

No. 21 Dt. 23-1-2020.

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**COURT NOTICE
(U/o 5 Rule 20 CPC)**

**IN THE COURT OF Dr. Ram Niwas Bharati
District and Sessions Judge Sirsa**

**Next Date, Purpose of case, Orders and Judgments as well as other
case information is available on <http://ecourts.gov.in>**

SATNAM KAUR

Vs.

SMT. RAJVINDER KAUR

CNR No. HRSI01-004980-2019

Next Date:- 12-02-2020

PUBLICATION ISSUED TO:

RAJENDER SINGH

Father :-KHAN SINGH

H. NO. 4 GALI NO. 4, NEW AGAR NAGAR LUDHIANA PUNJAB

The Manager
Chardi Kalan News Paper
Patiala, Punjab.

Whereas it has been proved to the satisfaction of the Court that the defendant(s)/respondent(s) above named cannot be served in the ordinary way of service. Hence, this proclamation **under order 5 Rule 20 CPC** is hereby issued against him/them and should appear personally or through their counsel on **12-02-2020 at 10:00 a.m.**

Take notice that, in default of his/their appearance on the day before mentioned, the above said case will be heard and determined in his/their absence according to law.

Given under my hand and the seal of the Court, this **22-01-2020**.



**District and Sessions Judge
Sirsa**

IN THE COURT OF HON'BLE DISTRICT JUDGE, SIRSA:

Civil Suit No.	Date of Instt. of civil suit	Date of Decision of civil suit	Date of filing of appeal
138-C	15.09.2016	15.02.2019	11.03.2019

Value of the suit
Court fee & Jurdn.

Value of the appeal
Court fee & Jurdn.

Amount of Co

Rs.200/-

Rs.200/-

Rs.25/-

1. Satnam Kaur aged 54 years daughter of Smt. Ram kaur widow of Shri Khan Singh, ...Resident of Vill. Moriwala, Tehsil & Distt. Sirsa
2. Darshan Kaur aged 52 years daughter of Smt. Ram kaur widow of Shri Khan Singh, ...Resident of Vill. Moriwala, Tehsil & Distt. Sirsa

..Appellant/Defendant

Versus

1. Smt. Rajvinder Kaur wife of Shri Richhpal Singh son of Shri Harbaz Singh, resident of Vill. Kanganpur, Tehsil and Distt. Sirsa.
2. Rajender Singh son of Shri Khan Singh, Resident of House No.4, Gali No.4, New Agar Nagar, Ludhiana (Punjab).

...Defendants/ Respondents

3. Smt. Gurnam Kaur daughter of Shri Khan Singh & wife of Shri Surinder Pal Singh Chawla, Resident of Suratgarhia Chowk, Near Bank of Baroda, Sirsa, Tehsil & Distt. Sirsa.

...Proforma Respondent

Appeal against the Judgment & decree dated 15.02.2019 passed by the Court of Shri Abhishek Chaudhary, Learned Civil Judge (Junior Division), Sirsa in Civil suit No.138-C of 2016, vide which the learned Civil Judge, Sirsa has decreed the suit of the plaintiff and ordered that the plaintiff is entitled to claim damages of Rs.100,000/- from the defendants at the rate of 6% per annum from the date of filing of the earlier civil suit no.31-C of 2012/2014..

CLAIM IN APPEAL

For setting aside the Judgment & decree dated 15.02.2019, passed by the learned Lower Court Sirsa in a casual manner & also for dismissal of the suit filed by the plaintiff with costs as prayed for, by acceptance of appeal with costs.

Grounds of Appeal

Sir,

The appellants/defendants respectfully submit as under:-

1. That the Judgment & decree dated 15.02.2019 passed by the Court of Shri Abhishek Chaudhary, Learned Civil Judge (Junior Division), Sirsa in Civil suit No.138-C of 2016, vide which the learned Civil Judge, Sirsa has decreed the suit of the plaintiff and ordered that the plaintiff is entitled to claim damages of Rs.100,000/- from the defendants at the

rate of 6% per annum from the date of filing of the earlier civil suit no.31-C of 2012/2014, suffers from material irregularities of procedure and patent illegalities of law being passed in casual manner, without any speaking order, against law & facts, erroneous, hence the impugned Judgment and decree dated 15.2.2019 is liable to be set-aside. Certified copies of the impugned Judgment & decree are hereby enclosed for the kind perusal of this Hon'ble Court.

2. That in short the facts of the case are that the plaintiffs have filed a suit seeking the compensation on account of damages on the grounds that civil suit No. 31-c of 2012/2014, under Section 22 of Hindu Succession Act, titled as 'Satnam Kaur Vs. Rajvinder Kaur and others' was filed by the defendants (in "Which defendant no.3/Gurnam Kaur was proforma defendant) against the plaintiff vide which they had sought the relief of preferential right to acquire property being class-I legal heirs of Smt. Ram 'Kaur widow of Shri Khan Singh, their mother regarding the land measuring 16 kanal 19 marlas 6 sarsai, situated in village Moriwala tehsil and distt. Sirsa, which was sold by Rajinder Singh, proforma-defendant no.4, to the plaintiff vide registered sale deed no.5510 dated 03.10.2012. It is alleged that plaintiff had received summons from the court in that suit and she had put her appearance through her counsel and filed her written statement and reply to stay application through her counsel Sh.A.K. Gupta Advocate, Sirsa. The 'proforma-defendant no.4 had also filed

his written statement and reply to the application under order 39 Rules 1 and 2 read with section 151 of civil procedure Code. It is further alleged that as the defendants had filed the civil suit no.31-C of 2012/2014 without acquiring the valid cause of action and an application under order 7 rule 11 read with section 151 of Civil Procedure Code had also filed by the plaintiff in that suit and after taking reply of that application from the present defendants, the learned court of Sh. Balwant Singh, the then Addl. Civil Judge (Senior Division) Sirsa had rejected the application of the plaintiff vide order dated 03.03.2014. However, the plaintiff had preferred a civil revision No.3964 of 2014 before the Hon'ble Punjab and Haryana High Court at Chandigarh through her counsel Sh., Ashok Verma Advocate, Chandigarh and vide order of Hon'ble Punjab and Haryana High Court dated 29.09.2015 the civil revision was allowed and plaintiff's complaint was rejected. The present defendants had not preferred any appeal or revision against the order of the Hon'ble High Court to any other bench of High Court or to the Supreme Court of India. It is further alleged that a huge amount about Rs. 1 Lac/- was spent by the plaintiff on contesting the false and frivolous litigation of the defendant. It is further alleged that defendants deliberately and knowingly without any reasonable cause dragged the plaintiff into false and frivolous litigation maliciously and without any reasonable and probable cause, which affects the reputation of plaintiff as well as his family members also, in the Social

set-up of public at large in the local area as well as in the respectable and relatives and she was made to suffer depression and Hypertension and mental torture and agony for a long period of about three years and incurred expenses. The plaintiff had also suffered a great loss like economic loss and social loss, so plaintiff is entitled for compensation along with interest from the date of filing of that false suit. The plaintiffs approached and requested to defendants pay the abovesaid money/damages to the plaintiff with all interest, but every time defendants had put off the matter with one pretext or other and ultimately they had refused to pay the damages with interest to the plaintiff.

3. That on receipt of notice in the afore mentioned civil suit filed by the plaintiff, the appellants/ defendants caused their appearance & filed the detailed reply mentioning therein that the suit of the plaintiff is not maintainable in the present form; suit is not covered under Indian Contract Act as well as Law of Torts, suit of the plaintiff has not been properly valued for purpose of court fee and jurisdiction, plaintiff has no cause of action and locus standi to file the present suit and suit of the plaintiff is false and frivolous and the same is filed just to harass and humiliate the defendants. Further submitted that the civil suit No.31-C of 2012/2014 under which the defendants namely Satnam Kaur, Darshan Kaur and proforma defendant Gumam Kaur sought preferential right under Section 22 of the Hindu Succession, Act being a Class-I legal heir of Smt.Ram Kaur, resident of village

Moriwala, District Sirsa with regards to the land measuring 16 kanal [9 marlas 6 sarsai being a preferential right to acquire the interest of the suit land, which was sold by Rajender Singh who has been shown as proforma defendant in the present case, vide registered sale deed No.5510 dated 0-3.10.2012 in the name of the plaintiff. It is submitted that after appearance written statement was filed by Rajwinder Kaur (plaintiff in the present case) in which it is submitted that the suit land measuring 13 kanals 11 marlas of Khewat No. 10 measuring 8 kanal 0 marlas, Khewat No. 159 measuring 1 kanal 17 marlas* Khewat No. 463 land measuring 3 kanals 14 marlas as per jamabandi for the year 2007-08 was the self acquired property of Rajender Singh vendor and the defendants have no right under Section 22 of the Hindu-Succession Act. The plea taken by the plaintiff who purchased the land from Rajender Singh proforma defendant and taken-pleas that the property in question is self acquired property of Rajender Singh, whereas in fact and in reality, the property in question was purchased by Khan Singh and Ram Kaur, through registered sale deed. It is averred that Rajwinder Kaur further took wrong plea that the aforesaid land was never received by way of inheritance whereas the property in question purchased by Khan Singh himself and his wife namely Ram Kaur. It is further submitted that after the filing of the written statement, an application under order 7 rule 11 read with section 151 of CPC filed by the plaintiff and the same was dismissed vide

order dated 03:03.2014. It is further submitted that aggrieved by the said order, revision was filed before Hon'ble Punjab and Haryana High Court, and the said civil revision was allowed vide order dated 2-9.09.2015. It is further submitted that the findings of the Hon'ble Punjab and Haryana High Court, vide order dated 29.09.2015 in civil revision vide which the suit of the defendants had been dismissed only on the ground that the defendants have already seeking the permanent injunction in another civil suit. It is further submitted that that husband of the plaintiff is an advocate, who engaged the counsel in Hon'ble Punjab and Haryana High Court. It is denied that a huge amount about Rs.1 Lakh was spent by the plaintiff on contesting the false and frivolous litigation of the defendants. It is further submitted that in the pleadings the plaintiff has disclosed the name of counsel Shri Ashok Verma, Advocate,, whereas in the said para she disclosed that she has engaged different counsel and paid the fees to them. The other assertions regarding expert fee and other litigation expenses and misc. expenses which disclosed in this para are not spent by her as alleged in this para but concocted a false and frivolous story in this para. It is further denied by the "defendants that she has also suffered a great loss like economic loss and social loss, illegal act done by the them under the conspiracy and the Hon'ble Court has also observed in their impugned judgments. It is also worth while to mention here that the husband of the plaintiff in collusion with Rajender Singh

proforma defendant procured the sale deed with the recital that the possession of the land in question was delivered to the plaintiff whereas in Civil, suit titled as Satnam Kaur Vs. Rajwinder Kaur while deciding- an application under order 39 rules 1 and 2 the learned lower court as well as the appellate court held that the defendants are in possession of the land in question. It is further averred that a criminal complaint was filed by- Darshan Kaur under Section 420, 467, 468, 471, 120-B IPC against the plaintiff her husband and proforma defendant Rajender Singh in the Ld.Court of Chief Judicial Magistrate, Sirsa, in which they have been summoned in the aforesaid section and are facing trial in the above said complaint. It is settled law that no person can claim any damages in civil dispute as alleged in the plaint. The attitude of the plaintiff and her husband against the defendants are mischievous and several times they have threatened the defendants to occupy the suit land illegally and forcibly. It is further submitted that Rajwinder Kaur-plaintiff after purchasing the land in question falsely dragged the defendants in civil suit titled as Rajwinder Kaur Vs. Satnam Kaur, which is also pending and clubbed with the suit titled as Satnam Kaur-Vs. Rajwinder Kaur. It is averred that when Ram Kaur expired the husband of plaintiff has purchased the land from Rajender Singh in the name of the plaintiff wrongly and malafidely. After purchasing the land by the plaintiff in an illegal and improper manner, the defendants suffered a depression and Hypertension to face

drastic litigation. As such there is no question of any damages suffered by the plaintiffs.

4. That the learned Lower court has passed the impugned Judgment and decree on the basis of surmises and conjectures and as such the same is liable to be set-aside.
5. That while passing the impugned Judgment and decree dated 15.2.2019, the learned Trial Court has though specifically observed that, " Moreover it appears that the said suit has only been filed by the defendant with an oblique motive. Since the said suit has been rejected by the Hon'ble High Court, therefore it can be concluded that the suit has been filed maliciously. Further observed that DW1 in her cross examination admitted that an amount of Rs.100,000/- has been spent by the plaintiff"... These findings of the learned Trial Court are not warranted by law, facts and evidence. First of all, the learned Trial Court failed to apply its judicious mind that the plaintiff should prove their own case standing on their own legs. The plaintiff has filed the suit for compensation on account of damages, but the plaintiff completely failed to prove on file the damages suffered by her on account of the civil suit filed by the defendant/appellant. The plaintiff completely failed to prove on file any fee certificate paid to Shri Ashok Verma, Advocate, Chandigarh and also failed to prove on file that any such amount has been paid by her or by her husband, as no record of payment including the Income Tax return has been filed by the plaintiff/ respondent. It is also submitted that the

plaintiff even failed to disclose that she does not know who is standing counsel of the plaintiff in the appeals pending in the Court of Additional Distt. Judge, Sirsa. It is also submitted that the plaintiff during her testimony and cross examination completely failed to explain that how and when she even paid, visit at Chandigarh in concern with the said case or when she even met to the Counsel Shri Ashok Verma at Chandigarh. Thus the plaintiff failed to prove on file the damages to her on account of civil suit under which preferential right has been claimed by the appellants.

6. That while deciding the issue no.1, learned Trial Court has adopted the pick and choose policy, as the Hon'ble Court has wrongly interpreted the evidence of the defendant-Darshan Kaur, as the defendant has specifically made clear that the plaintiff has wrongly got written the thing about payment of Rs.100,000/- and also clarified that the husband of the plaintiff is an Advocate by profession and on account of same profession and being familiar to the husband of plaintiff, no fee has been paid by the plaintiff. Besides this the plaintiff also failed to prove on file any fee paid by her, as neither Mr. Ashok Verma nor Anil Kumar Gupta or any of their assistant has been examined nor any Fee certificate has been placed and proved with authentication hence the findings of the learned Trial Court are not warranted by the law and evidence.

7. That it is also submitted that it is well proved on file that the plaintiff-Darshan Singh in Civil suit no.31-C being the first

class legal heir of the deceased Ram Kaur whose land had been sold vide sale deed No.5510 Dated 3.10.2012, as such the plaintiff Darshan Kaur having the preferential right in the land has filed the civil suit No.31-C of 2012/2014, as such suit filed by the plaintiff-Darshan Kaur is fully covered under the provisions of Section 22 of the Hindu Succession Act, hence the basic ingredient/ condition of malicious prosecution, i.e "The defendant filed or pursued the original case for an improper purpose – it must be proven that the defendant pursued the original case for an abusive purpose, such as a desire to ruin the plaintiff's reputation, or simply out of malice or ill will." The same is not proved by the plaintiff Rajwinder Kaur in the suit filed by her, but this material thing has not been discussed by the Trial Court.

8. That the findings of the learned Trial Court on issue no.1 in the Civil Suit No. 138-c of 2016 are illegal, erroneous, against law and facts and the same are liable to be set-aside and the said issue ought to have been decided in favour of the appellants. Infact the findings of the learned Trial court on issue no.1 are result of mis-reading of evidence and mis-interpretation of law.
9. That the findings of learned Trial Court on issues no.2 to 4 are also erroneous as according the facts and evidence produced by the plaintiffs and these issue ought to have been decided in favour of the defendants/ appellants but

the same has been wrongly given up by the learned Trial Court.

10. That after deducting day spent in obtaining the certified copy of impugned judgment and decree, the appeal is being filed well within limitation.
11. That the requisite court fee is fixed on the appeal.

It is therefore, prayed that the impugned Judgment and decree dt. 15.2.2019 may kindly be set-aside and the suit of Plaintiffs/respondents may kindly be dismissed as prayed for, by accepting the appeal in hand with costs throughout, in the interest of justice. Any other relief which this Hon'ble Court may deem fit be also granted in favour of appellant.

Sirsa/12.3.2019

Submitted by

Satnam Kaur

Darshan Kaur

1. Satnam Kaur daughter of Smt. Ram kaur widow of Shri khan Singh, ...Resident of Vill. Moriwala, Tehsil & Distt. Sirsa
2. Darshan Kaur daughter of Smt. Ram kaur widow of Shri khan Singh, ...Resident of Vill. Moriwala, Tehsil & Distt. Sirsa

Presented by Sh. R.P. Sharma Adv -
Put up in Peshi on Today
Dated 12/3/2019
Hemraj
Superintendent
Gr.II (Judl.)

..Appellants/ Defendants

THROUGH: R.P SHARMA, ADV.SIRSA

R/S

Court fee is correct and
Appeal is within time
Hemraj
Asstt.