

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

**CWP No.26466 of 2016
Date of decision:15.02.2017**

Smt. Kanchan Bhatia

... Petitioner

Vs.

Rupinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Brijeshwar Singh Kanwar, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner is a subsequent purchaser from Harmesh Singh, beneficiary of the Will dated 21.12.1992 executed by Ajaib Singh, who is stated to have purchased some part of the property.

Mr. Brijeshwar Singh Kanwar, learned counsel appearing on behalf of the petitioner submits that the property was purchased on the basis of mutation bearing no.305 which was entered on the basis of the Will. However, Rupinder Kaur, daughter challenged the aforementioned Will. The mutation bearing No.16860 on the basis of natural succession was also challenged. The matter was assailed before the Commissioner, much less, the Financial Commissioner. Though the Financial Commissioner dismissed the application but rendered a finding with regard to the Will to be not genuine. The said finding cannot be allowed to be sustained in the absence of compliance of Section 68 of Indian Evidence Act and Section 63-C of

Indian Succession Act as the matter with regard to the same is sub-judice before the Civil Court.

He further submits that he would be satisfied in case the finding rendered by the Financial Commissioner qua Will are expunged or held to be only for the purpose of adjudication of the revision, in essence, should not come in the way of the petitioner in the pending civil suit.

I have heard learned counsel for the petitioner and appraised the paper book.

The law with regard to mutation being not kept in abeyance is no longer res integra. The aforementioned view of mine is derived from the ratio decidendi culled out by a Hon'ble Division Bench of this Court in **Jagjit Singh vs. Divisional Commissioner, Patiala and others 2012(13) RCR (Civil) 96**. The controversy involved in the present case is whether inheritance of Ajaib Singh would be on the basis of the Will or natural succession, for, that Will is already under challenge before the Civil Court. In my view, the Financial Commissioner should not have exceeded the jurisdiction in pondering upon the validity of the Will without there being any compliance of provisions of law indicated above.

In my view, the mutation so long entered on the basis of natural succession would not effect the right of the party, in case the petitioner succeeds in a suit, it can always be expunged but the finding rendered by the Financial Commissioner qua Will shall not come in the way of the petitioner in the pending suit, in essence, the Civil Court shall decide the suit

independent of the finding rendered by the Financial Commissioner.

With the aforementioned observations, the rest of the findings rendered by the authorities below, i.e., Commissioner and Financial Commissioner are affirmed.

Writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

February 15, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No