

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

RSA No.2122 of 2017 (O&M)

Date of decision : 11.09.2017

Pardeep @ Parmod

...Appellant

Versus

Poonam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate for the appellant.

Mr. Vishal Garg Narwana, Advocate
for the respondent Nos.1 to 4.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.2 is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs namely daughters of Shri Ram-defendant No.1 had filed a suit for declaration and permanent injunction claiming that the property is a coparcenary property and the release deed executed by defendant No.1 in favour of defendant No.2, grandson of Shri Ram is against the law and result of misrepresentation and fraud.

Defendant No.1-Shri Ram, supported the case of the plaintiffs whereas defendant No.2 contested the suit.

Both the Courts have relied upon the unrebutted evidence of the defendant No.1 on the ground that he has not been cross-examined by

the counsel for defendant No.2.

A look at the evidence would show that in fact the Court did not grant any opportunity to the counsel representing defendant No.2 i.e. contesting defendant, to cross-examine the defendant No.1.

Once defendant No.1 had supported the case of the plaintiffs and admitted the claim of the plaintiffs, it was incumbent upon the Court to allow the opportunity to the contesting defendant i.e. defendant No.2 to cross-examine defendant No.1. However, no such opportunity was given. Once a defendant supports the case set by the plaintiff, he infact partake the character of the plaintiff. Hence, it is necessary for the Court to give opportunity to the contesting defendant to cross-examine such defendant who is supporting the case of the plaintiff before using the statement against the contesting defendant.

In these circumstances, the judgments and decrees passed by the Courts below are set aside.

Case is remanded back to the trial Court to grant opportunity to the counsel for the defendant No.2 to cross-examine the defendant No.1.

Parties through their counsel are directed to appear before the trial Court on 28.09.2017.

Regular Second Appeal is allowed.

11.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No