

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

(1) RSA No. 5995 of 2014 (O&M)
Date of decision: September 4, 2015

Tej Pal and another

...Appellants
Versus

Jagmal Singh

...Respondent

(2) RSA No. 6087 of 2014 (O&M)

Tej Pal and another

...Appellants
Versus

Jagmal Singh

...Respondent

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. RS Mamli, Advocate,
for the appellants.

K. KANNAN, J. (Oral)

1. This order shall dispose of the above titled second appeals, as they arise from the same set of facts.

2. The appeal is by defendants No. 1 and 2 who face an action for injunction brought at the instance of their brother on a claim that he is entitled to a joint possession of all the suit properties and also sought by means by another suit that the so-called release execute by the father 3rd defendant, who died subsequently during the pendency of the suit, in favour of defendants No.1 and 2 through a document said to have been made on 15.5.2001, described as *dastar bardarinama* as null land void and not

binding on the plaintiff.

3. The suit was contested on a plea that the family, although originally joint had been partitioned and the plaintiff had his own share given to him and even the house property was divided and the parties had separate mess. Since the defendants had admitted to the ancestral character of the property, it became essential to consider the evidence whether the plaintiff's right could be defeated by any partition in the manner pleaded and the trial court placed the burden correctly on defendants No. 1 and 2 to prove that there was a partition. It adverted to the evidence of the defendants in its judgment by observing that the defendants did not give the date of partition, the particular extents of property which each member was given, the presence of any third party at the time of partition and the amount which was alleged to have been given. The court also observed that there had been no mutation of entries of properties jointly standing in their names and in the name of the father only with reference to the properties of an extent of 32 kanals 16 marlas, which was the subject of release. When the court found that there was no proof of partition, it held that the father could not have released the interest in the property in favour of defendants No. 1 and 2 only and cited voluminous case law without discussing any of them that as per the decisions cited, the defendants could not defeat the plaintiff's right of joint possession. However, the plaintiff's relief for mandatory injunction for removal of wall which brought about the division within the house was not favourably considered in favour of the plaintiffs. It would appear from the record that the plaintiff himself did not file any appeal against the relief declined to him and rest contended with the rest of the portion of the decree in the two suits. The defendants preferred an appeal

and the appeal confirmed the same finding.

4. Learned counsel appearing for the appellant would contend that it was brought out in the evidence that the plaintiff was having a separate mess and a separate portion for his own residential living and it became, therefore, obvious that the family was divided. A division in mess does not constitute a division of all properties and there is no such presumption in law for such an inference. If the existence of the ancestral family nucleus was admitted fact and if the properties had not been mutated in the names of several persons, the court's below were justified in holding that the family holding continued to be joint and the plea of oral partition as propounded by the defendants could not be accepted. If partition was not proved as set up by the defendants, even the father had no power under the Hindu Law to make a release of his own undivided share. The release operates on the same footing as a gift of ancestral property and void in law. If it is brought in challenge by a person who is not made a party to the release, he is entitled to obtain a declaration that the release is void and the court correctly considered the legal issue therefor. A Division Bench of Lahore High Court in Karam Singh V. Surender Singh and others AIR 1931 Lahore 289 (2) held that one coparcener cannot renounce his interest except in favour of all the coparceners, if he renounces in favour of one or more of them. The renunciation enures to the benefit of all coparceners in whose favour the renunciation is made. In Chellla Subbanna and another Versus Chella Bala Subbareddi and others 1945 AIR (Madras) 142, a question raised before the Court was that whether one member of a joint Hindu family consisting of several members can, irrespective of a partition of the family estate, give his own interest therein to one of the other coparceners,

the answer to the same was that a member of a joint Hindu family governed by the Mitakshara law cannot give his interest in the family estate to one of several coparceners, if they remain joint in estate. In such circumstances, he can relinquish his interest but the relinquishment operates for the benefit of all the other members. There is no merits at all in the appeals and the decisions of the courts below granting decree in favour of the plaintiff would require no intervention. There arise no substantial question of law for consideration in favour of the appellants.

5. The appeals are dismissed.

September 4, 2015
prem

(K.KANNAN)
JUDGE