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

+ **CS(OS) 303/2016**

SHRI KULDEEP SINGH DALAL & ORS Plaintiffs

Through: Mr. Sanjay Goswami, Advocate.
versus

M/S ANTRIKSH INVESTMENT PVT LTD & ORS Defendants

Through: Mr. N. Prabhakar, Advocate for D-2
and D-3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **26.03.2021**

I.A. 4570/2021 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

I.A. 4569/2021 (under Section 152 CPC for the rectification of the judgment and decree dated 24.05.2019)

3. This is an application filed by Defendant Nos. 2 and 3 in the suit, seeking rectification of the judgment and decree passed by this Court on 24th May, 2019.

4. Mr. N. Prabhakar, learned counsel for the Applicant submits that there is an error which has crept in the judgment passed by this Court and the same needs to be rectified under Section 152 of the Code of Civil Procedure, 1908. He submits that vide a settlement dated 25th April, 2019, all the stakeholders including the Applicants herein, contingent upon satisfaction of

their monetary claims *inter-se* Defendant Nos. 2 to 4, agreed to apportion 40% of the total land measuring 103 bighas belonging to Defendant Nos. 2 and 3 in the revenue estate of village Ghumenhera, New Delhi. The claim of 40% of the subject land was predicated by the Memorandum of Understanding (MoU) dated 19th July, 2012. All the stakeholders arrived at a settlement dated 25th April, 2019, inter alia in respect of the apportionment of 40% of the total land mentioned in the MoU. While calculating the 40% of the total land i.e. 103 bighas, inadvertently an arithmetical error crept in. He explains that 40% of the total land (which is 103 bighas) works out to be 41 bighas and 4 biswas (8.58 acres) and not 42 bighas and 13 biswas (8.89 acres), as erroneously recorded in the Settlement Agreement and the MoU referred above. Since the judgment and decree were passed on the basis of the Settlement Agreement dated 25th April, 2019, the said error has also crept in the judgment.

5. As a result of the aforesaid mistake, now Defendant Nos. 2 and 3 are being obliged to execute and register the sale deed in respect of 8.89 acres instead of 8.58 acres. The afore-noted mistake could not be discovered earlier because the Applicants never suspected that such a mistake could have been made by the counsel for Defendant No. 5 who had drafted the MoU dated 19th July, 2012 and the Settlement Agreement dated 25th April, 2019. The mistake came to light only after Plaintiff No. 2 and Defendant No. 5 filed Execution Petitions No. 49/2021 and 55/2020. It is further submitted that the Applicants are willing to execute the sale deeds in respect of 40% of the total land. Further reliance is sought to be placed upon a judgment of this Court in *Angle Infrastructure Pvt. Lt. v. Ashok*

Manchanda, 2016 SCC Online Del 1534.

6. The counsel for the non-Applicant on the other hand, draws the attention of this Court to the MoU Dated 19th July, 2012, and submits that the area of the land has been delineated in the schedule thereto. It is further submitted that the Settlement Agreement also categorically delineates the area which is sought to be conveyed by way of execution of sale deed. Thus, the so-called error which has been pointed out is in fact only a ploy to avoid the execution of the sale deed of the area which has been agreed to be conveyed by way of the sale deed in terms of the settlement arrived at between the parties. It is further argued that the Settlement Agreement was executed on 25th April, 2019 and only when the non-Applicant sought to execute the settlement, the Defendant Nos. 2 and 3 have belatedly approached this Court by way of this application which is clearly indicative of the fact that the error is only in their imagination. The settlement was worked out by the parties after carefully understanding the terms thereof, and the Applicants cannot, under the guise of a clarification application, be permitted to escape from their commitment recorded in the settlement.

7. The counsel for the parties have been heard at length. In the opinion of the Court, the Application is devoid of merits. The Court finds merit in the contention of the Plaintiff that the MoU dated 19th July, 2012, specifically delineates the area and this has to be given its due significance. Further, the settlement arrived at between the parties also specifically mentions the khasra numbers and the area, which reads as under:

“Land bearing no. Mustatil No. 33 Qila No. 2 (4-16), 9(4-16), Mustatil No.

24, Qila No. 23 (4-16), 24(4-16), Mustatil No. 24, Qila No. 20/1 (2-13), 14 (4-16), 8 (4-16), 7 (4-16), 13 (4-16), Mustatil No. 33, Qila No. 1/2 (1-12) situated in the revenue estate of Village Ghumenhera, New Delhi, total land measuring 42 bighas - 13 biswas/42,986 square yards / 8.89 acres of land.”

8. This settlement forms the basis of the judgment passed by this Court. Thus, there is no error in the judgment, as the Court proceeded on the basis of the settlement between the parties. If the area of the land was wrongly calculated, it cannot mean that there is an error in the judgment passed by this Court. Further, there appears to be no error as is sought to be portrayed before this Court. The settlement was arrived at before the Mediation Centre between the parties who were assisted by the counsels. The details of the khasra Nos. has been specifically given. The area has been calculated precisely and therefore it is hard to believe that there is an error in the calculation just because the said area works out to be more than the 40% of the total land. The Court cannot venture into this disputed question and modify the judgment which has been passed purely on the basis of settlement arrived at between the parties. Moreover the judgment of ***Angle Infrastructure*** (supra) arose in a Section 9 petition under the Arbitration and Conciliation Act, 1996 and it merely states that the executing Court is empowered to correct unintentional mistakes. The same is of no assistance to the Applicant in the present case .

9. In view of the above, there is no merit in the present application and accordingly, the same is dismissed.

SANJEEV NARULA, J

MARCH 26, 2021/nk