



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

**Date of decision : 7.5.2025  
RSA-3357-1999 (O&M)**

**I.**

Tek Chand and others

... Appellants

VERSUS

Sobha Ram and another

... Respondents

**II.**

**RSA-3535-2000 (O&M)**

Tek Chand and others

... Appellants

VERSUS

Karan Singh

... Respondent

**III**

**RSA-4522-2000 (O&M)**

Tek Chand and others

... Appellants

VERSUS

Dharamvir and others

... Respondents

**IV**

**RSA-4567-2001 (O&M)**

Tek Chand and others

... Appellants

VERSUS

Ratanbir and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Abhilaksh Grover, Advocate,  
for the appellants in RSA-3357-1999 and  
RSA-3535-2000.

Mr. Sukhandeep Singh, Advocate and  
Mr. Ashok Kaushik, Advocate,  
for the respondent in RSA-3535-2020.

Mr. S.K.Sharma, Advocate and  
Mr. Rajat Sharma, Advocate,  
for the respondent in RSA-3357-1999.

Mr. D.K.Singal, Advocate,  
for respondents No.1 to 3-A to C.

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**PANKAJ JAIN, J.**

This is a bunch of 4 appeals arising out of 4 different suits filed by the same plaintiffs challenging alienation made by his father Puran in favour of different vendors. All the suits are based upon common set of facts and involve common questions of law.

2. RSA-3357-1999 is taken as a lead case. The plaintiffs sons of Puran defendant No.1 filed suit for declaration with consequential relief of permanent injunction. Declaration sought is to the effect that sale deed dated 15.9.1988 executed by deceased Puran in favour of defendant No.1 with respect to the suit land as detailed out in the plaint is illegal qua the rights of the plaintiffs. The alienation made is without their consent and knowledge. The plaintiffs are *Jaat* by caste and are governed by agricultural custom. Puran was a man of vices. There being no authority vested in him to alienate the suit property without the consent of the plaintiffs who are immediate reversioners, the sale deed executed by him is bad. It was further claimed that in case the plaintiffs failed to prove the custom, they being sons of deceased Puran constitute a Hindu joint family. The property in dispute is



owned by joint Hindu family. Deceased-Puran acting as *Karta* was not competent to alienate the suit property without legal necessity.

3. The suit was contested by defendant No.1. The other defendants were proceeded *ex parte*. As per defendant No.1, the suit has been filed in collusion with the other defendants. Custom was denied. Defendant No.1 claimed that the suit land was sold by defendant No.2 with the consent of the plaintiffs and his family. The sale deed was executed for valuable consideration and to satiate legal needs of family. Puran was in need of money for getting the land redeemed. He wanted to marry his daughters. The suit land was sold by Puran for betterment of the plaintiff. Out of the sale proceeds, plot was purchased in the name of the plaintiffs for valuable consideration of ₹ 16,000/-.

4. On the basis of the pleadings of the parties, following issues were struck : -

- “1. *Whether the sale deed dated 12.5.89 is wrong, null and void and is liable to be set aside, as alleged? OPP*
2. *Whether the plaintiffs are entitled to the possession of the suit land? OPP*
3. *Whether the suit is collusive between the plaintiffs and the defendant No.2, as alleged? OPP*
4. *Whether the suit is bad for non-joinder of necessary parties? OPD*
5. *Whether the suit is not maintainable in the present form? OPD*
6. *Whether the plaintiffs have no cause of action to file the present suit? OPD*



7. *Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD*

8. *Relief.*

*Additional Issue*

1-A *Whether the disputed property was co-parcenary property at the hands of Puran; If so its effect? OPP*

5. Deciding issue No.1-A, the Court of first instance held that as per Ex.P3, Puran succeeded to the estate of his father Roop Lal. Hence, the suit land is proved to be co-parcenary in the hands of deceased Puran and decided issue No.1-A in favour of the plaintiffs.

6. While deciding issues No.1 and 2, trial Court after analyzing the evidence, found that the suit land was sold by Puran for ₹ 50,000/-. Prior to sale of the land, the land was already lying mortgaged with Sanwalia. The same was redeemed after paying mortgage amount of ₹ 26,500/-. Parts of the sale proceeds were utilized in the marriage of daughter of Puran. ₹ 16,000/- were further paid for purchase of plot in favour of Tek Chand plaintiff on 28.5.1990. Though the plot was purchased in the name of the plaintiff but there is no evidence that the plaintiff had any independent source of income.

7. The suit filed by the plaintiffs was ordered to be dismissed.

8. Dissatisfied, the plaintiffs preferred appeal. Lower appellate Court has affirmed the findings recorded by the trial Court.

9. Though there is no appeal preferred by the defendants against the findings recorded by the Courts below on issue No.1-A, however, this Court finds that merely for the reason that Puran succeeded to the estate of his father Roop Lal, the property cannot be held to be co-parcenary. The property at the most would be ancestral in the hands of Puran qua his sons.



9. Be that as it may, the power of the *Karta* or manager to alienate the property owned by joint Hindu family or the ancestral property is no more *res integra* and the same has been dealt by the Supreme Court in the case of **Sunil Kumar v. Ram Parkash, 1988 (2) RRR 288 (SC)** observing as under : -

*“19. In an early case of the Madras High Court in [Sudarsanam Maistri v. Narasimhulu Maistri and anr.](#), 1902 ILR 25 Madras 149 Bhashyam Ayyanger, J. made the following pregnant observations about the R nature of the institution and its incidents at p. 154:*

*"The Mitakshara doctrine of joint family property is founded upon the existence of an undivided family, as a corporate body Gansavant Bal Savant v. Narayan Dhond Savant 1883 I.L.R. 7 Bom 467 and Mayne's Hindu Law and Usage, 6th edition, paragraph 270 and the possession of property by such corporate body. The first requisite therefore is the family unit; and the possession by it of property is the second requisite. For the present purpose female members of the family may be left out of consideration and the conception of a Hindu family is a common male ancestor with his lineal descendants in the male line and so long as that family is in its normal condition viz. the undivided state-it forms a corporate body Such corporate body, with its heritage, is purely a creature of law*



*and cannot be created by act of parties, save in so far that, by adoption, a stranger may be affiliated as a member of that corporate family".*

20. *Adverting to the nature of the property owned by such a family, learned Judge proceeded to state at p. 155:*

*"As regards the property of such family, the 'unobstructed heritage' devolving on such family, with its accretions, is owned by the family as a corporate body, and one or more branches of that family, each forming a corporate body within a larger corporate body, may possess separate 'unobstructed heritage' which, with its accretions, may be exclusively owned by such branch as a corporate body."*

20A. *This statement of law has been approved by the Supreme Court in [Bhagwan Dayal v. Mst. Reoti Devi, 1962 \(3\) SCR 440](#)*

*Managing Member and His Powers:*

21. *In a Hindu family, the karta or manager occupies a unique position It is not as if anybody could become manager of a joint Hindu family. "As a general rule, the father of a family, if alive, and in his absence the senior member of the family, is alone entitled to manage the joint family property." The manager occupies a position superior to other members. He has greater rights and duties. He must look after the family interests. He is*



*entitled to possession of the entire joint estate He is also entitled to manage the family properties. In other words, the actual possession and management of the joint family property must vest in him. He may consult the members of the family and if necessary take their consent to his action but he is not answerable to every one of them.*

22. *The legal position of karta or manager has been succinctly summarised in the Mayne's Hindu Law (12th Ed. para 318) thus:*

*318. Manager's Legal position-"The position of a karta or manager is sui generis; the relation between him and the other members of the family is not that of principal and agent, or of partners. It is more like that of a trustee and cestui que trust. But the fiduciary relationship does not involve all the duties which are imposed upon trustees.*

23. *The managing member or karta has not only the power to manage but also power to alienate joint family property. The alienation may be either for family necessity or for the benefit of the estate. Such alienation would bind the interests of all the undivided members of the family whether they are adults or minors. The oft quoted decision in this aspect, is that of the Privy Council in Hanuman Parshad v. Mt. Babooee, 1856 (6) Moo Ind App 393. There it was observed at p. 423: ( 1) "The*



*power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in case of need, or for the benefit of the estate." This case was that of a mother, managing as guardian for an infant heir. A father who happens to be the manager of an undivided Hindu family certainly has greater powers to which I will refer a little later. Any other manager however, is not having anything less than those stated in the said case. Therefore, it has been repeatedly held that the principles laid down in that case apply equally to a father or other coparcener who manages the joint family estate.*

*Remedies against alienations:*

24. *Although the power of disposition of joint family property has been conceded to the manager of joint Hindu family for the reasons aforesaid, the law raises no presumption as to the validity of his transactions. His acts could be questioned in the Courts of law. The other members of the family have a right to have the transaction declared void, if not justified. When an alienation is challenged as being unjustified or illegal it would be for the alienee to prove that there was legal necessity in fact or that he made proper and bonafide enquiry as to the existence of such-necessity. It would be for the alienee to prove that he did all that was reasonable to satisfy himself as to the*



*existence of such necessity. If the alienation is found to be unjustified, then it would be declared void. Such alienations would be void except to the extent of manager's share in Madras, Bombay and Central Provinces. The purchaser could get only the manager's share. But in other provinces, the purchaser would not get even that much. The entire alienation would be void. [Mayne's Hindu Law 11th ed. para 396].*

25. *In the light of these principles, I may now examine the correctness of the contentions urged in this appeal. The submissions of Mr H.N. Salve, as I understand, proceeded firstly on the premise that a coparcener has as much interest as that of karta in the coparcenary property. Second, the right of coparcener in respect of his share in the ancestral property would remain unimpaired, if the alienation is not for legal necessity or for the benefit of the estate. When these two rights are preserved to a coparcener, why should he not prevent the Karta from dissipating the ancestral property by moving the Court? Why should he vainly wait till the purchaser gets title to the property? This appears to be the line of reasoning adopted by the learned counsel.*
26. *I do not think that these submissions are sound. It is true that a coparcener takes by birth an interest in the ancestral property, but he is not entitled to separate possession of the coparcenary estate. His rights are not*



*independent of the control of the karta. It would be for the karta to consider the actual pressure on the joint family estate. It would be for him to foresee the danger to be averted. And it would be for him to examine as to how best the joint family estate could be beneficially put into use to subserve the interests of the family. A coparcener cannot interfere in these acts of management. Apart from that, a father-karta in addition to the aforesaid powers of alienation has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. If there is no such need or benefit, the purchaser takes risk and the right and interest of coparcener will remain unimpaired in the alienated property. No doubt the law confers a right on the coparcener to challenge the alienation made by karta, but that right is not inclusive Of the right to obstruct alienation. Nor the right to obstruct alienation could be considered as incidental to the right to challenge the alienation. These are two distinct rights. One is the right to claim a share in the joint family estate free from unnecessary and unwanted encumbrance. The other is a right to interfere with the act of management of the joint family affairs. The coparcener cannot claim the latter right and indeed, he is not entitled for it. Therefore, he cannot move the court to grant relief by injunction*



*restraining the karta from alienating the coparcenary property.*

27. *There is one more difficulty for the sustainability of the suit for injunction with which we are concerned. Temporary injunction can be granted under sub section (1) of [Section 37](#) of the Specific Relief Act, 1963. It is regulated by [the Code of Civil Procedure](#), 1908. A decree for perpetual injunction is made under sub section (2) of [Section 37](#). Such an injunction can be granted upon the merits of the suit. The injunction would be to restrain the defendant perpetually from the commission of an act, which would be contrary to the rights of the plaintiff [Section 38](#) of the Specific Relief Act governs the grant of perpetual injunction and sub [section 3](#) thereof, reads:*

*"When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely :*

*a) Where the defendant is trustee of the property for the plaintiff;*

*(b) Where there exists no standard for ascertaining the actual damage caused or likely to be caused, by the invasion;*

*(c) Where the invasion is such that compensation in money would not afford adequate relief;*



*(d) Where the injunction is necessary to prevent a multiplicity of judicial proceedings".*

28. *The provisions of [Section 38](#) have to be read alongwith [section 41](#). [Section 41](#) provides that an injunction cannot be granted in the cases falling under clauses (a) to (j). Clause (h) thereunder provides that an injunction cannot be granted when a party could obtain an efficacious relief by any other usual mode of proceeding (except in case of breach of trust). The coparcener has adequate remedy to impeach the alienation made by the karta. He cannot, therefore, move the Court for an injunction restraining the karta from alienating the coparcenary property. It seems to me that the decision of the Punjab & Haryana High Court in [Jujhar Singh v. Giani Talok Singh](#), [1986 P.L.J. 346 has correctly laid down the law. There it was observed at p. 348*

*"If it is held that such a suit would be competent the result would be that each time the manager or the karta wants to sell property, the coparcener would file a suit which may take number of years for its disposal. The legal necessity or the purpose of the proposed sale which may be of pressing and urgent nature, would in most cases be frustrated by the time the suit is disposed of. Legally speaking unless the alienation in fact is completed there would be no cause of action for any coparcener to*



*maintain a suit because the right is only to challenge the alienation made and there is no right recognised in law to maintain a suit to prevent the proposed sale. The principle that an injunction can be granted for preventing waste by a manager or karta obviously would not be applicable to such a suit because the proposed alienation for an alleged need or the benefit of the estate cannot be said to be an act of waste by any stretch of reasoning. We are, therefore, of the considered view that a coparcener has no right to maintain a suit for permanent injunction restraining the manager or the karta from alienating the coparcenary property and his right is only to challenge the same and to recover the property after it has come into being."*

11. Applying the aforesaid parameters to the present case, the issue is :-

*Whether the land was sold by Puran for legal necessity of the family or not?*

12. It has come on record that out of the total sale proceeds, majority of the amount was spent by the *Karta* to get the land redeemed. Part thereof was utilized for discharging the obligation of marrying his daughter by Puran. The said fact has been admitted by the plaintiff appearing as PW1. Even though Tek Chand contends that part of the sale proceeds were not utilized for purchase of plot in his name but the same stands proved on



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record vide Ex.D7 that the plot was purchased in the name of the plaintiff on 28.5.1990 for valuable consideration of ₹ 16,000/-.

13. In view of the aforesaid pure findings recorded by the Courts below, this Court finds no ground to interfere in these second appeals. Finding no merit in the present appeals, the same are ordered to be dismissed.

**( PANKAJ JAIN )**  
**JUDGE**

May 7, 2025  
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No