

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 118 of 2017**

1. Mrinal Mallik S/o Gourchandra Mallik, Aged About 35 Years R/o Atal Awas Dharamjaigarh, Thana And Tahsil Dharamjaigarh, Civil And Revenue District Raigarh, Chhattisgarh

**---- Petitioner****Versus**

1. Jagannath Dey
2. Smt. Meena Dey W/o Jagannath Dey
3. Arun Dey S/o Jagannath Dey,

All are R/o Sector-2, Timber Colony, Raurkela, District Sundergarh Odisha

**---- Respondent**


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For Appellant

Sunil Sahu, Advocate

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**Hon'ble Shri Justice Prashant Kumar Mishra****Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board****By****Prashant Kumar Mishra J.****07/12/2018**

1. Learned counsel appearing for the appellant would seek permission of the Court to withdraw this appeal with liberty to move a fresh suit under the provisions of the Guardians and Wards Act, 1890 seeking custody of the minor.

2. *In Shiv Kumar Sharma v Santosh Kumari* reported in (2007) 8 SCC 600 the Supreme Court has held that a civil Court does not grant leave to file another suit. In the said case the following has been observed by the Supreme Court in para 29 :

“29.....In any event, if a second suit was maintainable in terms of Order 2 Rule 4 of the Code, as was submitted by Ms Luthra, no leave was required to be granted therefor. A civil court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made by a superior court.

3. In view of the above, if the appellant intends to file another suit, which is otherwise maintainable, no leave of the Court is necessary.
4. Accordingly, the appellant is permitted to withdraw this appeal subject, however, to the observations as stated *supra*.

Sd/-  
Judge  
Prashant Kumar Mishra

Sd/-  
Judge  
Vimla Singh Kapoor

Gowri