

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

RSA No. 1896 of 2014 (O&M)

Date of decision: September 14, 2015

Sube Singh and others

...Appellants

Versus

Udey Singh 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. Sumit Sangwan, Advocate,
for the appellants.

K. KANNAN, J. (Oral)

1. The second appeal is at the instance of the defendants who lost the defence to an action for declaration brought at the instance of the plaintiff that he was the owner with the 6th defendant, his brother, in relation to the properties described in the suit and for a declaration that the release deed executed by the father in favour of the grand sons defendants No. 1 to 4 was invalid and not binding. It was an admitted case that the father Shree Chand got the properties ancestrally and he died on 18.9.2005, after coming into force the amendment in the Hindu Succession Act, providing for a status of deemed coparcener to the daughters. The plaintiff was the eldest son of Shree Chand and he was reported to have contracted a second marriage even during the subsistence of the 1st marriage and hence went

away from the village, benefited himself to a purchase of 4 acres being taken by the father with an intent to snap all family ties. The defendants pleaded that the father had made the transaction of release in favour of the grand sons only after making enough provision for the plaintiff and that, therefore, the plaintiff cannot assail the same. The courts below have not found the family arrangement, as set up by the defendants, as established but granted a decree on the admitted premise that the properties, which were released, were admittedly ancestral and the plaintiff's share cannot be bound.

2. If the family arrangement is not established and the plaintiff is known to have cast himself away from the family by a division in status then a release of ancestral properties in favour of any member of coparceners cannot bind persons who were not parties to the release. It has been held as early as in Karam Singh Versus Surendar Singh AIR 1931 Lahore 289 (2) that relinquishment of joint family interest will be taken as enuring to the benefit of all the coparceners. The saving of right of coparceners to transfer by bequest as made under Section 30 of the Hindu Succession Act was not extended either gratuitous gift, which is void in law or to gratuitous release which will operate to make possible for a person who is not a party to treat himself as beneficiary along with all other coparceners in the hands of releasees. This Court itself has considered the effect of release of ancestral property in Balbir Singh Versus Ravinder (minor) and others RSA No. 3563 of 2013 decided 31.8.2015.

3. The suit that contained a declaration that the release deed are not binding on the plaintiff has correctly found but the issue of whether the

plaintiff is entitled to retain his own possession of 4 acres of land is not addressed in this case. If there is a general suit for partition which any other coparcener is entitled to bring for adjustment of mutual rights and for equal distribution taking the note of all the transactions and sale and release could be made. For the present, I will only affirm the declaration already made by the trial court and the decree granted in favour of the plaintiff and I clarify that it will not take away any right which the defendants might have to seek partition of all the properties, after bringing all the joint family properties to hotch pot.

4. The second appeal is dismissed but with the above observations.

September 14, 2015
prem

(K.KANNAN)
JUDGE