

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 8785 of 2017(O&M)

Date of decision: 14.12.2017

Surja Ram Memorial Foundation Charitable TrustPetitioner

VERSUS

Ashok Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

Challenge in the present petition has been directed against order dated 13.11.2017 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Malout whereby application under Order 23 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for withdrawal of the suit with permission to file a fresh one in respect of the same cause of action has been disposed of granting liberty to withdraw the suit but permission to file a fresh suit on the same cause of action has been declined.

Counsel for the petitioner has submitted that transfer deed bearing No.1869 dated 24.07.2006 executed by Sh. Prahlad Kumar in favour of the plaintiff/petitioner is the subject matter of controversy in the present case. It is argued that the matter with regard to stamp duty on the said transfer deed is pending adjudication in LPA No.1979 of 2017 fixed for 24.01.2018. It is further submitted that as there is a formal defect in the suit, necessary permission may be granted to file a fresh suit on the same cause of action after withdrawal of the instant suit.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Perusal of the findings recorded by the trial Court in para 3 of the impugned order makes it evident that the petitioner has failed to point out any formal defect in the suit on the basis whereof the suit is likely to fail to attract the provisions of Order 23 Rule 1 CPC. The mere fact that the matter with regard to stamp fee on the transfer deed is pending adjudication in LPA filed by the petitioner cannot be construed as a formal defect in the suit as has been rightly held by the Court below. As such, I do not find any error much less illegality in the order impugned warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

DECEMBER 14, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no