

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.121 of 2014**

Setram, son of Shri Aasharam Rawat, aged about 60 years, resident of Village Singhanpuri, Police Station Tahsil Saja, District Durg (now District Bemetara).

---- Applicant

Versus

1. Biran, son of Shri Sonu Yadav, aged about 48 years, occupation Labour, resident of Village Budhwara, Tahsil Saja, District Durg (now District Bemetara).
2. State of Chhattisgarh, through the Collector, Bemetara (CG).

---- Non-applicants

For Applicant	:	Ms. Sharmilla Singhai, Advocate.
For Non-applicant No.1	:	Shri Sunil Sahu, Advocate
For Non-applicant No.2	:	Shri Neeraj Jain, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/07/2016

(1) Heard.

(2) Learned trial Court has rejected the application under Section 151 of CPC filed by the applicant/defendant holding that plea of res-judicata being mixed question of law and fact cannot be decided at preliminary stage.

(3) It is well settled principle of law that the question of res-judicata involves mixed question of law and fact and therefore requires not only examination of plaint but also other evidence, it cannot as such be a ground to reject plaint as recently held by Supreme Court in the matter

of **Vaish Aggarwal Panchayat Vs. Inder Kumar & Others**¹.

(4) In view of that learned counsel appearing for the applicant/defendant seeks permission of this Court to withdraw this civil revision and submits that the trial Court may be directed to decide the issues afresh after recording the evidence of the parties.

(5) On the other hand, learned counsel appearing for the non-applicant No.1/plaintiff submits that he has no objection and the plea of res-judicata may be decided along with other issues after recording the evidence.

(6) Accordingly, the applicant is permitted to be withdrawn the civil revision with the above-stated liberty and trial Court is directed to decide the plea/issue of res-judicata so raised along with other issues at the time of hearing of suit. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

L/-

