

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(227) No. 967 of 2015**

Deepak Agrawal S/o Shree Chandrabhan, Aged About 45 Years
 Profession: Business, Caste Agrawal, R/o Raigarh, Kotra Road, District
 Raigarh, (Chhattisgarh).

---- Petitioner**Versus**

1. Smt. Gontibai W/o Gajadhar, Aged About 62 Years Profession
 Agriculture, Caste Agharia, R/o Village Konpara, Tehsil Gharghoda,
 District Raigarh, (Chhattisgarh).
2. Radhelal, S/o Shambhu, Aged About 40 Years Occupation Farmer,
 Cast Aghariya, R/o Village Konpara, Tahsil Gharghoda, District
 Raigarh, (Chhattisgarh).
3. State Of Chhattisgarh, Through Collector, Raigarh, (Chhattisgarh).

---- Respondents

For Petitioner	Shri Arvind Shrivastava, Advocate.
For Respondent No.1.	Shri RS Patel, Advocate.
For Respondent/State	Shri Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/01/2017**

1. The present petition under Article 227 of the Constitution of India has
 been filed seeking for quashment of impugned order dated 12.08.2015
 which has been passed by the Civil Judge, Class-I, Gharghoda, Distt.
 Raigarh, in Civil Suit No.19-A/2014. Vide the said impugned order the
 court below has allowed the application under Order 23 Rule 1 CPC
 filed by the respondent for withdrawal of the suit with liberty to file a
 duly constituted fresh suit before the appropriate court.
2. Learned counsel appearing for the petitioner submits that the court
 below has committed an error of law to the extent that in addition to the
 technical error of the valuation of the suit, there were major defects in

the suit so far as limitation as well as the relief claimed for was for declaration simplicitor without possession and other ancillary reliefs. He further submits that the court below ought to have considered the fact that there were other major defects in the suit so far as limitation and as far as suit being for the declaration simplicitor, would not permit the respondent to withdraw the suit and the court ought to have dismissed the suit itself on this very ground.

3. At this juncture, counsel for the respondents submits that subsequent to withdrawal of Civil Suit No.19-A/2014 on 12.08.2015, the respondent No.1 has filed a duly constituted suit and which has been filed before Civil Judge, Class-I, Gharghoda where the suit has been registered as Civil Suit No.3-A/ 2016 on which the notices also have already been issued to the respondents and the present petitioner (defendant therein) has already entered appearance in the said suit.
4. In the light of the subsequent development, this court is of the opinion that no fruitful purpose would be served in entertaining this petition now. All the objections of the petitioner raised so far as maintainability of the suit like limitation can still be raised by the petitioner, who are defendant No.1 in the fresh suit which has been instituted by the respondent No.1.
5. With the aforesaid observations, the petition stands disposed off.

Sd/-
(P.Sam Koshy)
Judge