

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

**CWP No.7569 of 2017
Date of decision:18.04.2017**

Joga Singh

... Petitioner

Vs.

Financial Commissioner Revenue Punjab, Chandigarh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.P.S.Ghuman, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The grievance of the petitioner is to the impugned orders dated 23.01.2017 and 19.07.2016 in respect of mutation of Karnail Singh as private respondent - Harbans Kaur (since deceased) and her LRs claim to be his wife and children respectively, whereas on the contrary, according to the argument of Mr. H.P.S.Ghuman, the petitioner is the nephew as Karnail Singh was un-married and therefore, question of his wife cannot be raised. The Financial Commissioner while remanding the matter back has left the question open qua relationship of wife by holding the Will to be fraud one. He further submits that revenue Court cannot pass such orders as competence of the same is of the Civil Court and thus, urges this Court for supplementing the orders under challenge by keeping the question open.

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

It is settled law that mutation cannot be kept in abeyance. If the party is asserting a right in the property on the basis of the testamentary document, remedy only lies in the Civil Court which would decide the question on preponderance of evidence but not in the manner and mode as indicated above. In case, the petitioner is aggrieved, he can avail the remedy by filing a suit and claim the declaration by proving the Will and if such remedy is availed, the finding rendered by Financial Commissioner/revenue authority, in my view, would not be taken into consideration by the Civil Court, in essence, the Civil Court shall decide the matter independently/uninfluenced with the finding of the Financial Commissioner/revenue authority. Rather the question of status of his wife is the domain of the Civil Court as respondent has to prove the relationship by leading direct and cogent evidence by complying with the provisions of Section 50 of Indian Evidence Act.

With the aforementioned modification, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

April 18, 2017
savita

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