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

+ RSA 163/2015

NARAIN DASS NIRWAN Appellant
Through Mr.Rajiv Bajaj, Adv.

versus

MANOJ KUMAR Respondent
Through Mr.S.K. Rout, Adv.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **25.02.2016**

Mr.Rajiv Bajaj, learned advocate for the appellant submits that the appellant died on 22.12.2015.

A copy of the death certificate has been brought on record at the instance of the respondent Manoj Kumar. The aforesaid death certificate is kept on record.

Learned counsel for the appellant submits that the deceased appellant is survived by his wife and two other sons, apart from the respondent Manoj Kumar. He further submits that in case the wife and the other two sons do not wish to pursue this case, such statements may be brought on record by way of an affidavit or a statement but only after they are impleaded as legal representatives of the deceased appellant.

The wife of the deceased appellant, Mst.Anguri Devi, is present in the Court. She submits that there has been an arrangement between her and her three sons regarding the suit property. She further submits that because of

her ill health, she would not be in a position to prosecute this case or come to the Court any further.

The respondent and his family members are also present.

The respondent also, in unison with his mother, submits that the dispute is over now as his father, the appellant, is dead and good feelings have been restored between the family members.

In that view of the matter, this Court is left with no other option but to order for abatement of the suit.

For the purposes of record, it is stated that the deceased appellant had filed a suit for mandatory injunction and in the alternative for possession of the first floor of the suit property. It was his case that Manoj Kumar, his son, was permitted as a licensee to stay on the first floor of the house in question. Since Manoj Kumar evinced bad behaviour and claimed to be the owner of the property, therefore, a suit was filed seeking mandatory injunction against his son not to disturb the peaceful existence of the appellant in the suit property.

The suit was decreed by the Trial Court.

The Appellate Court, however, differed with the findings given by the Trial Court on the premise that the plaintiff/appellant could not prove the ownership of the first floor of the house in which his son Manoj Kumar was residing. The relationship of a licensee-licensor also could not be established.

The Appellate Court was further of the view that the suit was bad for non-rejoinder and as other co-owners were not impleaded in the suit.

However, now, with the wife and one of the sons, who is the respondent in the present case, making a categorical statement before the

Court that the dispute between the family members have been settled, there is not reason for keeping the record of this second appeal pending.

As a result of the aforesaid discussion, the suit abates.

The present appeal has become infructuous and is dismissed accordingly.

ASHUTOSH KUMAR, J

FEBRUARY 25, 2016

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