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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1630/2000

MASTER SAHIL & ORS. Plaintiffs
Through: Mr. Vaibhav Jain, Adv.

Versus

ASHOK BHALLA & ORS. Defendants
Through: Mr. Amit Bhalla and Mr. Abhishek
Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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22.12.2016

IA No.16046/2016 (of parties u/S 152 for clarification/modification of order dated 23rd May, 2016)

1. An application on the same lines as the present one, being IA No.13893/2016 filed earlier was dismissed as withdrawn on 9th November, 2016, after the counsels were heard and were unable to satisfy this Court of the relief as claimed in that application as well as this application being tenable in law.
2. Vide order dated 23rd May, 2016 a consent decree was passed in this suit for partition in accordance with the Memorandum of Settlement placed before this Court. As per the said Memorandum of Settlement, the properties were divided by metes and bounds.
3. The counsels state that the properties were not divided by metes and bounds vide the said Memorandum of Settlement but the said Memorandum of Settlement is merely a record of the said division.

4. Be that as it may, if the parties want an executable decree creating title in the respective parties with respect to the separate portions which have fallen into their share, they will have to pay the requisite stamp duty thereon. However, if the parties do not want a decree and merely want the suit to be disposed of as compromised in terms of Memorandum of Settlement, then the suit can be so disposed of. However, such an order will not be an executable order. This option was given to the counsels for the parties on 9th November, 2016 also when the earlier application aforesaid was filed and whereupon the counsels had withdrawn the application.
5. The same offer is made to the counsels today.
6. The counsels, besides relying on ***Kale Vs. Deputy Director of Consolidation*** (1976) 3 SCC 119 have also drawn attention to ***Bhai Manjit Singh Vs. Bhai Analjit Singh*** (2013) 133 DRJ 604. A perusal thereof does not show the Co-ordinate Bench to have held anything contrary to what has been observed above.
7. The counsels state that the order dated 23rd May, 2016 be modified to the extent stated in internal page 9 of the application.
8. The same does not solve the problem. If the parties want a decree, they will have to pay the stamp duty.
9. The counsels are unable to exercise either of the options. In such a situation, the application has to be dismissed.
10. Dismissed.

RAJIV SAHAI ENDLAW, J.

DECEMBER 22, 2016

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