

B.P. ACHALA ANAND

v.

S. APPI REDDY AND ANR.

FEBRUARY 11, 2005

[R.C. LAHOTI, CJ., G.P. MATHUR AND
P.K. BALASUBRAMANYAN, JJ.]

Hindu Law :

Deserted or divorced wife—right of—To retain occupation of matrimonial home—Tenanted premises—Taken by husband—premises left by husband leaving behind deserted wife—Eviction suit—Right of deserted wife to contest the suit—Decree of divorce during pendency of the suit—Held: Deserted wife has right to remain in occupation of the matrimonial home and can continue to stay exercising her right to residence as a part of right to maintenance—Such right comes to an end upon decree of divorce as wife loses the status of wife—However, right of divorced wife would depend on the terms and conditions of the decree of divorce—Deserted wife can contest the suit for eviction before the decree is passed if the tenant (husband) gives up the contest or not interested in contesting—Scope and ambit of the contest or defence by the wife would not be on a higher or larger footing than that of the tenant—In the present case wife rightly allowed to contest the suit—But after dissolution of marriage and in absence of terms and conditions of decree of divorce as to whether she was entitled to continue in the premises by virtue of obligation of husband to provide residence for her as a part of maintenance cannot defend the suit thereafter—Karnataka Rent Control Act, 1961—Section 21(1)(a) and (h)—Hindu Adoption and Maintenance Act, 1954—Section 18—Hindu Marriage Act, 1955—Sections 25 and 27.

Respondent No. 2 had taken the premises in dispute on rent and used to live therein alongwith his appellant-wife. Due to estranged relationship he deserted his wife leaving her behind in the tenanted premises. Landlord initiated eviction proceedings against respondent No. 2 u/s.21(1)(a) and (h) of Karnataka Rent Control Act, 1961 alleging that he was in arrears of rent and that they needed the rented premises *bonafide* for their own occupation. Since Respondent No. 2 did not contest the suit seriously, appellant-wife filed an application seeking her impleadment in the

A proceedings which was rejected by trial Court. In Revision Petition, High Court permitted her to be brought on record subject to her depositing a sum towards payment of arrears of rent. Trial Court passed order for partial eviction holding that case for eviction u/s. 21(1)(a) was not made out. In Revision Petition by landlord, High Court set aside the order of partial eviction, rejecting the ground of eviction u/s. 21(1)(h) and ordered
B eviction u/s. 21(1)(a) holding that there was no relationship of landlord and tenant between the landlord and the appellant; that provisions of Section 21(2) having not been complied with, tenant was liable to be evicted u/s.21(1)(a).

C Dismissing the appeal, the Court

HELD : 1. The Rent Control Law makes provision for protection of the tenant not only for his own benefit but also for the benefit of all those residing or entitled to reside with him or for whose residence he must provide for. A decree or order for eviction would deprive not only the
D tenant of such protection but members of his family (including the spouse) will also suffer eviction. So long as the tenant defends himself, the interest of his family members merges with that of the tenant and they too are protected. The tenant cannot, by collusion or by deliberate prejudicial act, give up the protection of law to the detriment of his family members. So
E long as a decree for eviction has not been passed the members of the family are entitled to come to the Court and seek leave to defend and thereby contest the proceedings and such leave may be granted by the Court if the Court is satisfied that the tenant was not defending - by collusion, connivance or neglect - or was acting to the detriment of such persons. Such a situation would be rare and the Court shall always be on its guard
F in entertaining any such prayer. Such a prayer or any dispute sought to be raised post-decree by a member of family of the tenant may not be entertained by the Court. [12-C-G]

2. A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to
G separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a will to defeat such a right. The right
H has come to be statutorily recognized with the enactment of the Hindu

Adoption and Maintenance Act, 1956. For the purpose of maintenance the term 'wife' includes a divorced wife. On the status of wife being terminated by a decree for divorce under the Hindu Marriage Act, the rights of the divorced wife seem to be cribbed, confined and cabined by the provisions of the Hindu Marriage Act and to the rights available under Sections 25 and 27 of the Act. [18-H; 19-A-B]

V.B. Jaganathan v. A.R. Srividhya, (1997) 2 MLJ 366 and *Karam Singh Sobti and Anr. v. Sri Pratap Chand and Anr.*, AIR (1964) SC 1305, referred to.

Principles of Hindu Law, by Mulla, Vol. I, 18th Ed. 2001 paras 554 and 555, referred to.

3. A deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises. Her rights and obligations shall not be higher or larger than those of the tenant himself. A suitable amendment in the legislation is called for to that effect. The landlord's right to eviction against his tenant is not subordinated to wife's right to residence enforceable against her husband. Let both the rights co-exist so long as they can. [20-B-C; 20-E]

4. A deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions : first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. The deserted wife can continue to stay exercising her right to residence as a part of right to maintenance subject to compliance with all such obligations including the payment of rent to which the tenant is subject. This right comes to an end with the wife losing her status as wife consequent upon decree of divorce and the right to occupy the house as part of right to maintenance coming to an end. Whether or not she has the right of residence in the

A matrimonial home, would depend on the terms and conditions in which the decree of divorce has been granted and provision for maintenance (including residence) has been made. In the event of the provision for residence of a divorced wife having been made by the husband in the matrimonial home situated in the tenanted premises, such divorced wife too would be entitled to defend, in the eviction proceedings, the tenancy rights and rights of occupation thereunder in the same manner in which the husband-tenant could have done and certainly not higher or larger than that. She would be liable to be evicted in the same manner in which her husband as tenant would have been liable to be evicted.

[19-F-H; 20-A; 21-B-C]

C 5. The appellant was rightly-in the facts and circumstances of the case-permitted by the High Court to be joined as a party to the proceedings and to contest the suit and deposit the rent in the court for payment to landlord for and on behalf of the tenant-husband. But she cannot be allowed to prosecute the appeal and defend her right against the claim D for eviction made by the landlord because during pendency of these proceedings and while the matter was pending in the High Court a decree for dissolution of marriage by divorce based on mutual consent has been passed. The terms and conditions of such settlement have not been brought on record by the appellant. It is not the case of the appellant that she is E entitled to continue her residence in the tenanted premises by virtue of an obligation incurred by her husband to provide residence for her as a part of maintenance. [21-D-E]

Kirtikant D. Vadodaria v. State of Gujarat and Anr., [1996] 4 SCC 479, relied on.

F *Sri Raja Bommadevara Raja Lakshmi Devi Amma Garu v. Sri Raja B. Naganna Naidu Bahadur Zamindar Garu and Anr.*, AIR (1925) Madras 757; *Unnamalai Ammal v. F.W. Wilson and Ors.*, AIR (1927) Madras 1187; *P. Suriyanarayana Rao Naidu v. P. Balasubramania Mudali and Ors.*, ILR 43 Madras 635; *Bai Appibai v. Khimji Cooverji*, AIR (1936) Bombay 138; G *Ganga Bai v. Janki Bai*, ILR 45 Bombay 337; *Dr. Abdur Rahim Undre v. Smt. Padma Abdur Rahim Undre*, AIR (1982) Bombay 341 and *M/s. Bharat Heavy Plates and Vessles Ltd.*, AIR (1985) Andhra Pradesh 207, referred to.

H *Old Gate Estates, Ltd. v. Alexander and Anr.*, (1949) 2 All England Law Reports 822; *Hutchinson v. Hutchinson*, (1947) 2 All E.R. 792; *Brown v.*

Draper, (1944) 1 All E.R. 246; *Middleton v. Baldock*, (1950) 1 All England Law Reports 708; *National Provincial Bank Ltd. v. Ainsworth*, 165 AC 1175; *Harriman v. Harriman*, (1909) 123; *Robson v. Headland*, (1948) 64 TLR 596 and *Vaughan v. Vaughan* (1953) 1 QB 762, referred to. A

The Due Process of Law by Lord Denning, Butterworths, (1980) 212, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4250 of 2000.

From the Judgment and Order dated 14.7.99 of the Karnataka High Court in H.R.R.P. No. 691 of 1998. C

Appellant-In-person, S.N. Bhat (NP).

P.R. Ramashesh and Ms. Vandana Jalan for the Respondents.

The Judgment of the Court was delivered by D

R.C. LAHOTI, C.J. Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by Courts, transforms into justice. "The definition of justice mentioned in Justinian's *Corpus Juris Civilis* (adopted from the Roman jurist Ulpian) states 'Justice is constant and perpetual will to render to everyone that to which he is entitled.' Similarly, Cicero described justice as 'the disposition of the human mind to render everyone his due'."¹ The law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be re-interpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts. Lord Denning once said: "Law does not standstill; it moves continuously. Once this is recognized, then the task of a judge is put on a higher plain. He must consciously seek to mould the law so as to serve the needs of the time."² E F

The facts which are either not disputed, or, are, at this stage, beyond the pale of controversy, may briefly be noticed. The appellant Smt. B.P. G

1. Justice Markandey Katju. *Law in the Scientific Era - The Theory of Dynamic Positivism*. p. 73.

2. Dr. Justice Nasim Hasan Shah, Chief Justice of Pakistan quoted in *Law as an Instrument of Economic Change in SAARC Region*, p. 7. H

A Achala Anand (hereinafter 'Smt. Achala' for short) was the legally wedded wife of H.S. Anand-respondent No. 2. Their relationship got estranged so much so that in the year 1983 H.S. Anand deserted his wife Smt. Achala. The matrimonial home was a tenanted premises owned by respondent No. 1. H.S. Anand left behind his wife with the children in the tenanted premises and walked away to reside in a lodge. In the year 1991, proceedings for dissolution of marriage by decree of divorce seem to have been initiated between the estranged couple. On 3/12/1998 the marriage stood dissolved by a decree of divorce based on mutual consent. That was an unhappy ending so far as the matrimonial relationship is concerned. However, what transpired between the couple has given a complex turn to an otherwise simple landlord-tenant litigation which we are called upon to deal with in this appeal.

The premises forming part of dispute in the present litigation is situated on the ground floor of a property bearing No. 522, Upper Palace Orchards, Bangalore. H.S. Anand had taken the ground floor of the building on tenancy from the landlord-respondent No. 1. The rent of the premises was fixed at Rs. 300 which was later on revised and enhanced to Rs. 600 and then to Rs. 700 (the rate which the Trial Court has found proved on evidence). The ground floor premises consisted of one verandah, one hall, two bedrooms with attached toilet, kitchen, bathroom, another toilet and corridor with overhead water supply and other incidental facilities. The tenant - H.S. Anand resided in the premises with his family members including his wife Smt. Achala.

The tenanted premises were badly in need of repairs and in April 1991, consequent upon a mutual agreement arrived at between the landlord and the tenant, a major portion of the ground floor-tenanted - premises was handed over by the tenant to the landlord for the purpose of carrying out repairs and the tenant continued to retain and enjoy the verandah, one bedroom and an attached toilet. However, the repairs, as were agreed upon, were not carried out.

On 28/11/1991, the landlord served a notice upon the tenant H.S. Anand and initiated proceedings for eviction from the suit premises on the grounds available under Clauses (a) and (h) of sub-section (1) of Section 21 of the Karnataka Rent Control, Act, 1961 (hereinafter "the Act" for short). The tenant was alleged to be in arrears of rent and was, therefore, called upon to clear the same within a period of two months from the date of the service of the notice in this regard. It was also alleged that the landlord and his wife were old-aged couple and now-a-days residing in some adjoining premises

not their own and needed *bona fide* the ground floor premises for their own occupation. The tenant-H.S. Anand appeared in the Court of Small Causes and defended the suit. However, it seems that on account of strained relationship between him and his wife and, further as he had discontinued his residence in the tenanted premises, he was not serious in contesting the suit and consequently, in the event of a decree for eviction being passed, the family members including the appellant-Smt. Achala, the deserted wife, ran the risk of being thrown away from the tenanted premises which happened to be the matrimonial home. Briefly stating these facts, the appellant moved an application under Order I Rule 10 of the Code of Civil Procedure (for short "the Code") seeking her own impleadment in the eviction proceedings so as to defend against the eviction. The trial court, by order dated 30.01.1993, rejected the application.

The appellant preferred a revision petition in the High Court. Obvious as it is, the revision petition preferred by the appellant was contested by the landlord-respondent No. 1 submitting that it being a landlord-tenant dispute, the appellant-wife had no right to be joined as a party to the proceedings and further that the rent being substantially in arrears, the case for eviction was already made out and impleadment of the appellant would only prolong the proceedings. The High Court vide its order dated 02/12/1993 (Civil Revision Petition No. 1309/1993) noted the submission of the parties and passed an order which can be termed an equitable one. Legality or otherwise of the contentions raised by the parties in the High Court was left open, the revision petition was allowed and the trial court's order dated 30/01/1993 was set aside. The appellant was permitted to be brought on record as defendant No. 2 in the original case subject to her depositing a sum of Rs. 10,000 towards payment of arrears of rent. The High Court did not express any opinion as to the status of the appellant as tenant or otherwise which issue was left open to be decided by the trial court. The fact remains that the appellant did deposit an amount of Rs. 10,000 towards the arrears of rent claimed by the landlord and it appears that the amount has been withdrawn by the landlord without prejudice to his rights. The appellant has, thereafter, contested the suit.

The trial court disposed of the suit on 04/12/1998. The trial court held that H.S. Anand-respondent No. 2 was the tenant. A case for eviction under Section 21(1)(a) of the Act was not made out in the opinion of the trial court. However, a case for partial eviction under Section 21(1)(h) was made out. The trial court directed partial eviction of the two defendants (i.e. H.S. Anand

A and his wife Smt. Achala) from that portion of the premises over which the tenant had surrendered possession to the landlord and allowed the tenant to continue in the front portion, namely, bedroom, hall, verandah, toilet etc. as to which accommodation the eviction petition was directed to be dismissed.

B Feeling aggrieved, the landlord preferred a revision petition in the High Court which has been disposed of by the judgment impugned herein. It will be useful to notice in brief the findings arrived at by the High Court which are as follows. According to the High Court - "There is no relationship of landlord and tenant between the landlord and Smt. Achala. The tenancy vested only in H.S. Anand who had given away the contest. He was served with a prior notice of demand. The rent was Rs. 700 per month. The provisions of Section 21(2) of the Act were not complied with and therefore, the question of extending protection under Section 21(2) did not arise and the tenant was liable to be evicted under Section 21(1)(a)." So far as the ground for eviction under Section 21(1)(h) is concerned, the High Court has not discussed the evidence in very many details but seems to have been persuaded to hold against the landlord on the ground that the first and second floor of the premises fell vacant but were not occupied by the landlord and were rather let out which is a pointer to the lack of *bona fides*. Even the back portion of the ground floor premises which was got vacated from the tenant was not put to any use for satisfying the alleged need of the landlord. The High Court set aside the order of partial eviction under Section 21(1)(h) and instead directed the tenant to be evicted under Section 21(1)(a) of the Act. It may be noted that neither the tenant H.S. Anand nor Smt. Achala, the wife had challenged the order for partial eviction passed by the trial court and it became final.

F Smt. Achala has, feeling aggrieved by the judgment of the High Court, preferred this appeal by special leave. The tenant H. S. Anand has not filed any appeal.

G The Karnataka Rent Control Act, 1961 has been enacted to provide for the control of rents and evictions and for the leasing of buildings amongst other things. It is not necessary to extract and reproduce *in extenso* the relevant provisions of the Act. For our purpose, it would suffice to notice that vide clause (a) of sub-section (1) of Section 21 of the Act, the tenant's failure to pay or tender the whole of the arrears of the rent legally recoverable from him within two months of the date of service of notice of demand on him in this regard provides a ground for eviction. In spite of a ground for eviction having been made out within the meaning of the said provision entitling the H

landlord to initiate proceedings for eviction of the tenant, no order for the recovery of possession of any premises on that ground shall be made if the tenant deposits or pays to the landlord rent during the pendency of proceedings in the manner prescribed by Section 29 of the Act and satisfies the Court that there was a sufficient cause for the default to pay or tender the rent within the period referred to in Section 21(1)(a) and further pays to the landlord or deposits in the Court such further amount as may be determined and fixed by the Court within the meaning of clause (iii) of sub-section (2) of Section 21 of the Act.

Under Section 30 of the Act once the interest of the tenant in any premises has been determined and order for recovery of possession has been made by the Court the same is binding on all persons who may be in occupation of the premises and vacant possession of the premises has to be given to the landlord by evicting the tenant and all persons in occupation of the premises excepting those who have any independent title to such premises. The term 'family' has been defined in clause (ff) of Section 3 of the Act as - "family' in relation to a person means the wife or husband of such person and his or her dependent children". Once the premises are taken on lease by any individual as tenant he is entitled to exercise all such rights and is subject to all such obligations qua the landlord as are referable to a lessee under the law. Yet, the tenant in whose name the tenancy has been created is not the only one who is entitled to live in the residential premises; he has a right to live therein with his family wherein is included the spouse. In any litigation, based on landlord-tenant relationship, when the tenant enters upon defence, he does so not only for himself but also for protecting the interest of his family as its members do live and are entitled to live with him, because in the event of an order for eviction being made it is not only the tenant but also his family members who shall be liable to be evicted from the tenancy premises along with him.

Having said so generally, we may now deal with the right of a wife to reside in the matrimonial home under personal laws. In the factual context of the present case, we are confining ourselves to dealing with the personal law as applicable to Hindus as the parties are so. A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The

A right to maintenance cannot be defeated by the husband executing a will to defeat such a right. (See: MULLA, Principles of Hindu Law, Vol. 1, 18th Ed. 2001, paras 554 and 555) The right has come to be statutorily recognized with the enactment of the Hindu Adoption and Maintenance Act, 1956. Section 18 of the Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of Section 3 of the Hindu Adoption and Maintenance Act, 1956 as to include therein provision for residence amongst other things. For the purpose of maintenance the term 'wife' includes a divorced wife.

The position of law which emerges on a conjoint reading of the Rent Control Legislation and Personal Laws providing for right to maintenance - which will include the right to residence of a wife, including a deserted or divorced wife, may be examined. The Rent Control Law makes provision for protection of the tenant not only for his own benefit but also for the benefit of all those residing or entitled to reside with him or for whose residence he must provide for. A decree or order for eviction would deprive not only the tenant of such protection but members of his family (including the spouse) will also suffer eviction. So long as the tenant defends himself, the interest of his family members merges with that of the tenant and they too are protected. The tenant cannot, by collusion or by deliberate prejudicial act, give up the protection of law to the detriment of his family members. So long as a decree for eviction has not been passed the members of the family are entitled to come to the court and seek leave to defend and thereby contest the proceedings and such leave may be granted by the court if the court is satisfied that the tenant was not defending - by collusion, connivance or neglect - or was acting to the detriment of such persons. Such a situation would be rare and the court shall always be on its guard in entertaining any such prayer. But the existence of such a right flows from what has been stated hereinabove and must be recognized. Persons residing with the tenant as members of his family would obviously be aware of the litigation and, therefore, it will be for them to act diligently and approach the court promptly and in any case before the decree of eviction is passed as delay defeats equity. Such a prayer or any dispute sought to be raised post-decree by a member of family of the tenant may not be entertained by the court.

Any precedent, much less of a binding authority, from any Court in India and dealing with a situation as we are called upon to deal with is not available. At least, none has been brought to our notice. However, English decisions can be found. Lord Denning states in *The Due Process of Law* (London, Butterworths, 1980, at page 212) - "A wife is no longer her husband's

chattel. She is beginning to be regarded by the laws as a partner in all affairs which are their common concern. Thus the husband can no longer turn her out of the matrimonial home. She has as much right as he to stay there even though the house does stand in his name. Moreover it has been held that the wife's right is effective, not only as against her husband but also as against the landlord. Thus where a husband who was statutory tenant of the matrimonial home, deserted his wife and left the house, it was held that the landlord could not turn her out so long as she paid the rent and performed the conditions of the tenancy."

In *Old Gate Estates, Ltd. v. Alexander and Anr.*, [1949] 2 All England Law Reports 822, a statutory tenant living with his wife in a flat which constituted the matrimonial home left the premises following a quarrel with his wife, and purported to surrender them to the landlords by agreement. His wife remained in occupation with the use of his furniture. On the wife's refusing to quit the premises, the husband gave her written notice revoking any authority which she might have from him to occupy the flat. In proceedings by the landlords against the tenant and his wife for possession, the court held that the tenant had not given up possession, as he remained in occupation through his wife and furniture, and, accordingly, his statutory tenancy had not been terminated. The statement of law as made by Denning, L.J. is instructive. He said - "If a statutory tenant goes out of occupation, leaving lodgers or sub-tenants or no one in the house, he ceases to be entitled to the protection of the Rent Restrictions Acts, but he does not, in my opinion, lose the protection if he goes out leaving his wife and furniture there. The reason is because the wife has a very special position in the matrimonial home. She is not the sub-tenant or licensee of the husband. It is his duty to provide a roof over her head. He is not entitled to tell her to go without seeing that she has a proper place to go to. He is not entitled to turn her out without an order of the court : see *Hutchinson v. Hutchinson*, [1947] 2 All E.R. 792. Even if she stays there against his will, she is lawfully there, and, so long as she is lawfully there, the house remains within the Rent Acts and the landlord can only obtain possession if the conditions laid down by the Acts are satisfied."

Their Lordships referred to and applied the dictum of Lord Greene, M.R., in *Brown v. Draper*, [1944] 1 All E.R. 246, where the facts were somewhat similar. A husband was the tenant of a house on a weekly tenancy. As in this case, he left the house in a dispute with his wife, and his wife and child remained in occupation of the house with the use of his furniture and he continued to pay rent. He received notice to quit from the landlord and he

A then stopped paying the rent, but he did not revoke his leave to the wife to reside in the house nor did he remove his furniture. Later, the landlord brought proceedings against the wife for trespass and at the hearing, the husband, who was not made a party to the proceedings, gave evidence that he had no interest in the house. It was held by the Court of Appeal that the husband was still in possession of the house, and the only way he could be deprived of the protection of the Rent Acts was by his going out of possession or having an order for recovery of possession made against him.

C Applying the law propounded in *Brown v. Draper* (supra) and in *Old Gate Estates Ltd. v. Alexander and Anr.*, (supra), the Court of Appeal held in *Middleton v. Baldock*, [1950] 1 All England Law Reports 708, that where a husband had deserted his wife and the wife remained in the matrimonial home, she was lawfully there and the husband remained in occupation through her; possession of a dwelling-house to which the Rent Restrictions Acts applied could only be ordered on one of the grounds specified in the Acts, and a tenant could not by agreement waive the statutory protection afforded by the Acts; and, therefore, the orders for possession were wrongly made.

E The deserted woman's equity (as it was called) was considered by House of Lords in the *National Provincial Bank Ltd. v. Ainsworth*, (1965) AC 1175. The House of Lords held that the rights of a deserted wife were their personal rights and as such that they could not be treated as in any sense constituting a clog on the property of the husband so as to run with the land as in the case of reality; and that, accordingly, a deserted wife could not resist a claim from a genuine purchaser of the matrimonial home from her husband whether the purchase took place after or before desertion. Lord Hodson stated: "The duration of the right if it were held to affect the land would be uncertain. F It would not survive divorce nor would it necessarily survive a judicial separation by order of the court which puts an end to the duty of cohabitation on both sides." He concluded:- "Having done the best I can to analyze the nature of the right which the wife has against her husband which is fundamentally the right relied on by the respondent, I conclude that it does not operate as a clog on the land which protects her by operating as a mere equity against anyone but a purchaser for value without notice". Lord Upjohn stated:- "The cases that I have already cited show that, provided the wife's marital rights are adequately safeguarded in some such way, the court would not normally refuse to evict a wife if the husband wants to deal with his property. Or he may return and resume cohabitation when the domestic forum resumes exclusive jurisdiction. Or the wife may change her position. She H

may commit a matrimonial offence which may lead the court to refuse her the right to continue under her husband's roof; she may obtain (as in this case) a decree of judicial separation which at all events brings the husband's desertion to an end [*Harriman v. Harriman*, (1909) P. 123]. Such a decree must necessarily be an important though not conclusive factor, if the husband is seeking to turn his wife out of occupation. *Finally, any right on the part of the deserted wife to remain in occupation, terminates when the marriage terminates.*" (emphasis supplied). A B

His Lordship in conclusion stated :-

"My Lords, when differing as I do with regret from so eminent a judge as the Master of the Rolls I think it is important to see how this problem has been dealt with in other comparable jurisdictions. C

In several States of Australia there has been a refusal to recognize that the deserted wife has any equity available against third parties. In *Brennan v. Thomas*, (1953) V.L.R. 111 Sholl J. sitting in the Supreme Court of Victoria after an exhaustive review of the authorities, including *Bendall v. McWhirter*, (1952) 2 Q.B. 466 then recently decided in the Court of Appeal, refused to recognize any right on the part of the wife available against purchasers for value. D

In *Public Trustee v. Kirkham*, (1956) V.L.R. 64 sitting in the same court Herring C.J. criticized the doctrine. E

In *Maio v. Piro*, (1956) S.A.S.R. 233 Ligertwood J. sitting in the Supreme Court of South Australia followed Sholl J. in preference to the English decisions.

Finally, in *Dickson v. McWhinnie*, (1958) 58 S.R. (N.S.W.) 179, the Full Court of New South Wales refused to follow *Bendall v. McWhirter* (supra) save in relation to bankruptcy. I derive much comfort from such a strong body of opinion in favour of the view I have expressed." F

In *Robson v. Headland*, [1948] 64 TLR 596, it was held that "after the date of the divorce the former wife of the defendant was a stranger to him and was not in occupation of the flat as his representative and that as he had abandoned possession himself, the Rent Restriction Acts did not apply." G

In *Vaughan v. Vaughan*, (1953) 1 QB 762, a wife continued to reside H

A in the matrimonial home even after she obtained a decree of divorce against her husband. After some time the husband brought proceedings for possession. The divorced wife resisted claiming that she had an irrevocable licence during her lifetime. It was held by the Court of Appeal (Evershed M.R. Denning and Romer. L.J.J.) that after they had ceased to be husband and wife, the wife could not justify her claim unless she could set up a contract. As it was, the statement originally made to her could after the divorce, amount to no more than she, as ex wife, was entitled to remain in occupation as a bare licensee and the licence was, therefore, revocable. Lord Denning stated :

B
C “The wife ought to have protected her position by applying for maintenance in the divorce proceedings before decree absolute and should have come to an arrangement with her husband whereby he agreed not to turn her out except by an order of the court, she agreeing to accept a reduced sum for maintenance as long as she lived there.”

D This indicates that the right of residence is a part of the right to maintenance and in which case in the absence of an order by the matrimonial court in the proceedings for divorce, she would not be able to set up a claim in respect of the house even as against her husband, leave alone the landlord of her husband.

E It is of interest to note that the above decision of the House of Lords led to the enactment of the Matrimonial Homes Act, 1983. The preamble of the Act says “an Act to consolidate certain enactments relating to the rights of a husband or wife to occupy a dwelling house that has been a matrimonial home”. So long as one spouse has right to occupation, either of the spouses may apply to the court for an order requiring either spouse to permit the exercise by the other of that right. This is one of the several rights expressly provided for.

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G It has been held in India that right to maintenance arises out of the status as a wife and not by way of a contract or otherwise. In *Sri Raja Bommadevara Raja Lakshmi Devi Amma Garu v. Sri Raja B. Naganna Naidu Bahadur Zamindar Garu and Anr.*, AIR (1925) Madras 757, Specncer, Officiating CJ, stated :

H “The obligation of a husband to maintain his wife is described, as one arising out of the status of marriage. It is a liability created by the Hindu Law in respect of the jural relations of the Hindu family. When there is no contract between the parties to a marriage, as among

Hindus, a suit for maintenance is not a suit based upon contract, but it is a suit arising out of a civil relation resembling that of a contract which is specially provided for in Article 128 of the Limitation Act". (Head Note) A

In *Unnamalai Ammal v. F.W. Wilson and Ors.*, AIR (1927) Madras 1187, it was stated that the maintenance of a wife by a husband is a personal obligation upon him arising from the existence of the relations. In *P. Suriyanarayana Rao Naidu v. P. Balasubramania Mudali and Ors.*, ILR 43 Madras 635, it was held that an auction purchaser of an ancestral house sold in execution of a money decree passed on a personal debt of the mother who inherited the property as heir to her son, is not entitled to oust the unmarried sisters of the latter, who reside in the house. The Bombay High Court in *Bai Appibai v. Khimji Cooverji*, AIR (1936) Bombay 138, held that under the Hindu Law, the right of a wife to maintenance is a matter of personal obligation on the husband. It rests on the relations arising from the marriage and is not dependent on or qualified by a reference to the possession of any property by the husband. In *Ganga Bai v. Janki Bai*, ILR 45 Bombay 337, it was held :- B
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"Under Hindu Law, a widow cannot assert her right of residence in a house which has been sold by her husband during his life time, unless a charge is created in her favour prior to the sale. The right which a Hindu wife has during her husband's life time is a matter of personal obligation arising from the very existence of the relation and quite independent of the possession by the husband of any property, ancestral or self acquired." (Head Note) E

Dr. Abdur Rahim Undre v. Smt. Padma Abdur Rahim Undre, AIR (1982) Bombay 341, is a Division Bench decision of the Bombay High Court, dealing with right to residence of a wife in the matrimonial home. The marriage between the parties was subsisting in law but had broken down beyond repairs. The husband filed a suit *inter alia* for injunction, restraining the wife from entering the matrimonial house. The Court held that an injunction subject to certain terms and conditions could be granted. The parties, on account of seriously estranged relationship between them could not be forced to live together. The flat was big enough to allow the parties to live there separately. The Court earmarked separate portions for the husband and the wife to live separately and restrained the wife from entering the portion in occupation of the husband, who was an eminent surgeon, so that he could F
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A have a peace of mind to enable him to discharge his duties as a surgeon more efficiently. In addition, the husband was directed to pay a certain amount of money by way of maintenance to the wife.

B A Single Bench decision of the Andhra Pradesh High Court in *M/s. Bharat Heavy Plates and Vessles Ltd.*, AIR (1985) Andhra Pradesh 207, is more near to the facts of the case at hand. The husband was an employee in a company. He was allotted a company quarter in which he lived with his wife. The quarter was the matrimonial home. However, differences developed between the husband and wife, leading to their estrangement and finally the wife went to the Court, charging her husband with neglect to maintain her and her three minor children. The husband left the company quarter and it was occupied only by his wife and minor children. The husband also wrote to the company, terminating the lease which was in his favour. The hovering prospects of eviction led the wife to the Court for protection, seeking an injunction restraining the company from evicting the wife and her three minor children. The High Court upheld the order impugned before it, whereby the company was restrained from evicting the wife and her minor children. For forming this opinion, the Court took into consideration the facts that the quarter was meant to be used by the employee and the husband was under an obligation to provide shelter to the wife and children. The husband and the company had both recognized the quarter to be the matrimonial home wherein the wife too was residing. The amount of rent was directed to be deducted from the salary of the husband.

D This Court in *Kirtikant D. Vadodaria v. State of Gujarat and Anr.*, [1996] 4 SCC 479, has held: "According to the law of land with regard to maintenance there is an obligation on the husband to maintain his wife which does not arise by reason of any contract - expressed or implied - but out of jural relationship of husband and wife consequent to the performance of marriage.....The obligation to maintain them is personal, legal and absolute in character and arises from the very existence of the relationship between the parties."

E Section 18 of the Hindu Adoption and Maintenance Act confers a right on a wife to be maintained by her husband during her life time. According to Mulla, the right of a wife for maintenance is an incident of the status or estate of matrimony and a Hindu is under a legal obligation to maintain his wife. (See : Mulla, *ibid*, pp. 454-455)

H The Hindu Marriage Act provides for divorce. Section 15 indicates

when divorced persons may marry again. Section 25 enables the court to pass an order for providing alimony and maintenance in favour of the divorced wife. Section 27 enables the court to make provisions in the decree in respect of a property that may belong to the wife or to both. On the status of wife being terminated by a decree for divorce under the Hindu Marriage Act, the rights of the divorced wife seem to be cribbed, confined and cabined by the provisions of the Hindu Marriage Act and to the rights available under Sections 25 and 27 of the Act.

In *V.B. Jaganathan v. A.R. Srividhya*, (1997) 2 MLJ 366, the Madras High Court has held that a court can pass an appropriate order under Section 27 of the Hindu Marriage Act even when one of the parties to a marriage claims the property as belonging to him exclusively thereby indicating that it might have been possible to make a provision regarding the tenanted premises, in the proceedings under the Hindu Marriage Act. How far that order would be binding on a landlord who is not a party is another question, but it would certainly give her a right to defend the proceedings for eviction.

Incidentally, we may refer to *Karam Singh Sobti and Anr. v. Sri Pratap Chand and Anr.*, AIR (1964) SC 1305, though not directly in point. Proceedings for eviction were initiated by the landlord against the tenant and sub-tenant unlawfully inducted by the tenant in the premises. The tenant suffered a decree for eviction and decided not to file an appeal. This Court upheld the right of sub-tenant to file an appeal in his own right against the decree so as to protect himself even though thereby the tenant would also be freed from the decree.

In our opinion, a deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions : first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. In other words, such a wife would be entitled to raise all such pleas and claim trial thereon, as would have been available to the tenant himself and no more. So long as, by availing the benefit of the provisions of the Transfer of Property Act and Rent Control Legislation, the tenant would have been entitled to stay in the tenancy premises, the wife too can continue to stay exercising her right to residence as a part

A of right to maintenance subject to compliance with all such obligations including the payment of rent to which the tenant is subject. This right comes to an end with the wife losing her status as wife consequent upon decree of divorce and the right to occupy the house as part of right to maintenance coming to an end.

B We are also of the opinion that a deserted wife in occupation of the tenanted premises cannot be placed in a position worse than that of a sub-tenant contesting a claim for eviction on the ground of subletting. Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of
C - and we do so - that a deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the
D same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises. Her rights and obligations shall not be higher or larger than those of the tenant himself. A suitable amendment in the legislation is called for to that effect. And, so long as that is not done, we, responding to the demands of social and gender justice, need to mould the relief and do complete justice by exercising our jurisdiction under Article
E 142 of the Constitution. We hasten to add that the purpose of our holding as above is to give the wife's right to residence a meaningful efficacy as dictated by the needs of the times; we do not intend nor do we propose the landlord's right to eviction against his tenant to be subordinated to wife's right to residence enforceable against her husband. Let both the rights co-exist so
F long as they can.

We have dealt with all the abovesaid aspects of the law as it was urged on behalf of the landlord - respondent No. 1 that Smt. Achala, the appellant has no right to contest or defend herself in these proceedings nor a right to file and prosecute this appeal as there is no privity of contract between the
G appellant and landlord and the appellant is neither a tenant nor so recognized ever by the respondent No. 1 - landlord. We cannot agree. We feel that the appellant was rightly - in the facts and circumstances of the case - permitted by the High Court to be joined as a party to the proceedings. She was also rightly allowed to contest the suit and deposit the rent in the court for payment
H to landlord for and on behalf of the tenant-husband.

So far as a deserted wife, whose status as wife has not come to an end by a decree of divorce or by decree for annulment of marriage, is concerned, we have made the position of law clear as above. However, the case of a divorced wife stands on a little different footing. Divorce is termination of matrimonial relationship and brings to an end the status of wife as such. Whether or not she has the right of residence in the matrimonial home, would depend on the terms and conditions in which the decree of divorce has been granted and provision for maintenance (including residence) has been made. In the event of the provision for residence of a divorced wife having been made by the husband in the matrimonial home situated in the tenanted premises, such divorced wife too would be entitled to defend, in the eviction proceedings, the tenancy rights and rights of occupation thereunder in the same manner in which the husband-tenant could have done and certainly not higher or larger than that. She would be liable to be evicted in the same manner in which her husband as tenant would have been liable to be evicted.

In the present case, it is admitted by the appellant that on 3.12.1998, that is, during the pendency of these proceedings and while the matter was pending in the High Court a decree for dissolution of marriage by divorce based on mutual consent has been passed. The terms and conditions of such settlement have not been brought on record by the appellant which she ought to have done. It is not the case of Smt. Achala, the appellant that she is entitled to continue her residence in the tenanted premises by virtue of an obligation incurred by her husband to provide residence for her as a part of maintenance. She cannot, therefore, be allowed to prosecute the appeal and defend her right against the claim for eviction made by the landlord.

The appeal is, therefore, held liable to be dismissed and is dismissed accordingly. However, in the facts and circumstances of the case, the appellant is allowed time till 31.12.2005 for vacating the suit premises, subject to the following conditions :-

- (i) that the appellant shall clear all the arrears of rent (calculated upto the date of deposit) at the rate of Rs. 700 per month, on or before 31st March, 2005, by depositing the same in the executing court;
- (ii) with effect from 1st April, 2005 the appellant shall continue to deposit rent calculated at the rate of Rs. 700 per month on or before 15th day of each month for payment to landlord;

- A (iii) on or before 31st December, 2005, the appellant shall hand over vacant and peaceful possession over the suit premises to the landlord and shall not in-between part with possession to anyone else or create third party interest;
- B (iv) that an undertaking on affidavit, incorporating the above said terms, shall be filed in the executing court on or before 31.3.2005.

No order as to the costs.

K.K.T.

Appeal dismissed.