

Cs No. 1643/2013 "Puran Chand Kaushal vs . Jagmohini Sangwan And Ors." Dod: ... on 27 August, 2016

CS No. 1643/2013 "Puran Chand Kaushal vs. Jagmohini Sangwan and Ors." DOD: 27.0

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-01:
SOUTH-WEST DISTRICT: DWARKA COURTS: NEW DELHI
PRESIDED BY :MS. PINKI

Civil Suit No. 1643/2013

In the matter of:
Mr. Puran Chand Kaushal,
S/o Late Mr. Moti Ram,
R/o L-503, Gali no. 15,
Mahipal Pur,
New Delhi-110037.

.....Pla
(Through Mr. A. K. Mishra, Advoca

Versus

1.

Mrs. Jagmohini Sangwan, W/o Mr. Rajinder Kumar Sangwan, Plot no. 488□489, L□Block,
Gali No. 15, Mahipal Pur, New Delhi□10037.

2. Mr. Rajinder Kumar Sangwan, S/o Mr. H. K. Sangwan, Plot no. 488□489, L□Block,
Gali No. 15, Mahipal Pur, New Delhi□10037.

.....D
(Through Mr. Bijender Mehla, Advocat

| | | |
|-----------------------------|---|------------|
| Date of Institution of Suit | : | 16.08.2012 |
| Date of Reserving judgment | : | 12.08.2016 |
| Date of Pronouncement | : | 27.08.2016 |

Suit for Recovery : "Decreed"

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SUIT FOR RECOVERY OF Rs.19,50,000/□(RUPEES NINETEEN LACS AND

FIFTY THOUSAND ONLY) AS DAMAGES FOR MALICIOUS PROSECUTION AND DEFAMATION
J U D G M E N T :

1. The present suit has been filed on 14.08.2012 wherein the plaintiff has prayed for a decree of Rs.19,50,000/□(Rupees Nineteen Lacs and Fifty Thousand Only) as damages for malicious prosecution and defamation.

Plaintiff 's Case

2. The brief facts of the case as borne out from the record are that the plaintiff is a retired government offices who belongs to a respectable schedule caste family. The plaintiff is a well educated person who had graduated from Hansraj College, Delhi University in the year 1969 and joined Indian Airlines as Traffic Assistant and got promoted as Traffic Superintendent in the year 1978. The plaintiff was further promoted as Traffic Officer and thereafter as Deputy Manager (Commercial) in the year 1996 and retired from Indian Airlines as Deputy Manager (Commercial) in the year 2003.

3. The plaintiff has three sons and one daughter. The eldest son of the plaintiff is an MBBS and MD (Pediatrics) and is posted as Chief Medical Officer in a Delhi Government Hospital. The wife of eldest son of the plaintiff is also an MBBS, MD (Pathology). The second son of the
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plaintiff is a graduate from Delhi University and is running a business of Internet Services. The youngest son of the plaintiff is also a graduate from Delhi University and is running his own Travel Agency. The daughter of the plaintiff has graduated from Delhi University and has done MBA (Finance) and is presently posted as Branch Manager in State Bank of India. All the relatives of the plaintiff live in Delhi.

4. It has been averred that in the month of January, 2007, the plaintiff purchased a plot in the name of his wife, measuring 75 square yards bearing plot no. 485□ B , f r o m o n e M r . M a h i n d e r S i n g h , B H U M I D A R of the said land and thereafter, the defendants visited plaintiff's residence on 27.01.2007 and intentionally passed derogatory remarks about his caste and asked as to how he dared to buy that land in their neighbourhood and threatened him of dire consequences if he tried to enter that land. The plaintiff later came to know that the defendants wanted to grab the land which he (plaintiff) had purchased.

5. It has been submitted that on 28.05.2007, both the defendants blocked the way and restrained him from going to his office and threatened to kill him. The plaintiff received a number of injuries in hand (fracture in finger), spinal cord, chest and eardrum due to which the plaintiff became partially deaf. Thereafter, the plaintiff got registered an

FIR bearing no. 356 dated 29.05.2007 under Section 323/325/341/506 IPC at police station Vasant Kunj. On 02.06.2007, defendant no. 1 called the plaintiff on his mobile phone and threatened him that as he had registered a complaint in police, her husband was arrested and she would
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take a revenge of the same. On this the plaintiff again made a complaint at police station Vasant Kunj vide DD no. 29A dated 12.06.2007.

6. It has been averred that in order to defame the plaintiff and to take the revenge, both the defendants hatched a conspiracy and implicated the plaintiff and one Mr. Onkar Nath Tiwari (neighbour), in a false case bearing FIR No. 427 / 2007 , under Section 452/342/376/377/511/506/34 IPC at police station Vasant Kunj which was registered on the complaint of defendant no. 1 Mrs. Jagmohini. The plaintiff got arrested in the said case on 21.06.2007 and remained in judicial custody for about ninety six days. He had to undergo severe mental tension, torture, agony and trauma.

7. It has been submitted that the plaintiff felt insulted and humiliated as he had to suffer the stigma of commission of such a serious offence of rape at the fag end of his life at the age of sixty five years. The plaintiff also suffered financial loss as he had to engage a counsel to defend him in the said rape case. In addition to this, the plaintiff had to undergo the trauma of protracted trial for a long period of five years and suffered defamation. The plaintiff got acquitted in the said case vide judgment dated 21.04.2012, passed by the learned Additional Sessions Judge . However, the plaintiff had to suffer grave humiliation, mental tension, agony and trauma of defamation as the news of false implication of plaintiff in a rape case got published in all the leading newspapers of Delhi. It further defamed the plaintiff in the eyes of public at large.

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8. It has further been averred that during the trial of the aforesaid case as well, both the defendants kept on propagating and circulating the malicious propaganda in the neighbourhood, locality and in the society at large that plaintiff is a characterless person who has committed a heinous offence of rape as a result of which the relatives, neighbours, ex-colleagues, persons of locality and general public told the plaintiff that they used to respect him a lot and used to keep him at a very high esteem but after hearing about the allegations of rape against him, the respect of plaintiff in their eyes got lost. It has been due to the false implication of the plaintiff in a case of

rape by defendants and defamation of the plaintiff in the society at large, the plaintiff had suffered mental tension, torture, and agony for a continued period of five years and had also suffered humiliation and social boycott during this period and had to undergo trauma of being in jail for ninety six days. The plaintiff had also sent a legal notice to the defendants calling upon them to tender an unconditional apology and to make a payment of Rs . 1 9 , 5 0 , 0 0 0 / □ , however, despite service of the legal notice, the defendants did not send any reply of the same.

9. The plaintiff filed replication wherein he reiterated and reaffirmed the facts mentioned in his plaint.

Defendants' Case

10. Defendants filed written statement on 30.10.2012 wherein they contested the suit inter alia on the grounds that the suit filed by the Plaintiff for Recovery : "Decreed" Page no. 5 of 19 CS No. 1643/2013 "Puran Chand Kaushal vs. Jagmohini Sangwan and Ors." DOD: 27.08.2016 plaintiff is without any cause of action and the plaintiff has concealed various material facts from the court. It has been submitted that the matter is still subjudice before the Hon'ble High Court of Delhi and thus, the present suit is not covered under the ingredients of malicious prosecution.

11. It has been submitted that a land had been purchased by the defendants for the purpose of using the same for their school, from the person to whom the plaintiff sold the same and the defendants were well in possession of the said land and are having genuine documents in their favour. It has added that no criminal cases are pending against the defendants and they are peace loving citizens having deep roots in the society.

12. It has been submitted that no incident took place on 28.05.2007 and the plaintiff himself took up quarrel with some other persons and received injuries and with the connivance of police got a case registered against the defendants and the said matter is still pending for trial before the concerned court. It has been submitted that the plaintiff is jealous of the defendants as they are very successfully running a school in their area.

13. It has further been averred that so far as the rape case is concerned, although the plaintiff has been acquitted in the said case by the learned trial court but an appeal against the order of the learned trial court is subjudice before the Hon'ble High Court of Delhi. The defendants Suit for Recovery : "Decreed" Page no. 6 of 19 CS No. 1643/2013 "Puran Chand Kaushal vs. Jagmohini Sangwan and Ors." DOD: 27.08.2016 have denied that the plaintiff was implicated in a false case of rape and have stated that the

allegations made in the said case were true and correct. It has been added that the present case has been filed by the plaintiff only with a view to harass the defendants and to extract money from them.

Issues

14. Vide order dated 09.01.2013 passed by the learned predecessor of this court, the following issues were framed:□

1. Whether the plaintiff is entitled to recover damages of Rs.5 lacs from the defendant for malicious prosecution? OPP

2. Whether the plaintiff is entitled to recover Rs.4.5 lacs from the defendant which was spent by the plaintiff towards legal charges to defend himself in the Court? OPP

3. Whether the plaintiff is entitled to recover Rs.10 lacs from the defendant for loss of reputation? OPP

4. Whether the suit is bad for mis□joinder and non□joinder of necessary parties?OPD

5. Relief;

Parties' Evidence

15. The plaintiff has examined three witnesses in support of his case
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i.e. PW□ the plaintiff himself, PW□2 Mr. Ramesh Chand Gautam, one of the neighbours and PW□
3 Mrs. Pritam Kumari, sister of the plaintiff.

16. The defendants examined only one witness in their defence DW□1
Mr. Rajinder Kumar Sangwan, defendant no. 2 himself.

Findings

17. The record has been carefully and thoroughly perused.

Submissions of either side have been heard and considered.

18. The issue wise findings in the matter are as follows:

Issue no. 1. Whether the plaintiff is entitled to recover damages of
Rs.5 lacs from the defendant for malicious prosecution? OPP Issue no. 2

Whether the plaintiff is entitled to recover Rs.4.5 lacs from the defendant which was spent by the plaintiff towards legal charges to defend himself in the Court?

OPP Issue no.3 Whether the plaintiff is entitled to recover Rs.10 lacs from the defendant for loss of reputation? O P P

The onus to prove these issues is on the plaintiff.

19. It is the admitted case of parties that they have entered into a Suit for Recovery : "Decreed" Page no. 8 of 19

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20. The Memorandum of Understanding Ex. DW1/PA reads as under:□".....

a) Suit for recovery of damages to the tune of Rs.19,50,000/□ for defamation and malicious prosecution against the Second Party vide Suit CS No. 1643/13 which at present is pending in the Court of Additional District Judge, Dwarka, New Delhi, previously presided over by Mr. Vinod Yadav, A.D.J. Dwarka which is fixed for recording of defendant's evidence on 21.02.2015.

b) Criminal complaint under Section 200 Cr. P. C. for offence of section 500 IPC which is now pending before the Court of Mr. Sunil Kumar Sharma, Metropolitan Magistrate, New Delhi, which is fixed for pre-□summoning evidence on 28.02.2015.

c) Criminal Case registered in FIR No. 356/2007 under Section 323, 325, 341, 506 IPC pending before the Court of Ms. Gomti Manocha, Metropolitan Magistrate, New Delhi which is fixed for prosecution evidence on 19.03.2015.

d) Criminal Case under Section 3 of SC/ST Act registered on FIR No. 451/2007, pending before the Court of Mr. Vimal Kumar Yadav, Additional Sessions Judge, Saket, New Delhi, which is fixed for defence evidence on 10.02.2015.

e) Criminal Case under Section 3 of SC/ST Act registered

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on FIR No. 523/2014, pending in the Court of Mr. Reetesh Singh, Additional Sessions Judge, New Delhi which is fixed for prosecution evidence on 05.02.2015.

.....the parties have amicably settled their disputes and differences and has agreed as under:

a) That the Second Party has agreed to pay the First Party has agreed to accept a total sum of Rs.16,00,000/□(Rs. Sixteen Lakh only) towards entire satisfaction of the above stated amount claimed in the civil suit C. S. No. 1643/2013 filed by him against the Second Party. On receipt of the said amount on the disputes between the parties shall stand resolved.

However, the parties have agreed that the above stated total sum of Rs.16,00,000/□ shall be paid by the Second Party to the First Party in the following manner :□ I. A sum of Rs.5,00,000/□ (Rs. Five Lakh only) by way of money transfer is being paid today in the account of the First Party at the time of execution of this Memorandum of Understanding.

II. A sum of Rs.5,00,000/□ (Rs. Five Lakh only) shall be paid by the Second Party to the First Party by way of money transfer in the account of the First Party on or before 10 th of February, 2015.

III. It has been agreed that the balance amount of Rs.6,00,000/□ (Rs. Six Lakh Only) shall be paid by the Second Party to the First party on 21.02.2015 or any day thereafter, by way of Demand Draft/cash/Banker's cheque at the time of withdrawal of CS No. 1643/2013.

IV. That it has been agreed between the parties that the First Party shall, on receipt the above stated total amount shall withdraw the above numbered civil suit from the court of Additional District Judge, Dwarka, New Delhi.

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V. That it has been agreed between the parties that the Second Party in the meanwhile, shall file a petition under Section 482 Cr. P. C. for quashing of FIR No. 451/2007 and proceedings under Section 3 of the Prevention of Atrocities on Scheduled Castes and Scheduled Tribes Act, pending in the court of Mr. Vimal Yadav, ASJ, Saket, New Delhi and another petition under Section 482 Cr. P. C. for quashing of FIR No. 523/14 and proceedings under Section 3 of the Prevention of Atrocities on Scheduled Castes and Scheduled Tribes Act, pending in the court of Mr. Reetesh Singh ASJ, Patiala House, New Delhi. The First Party has undertaken to sign, swear and give his affidavit giving no objection to the quashing of both the FIRs and proceedings and further to appear before the Hon'ble High Court as and when informed to appear by the

Second Party. The First Party has further agreed to coöperate Second Party, in all respects for quashing of both the above stated FIRs and proceedings.

d) That the First Party has further agreed to compound the offences under Sections 323/341/325/506 IPC in case FIR No. 356/2007 pending in the court of Ms. Gomti Manocha, MM, New Delhi and not to pursue the same any further.

e) It has, further been agreed that the First Party shall also withdraw the criminal complaint filed by him vide CC no. 31/1B/2014 from the court of Mr. Sunil Kumar Sharma, MM, New Delhi prior to withdrawal of the above mentioned Civil Suit No. 1643/2013.

f) That it has also been agreed that after withdrawal of the above stated civil and criminal case and payment of the entire settled amount, no claim of any sort shall remain pending against each other between the parties named above and none of the parties shall lodge any complaint to any authority or file any civil or criminal case, against the other in respect of the above mentioned cases/matters.

g) That it has been agreed that after completion o

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terms and conditions of this Memorandum of Understanding both the parties shall live in harmonious atmosphere and shall maintain peace and tranquility in the area and shall live peacefully.

h) That both the above stated Memorandum of Understanding has been agreed and executed by the parties out of their free will and consent without any pressure, coercion or undue influence from any corner whatsoöver.

i) That the parties hereby bind themselves and undertake to abide by all the terms and conditions mentioned in this Memorandum of Understanding and ensure to obey the same.

j) That two sets of this Memorandum of understanding has been prepared and signed by both the parties and both sets shall be treated as originals as each set is being kept by each party.

....."

21. DW□ has admitted about the matters/FIRs registered against him which are mentioned at c, d, & f on page 1 and 2 of Memorandum of Understanding Ex. DW1/PA. He has also admitted that his wife defendant no. 1 got registered an FIR No. 427/2007 under Section 376 IPC, Police Station Vasant Kunj South against plaintiff and co□accused Govind Tiwari and both accused have been acquitted.

22. DW□ has also admitted that his wife (Defendant no. 1) had preferred an appeal against acquittal in case FIR No. 427/2007, Police Station Vasant Kunj South which was dismissed with cost of Rs.10,000/□ She had also filed SLP before the Hon'ble Supreme Court which was Suit for Recovery : "Decreed" Page no. 12 of 19
CS No. 1643/2013 "Puran Chand Kaushal vs. Jagmohini Sangwan and Ors." DOD: 27.08.2016 dismissed. He volunteered that cost of Rs.10,000/□ imposed by the Hon'ble High court was waived off.

23. It is admitted fact that a sum of Rs.10,00,000/□ as part payment of settled amount of Rs.16,00,000/□ was paid to the plaintiff and balance of Rs.6,00,000/□ has yet to be paid. DW□ has deposed that he has already paid a sum of Rs.5,00,000/□ at the time of quashing of FIR No. 523/2014, Police Station Vasant Kunj South (mentioned at 'e' on page 2 of Ex. DW1/PA) which was quashed. He has also deposed that he (DW□) had paid a sum of Rs.5,00,000/□ to the plaintiff at the time of quashing of FIR No. 451/2007, Police Station Vasant Kunj South (mentioned at 'd' on page 2 of Ex. DW1/PA). He has admitted that it was not quashed by the Hon'ble High Court, as since then the charges were not framed against him (DW□) and the Hon'ble High Court had directed them to approach the learned trial Court for recalling the summoning order. It is also admitted fact that in that case DW□ 1 was acquitted. The certified copy of judgment of acquittal dated 20.10.2015 is Ex. DW1/PB. DW□ 1 has also deposed that he had not informed the Hon'ble High Court in petition for quashing the FIR No. 451/2007 under Section 3 of Schedule Castes and Schedule Tribes (Prevention of Attrocities) Act, 1989, Police Station Vasant Kunj South that plaintiff has filed a false complaint against them (Defendant no. 1 and Defendant no. 2).

24. DW□ has deposed that compromise was arrived at with the intervention of PANCHAYAT. He has denied the suggestion that he has not paid a sum of Rs.6,00,000/□ i.e. the balance settled amount of Suit for Recovery : "Decreed" Page no. 13 of 19
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that matter, however, balance Rs.1,00,000/- he (DW1) is still ready to pay and the PANCHAYAT is also of the same view.

25. DW1 has admitted during the course of his cross examination that plaintiff had appeared in the court of Mr. Loveleen, learned Metropolitan Magistrate, Patiala House Courts on 12.01.2016 and got the offence compounded in case FIR No. 356/2007 under Section 341 / 325 / 506 Indian Penal Code, Police Station Vasant Kunj South (mentioned at 'c' on page 1 and 2 of Ex. DW1/PA) vide order/statement certified copy of which is Ex. DW1/PC.

26. DW1 cleverly deposed that he is not aware whether pursuant to Memorandum of Understanding Ex. DW1/PA, the plaintiff had withdrawn Complaint Case No. 31/1B/14, Police Station Vasant Kunj South titled "Puran Chand Kaushal v. Jagmohini Sangwan and Others"

(mentioned at 'b' on page 1 of Ex. DW1/PA) on 11.12.2015 and Certified copy of order is Ex. DW1/PD.

27. The details of litigations between the parties and their outcome is as under: Page no. 14 of 19
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Srl. Case Details Withdrawal/FIR Date of No. quashed/Acquittal Disposal
1 Complaint Case No. 31/1B/14 Complaint withdrawn vide 11.12.2015 (mentioned at 'b' in Ex. DW1/PD DW1/PA) 2 FIR No. 356/2007, Police Case compounded vide 12.01.2016 Station Vasant Kunj South Ex.DW1/PC (mentioned at 'c' in Ex.

DW1/PA) Station Vasant Kunj South (mentioned at 'e' in Ex.

| | | |
|---|---|---|
| 4 | DW1/PA) FIR No. 451/2007, Police Station Vasant Kunj South (mentioned at 'd' in Ex. DW1/PA) | Acquitted vide Ex. 20.10.2015 DW1/PB (FIR was not quashed by the Hon'ble High Court since then the charges were not framed against the defendants as deposed by DW-1) |
| | (mentioned at 'a' in Ex. DW1/PA) | |

28. It is noteworthy that after withdrawal, compounding, acquittal and quashing in matters at Serial No. 'b' to 'e' on page 1 and 2 in Ex. DW1/PA, defendants are trying not to pay balance settled amount. Memorandum of Understanding Ex. DW1/PA shows that all the five matters were settled for sum of Rs.16,00,000/- and Rs.10,00,000/- has

already been paid. For balance payment of Rs.6,00,000/□defendants are ready to pay Rs.1,00,000/□ and are not ready to pay Rs.5,00,000/□. Defendants have taken the plea that the settlement was case wise. In case Suit for Recovery : "Decreed" Page no. 15 of 19 CS No. 1643/2013 "Puran Chand Kaushal vs. Jagmohini Sangwan and Ors." DOD: 27.08.2016 FIR No. 451/2007, Police Station Vasant Kunj South (mentioned at 'd' on page 2 of Ex. DW1/PA), defendants were acquitted even though settlement was for quashing. They had to face full trial. Rs.5,00,000/□ was for this case FIR No. 451/2007, Police Station Vasant Kunj. There is nothing on record to show that plaintiff has not co□perated for quashing of this FIR.

29. DW□ has even denied the suggestion that plaintiff got his statement recorded before the learned Additional Sessions Judge, South District, Saket. He has also denied the suggestion that plaintiff had appeared before the learned Additional Sessions Judge, South District Saket on the date defendants were acquitted and had submitted before the court that the matter had been settled and the Hon'ble High court had not quashed the FIR and the plaintiff wish to withdraw the matter as settled.

30. It is also noteworthy that there is nothing on record to support version of defendants that settlement vide Ex. DW1/PA was case wise settlement. Not an iota of evidence is on record in this regard. The defendants have acted upon the Memorandum of Understanding Ex. DW1/PA partly. After withdrawal, compounding, acquittal, quashing of FIR against the defendants (all criminal cases) and now only the instant case is pending against the defendants (only civil case) the defendants have attempted to withdraw from the Memorandum of Understanding Ex. DW1/PA which cannot be permitted. Defendants cannot be permitted to take benefit and deny to pay balance settled amount to the plaintiff.

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Memorandum of Understanding Ex. DW1/PA has to be considered as a whole and not in peacemeal/case wise.

31. Memorandum of Understanding Ex. DW1/PA is admitted piece of evidence. Payment of Rs.10,00,000/□is also not disputed. In this backdrop, this court is of the considered view that nothing more is required to be proved by the plaintiff. Defendants are making mockery of the court. For criminal cases against them, they have taken benefit, plaintiff has also co□perated for withdrawal, compounding, quashing of FIR etc. The parties have acted upon the Memorandum of Understanding. Hence defendants cannot be given liberty to deny the

Memorandum of Understanding Ex.DW1/PA.

32. The argument put forth by defendants that no document/evidence for legal charge, loss of reputation etc. has been proved, has no force keeping in view the Memorandum of Understanding Ex. DW1/PA.

33. Learned counsel for the defendants has relied on judgment titled Ramlal vs. Mahender Singh, AIR 2008, Raj 8. This judgment is not disputed, but with due regard keeping in view the facts and circumstances of the instant case where in Memorandum of Understanding Ex. DW1/PA has also been acted upon, the judgment relied is of no help to defendants.

34. In view of the abovesaid discussion, this court is of the considered view that since Memorandum of Understanding Ex. DW1/PA has already Suit for Recovery : "Decreed" Page no. 17 of 19 CS No. 1643/2013 "Puran Chand Kaushal vs. Jagmohini Sangwan and Ors." DOD: 27.08.2016 been acted upon, the defendants have already taken benefit of the same in criminal cases, the plaintiff has also complied with the Memorandum of Understanding Ex. DW1/PA and has co-operated for settlement/withdrawal/compounding/quashing/acquittal etc., a sum of Rs.10,00,000/- has already been paid to the plaintiff, defendants are duty bound to pay balance settled amount i.e. Rs.6,00,000/- to the plaintiff, now defendants cannot be permitted to misuse the Memorandum of Understanding Ex. DW1/PA by twisting its terms and conditions. In view of Memorandum of Understanding Ex. DW1/PA, conditions (a) (III) and (IV) on page 2 and 3, defendants are liable to pay a sum of Rs.6,00,000/- to the plaintiff. Accordingly, issue no. 1 to 3 are decided in favour of the plaintiff and against the defendants.

35. Issue no. 4 Whether the suit is bad for misjoinder and nonjoinder of necessary parties? O P D
The onus to prove this issue is on the defendants. Nothing material has come on record in support of this issue. Nothing is on record to show as to how suit is bad for misjoinder and nonjoinder of necessary parties. Mere averment in the preliminary objection no. 4 that State was not joined as necessary party has no force. No such argument has been put forth in support of this issue. This court is of the considered view that defendants have failed to prove this issue in their favour. This issue is decided against the defendants and in favour of the plaintiff.

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36. Relief.

In view of the evidence, record and issue wise findings, the suit of the plaintiff is decreed as under :

(a) Decree in the sum of Rs. 6,00,000/□ (Rupees six lacs only) is passed in favour of the plaintiff and against the defendants.

(b) Parties shall bear their own cost.

37. Decree sheet be prepared accordingly.

38. File be consigned to Record Room.

Dictated & Announced in the
open court on 27.08.2016

(PINKI)
Addl. District Judge-01/South-West
Dwarka District Courts: New Delhi

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