

CWP No.11617 of 2015

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

**CWP No.11617 of 2015
Date of decision:11.08.2015**

Lakhvir Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ashish Gupta, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has challenged validity of the orders dated 18.03.2011 passed by respondent No.3 and dated 06.05.2014 passed by respondent No.2.

In brief, after the death of Jarnail Singh, the Halqa Patwari entered a mutation No.8747 on 29.08.2002 and presented it before the Assistant Collector 2nd Grade on 02.10.2002, which was sanctioned in favour of the natural heirs of Jarnail Singh on 22.10.2002. This order dated 22.10.2002 was challenged by the petitioner, his brother Balvir Singh and mother Jangir Kaur in appeal, which was allowed on 02.05.2003 and the case was remanded. The petitioner along with his brother Balvir Singh (respondent no.10 herein) and Jangir Kaur widow of Jarnail Singh set up an unregistered Will dated 24.05.2002. Respondent No.9, i.e. Kauro, the

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alleged first wife of Jarnail Singh, submitted an affidavit dated 10.03.2004 that she has no connection with the estate of Jarnail Singh and withdrew her objection which she had filed in the mutation proceedings. Thereafter, vide order dated 31.12.2004, the mutation was sanctioned on the basis of the unregistered Will dated 24.05.2002 in favour of the petitioner, Balvir Singh and Jangir Kaur. In the meantime, respondent No.9-Kauro sold 3 Kanal 19 Marlas of land to respondent No.6, who filed the appeal against the order dated 31.12.2004 before the Collector on 17.08.2009 on the ground that he is a subsequent purchaser of 3 Kanal 19 Marlas of land from respondent No.9 vide sale deed dated 13.02.2003. The said appeal was dismissed on 30.03.2010 by the Collector. However, the revision filed by respondent No.6 was allowed by the Commissioner and the matter was remanded back to the Assistant Collector 1st Grade, Faridkot for afresh decision after considering all the aspects. The said order was challenged before the Financial Commissioner, who has dismissed the appeal filed by the petitioner vide its order dated 06.05.2014.

Thus, the petitioner has challenged the orders dated 18.03.2011 passed by the Commissioner and dated 06.05.2014 passed by the Financial Commissioner in the present writ petition.

Counsel for the petitioner has argued that the property left behind by Jarnail Singh was mutated in favour of the petitioner, respondent No.10 and his mother Jangir Kaur on the basis of the Will dated 25.04.2002, whereas respondent No.6 is claiming his ownership on part of the suit property on the basis of the sale deed, alleged to have been executed in his

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favour by respondent No.9 on 13.02.2003, who had given an affidavit that she is not interested in the property in dispute. It is also submitted that respondent No.6 is a third party and is not in the line of succession of Jarnail Singh to challenge the mutation sanctioned on the basis of the Will dated 24.05.2002.

I have heard learned counsel for the petitioner and examined the available record.

It is observed by the Financial Commissioner that the petitioner did not disclose the material facts to the Court inasmuch as the alleged filing of Civil Suit in 2009 by respondent No.9, challenging the mutation, was not mentioned to the Commissioner, therefore, the petitioner had not approached the Court with clean hands. It is also observed that at the time when the sale deed was executed by respondent No.9-Kauro in favour of respondent No.6, she had the alienable rights of the immovable property, therefore, respondent No.6 was a necessary party to be heard at the time of sanctioning of mutation on the basis of the Will. It is also observed that respondent No.9 had deposed in the affidavit that she had already taken her share in the property of Jarnail Singh and has no further stakes. The affidavit was sworn by respondent No.9 on 10.03.2004, whereas the land was sold by her to respondent No.6 on 13.02.2003. It is also observed in the impugned order dated 06.05.2014 that the Civil Suit for declaration filed by the beneficiaries of the unregistered Will to challenge the sale deed dated 13.02.2003 has been dismissed for non-prosecution on 12.03.2004.

In view of the aforesaid discussion, respondent No.2 has

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remanded the case back to the Assistant Collector 1st Grade to decide all the issues pertaining to the property of deceased Jarnail Singh afresh, keeping in view the claim made by respondent No.6 to whom some part of the suit property was sold by respondent No.9.

Thus, I do not find any merit in the present writ petition which has been filed by the petitioner only against the order of remand, which is necessary in the given facts and circumstances of the case.

Dismissed.

August 11, 2015
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(Rakesh Kumar Jain)
Judge