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

*Date of decision: 23.07.2019*

+ W.P.(C) 7202/2001, CM APPLN. 10556/2012

KHEM CHAND

..... Petitioner

Through Mr. T. K. Ganju, Sr. Adv. with Mr. B. Tripathi, Mr. Abhishek Bhardwaj and Mr. Ranbeer Singh, Advs.

versus

UOI & ANR.

..... Respondents

Through Mr. Kirtiman Singh, Adv. with Ms. Rachna Srivastava and Ms. Umme Salma, Advs. for R-1

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**J U D G M E N T ( O R A L )**

**CM APPLN. 8324/2012**

1. Vide the present application, the respondent no.1 seeks direction thereby to dismiss the Writ Petition No. 7202/2001 as being abated due to death of the petitioner Sh. Khem Chand.

2. The writ petition was filed by the attorney of the petitioner for the possession of the land in question. Since no vacant land was available, to satisfy the verified claim of the petitioner, the petitioner was offered to settle for monetary compensation but he declined the same and asked for the

allotment of land in the alternative. The respondents had been exploring possibilities, since no vacant land was reported to be available, a possibility was being explored, to allot land after getting the same vacated from the unauthorized occupation.

3. Learned counsel appearing on behalf of the applicant/respondent no.1 submits that in pursuance of the Order dated 27.03.2012 for allotment of the alternate land to the Petitioner in Village Jaitpur, the matter was examined afresh to explore the feasibility for the allotment of agricultural land to Sh. Khem Chand. However, after scrutiny of old record afresh, it was noted that Sh. Khem Chand had executed an irrevocable Power of Attorney in favour of Sh. Hari Chand back in the year 1979. At that point of time, Sh. Khem Chand was residing at House No. 21, B.K. Dutt Colony, Lodhi Road, New Delhi and his brother Sh. Jagdish was residing in House No. 583 Aliganj, Lodhi Road, New Delhi.

4. An inquiry was conducted through the Police authorities and it has been informed that Sh. Khem Chand died back on 29.11.2003. The Assistant Sub Inspector, Lodhi Colony, Police Station has submitted a report that Sh. Mrinal K. Javeri as presently owner of House No. 21 B.K. Dutt Colony, who had purchased the said house from Sh. Banshi Lal and Sh. Bansi Lal had

purchased the said house from Sh. Narender Khatri S/o Khem Chand in the year 1996. Further informed that Sh. Narender Khatri is presently residing at G-9/3, Block G-9, Malviya Nagar, New Delhi. Also informed that Sh. Khem Chand died on 29.11.2003.

5. Learned counsel appearing for the applicant further submits that since, the petitioner Sh. Khem Chand died on 29.11.2003, after filing counter affidavit of the writ petition, therefore, the writ petition is abated and the rejoinder filed after the death of Sh. Khem Chand, is not to be taken into consideration.

6. Learned counsel further submits that the writ petition was filed by the attorney and after the death of the petitioner, the attorney filed an application No. 10556/2012 for impleadment and amendment in the writ petition.

7. The issue arises before this Court is, whether the attorney can be impleaded in writ petition as petitioner, based on the general power of attorney, executed by the deceased, after death of executant of attorney?

8. Learned senior counsel appearing on behalf of the Attorney submits that as per Section 202 of the Contract Act, if maker of the attorney died and attorney has the interest in the property, still the suit or writ petition does not abate.

9. To strengthen his arguments, learned senior counsel has relied upon case 188 (2012) DLT 538 whereby this Court observed as under:-

*“4. There is also one other aspect which needs to be clarified before proceeding ahead and which is whether a power of attorney given for consideration would stand extinguished on the death of the executant of the power of attorney. The answer to this is contained in illustration given to Section 202 of the Contract Act, 1872, and the said provision with its illustration reads as under;*

*"Section 202. Termination of agency, where agent has an interest in subject matter.-Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency, cannot, in the absence of an express contract, be terminated to the prejudice of such interest.*

*Illustrations*

- (a) A gives authority to B to sell A's land and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.*
- (b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death."*

*The object of giving validity to a power of attorney given for consideration even after death of the executants is to ensure that entitlement under such power of attorney remains because the same is not a regular or a routine power of attorney but the same had elements of a commercial transaction which cannot be allowed to be frustrated on account of death of the executants of the power of attorney."*

*“7. In my opinion, the respondent No. 1/plaintiff has*

*validly proved that the right in the suit property was transferred in his favour by means of the documents dated 16.5.1996. The witnesses to these documents deposed in favour the respondent No. 1/plaintiff and supported the execution of the documents. Learned Counsel for the appellant sought to argue that there were inconsistencies in the statement of the attesting witnesses because Sh.Munir Ahmed (PW- 3) stated that he did not know whether Sh. Kundan Lal used to put thumb impression or signatures and Sh. Shri Ram (PW-4) talked of a sale deed whereas the documents in question do not show existence of a sale deed. Learned Counsel for the appellant also argued that the brother Ram Swaroop (PW-2) stated that the property bearing No.290 Ambedkar Basti was given in gift and not in sale and thus there was contradiction in the statement of PW-2 because the suit property was not gifted but sold.”*

10. Learned senior counsel has also relied upon the other judgments on the same issues and submits that the present application filed by the respondent no.1 deserves to be, dismissed and the application filed by the attorney may be allowed.

11. It is not in dispute that under Section 202 of the Indian Contract Act, if the legal representative has interest in the property through irrevocable power of attorney even if executant of the attorney is expired.

12. This matter was partly heard on the last date of hearing and today heard at length. There is no direct judgment cited by either parties on the proposition that, if the writ petition is filed by the attorney on behalf of the petitioner who expired while writ petition was pending, still the attorney

holder has the right to be impleaded as writ petitioner. However, learned senior counsel for the attorney submits that the proportion of law cited and Section 202 of the Contract Act is applicable on the suit as well as on the writ petition.

13. I note, learned senior counsel has cited the case where the suit was pending and the plaintiff or defendant dies, in that eventuality, the suit is not abated. Moreover, Order XXII Rule (I) says, the death of a plaintiff or defendant shall not cause the suit to abate, if the right to sue survives. It is not in dispute that right to sue of the attorney is still there.

14. It is pertinent to mention here that there is no separate attorney, given by the petitioner, to file the writ petition. However, in the general power of attorney, it is stated that the attorney can file case in the Court and get the compensation or possession of the land. Though for the purposes of the suit and for the possession of land, the attorney has right in the property in question, despite the fact that the executant of the attorney has expired. But the fact remains that there is no such provision referred by the learned senior counsel that the writ petition still survives after death of the petitioner.

15. In view of above, since the petitioner has expired on 29.11.2003, therefore, the petition is abated on the very same day. However, the legal

heirs of the petitioner have not come forward to be brought on record. In that eventuality, the attorney has the option to withdraw the present writ petition and file the substantive writ petition or the suit before the competent court.

16. In view of above, I am of the considered opinion that the attorney of the petitioner cannot be impleaded as petitioner in the present petition which has already been abated on 29.11.2003, the date when the petitioner has expired. Therefore, I hereby allow the present application. Consequently, the application filed by the attorney vide CM APPLN. 10556/2012 for impleadment as petitioner is dismissed.

17. Before passing this order, keeping in view the interest of the power of attorney in the property by virtue of irrevocable general power of attorney, I hereby give liberty to the attorney / writ petitioners, to file the substantive writ petition, if so advised within two weeks from today or seek other remedy available under the law.

18. In view of above, the writ petition is dismissed as abated.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**JULY 23, 2019/ms**