

NEELAM GUPTA VS MAHIPAL SHARAN GUPTA AND ANR

(Criminal Appeal 417-418 of 2020)

Supreme Court of India,

BENCH: Uday Umesh Lalit J., Dinesh Maheshwari J., Krishna Murari J.

CITATION:

FACTS:

Mr Mahipal Gupta (Hereinafter R1) was married to Ms. Geeta Gupta and 2 child were born out of wedlock, one son named Arnav Gupta and One daughter Garima, but after demise of Ms Geeta Gupta in Oct 2004, R1 married to Ms Neelam Gupta and both resided in the house, which was owned by Ms. Geeta Gupta.

After sometime of marriage Ms. Neelam Gupta filled a petition for protection of her rights under the Protection of Women from Domestic Violence Act, 2005. And claimed rights of residence of property as shareholder. Trial court had passed a protection order of residence. The Appellant also filed a civil suit qua such premises and obtained an interim junction against her husband from her dispossession from the premise.

Subsequently Arnav (hereinafter R2) filled for partition suit qua the premise in question that got decreed, which in dismissed the suit of partition (MS Neelam Gupta) under Order 1 Rule 10 CPC. The appellant also preferred RFA (OS)/96/2013 against the final decree, which was also dismissed.

In lieu of this suit, R2 filed an application for variation of the protection order dated 26/10/16 against the appeal has been preferred, which was disposed by Mahila Court stating petitioner is liable for same standard of living as she had during the marriage when she was living with her matrimonial house, also provide her similar accommodation in locality or rent of 15000.

ISUUE:

Share in matrimonial house, Divorce to be Mutual Consent instead of Protection of Women from Domestic Violence Act.

JUDGEMENT:

The Court directed to file for Divorce by Mutual Consent as per 13B of Hindu Marriage Act, 1955 Deposition of 5L/- toward interim payment of consideration of 1/3rd value of share in matrimonial house, as well as 1L/- toward the rent for six month at 15000/- and 10,000/- toward pocket expenses. Deposition of 6L/- toward registry of court till appellant to re-locate herself at such places. To sell the Flat and give 1/3rd share to the petitioner. The approximate worth of flat was estimated to be 1.95cr to 2.25 Cr. In case if sale consideration is more, then consideration

will be $\frac{1}{3}^{\text{rd}}$ of total, if the consideration is less than 1.95cr then minimum 60L has to be paid. In case the house is not sold then 70L has to be paid.

