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

+ CS(OS) 210/2006

SH.RAVINDER NATH BHALLA

..... Plaintiff

Through: Mr. Ankit Jain, Advocate

versus

SH.AMAR NATH BHALLA

..... Defendant

Through: Ms. Nandni Sahni and Pavani Goel
for D-2

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
02.02.2016

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O.A. No.175/2014

This chamber appeal is directed against the order dated 16.08.2014 passed by the learned Joint Registrar, whereby the learned Joint Registrar while dealing with the plaintiffs application under Order 22 Rule 2 CPC has observed that the suit has abated qua defendant no.1. He further observed that there is no need for making an entry regarding the death of defendant no.1 in the memo of parties. The said fact has already come on record.

The background in which the present suit has been filed may, firstly, be noted. The plaintiff has filed the present suit to seek declaration and

cancellation of the sale deed executed by defendant no.1 (his father) in favour of defendant no.2 (his brother) on the premise that the said sale deed has been executed by defendant no.1 as an attorney of the plaintiff, which he was not. The case of the plaintiff is that they had not authorised defendant no.1 to sell the suit property on his behalf to defendant no.2. Defendant nos.1 and 2 filed a joint written statement, and the suit was contested by the two defendants jointly.

During the pendency of the suit, defendant no.1 has died on 31.05.2013. The plaintiff has moved the application under Order 22 Rule 2 CPC being I.A. No.13448/2013 on 12.08.2013. The case of the plaintiff in this application is that the beneficiary of the impugned transaction is defendant no.2 alone, and as such no right to issue survived upon defendant no.2. The plaintiff, therefore sought that a necessary entry be made with regard to the death of defendant no.1 in the memo of parties.

Defendant no.2 opposed the application on the ground that defendant no.1 was survived by several Class-I legal heirs, and the failure of the plaintiff to implead the LRs of defendant no.1 tantamounted to abatement of the suit qua defendant no.1. This submission of the defendant no.2 has been accepted by the learned Joint Registrar while passing the impugned order.

Counsel for the plaintiff submits that even though mesne profits had been claimed against both the defendants in the suit as per prayer (e), the plaintiff does not claim any such relief qua LRs of defendant no.1, except for defendant no.2 who is impleaded in the suit property in his personal rank.

I have heard learned counsel for the parties and in my view, the learned Joint Registrar has not correctly appreciated the legal position while

passing the impugned order. The case against defendant no.1, as already noted above, was that he acted as an attorney of the plaintiff while he was not holding such an attorney. It has been pointed out by counsel for defendant no.2 herself that under section 201 of the Contract Act, upon the death of either the principal or the agent, the contract of agency stands terminated.

The right to sue against defendant no.1 was a personal right in his capacity as an agent. It was not the case of the plaintiff or even defendant no.1 that he had a right in the suit property. Thus, no right to represent defendant no.1 survived upon his demise as it was the actions of the defendant no.1 as an agent of the plaintiff which have been called in question in the suit. Consequently, the right to sue did not survive against the legal representatives of defendant no.1 in the facts of the case.

Accordingly, the present appeal is allowed and the impugned order is set aside, and it is directed that an entry be made with regard to the death of defendant no.1 on 31.05.2015 in the memo of parties. The order of the learned Joint Registrar holding that the suit is abated qua LRs of defendant no.1 is set aside.

The amended memo of parties is taken on record.

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In view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), at the request of the counsels for the parties, the present suit is transferred to the Court of the District Judge (South-East), Saket Courts for further proceedings before the competent court on 28.04.2016.

It is made clear that as both sides are duly represented today, no fresh notice for appearance shall be issued and the parties shall ensure their presence before the concerned Court on the aforesaid date.

VIPIN SANGHI, J

FEBRUARY 02, 2016

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