

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 810 of 2015

1. Magan S/o Lachindar, Aged About 85 Years R/o Village Talnaar, Tah. Bakawand Jagdalpur, District Bastar Chhattisgarh Civil And Revenue District Bastar Chhattisgarh
(Plaintiff)

---- Petitioner

Versus

1. Smt. Kaandrimani D/o Laikhan, Aged About 60 Years Caste Mahara, R/o Village Paikpaal, Tahsil Bakawand, Jagdalpur, District Bastar, Civil & Revenue District Bastar Chhattisgarh(Defendant No. 01)
2. State Of Chhattisgarh, Through The Collector, Jagdalpur District Bastar Chhattisgarh Civil & Revenue District Bastar Chhattisgarh(Defendant No. 3)

---- Respondent

For Petitioner	Shri Vikash A. Shrivastava, Advocate
For Respondent No.1	Shri Manoj Paranjapae, Advocate
For Respondent/State	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/08/2016

1. This petition under Article 227 of the Constitution of India is directed against the order passed by the trial Court dismissing the petitioner's application for restoration of civil appeal No.03-A/2013 (*according to the petitioner, the correct civil appeal number is 63-A/2013*) in the Court of Additional District Judge (Fast Track Court), Jagdalpur.

2. The petitioner preferred a suit for declaration of title, declaring the partition as illegal, permanent injunction and confirmation of possession. The defendants filed a counter claim and after the trial the petitioner's suit was dismissed and the counter claim has been decreed by the judgment and decree dated 22-3-2016 passed by the Second Civil Judge Class-I, Jagdalpur at Bastar in civil suit No.5-A/2004.
3. Against the said judgment and decree the petitioner had preferred civil appeal before the Additional District Judge, Fast Track Court, Jagdalpur. In the said appeal, an application was moved by the petitioner's counsel on 29-4-2015 seeking withdrawal of appeal under the provisions of Order 23 Rule 1 of the Code of Civil Procedure, 1908 (for short 'the CPC'). The application was taken up for hearing on the same day and the appeal was dismissed as withdrawn.
4. The petitioner, later on, moved an application on 23-7-2015 for restoration of the appeal on submission that he had never instructed his counsel to withdraw the appeal nor any consent was obtained from him for moving the application under Order 23 Rule 1 of the CPC and the said application is not supported by affidavit also. He also submitted that the lawyer had informed him that he is not required to attend each and every date of hearing and he will take care of the entire matter. He came to know about withdrawal of appeal when the other party moved an application before the Tahsildar, Bakawand, for

effecting partition and produced a copy of the order dated 29-4-2015.

5. The trial Court has dismissed the restoration application on the ground that there being an application under Order 23 Rule 1 of the CPC for which recitals are available in the vakalatnama, permitting the counsel to withdraw the appeal, therefore, the petitioner is deemed to have instructed his counsel for withdrawal of appeal.
6. Having considered the rival submissions and for the fact that the petitioner appears to be an old aged illiterate person of 85 years of age and the application for withdrawal of appeal was not supported with the affidavit and without entering into the controversy as to whether the lawyer has acted *bona fide* or has acted adverse to the interest of his client, ends of justice would be sub-served if the civil appeal is restored for its hearing on its own merits.
7. In view of the above, the orders dated 5-8-2015 & 29-4-2015 passed by the Court below are set aside and the matter is remitted back to the first appellate Court for deciding the appeal, in accordance with law and on its own merits.
8. Accordingly, the writ petition is disposed of with the observations as stated *supra*.

Sd/-