

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

Regular Second Appeal No.3563 of 2013 (O&M)
Date of decision: 31.08.2015

Balbir Singh

.... Appellant

versus

Ravinder (minor) and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajesh Lamba, Advocate,
for the appellant.

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

K.Kannan, J. (Oral)

1. The suit was for a declaration that a release purported to have been effected by the plaintiff in favour of grandsons-defendants 1 and 2 for a 2/3rd share ought to have been for a 1/3rd share that was intended to be made. This release deed was purported to be immediately following the alleged family partition under the terms of which the father was prepared to release 1/3rd share to each one of his 3 sons-Dharmender, Bane Singh and Gopi Chand, who is the 3rd defendant and who is also the father of defendants 1 and 2. The claim was that it was an ancestral property and he had been releasing all the rights to the property to his 3 sons in equal shares,

but the document of release had been made for 2/3rd share without providing for 1/3rd share to yet another son Bane Singh.

2. I find the entire basis of the suit to be the result of utter confusion in the mind of the plaintiff of how ancestral property could be dealt with. If the property was ancestral as contended by the plaintiff, it would have fallen for division equally amongst all the coparceners and there was no question of the father making a release of 1/3rd share to each one of the sons. It is difficult to understand as to how the releasees could stand to any specific benefit, for, even without such release, coparceners would have right by birth. There is a further position in law that release in ancestral property will enure to the benefit of all coparceners and not merely to the releasees, as held in **Karam Singh Versus Surendar Singh- AIR 1931 Lahore 289(2)** that a coparcener can renounce his interest only in favour of all the other coparceners and when he renounces it in favour of only one of them, the renunciation enures for the benefit of even the others. This law finds acceptance also in Bombay High Court in **Shiovaji Versus Wasant-22 Bombay 267** and Madras High Court in **Subbanna Versus Balasubba Reddi-1945(1) MLJ 140**. If the case were to be examined merely from the point of view of whether the plaintiff knew what he was executing and whether he should be relieved of the recitals to which he was a party, the court held that there was no ground to suspect the genuineness of the

transaction or to allow for being assailed to any extent and provide for a declaration of 1/3rd share to Balbir Singh-the plaintiff. Indeed, if Balbir Singh had already been given 1/3rd share to one of the sons, it is even doubtful whether he retained anything to make up for the benefit of defendants 1 and 2. All the sons and daughters, who could be deemed coparceners, were also not parties to suit. The plaintiff, by his own suit, has only made possible a future litigation and has advanced no case to promote his interest better. A speculative suit that went for dismissal and deservedly so, would require no interference. The second appeal is dismissed.

(K.KANNAN)
JUDGE

31.08.2015
sanjeev