IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 571 of 2006

Reserved on: 17.03.2026

Date of Decision: 04.05.2026

Rajinder Singh ...Appellant

Versus

Hari Singh & Ors ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the Appellant : Mr Mohinder Verma, Advocate.

For the Respondents : None

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 17.10.2006 passed by the learned Additional District Judge, Fast Track Court, Shimla, H.P. (learned Appellate Court) vide which the judgment and decree dated 09.11.2001, passed by the learned Sub Judge, Court No.5, Shimla, H.P. (learned Trial Court) were set aside. (*Parties shall hereinafter be referred to in the same*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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manner as they were arrayed before the learned Trial Court for convenience.

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit before the learned Trial Court for seeking a declaration that relinquishment deed/release deed dated 15.02.1999 stated to have been executed by defendant No.2 in favour of defendant No.1 regarding the land comprised in Khata Khatauni No. 47/51 measuring 6-12 bighas, Khata Khatauni No. 54/58 measuring 7.07 bighas, Khata Khatauni No. 55/65, Khasra No. 879/806/772/451 measuring 4.10 bighas total measuring 17-19 bighas situated at village Pagog, Tehsil and District Shimla, H.P. as per jamabandi for the year 1996-97 (hereinafter referred to as the suit land) is null and void and does not affect the right, title and interest of the plaintiffs being the co-sharer in the suit land. A consequential relief of a permanent prohibitory injunction for restraining defendant No.1 from acting upon the relinquishment deed and getting the revenue entries mutated in his favour was also sought. It was asserted that the plaintiffs are the sons of Defendant No.2. Defendant No.2 inherited the property from his father. The pedigree table of the parties is as follows:

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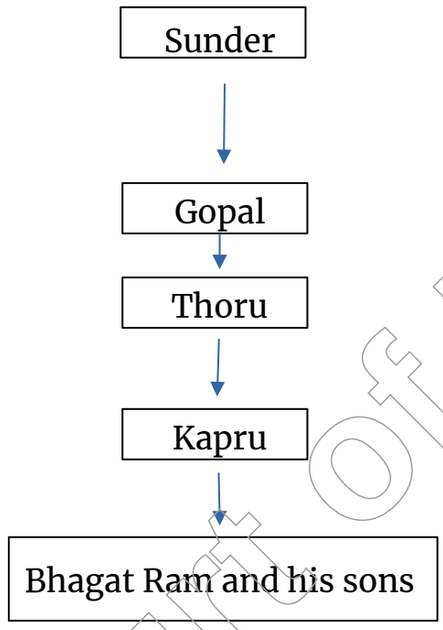

3. The plaintiff's family is a joint Hindu undivided family, and the suit land is an ancestral property. Defendant No.2 is not entitled to alienate the property without any legal necessity. He executed a relinquishment deed in favour of defendant No.1 to deprive the plaintiffs of their right. The relinquishment deed could not have been executed without the plaintiffs' consent. Defendant No.1 obtained the loan of ₹3,67,000/- from H.P. State Co-operative Agriculture and Rural Development Bank, The Mall, Shimla, based on the relinquishment deed. Hence, the suit was filed for seeking the relief mentioned above.

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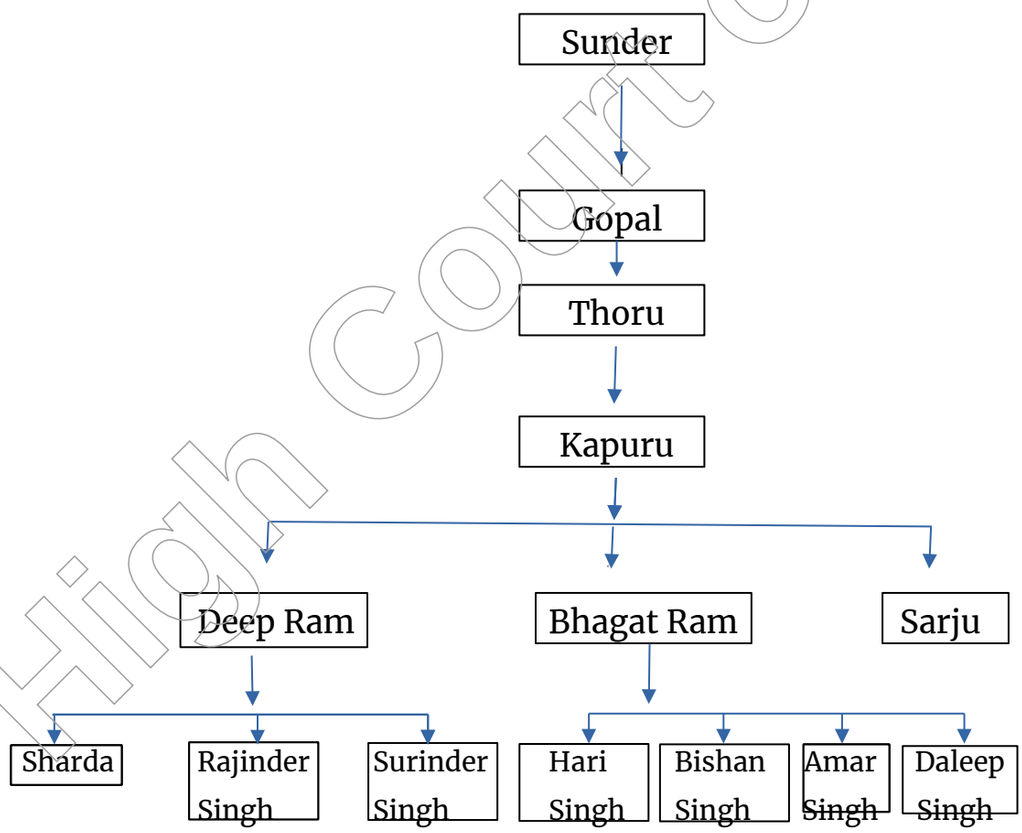
4. The suit is opposed by filing a written statement taking a preliminary objection regarding the lack of locus standi. The contents of the plaint were admitted to the extent that the suit land is ancestral and it was inherited by the defendants from their ancestors. As per the defendants, the pedigree table is as follows:



5. The family had land in village Bhotru, Pagog and Parchi. Bhagat Ram was residing in village Bhotru and was managing the land in that village. Hence, his name was entered

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in the revenue record. Deep Ram resided in village Pagog, and his name was recorded in the revenue record of the village Pagog. The rest of the land was recorded in the joint possession of Deep Ram and defendant No.2 after the death of Kapuru. Sarju had also inherited 1/3rd share in the estate of Kapuru along with his sons Deep Ram and Bhagat Ram. Bhagat Ram started disposing of the property jointly owned by him. He had disposed of more than his share in the joint property. Defendant No.1 brought this fact to the notice of defendant No.2. Defendant No.2 admitted his mistake and executed a relinquishment deed in favour of defendant No.1 to compensate him. The plaintiffs have no *locus standi* to file the present suit. Hence, it was prayed that the suit be dismissed.

6. A separate written statement was filed by defendant No.2 admitting that the plaintiffs are his sons, and that he had inherited the land from his father. It was asserted that defendant No.2 had not executed any relinquishment deed in favour of defendant No.1. He obtained the signatures of defendant No.2 on the documents on the pretext that he wanted to separate his share from that of defendant No.1. Defendant N0.2 came to know subsequently that a relinquishment deed was

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got executed from him. The contents of the deed were not read over and explained to him, and are not binding upon him. The release deed was without any consideration and could not be termed as a transfer. Defendant No.1 mortgaged his share with H.P. State Co-operative Agriculture and Development Bank, The Mall, Shimla, as security for the loan of ₹3.67 lakhs. Therefore, it was prayed that the suit be dismissed.

7 A replication denying the contents of the written statement and affirming those of the plaint was filed.

8. The following issues were framed by the learned Trial Court on 24.11.1999:

1. Whether the plaintiff is entitled to the relief of declaration, as alleged? OPP.
2. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction, as prayed? OPP.
3. Whether the plaintiffs have no locus standi to file the present suit? OPP.
4. Relief.

9. The parties were called upon to produce the evidence, and the plaintiffs examined Karam Chand (PW1) and Hari Singh, plaintiff No.1 (PW2). Defendant No.1, examined himself (DW1) and Karam Chand (DW2).

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10. The learned Trial Court held that the plea taken by defendant No.2 that the relinquishment deed was got executed from him by practising fraud was not proved on record. The relinquishment deed was registered in the office of the Sub Registrar and is presumed to be validly executed. Therefore, the learned Trial Court answered all the issues in negative and dismissed the suit.

11. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiffs filed an appeal, which was decided by the learned Additional District Judge, Fast Track Court, Shimla, H.P. (learned Appellate Court). Learned Appellate Court held that the ancestral nature of the property was not disputed by the defendants in their written statement. A *Karta* of a joint Hindu family can alienate the joint land only for legal necessity. The relinquishment deed is in the nature of a gift, which could have been executed with the consent of the other co-parceners or for legal necessity. In the present case, the consent of other co-coparceners or legal necessity was not proved. Hence, the relinquishment deed executed by defendant No.2 in favour of defendant No.1 was bad. The learned Trial Court failed to appreciate this aspect of the case, and the

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judgment and decree passed by the learned Trial Court were not sustainable. Hence, the appeal was allowed, and the judgment and decree passed by the learned Trial Court were set aside.

12. Aggrieved by the judgment and decree passed by the learned Appellate Court, the defendants have filed the present appeal, which was admitted on the following substantial questions of law on 16.05.2007.

1. Whether there has been misreading of oral as well as documentary evidence by the learned first Appellate Court, and pleadings of the parties have not been appreciated?
2. Whether the relinquishment deed in favour of the appellant was wrongly set aside by the learned first appellate Court?
3. Whether the transaction of relinquishment is either exchange or family settlement, but not an act of transfer and the transaction of relinquishment was not for consideration, and wrong findings have been given by the courts below?

13. Mr Mohinder Verma, learned counsel for the appellant/defendant, submitted that the learned Appellate Court erred in accepting the appeal. There was no evidence that the suit land was ancestral in the hands of defendant No. 2. Defendant No.2 had alienated more land than he was entitled to, and he executed a relinquishment deed to compensate

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defendant No.1 for the excess share alienated by him. Defendant No.2 asserted that he was not informed of the terms and conditions of the relinquishment deed, but this fact was not proved. This aspect was ignored by the learned Appellate Court. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside.

14. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.1:

15. Mr Mohinder Verma, learned counsel for the appellant, submitted that the learned Courts below proceeded on the basis that the nature of the suit land is ancestral without any evidence. This submission is only stated to be rejected. Defendant No.1 admitted in para 2 of the written statement that the property described in the plaint is part of the ancestral property inherited by the defendants. He stated, while appearing as DW1, that the whole of the land was ancestral. Therefore, the ancestral nature of the property was not disputed. A fact

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admitted need not be proved, and learned Courts below had rightly proceeded on the basis that the nature of the suit land was ancestral. Therefore, there was no misreading of the evidence, and this substantial question of law is answered accordingly.

Substantial Question of Law Nos. 2 and 3:

16. Both these substantial questions of law are interconnected and are being taken up together for convenience.

17. Mr Mohinder Verma, learned counsel for the appellant, submitted that the relinquishment deed does not fall within the definition of the transfer and the prohibition regarding alienation will not apply to a relinquishment deed. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Kuppuswami Chettiar v. Arumugam Chettiar, 1966 SCC OnLine SC 125: AIR 1967 SC 1395,*** that a relinquishment deed is a conveyance and if it is executed without consideration, it amounts to a gift. It was observed:

> "**4.** The question is whether Ex. B-1, in its true construction, conveyed properties to the respondents. In ***T. Mammo v. K. Ramunni [AIR 1965 SC 337, 340***], this Court held:

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> "A registered instrument styled a release deed releasing the right, title and interest of the executant in any property in favour of the releasee for valuable consideration may operate as a conveyance, if the document clearly discloses an intention to effect a transfer".

In the present case, the release was without any consideration. But property may be transferred without consideration. Such a transfer is a gift. Under Section 123 of the Transfer of Property Act, 1882, a gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Consequently, a registered instrument releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses. Exhibit B-1 stated that the releasor was the owner of the properties. It showed an intention to transfer his title, and its operative words sufficiently conveyed the title. The instrument, on its true construction, took effect as a gift. The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses."

18. The Hon'ble Supreme Court also held in ***M.R. Vinoda v. M.S. Susheelamma*, (2021) 20 SCC 180** that a coparcener is not entitled to execute a relinquishment deed in favour of other co-parcerners.

> **23.** This judgment in ***Thamma Venkata Subbamma [Thamma Venkata Subbamma v. Thamma Rattamma, (1987) 3 SCC 294]*** draws a distinction between gifts and relinquishment by a coparcener of his share, and the head of the branch or karta as the representative or eldest member of the branch. The former is valid and legal,

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provided the relinquishment is in favour of all other coparceners. The gift or relinquishment would also be valid if it were made with the prior consent of another coparcener. Equally, a coparcener may make a gift of his undivided interest in the coparcenary property to another coparcenary with the prior consent of the other coparceners.

24. ***Mulla's Hindu Law, 22nd Edn.*** vide Article 262, states that a coparcener may renounce his interest in favour of the other coparceners as a body, but not in favour of one or more of them. When he renounces in favour of one or more of them, the renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renunciation is made. A similar exposition vide Article 407 in ***Mayne's Treatise on Hindu Law and Usage, 17th Edn.***, states that a gift by a coparcener of his entire undivided interest in favour of the other coparcener or coparceners is valid whether it is regarded as one made with the consent of the other or others or as a renunciation of his interest in favour of all. Referring to the judgment in ***Thamma Venkata Subbamma [Thamma Venkata Subbamma v. Thamma Rattamma, (1987) 3 SCC 294], Mayne's Treatise on Hindu Law and Usage*** observes that renunciation in the form of an ostensible gift may have the effect of relinquishment, and if it enures for the benefit of all the coparceners, such a gift would be construed as valid. In addition, ***Mulla's Hindu Law, 22nd Edn***. recognises that a father or other managing member of the ancestral immovable property can make gifts within reasonable limits for "pious purposes". [*See* Articles 223 and 224 at pp. 332 and 333, ***Mulla's Hindu Law, 22nd Edn.***]

25. Read in this light, it can be validly argued that the relinquishment deed dated 13-3-1969, Ext. P-2, executed by the fourth defendant, would be invalid. However, in the present case, other aspects have to be noticed to

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> decide the relinquishment deed's validity. First, we must again refer to the superior power that the karta enjoys and, consequently, his greater rights and duties than other members. A karta can alienate the property when other coparceners have given consent. It is also settled that a karta may alienate the joint family property for value, either for legal necessity or for the benefit of the estate, to bind the interests of all the undivided members of the family, whether they are adults, minors or widows. [***Mayne's Treatise on Hindu Law and Usage, 17th Edn***., Article 385.] There are no specific grounds to prove the existence of legal necessity, and it must therefore depend on the facts of each case. A karta has wide discretion in the decision over the existence of legal necessity and as to in what way such legal necessity can be fulfilled. [***Mulla's Hindu Law, 22nd Edn., Article 242-A***.] However, it is observed that this exercise of power and rights by karta is not beyond challenge on the limited ground of lack of existence of legal necessity or absence of benefit to the estate."

19. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, a relinquishment deed would fall within the definition of a transfer, and a *karta* is not competent to execute a relinquishment deed without the consent of the other coparcener or any legal necessity.

20. Defendant No.1 has not pleaded any legal necessity. He claimed that defendant No.2 had alienated more land than he was entitled to and executed a relinquishment deed to compensate defendant No.1 for the excess transfer. This will not

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fall within the definition of a legal necessity, and the learned Appellate Court had rightly held that the relinquishment deed could not have been executed by defendant No.2 in favour of defendant No.1. Hence, these substantial questions of law are answered accordingly.

Final order:

21. In view of the above, the present appeal fails, and it is dismissed.

22. Pending application(s), if any, also stand(s) disposed of.

23. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

4th May, 2026
(Nikita)

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