

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.790 of 2016**

Shri Krishna Builders & Developers A Registered Partnership Firm,
Having Its Office At Chaitanya Nagar, Raigarh, District Raigarh
(Chhattisgarh). Through Its Partner :-

(1). Gagan Rathi, S/o Madan Lal Rathi, Aged About 42 Years, R/o
Chaitanya Nagar, Raigarh, District Raigarh (Chhattisgarh)

(2) Pawan Agrawal, S/o Late S. R. Agrawal, Aged About 50 Years R/o
Kranti Nagar, Bilaspur, District Bilaspur (Chhattisgarh)

---- Petitioners

Versus

1. Ramdas Agrawal S/o Late Shishram Agrawal, Aged About 66
Years R/o Friends Colony, Raigarh, District Raigarh
(Chhattisgarh).
2. State Of Chhattisgarh, Through Collector, District Raigarh
(Chhattisgarh)

---- Respondents

For Petitioners	:	Mr.Ankur Agrawal, Advocate
For Respondent No.1	:	Ms Hamida Siddique, Advocate
For Respondent No.2	:	Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20/09/2017

1. By the impugned order, the trial Court has allowed respondent
No.1 to withdraw the previous suit with liberty to file afresh
suit, against which, this writ petition has been filed by the
petitioners herein.
2. Learned counsel for the petitioners would submit that the
application ought not to have been entertained by the trial
Court as proper court fee was not paid and therefore, it was
not a suit and it could not have been permitted to be
withdrawn with liberty to file afresh suit. He would rely upon

the judgment of the Supreme Court² in the matter of **Meenakshisundaram Chettiar Vs. Venkatachalam Chettiar**¹ and judgment of the High Court of Allahabad in the matter of **Mt. Asghari Begum Vs. Fasihuddin**².

3. On the other hand, learned counsel for respondent No.1 would support the impugned order.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

5. Sub-rule (3) of Rule 1 of Order XXIII of the Code of Civil Procedure reads as under:-

“(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.”

6. The trial Court has recorded a finding that suit is likely to fail by reason of some formal defect and there are sufficient grounds for allowing the plaintiff to file a fresh suit as necessary party has not been impleaded including the subsequent purchaser, therefore, respondent No.1 was

1 (1980) 1 SCC 616

2 AIR 1934 All 989

permitted to withdraw the previous suit with liberty to file afresh suit (See **V. Rajendran & others Vs. Annasamy Pandian thro. Legal representative**³).

7. The trial Court has recorded sufficient and valid reasons in permitting respondent No.1 to withdraw the previous suit. I do not find any jurisdictional error the impugned order.
8. Accordingly, the writ petition being without substance is liable to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-