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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1234/2015 & C.M. No.30808/2015**
RAMAN JUNEJA

..... Petitioner

Through Mr.S.C.Singhal, Advocate.

versus

KRISHAN LAL JUNEJA & ORS

..... Respondents

Through Mr.J.K.Bhola, Advocate for R-1 and
R-3.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **02.03.2016**

Order impugned before this Court is the order dated 06.11.2015 passed on an application filed by the legal representatives of the deceased plaintiff to bring them on record. Petitioner Raman Juneja (defendant in the Trial Court) is aggrieved by this finding.

Record shows that a suit for possession had been filed by the mother of the petitioner namely Smt.Sudershan Juneja against her son Raman Juneja. This was a suit for possession, recovery and mesne profits. Her contention was that the petitioner has only permissive permission to use the property. He had been served with a legal notice to vacate the suit property as the property was owned by the deceased mother. Accordingly, suit for possession and recovery of mesne profits was made against her son.

In the course of the proceedings, the plaintiff-mother had died.

An application under Order XXIII Rule 3 of the CPC was filed. It was admittedly within the stipulated period.

The averments contained in the application have been perused. It was stated that after the death of the mother, she had left behind her widower-husband and two daughters and one son. Since the son was already arrayed as defendant and against whom the litigation was pending, the present application sought impleadment of the husband and the two daughters as the legal representatives of the deceased plaintiff.

The impugned order had brought the two daughters and the husband of the deceased plaintiff on record as legal representatives. Contention before this Court is that the suit stands abated as no cause of action now remains as the mother having died and the legal representatives now claiming their rights in the suit property through their mother, the son (defendant) is also claiming his right on the suit property and without arraying him as a legal representative, the present proceedings are a nullity.

This Court is not in agreement with the submission of the learned counsel for the petitioner. The words used in the language of Order XXII Rule 3 are “legal representative”. A “legal representative” is a person who is entitled to represent the estate of the deceased on the death of the party. A “legal representative” may not necessarily be a “legal heir”.

The application under Order XXII Rule 3 of the CPC clearly states that right to sue survives qua the legal representative. The distinction between a “legal representative” and a “legal heir” is clear

and this has been held by a catena of judgments. Reliance by the learned counsel for the respondents on a judgment of the Andhra Pradesh High Court reported as 2005(1) Civil Court Cases 173 (A.P.) G.N.Kishore Reddy Vs. Venugopal Rao & Ors. as also on the judgment of the Punjab and Haryana High Court reported as 2002(3) Civil Court Cases 623 (P & H) Gurwinder Singh & Ors. Vs. Bawa Singh & Ors. have been noted.

These judgments lay down the proposition that a legal representative is arrayed for the purpose to ensure that the estate of a deceased does not remain un-represented. The person impleaded as a legal representative does not get an automatic right in the estate of the deceased.

In this factual matrix, the legal representatives of the deceased plaintiff have only been permitted to carry on the battle which has been started by their mother against her son. The question of the suit having come to an end with the death of the mother does not arise. This submission of the learned counsel for the petitioner is unfounded. This petition is malafide. It is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MARCH 02, 2016

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