

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 22 of 2018**

- Tikamchand Rathi, S/o Mr. Amrit Lal Rathi Aged About 43 Years Farmer Of Village Aalekhunta, R/o Village Main Road Abhanpur, Tehsil Abhanpur, District Raipur, Chhattisgarh (Plaintiff)

---- Applicant**Versus**

1. Vasudev Chandrakar S/o Mr. Budheshwar Chandrakar Aged About 50 Years Caste Kurmi, R/o Village Achoti, Tehsil Kurud, District Dhamtari, Chhattisgarh,
2. Bhagwat Chandrakar S/o Mr. Budheshwar Chandrakar Aged About 56 Years Caste Kurmi, R/o Village Achoti, Tehsil Kurud, District Dhamtari, Chhattisgarh,
3. Gopi Krishna Chandrakar S/o Mr. Budheshwar Chandrakar Aged About 48 Years Caste Kurmi, R/o Village Achoti, Tehsil Kurud, District Dhamtari, Chhattisgarh,
4. Yogesh S/o Mr. Deenbandhu Chandrakar Aged About 27 Years Caste Kurmi, R/o Village Achoti, Tehsil Kurud, District Dhamtari, Chhattisgarh,
5. Smt. Devki Bai W/o Mr. Deenbandhu Chandrakar Aged About 55 Years Caste Kurmi, R/o Village Achoti, Tehsil Kurud, District Dhamtari, Chhattisgarh,
6. State Of Chhattisgarh Through The Collector Dhamtari, Chhattisgarh (Defendants),

---- Respondents

For Applicant	:	Shri Raza Ali, Advocate.
For Non-Applicants 1, 3 & 4	:	Shri Jitendra Gupta, Advocate.
For Non-Applicants 2 & 5	:	None.
For Non-Applicant 6/State	:	Shri Rahim Ubwani, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order on Board****23.10.2019**

1. This Revision Petition has been preferred by the plaintiff under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC)

questioning the legality and propriety of the order dated 06.02.2018 passed by the Civil Judge, Class-1, Kurud, District Dhamtari, in Civil Suit No. 317-A/2012, by which, the application filed by the plaintiff under Order 23 Rule 1 of the CPC has been refused.

2. Shri Raza Ali, learned counsel for the applicant submits that the Court below has committed an illegality in rejecting the application filed under Order 23 Rule 1 of CPC for withdrawal of the suit. According to him, although the Tahsildar, Kurud has passed the order on 04.12.2017 rejecting the application for mutation, but the appeal preferred thereagainst is still pending before the competent Revenue Authority. Therefore, under such circumstances, the trial Court ought to have permitted the plaintiff for withdrawal of the suit with the liberty to file a fresh one after the disposal of said mutation proceedings. The order impugned is, therefore, liable to be interfered.

3. On the other hand, Shri Jitendra Gupta, learned counsel appearing for Non-Applicants No. 1, 3 & 4 while supporting the order impugned submits that the suit was not only pending since 2011 but the issues were also framed. Therefore, the Court below has not committed any illegality in rejecting the said application filed under Order 23 Rule 1 of the CPC, particularly, when the plaintiff's application for mutation was already dismissed by the Tahsildar, Kurud, on 04.12.2017.

4. I have heard learned counsel for the parties and perused the entire papers annexed with this petition carefully.

5. A suit for declaration of title and injunction has been made by the plaintiff in relation to the property in question bearing Kh.No.327/1 admeasuring 3.55 hectares situated at village Aalekhunta, Tahsil Kurud, District Dhamtari, on the basis of the registered deed of sale dated 29.11.2007, purported to have been executed in his favour by Jhaduram and Manohar. According to the plaintiff, when

the defendants have started interfering in his peaceful possession, therefore, he has been constrained to file suit for the said purpose. The said suit was contested by the defendants and issues were also framed and statements of the parties are yet to be commenced.

6. From perusal of the papers annexed with this petition, it appears that although the Tahsildar, Kurud has passed the order on 04.12.2017 in Revenue Case No. 39/A-6/2016-17 refusing to mutate the revenue papers in the name of plaintiff, affirmed further by the Sub-Divisional Officer vide its order dated 29.04.2019 in Revenue Appeal No.16/A-6/2017-18, but it appears that the order as passed by the said Revenue Authorities have been questioned by the plaintiff before the Commissioner in exercise of the power under Section 44 (2) of the Chhattisgarh Land Revenue Code, 1959, registered as Appeal Case No.266/A-6/2018-19 and the same is pending consideration. It is true that apart from the pendency of the said mutation proceedings, no other ground has been assigned in the said application for withdrawal of the suit. However, a bare perusal of the said provision prescribed under Order 23 Rule 1 of the CPC would show that the plaintiff, at any stage of the suit, if so wishes, after obtaining permission of the Court for filing a fresh suit, may withdraw the claim. Here in the instant matter, although the issues were framed, but the evidence of the parties, as observed herein above, is yet to be commenced.

7. Having considered the aforesaid facts and circumstances of the case, considering further the pendency of the said mutation proceedings before the Revenue Authorities, I do not find any mala fide intention of the plaintiff seeking withdrawal of his claim/suit with the said liberty. Consequently, I am inclined to allow the application filed by the plaintiff under Order 23 Rule 1 of the CPC seeking withdrawal of his claim with the said liberty, as prayed for by him, with costs of Rs.5000/- (Rupees five thousand only) payable to defendants within the period of

two months from today.

8. The Revision Petition is accordingly allowed and the order impugned dated 06.02.2018 passed by the Civil Judge, Class-1, Kurud in Civil Suit No.317-A/2012 is hereby set aside with the aforesaid observations.

Sd/-
(Sanjay Agrawal)
Judge