

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

**FAO-917 of 2023(O&M)
Date of Decision: 05.12.2023**

Sunit Kumar Jain

...Appellant

Versus

General Public & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. M.S. Khan, Advocate
For the appellant.**

**Mr. Arun Saxena, Advocate
For respondents No.4 to 6.

KARAMJIT SINGH, J.

CM-21166-CII of 2023

Application is allowed, as prayed for and accompanied
Annexures A-1 and A-2 are taken on record.

CM-21169-CII of 2023

This is an application for impleading the LR's of deceased
respondents No.2 and 3. For the reasons mentioned in the application, the
same is allowed. Respondents No.4 to 6 are permitted to be impleaded as
LR's of deceased respondents No.2 and 3. Amended memo of parties is taken
on record. Registry to tag the same at appropriate place.

CM-21137-CII of 2023

Application is allowed, as prayed for and accompanied
Annexures R-1 to R-3 are taken on record.

FAO-917 of 2023

1. The present appeal has been filed by the appellant Sunit Kumar Jain against the judgment dated 06.01.2023 passed by the Court of Additional District Judge, Rohtak whereby the petition filed by the appellant for grant of probate/letters of administration with regard to will dated 22.01.1998 executed by Kanshi Ram Jain, father of the appellant was dismissed.

2. The brief facts of the case of the appellant are that his father Kanshi Ram Jain died on 09.03.1998 leaving behind sons, namely, petitioner Sunit Kumar Jain, respondent No.2 Vinit Kumar Jain, respondent No.3 Pardeep Kumar Jain, respondent No.4 Navin Kumar Jain, respondent No.5 Parveen Kumar Jain as his sons and daughter namely respondent No.6 Kamal Jain as his only legal heirs. Kanshi Ram Jain executed valid will dated 22.01.1998 with regard to his estate. The appellant filed petition under Section 278 of Indian Succession Act for grant of probate/letters of administration with regard to said will executed by his father. In the said petition all the other legal heirs of Kanshi Ram Jain were impleaded as party along with general public.

3. On receiving the notice, respondent No.6 appeared in the Court concerned and pleaded 'no objection' if the probate is given in favour of the appellant with regard to will in question. However, respondents No.1 to 5 did not appear in the Court below and were proceeded against ex-parte.

4. The Court of learned Additional District Judge, Rohtak dismissed the petition vide impugned order dated 06.01.2023 on the ground

that the appellant failed to examine any of the attesting witness of will in question.

5. Being aggrieved, the present appeal has been filed by the appellant.

6. In the present case respondents No.2 and 3 have already died and respondents No.4 to 6 being their legal heirs, have already been brought on record as such.

7. I have heard the counsel for the appellant and counsel for respondents No.4 to 6.

8. During arguments, the counsel for appellant has contended that no one has disputed the execution of will dated 22.01.1998 executed by Kanshi Ram with regard to his estate. That the copy of the will in question is Ex.P-1 which is part of the record of the Court below. The counsel for the appellant further submits that as the execution of will in question has been admitted, there was no need for the appellant to examine its attesting witnesses as per the requirement of Section 68 of Evidence Act.

9. Today, the counsel appearing on behalf of respondents No.4 to 6 has pleaded 'no objection' if the present appeal is allowed and the necessary letters of administration/probate is granted in favour of the appellant with regard to will dated 22.01.1998 executed by Kanshi Ram Jain. No objection certificates given by respondents No.4 to 6 in this regard are Annexures R-1, R-2 and R-3. Thus, in the instant case the execution of will dated 22.01.1998 is admitted by all the legal heirs of testator Kanshi Ram Jain.

10. Section 58 of Evidence Act provides that no fact need to be proved in any proceeding which the parties thereto agree to admit at the hearing. So it is settled law that admitted facts need not be proved. In the given circumstances, there was no need for the appellant to examine one of the attesting witnesses of will dated 22.01.1998 to prove its execution as the same was already admitted by the opposite party. Thus, the impugned judgment is not sustainable in eye of law.

11. In view of the above, instant appeal is allowed and the impugned judgment dated 06.01.2023 passed by the Court of Additional District Judge, Rohtak is set aside and letters of administration on the basis of will dated 22.01.1998 with regard to estate of Kanshi Ram Jain are granted in favour of the appellant under Section 278 of the Indian Succession Act.

**(KARAMJIT SINGH)
JUDGE**

05.12.2023

Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No