2025 passed by the Family Court, dissolving the marriage under Section 13B of the HMA. The said decree is presently under challenge at the instance of the Appellant in MAT.APP.(F.C.) No. 167/2025, wherein the Respondent has been restrained from solemnising a second marriage in the interregnum.



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5. Thereafter, *vide* the Impugned Order dated 17.04.2025, the Family Court, upon considering the record and the submissions made on behalf of both the parties, allowed the Respondent's application under Order XII Rule 6 CPC and passed a preliminary decree declaring both parties are entitled to 50% share each.

APPELLANT'S CONTENTIONS:

6. Learned counsel for the Appellant contends that the Family Court has erred in passing the Impugned Order dated 17.04.2025 allowing the application filed by the Respondent under Order XII Rule 6 of the CPC, inasmuch as it has failed to appreciate the facts and circumstances of the present case in their correct perspective. It is contended by the learned counsel for the Appellant that despite specific averments and material placed on record, the Family Court has passed a preliminary decree of partition under Order XII Rule 6 of the CPC solely on the basis of alleged admissions, without considering that the written statement filed by the Appellant, read in its entirety, disclosed no unequivocal or unambiguous admissions that would justify the passing of the said decree.

7. He further contends that the Family Court has failed to consider that the Appellant had categorically denied the Respondent's claim of equal ownership and had asserted that she had contributed over 60% for the purchase and furnishing of the suit property. Despite the existence of this material factual dispute regarding actual financial contribution and possession, the Family Court presumed equal ownership solely on the ground that no specific share ratio was mentioned in the Sale Deed. It is further submitted that the purported



admissions relied upon by the Respondent could not be construed in isolation, but were required to be considered holistically, in the context of the pleadings as a whole.

8. It is further contended that the Impugned Order is liable to be set aside on the ground that the suit property constitutes the matrimonial home of the Appellant and, therefore, falls within the definition of a '*shared household*' under Section 17 of the PWDV Act. It is submitted that the Family Court failed to consider that the statutory scheme under Section 17 of the PWDV Act is intended to protect the right of a woman to reside in the shared household, irrespective of ownership or title. In terms of the said provision, the Appellant has a statutory right to reside in the shared household, and no co-owner, including the Respondent, has any right to seek partition or to disturb her possession therein.

9. It is contended that the Family Court has failed to comprehend that any decree of partition, at the present stage, would result in serious hardship and prejudice to the Appellant, who continues to reside in the suit property along with the minor daughter. It is urged that the Appellant's continued residence in the said premises, coupled with the child's welfare, ought to have weighed as a relevant equitable consideration in the adjudication of the Respondent's application, particularly when the Appellant's right of residence under the PWDV Act remains *sub judice*.

10. Reliance is placed on the judgment passed by the Delhi High Court in ***Preeti Satija vs. Raj Kumari & Anr.***; (2014) SCC OnLine Del 188, wherein this Court held that a decree under Order XII Rule 6 of



the CPC can be passed only when the admission is clear, unambiguous, and unequivocal. Further reliance is placed on the judgments of the Supreme Court in *S.R. Batra & Anr. vs. Taruna Batra*; (2007) 3 SCC 169, *Satish Chander Ahuja vs. Sneha Ahuja*; (2021) 1 SCC 414 and *Sapna vs. Pravim Ishwar Bhai Patel & Others*; (2019) SCC OnLine Bom 760, to highlight the statutory rights of a woman to reside in her shared household and the need to harmonise such rights with claims for partition.

RESPONDENTS' CONTENTIONS:

11. *Per contra*, learned counsel for the Respondent, who appears on advance notice of the present Appeal, supports the Impugned Order and submits that the Family Court has rightly allowed the application under Order XII Rule 6 of the CPC filed by the Respondent. It is submitted that the Appellant has, in paragraph 2 of the preliminary submissions of her written statement, categorically, unequivocally, and unambiguously admitted that the parties are co-owners of the suit property, having purchased the same from joint funds. The Respondent, in his application under Order XII Rule 6 of the CPC, has extracted the said portion to demonstrate such admission and has submitted that there remains no material factual dispute requiring trial. In addition, reliance has been placed on the recitals of the Sale Deed, which records both parties as joint purchasers and co-owners of the suit property.

12. Learned counsel for the Respondent further submits that the suit property, as on date, is valued at approximately Rs.8,00,00,000/- and the Respondent is willing to pay Rs.4,00,00,000/- to the Appellant



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towards her 50% share; however, the Appellant is unwilling to accept the same. The Respondent has also offered to purchase another suitable apartment for the residence of the Respondent and the minor daughter with 50% of the price received on sale of the suit property, which offer was also declined by the Appellant. It is contended that the Appellant, being a well-educated and professionally qualified individual, is earning an annual income of approximately Rs.1,00,00,000/- and it is not the case that she would be left without any residential accommodation. It is argued that the plea of the suit property being a “matrimonial home” or “shared household” is wholly misconceived in law and fact, inasmuch as the suit property is a jointly owned asset, purchased through joint financial contributions of both parties, and admitted as such by the Appellant in her written statement. It is further submitted that the Appellant, being a co-owner, cannot seek to obstruct lawful partition proceedings by branding the suit property as a matrimonial home, particularly when she has sufficient space to reside in the suit property even after its equitable partition, and cannot, therefore, claim an absolute right of residence so as to prevent lawful partition.

13. Reliance is placed on the decisions in *Ajay Kumar Jain v. Baljit Kaur Jain*; 2009 SCC OnLine Del 1538, and *Sunita Shankar Salvi v. Shankar Laxman Salvi*; 2002 SCC OnLine Bom 927, to contend that where the ownership and entitlement of parties stand admitted, partition cannot be obstructed merely on the basis of a claim of residence or vague assertions of hardship.



ANALYSIS:

14. We have considered the rival submissions made by learned counsel for the parties and perused the material on record.

15. In order to appreciate the issue raised in the present Appeal, it is necessary to examine the scope and purpose of Order XII Rule 6 of the CPC. The said provision reads as under:

Order XII Rule 6 – Judgment on admissions.

(1) Where admissions of fact have been made either in the pleadings or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

A plain reading of Order XII Rule 6 of the CPC makes it evident that the legislative intent behind the provision is to empower the Court to expedite the disposal of cases by pronouncing judgment on the basis of clear, unambiguous, and unequivocal admissions made by a party, without awaiting the determination of other issues. The object is to avoid unnecessary prolongation of proceedings where the entitlement of a party is admitted and no further adjudication is warranted on that aspect. However, such power must be exercised with circumspection, bearing in mind the requirement that the admission must be categorical and must leave no room for doubt or interpretation.



16. In the present case, a perusal of the Written Statement filed by the Appellant reveals a categorical admission that the suit property was jointly purchased by the parties. The Appellant herself has, in paragraph 2 of the preliminary submissions of her written statement, expressly stated that the suit property was jointly purchased by her and the Respondent. Although in paragraph 8 of the Written Statement, the Appellant has vaguely averred that she contributed a “majority share” towards the purchase of the property with the help of her savings and financial assistance from her father, and has invested substantial amounts in renovation and maintenance, such assertions are neither supported by any contemporaneous documentation nor do they constitute a categorical denial of co-ownership. No material has been placed on record to establish the precise extent of the Appellant’s contribution *vis-à-vis* the Respondent’s.

17. It is not in dispute that the Sale Deed reflects both parties as joint purchasers, without specifying any differentiated ratio in ownership. Even as on date, both parties are jointly servicing the housing loan and are contributing equally towards the EMI payments. Having unequivocally admitted the co-ownership of the suit property and continued to discharge joint financial obligations arising therefrom, the Appellant cannot, at this stage, turn around and claim a greater share on the purported ground of having allegedly contributed more towards furnishing or renovation of the property.



18. Section 45 of the Transfer of Property Act, 1882, stipulates that in the absence of any contrary intention or specification, where property is purchased jointly in the names of two or more persons, the share of each shall be deemed equal.

19. The next issue that arises for consideration is the Appellant's plea that the suit property constitutes her matrimonial home and a "shared household" within the meaning of Section 17 of the PWDV Act. Section 17 of the PWDV Act reads as under:

17. Right to reside in a 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.

A plain reading of the provision confers upon every woman in a domestic relationship the right to reside in the shared household, irrespective of whether she has any right, title or beneficial interest in the same. However, this right to residence is not absolute in nature. Sub-section (2) of Section 17 of the PWDV Act clarifies that such a woman shall not be evicted or excluded from the shared household except in accordance with the procedure established by law. The combined reading of sub-sections (1) and (2) makes it clear that the right to reside in a shared household, though protected, is not indefeasible and is subject to lawful eviction or exclusion as per due process. The provision does not create a proprietary right in favour of



the aggrieved person, nor does it preclude lawful civil proceedings such as those for partition, possession or eviction, if instituted in accordance with law.

20. In the present case, the Appellant's reliance on Section 17 of the PWDV Act to resist partition of the suit property is misconceived. The Respondent is not seeking to evict the Appellant without following due process, but has initiated a civil action for partition of the jointly owned property. The Appellant, who herself claims to be a co-owner, would not be rendered homeless by the mere fact of partition. Upon division of the property, she would continue to be entitled to reside in her allocated portion, or in the event of sale, receive her share of the proceeds to secure alternative accommodation. It is also well settled that the right of residence under the PWDV Act is intended to provide shelter and protection to a woman facing domestic violence, and not to indefinitely resist lawful claims arising out of title or co-ownership. If the objective of secure residence can be achieved by other lawful means, such as the allotment of a share in the partition or by provision of alternate accommodation, the aggrieved person cannot insist upon retaining exclusive possession of the entire property. As held in **Ajay Kumar Jain** case (*supra*), a shared household can indeed be partitioned, and the female occupant's right to residence can be protected without conferring a greater proprietary entitlement than what is legally owned.

21. In the present case, therefore, the Appellant's plea that the suit property constitutes a shared household does not create any legal embargo against the partition of the property in accordance with the



admitted co-ownership rights. The right to reside in a shared household under Section 17 of the PWDV Act cannot override or nullify the lawful entitlement of either party to seek partition or enforcement of ownership rights in civil proceedings.

22. It is also relevant to note that the Appellant is a well-educated and professionally qualified individual. As per the pleadings, the Appellant is financially independent and gainfully employed. The factum of her employment and earnings is not in dispute. While the Appellant asserts that the suit property constitutes the only residence for her and the minor daughter, and that her right of residence under Section 17 of the PWDV Act ought to have weighed with the Family Court, it must be borne in mind that the concept of shared household is primarily intended to safeguard the shelter rights of women who are economically dependent, vulnerable, or genuinely aggrieved. The statutory protection under Section 17 of the PWDV Act does not entitle a financially self-reliant woman to indefinitely resist the lawful partition of a jointly owned property. Such provisions, which are enacted to protect women in genuine need of security and shelter, should not be misused by privileged individuals to frustrate legal claims arising out of ownership or title. In our considered view, the Family Court has correctly appreciated the factual matrix and has arrived at a reasoned conclusion that the right of residence under the PWDV Act cannot operate as a bar to lawful partition proceedings initiated by a co-owner.

23. In **S.R. Batra** case (*supra*), the Supreme Court was considering the validity of an injunction granted in favour of the wife restraining



the husband from dispossessing her from the matrimonial home. The Supreme Court set aside the injunction, holding that the right to residence under the PWDV Act does not extend to property owned exclusively by in-laws, and further observed that Section 19(1)(f) of the PWDV Act contemplates provision of alternate accommodation to the aggrieved woman, rather than enforcing residence in a specific property.

24. Again, in *Satish Chandra Ahuja* case (*supra*), the Supreme Court clarified that the right of residence under Section 19 of the PWDV Act is not an indefeasible or absolute right in the shared household. While identifying and addressing key questions in paragraph 30 and the subsequent portions of the judgment, the Supreme Court reaffirmed that the pendency of proceedings under Section 12 of the PWDV Act does not preclude or bar the initiation or continuation of civil proceedings, including those for partition or possession.

25. In *Sapna* case (*supra*), the Supreme Court was dealing with a case where the widow, having no independent source of income, was dispossessed from the matrimonial home by her deceased husband's brother. In the facts of that case, the Supreme Court directed restoration of possession to the widow, having regard to her vulnerability and lack of alternative accommodation.

26. Thus, it is evident that all the four judgments relied upon by the Appellant do not come to the Appellant's rescue. While interpreting statutory provisions, the Court is expected to look into the intent of the



Act, while avoiding its abuse.

27. As already noticed, the offer made by the Respondent to either pay the Appellant Rs.4,00,00,000/- towards her 50% share in the suit property, or to facilitate the purchase of an alternative residential apartment for the Appellant and the minor daughter using the sale proceeds from the suit property, appears to be *bona fide* and fair, particularly in light of the admitted co-ownership of the property and the Respondent's willingness to amicably resolve the dispute. The Appellant's insistence on continuing in exclusive possession of the entire suit property, while simultaneously resisting its partition, cannot be justified either in law or on equitable grounds. Such a stance defeats the very purpose of a partition suit, where each co-owner is entitled to enjoy and possess the property in accordance with their share.

CONCLUSION:

28. In view of the foregoing discussion on facts as well as the applicable legal principles, this Court finds no infirmity in the Impugned Order passed by the Family Court. The conclusions arrived at are well-reasoned, based on a fair appraisal of the pleadings and supported by the statutory framework. This Court, therefore, sees no reason to interfere.

29. The present Appeal, along with the pending applications, are accordingly dismissed.

30. However, it is made clear that the observations made hereinabove are confined to the adjudication of the present Appeal and



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shall not be construed as expressing any opinion on the merits of the proceedings pending before the Family Court, which shall be decided uninfluenced by any observations made in this judgment.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 05, 2025/jn/pl