

ORDER BELOW EXH.1

1. The present suit has been filed by the plaintiff against the defendants for getting probate under section 276 of Indian Succession Act, on 04.05.2017. At the time of filing of the suit, the plaintiff submitted an application seeking time to affix the deficit court fees stamp of Rs. 70,000/- which was granted by my predecessor Ld. Second Additional Senior Civil Judge. It is ordered that the plaintiff to submit deficit court fee stamp till 11.07.2017. Thereafter, Ld. Advocate for the plaintiff sought adjournment vide exh. 5 on 13.10.2017, which was also granted and thereafter, plaintiff neither submitted deficit court fee stamp of Rs. 70,000/- nor sought any extension.

2. On perusal of record, it transpires that plaintiff has failed to affix and/or produce the deficit court fees stamp according to suit valuation and also failed to seek extension to produce the deficit court fees stamp.

2.1 In view of above facts, it is necessary to consider the relevant provision of Sections 148 and Order-7, Rule-11 (c) of Code of Civil Procedure, 1908 which are as under:

ORDER VII- PLAINT

RULE 11. Rejection of plaint— *The plaint shall be rejected in the following cases:—*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper , as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

Sec.148. *Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, [not exceeding thirty days in total] even though the period originally fixed or granted may have expired.*

3. Taking into consideration, the provision contained in Order-7, R-11 (c) and Sec. 148 of Code of Civil Procedure, it is clear that, if the plaintiff fails to produce the deficit court fees stamp within the prescribed time limit, the suit is not tenable under Order-7, Rule-11(c) of the Code of Civil Procedure. The Court has granted time to remit the deficit court fee stamp but thereafter the plaintiff neither remitted deficit court fee stamp of Rs. 70,000/- nor seeking extension according to provision. As provided under section 148 of the Code of

Civil Procedure, there shall not be extension of more than 30 days. In view of above discussion, the plaintiff failed to comply the order and also failed to produce deficit court fee stamp according to valuation. As discussed above, the suit is also not tenable under Order 7 Rule 11 (c) of the Code of Civil Procedure as the plaintiff has failed to remit the deficit court fee stamp.

3.1 Looking to the record, it also transpires that the issue was framed vide exh. 13 on 17.12.2019. Since, then until now the plaintiff neither remained present nor produce evidence. Looking to the absence of plaintiff since, the framing of issues, the suit is also required to be dismissed in absence of any evidence. In view of the above discussion, I pass the following order in the interest of justice.

-: ORDER :-

- The present suit of the plaintiff is hereby rejected under O-7, R-11(c) of the Code of Civil Procedure.
- Decree be drawn accordingly.

Signed and pronounced in the open Court today i.e. 14th day of the month of September, 2021

Place : Nadiad
Date : 14/09/2021

(Sirajuddin Ganibhai Mansuri)
Principal Senior Civil Judge
Nadiad (Dist: Kheda)
GJ00603

vs