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

% Judgment delivered on: 18.04.2023.

+ CM(M) 613/2023 & CM APPL. 18684/2023

JASMIN SINGH

..... Petitioner

versus

JASBIR SINGH & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Siddharth Yadav, Sr. Adv. with Mr. Ankit Chadha, Advs.

For the Respondent : Mr. Narender Lodiwal, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 22.02.2023 in Misc DJ 76/2022 in CS DJ No. 278/2020 titled '*Jasmin Singh Vs. Jasbir Singh and Anr.*' whereby an application under Section 151 CPC, 1908 seeking amendment to the final judgment and consent decree dated 16.10.2020 was sought, was dismissed on the ground that the rectification of the consent order cannot be done, unless the mistake is apparent on the face of the record.

2. Mr. Yadav, learned senior counsel appearing for the petitioner submits that parties were *ad idem* on the aforesaid issue and that is how settlement agreement has been arrived at.

3. In fact, Mr. Yadav, learned counsel draws attention to the settlement agreement to submit that the consent of both the parties were

obtained in respect of the dispute between the parties regarding execution of sale deed etc. in favour of the petitioner i.e. Jasmin Singh by the respondent/defendant. Learned counsel submits that it was only an omission to not have included the sale consideration of Rs.42,000/- which were already paid by the father of the petitioner to the father of the respondent.

4. Learned counsel draws attention of this Court to page 23 containing the plaint of the petitioner, particularly to para 7 and 8 to submit that the plaintiff has categorically mentioned the said sum, as sale consideration, of the subject property. Learned counsel also refers to para 7 of the plaint of the written statement whereby the respondents have categorically admitted the said issue.

5. Learned counsel draws attention to the application under Order XXIII Rule 3 r/w Section 151 CPC, 1908 filed on behalf of the parties before the learned Trial Court to submit that the entire facts regarding the consent of the parties were recorded, barring this particular issue. On that basis, Mr. Yadav, learned senior counsel submits that the non-mentioning of the said amount as sale consideration was an error or an omission which falls within the ambit of the provision of under Section 152 of CPC, 1908.

6. Learned senior counsel that the reliance of the Trial Court on the judgment of Supreme Court in *Ajanta LLP Vs. Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer company Limited And Anr.* reported in (2022) 5 SCC 449 and applying the same to the facts of this case was not appropriate.

7. Learned counsel submits that in view of the aforesaid, the

impugned order ought to be set aside and the judgment and consent decree be rectified to include the sum of Rs. 42,000/- as having been paid and received by late father of the respondent to complete the sequence of events insofar as the execution of the consent decree is concerned.

8. Learned counsel appearing for the respondent submits that they have no objection whatsoever to such rectification and the same was also consented to by the respondent before the learned Trial Court.

9. This Court has considered the submissions of learned senior counsel appearing on behalf of the petitioner as well as learned counsel appearing for the respondent and has perused the entire record.

10. So far as the judgment of Supreme Court in *Ajanta LLP (Supra)* is concerned, there is no quarrel to the facts that the rectification or modification of judgment and decree is impermissible unless it is vitiated by fraud or a mis representation or created for a obvious mistake.

11. So far as the facts are concerned obtaining in the judgment of the of *Ajanta LLP (Supra)* is concerned, it appears from the reading of the fact that there were adversarial and contrasting assertions insofar as the rectification, judgment and decree is concerned. However, in the present case, the submission of the parties as well as the pleadings on record, that is, the plaint and the written statement, it is apparent that the parties are *ad idem* on the issues on which the modification was sought for and therefore the ratio as laid down by the Supreme Court would not be, in the humble view of this Court, applicable to the facts of the present case.

12. Having said that, this Court has considered the contentions in para

7 and para 8 of the plaint and the reply thereto filed in the written statement in para 7 & 8 of the preliminary objection and has come to the conclusion that so far as the assertion in respect of payment of sale consideration of Rs.42,000/- in respect to the subject suit property is concerned, the assertions has been met with positive admission on behalf of the respondent /defendant in its written statement. So far as this fact is concerned, it is apparent that there could be no qualms on the fact that parties were *ad idem* in respect of the aforesaid issue.

13. It appears from the submissions as also from the documents on record that inadvertently and due to oversight, the said extracts in respect of sale consideration have not found mention in the application under Order XXIII Rule 3 CPC, 1908.

14. Be that as it may, the bare reading of the covenants of the settlement agreement dated 16.09.2022 would bring to fore the fact that, the respondent/defendant had unequivocally agreed to execute the documents such as sale deed etc. in favour of the petitioner/plaintiff without any objection whatsoever.

15. Keeping that in mind and also the fact that there is a categorical written admission on behalf of the respondent /defendant in respect of the sale consideration of Rs.42,000/- paid by the late father of the petitioner/plaintiff to the late father of the respondent/defendant, there is no reason why the said error/omission could not have been inserted by way of the amendment in the judgment as well as the consent decree passed by the learned Trial Court.

16. In furtherance of the aforesaid, it would be apposite to extract the Section 152 CPC, which is as under:-

“Section 152- An amendment of judgments, decrees or orders.
Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

The plain reading of the aforesaid provision, brings to fore the fact that the errors or omission by the parties could also form part of the consideration and necessary corrections in that regard, is done by the court on its motion or by an application filed on behalf of either of the parties. The fact that the learned Trial Court had not considered the plain language, as appearing in Section 152 CPC, 1908 and applying to the facts, as arising in the present petition, makes the impugned order unsustainable in law.

17. In para 7 & 8 of the plaint as also the para 7 to 9 preliminary objections of the written statement are extracted as under:-

Para 7 & 8 of plaint

“7. As the Plaintiff had been residing in the Suit Property for more than five (5) years, hence offered to purchase the same. The father of the Defendants being an honourable man and in order to respect his word and Oral Agreement between the Parties, the Suit Property was sold to the Plaintiff for an agreed consideration of Rs. 42,000 (Rupees Forty Two Thousand Only). The entire amount of Rs. 42,000 stands paid .

8. However, before the legal formality of transfer of Suit Property in favour of the Plaintiff by way of execution of legal documentation, Mr. Santokh Singh unfortunately passed away on 24.12.1977, due to

which the paper-work/ documentation could not be completed in favour of the Plaintiff.”

Para 7 to 9 of written statement

7. During her lifetime, our Mother had informed us that the Plaintiff had then offered to purchase the Suit Property, sometime in the year 1981 and the same was agreed to be transferred in her favour, by our father. However, before any formal documentation could be executed by our father in favour of the Plaintiff, he unfortunately passed away.

8. It is correct that we have never resided in the Suit Property and all maintenance towards the same including payment of Property Tax, Electricity & Water Bills has been made solely by the Plaintiff.

9. It is however denied that we have ever disputed possession and/ or ownership over the Suit Property in favour of the Plaintiff. It is respectfully submitted that all the understanding towards Sale-Purchase of the Suit Property took place between our father, Sh Santokh Singh and his dear friend Sh Joginder Singh. It is our mother who has confirmed the said transaction to us, however, she is also unfortunately today not alive.”

18. The petitioner/plaintiff with the consent of the respondent/defendant sought insertion of para as under:-

“The plaintiff and paid and defendant has received full consideration amount of Rs.42,000/- towards the sale of the suit property, hence, no further amount towards the transfer of the property in favour of the plaintiff remains payable/ due to the defendant.”

19. In view of the aforesaid position and finding, this Court is of the

considered opinion that the para as mentioned above can and is permitted to be inserted in the impugned judgment as well as the consent decree dated 16.10.2020 as under:-

“The plaintiff and paid and defendant has received full consideration amount of Rs.42,000/- towards the sale of the suit property, hence, no further amount towards the transfer of the property in favour of the plaintiff remains payable/ due to the defendant.”

20. In view of above, the impugned order is quashed and set aside and the modification as directed above shall be inserted in the impugned judgment as well as consent decree passed by the learned Trial Court. The learned Trial Court is directed to issue a fresh judgment and consent decree dated 16.10.2020 after inserting the aforesaid paragraph.

21. It is also specifically made clear that the observations made herein are only applicable for the facts peculiar to the present case at hand and thus, the same shall not tantamount to or the present case is not to be considered as precedent for the future.

22. With the aforesaid, the petition is disposed of with no order as to costs.

23. Parties are directed to appear before the learned Trial Court on 12.05.2023.

24. A copy of this order be sent to the concerned court for compliance.

TUSHAR RAO GEDELA, J .

APRIL 18, 2023/ms