



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

118

FAO-2277-2016 (O&M)**Date of decision : 24.09.2024****Sandeep Sharma****..... Appellant****versus****General Public****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Rajiv Sharma, Advocate
for the appellant.

Mr. Jitender Yadav, Advocate
for respondent No.2(i) and (ii) (through V.C.).

PANKAJ JAIN, J. (Oral)

1. Present appeal is directed against order dated 01.02.2016 passed by Additional District Judge, Gurugram whereby petition filed by the appellant under Section 276 of the Indian Succession Act for grant of Probate qua Will dated 14.04.2006 executed by late R.K. Sharma stands dismissed.

2. The probate petition has been primarily dismissed on the ground that the LRs of R.K. Sharma have not been impleaded as respondents. Bare perusal of the petition would reveal that general public was impleaded as respondent and the service was effected through publication. While issuing notice of motion, this Court vide order dated 15.05.2017 observed as under:-

“Counsel *inter alia* submits that there was no objection as such as the general public was ex parte but the trial Court has dismissed the petition on the ground that the legal representatives of the deceased R.K.



Sharma were not impleaded and neither their particulars have been mentioned. It is accordingly submitted that if adequate opportunity had been granted, the petition could have been amended at any stage and in the absence of any opposition or objection on this account, the denial of the necessary relief was not justified. By virtue of the Will, allotment of 1000 square meters of Industrial Plot No. 227, Phase IV, Udyog Vihar, Gurugram allotted by HSIDC dated 27.11.1987 would remain to continue in the name of the deceased and to the prejudice of the appellant. It is submitted that in such circumstances, the matter can be remanded for fresh decision. It is further submitted that legal representatives can be impleaded in the present appeal also.

Notice of motion for 20.09.2017.

Publication be done in the newspaper circulating in the area of Gurugram.

Lower Court record be requisitioned.”

3. Counsel for both the parties are *ad idem* that it is in the interest of both the parties that the matter be finally adjudicated upon merits. Since the LRs of late R.K. Sharma-the testator already stand impleaded before this Court and are represented through counsel, the prime defect that led to dismissal of the petition, stands cured.

4. The impugned order dated 01.02.2016 is hereby set aside. The matter is remanded back to be decided afresh, in accordance with law. Parties are directed to appear before the District and Sessions Judge, Gurugram on **18.11.2024**, who shall assign the matter to the Court as per rules. Parties shall be allowed to lead their evidence after granting adequate opportunity to newly added respondents to file their written statement. It shall be a *De novo* trial.



- 4. Disposed off, accordingly.
- 5. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

24.09.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No