

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 3917 of 2015 (O&M)

Date of decision: September 10, 2015

Jai Singh and others

...Petitioners

Versus

Ram Partap and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Jitender S. Chahal, Advocate,
for the petitioners.

K. KANNAN, J. (Oral)

1. An objection has been brought about at the stage of execution by the petitioners as sons of one Arjun Singh, when their father Arjun Singh had suffered a decree obtained against him. There had been an earlier litigation when the father had challenged a sale said to have been executed in favour of the decree-holders contending that the father was not the full owner of the property and that the Will executed by the father cannot operate to defeat their rights. The petitioners' father's suit was dismissed after contest. The defendants in that suit, who successfully fended off the claim of the father and who obtained a favourable decree having propounded a Will came with their own suit against the father. The father wanted to contend that the property was ancestral property and the court

held that the decision rendered between Arjun Singh and decree-holders constituted resjudicata and granted the decree for possession in favour of Ram Partap and Avtar Singh. When the decree for possession was put to execution, the sons of Arjun Singh have caused obstruction and they have sought for adjudication under Order 21 Rules 97 to 99 CPC. The objection was dismissed and the petitioners are before this court challenging the order.

2. Learned counsel appearing on behalf of the petitioners would submit that any decree obtained against the father would not bind them since the decree obtained against the father cannot defeat the rights of the sons who are co-parceners. The counsel would refer to me several decisions which according to him, govern the issue. The proposition brought out through several decisions, which were read out to me were that father is not fully competent to execute a sale without reference to the sons right in the property for any purpose other than for joint family benefit or necessity. Yet another line of decisions are that there could be no Will in respect of the ancestral property more than the share of the coparcener. Another line of authority is that there could be no gift in respect of the ancestral property. None of them has application in the present case. In this case, it is not a transaction of sale by the father which the sons are impugning. It is the decree obtained against the father in relation to a property where the character of property was already decided in a litigation against the father and the decree-holders had obtained a decree for possession. A decree obtained against the father where the character of the property is held in a particular fashion will constitute a resjudicata against their descendants

also. Even if the sons may have independent right by birth, a decree against the father is always binding unless the father is shown to have acted with reckless abandon and has done any act which was immoral or illegal. A father coparcener fulfills a particular status that even action for his own personal benefit will bind the sons. The exceptions will be only in respect of transactions of sale where there could a limitation of his power when the father could still transact without reference to his sons or making them party, if only the sale was for necessity or benefit. In every other situation, a decree obtained against the father will bind the sons also irrespective of whether it is ancestral property or separate property

3. The revision petition is without merit and it is dismissed.

September 10, 2015
prem

(K.KANNAN)
JUDGE