

Regular Civil Appeal No. 18 of 2018

Order below Exh. 1

1. The appellant has filed the present appeal under the provision of Indian Succession Act. The learned Principal District Judge ordered to register the present appeal under Section 383 of the Indian Succession Act. Looking to the record of the appeal, one application Exh. 4 is pending and ordered to fix for hearing. There strong objection endorsement over application Exh. 4. This Exh. 4 - petition dated 03/08/2017 which is shown as pending in this appeal from 16/11/2018 and thereafter, regular rojkam up-till 28/11/2019 shows application Exh. 4 pending. Thereafter, one affidavit vide Exh. 3 is also filed which is dated 03/08/2017 and it is ordered to be recorded. Vide Outward No. 1153/2020, dated 17/12/2020 notice of intimation given to the Lower Court and R. & P. has been called from II Additional Senior Civil Judge, Porbandar. So, the II Additional Senior Civil Judge, Porbandar by his letter Outward No. 2/2021, dated 04/01/2021 sent the entire record and proceeding to this Court which is kept with this appeal.
2. Now, here vide Exh. 8 in the month of January-2023 appellant's advocate given application to join the proposed respondents No. 1 to 4, no order has been

obtained up-till now. Vide Exh. 9 an application for publishing notice of the proceeding in the local newspaper has been given. These Exh. 4, 8 and 9 are pending which are ordered to be recorded today. Thus, here following provisions of Order 41 and Section 96 is considered which provides for appeal from original decree. Order 41, Rule 17 which provides as under -

17. Dismissal of appeal for appellant's default :-

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

3. Thus, here bearing in mind the statutory provisions, considering the entire records rojkam, neither parties, nor their advocates remained present before this Court for hearing of their appeal even no order has been obtained from the Court below Exh. 4, 8 and 9 since last so many years. Hence, it seems that the appellant has no interest in this appeal. Hence, following order is passed in absence of the parties and their advocates as provided under Order 41, Rule 17 of C. P. C.

::Order::

1. The present appeal is hereby dismissed for default.
2. R. & P. of the Trial Court along with the copy of this order be sent to the learned II Additional Senior Civil Court, Porbandar.
3. Parties to bear their own cost.

Signed and pronounced in open Court today on 28th June-2024.

Date: 28/06/2024 (KADARKHAN ABDULRAUF PATHAN)
Place: Porbandar (GJ00347)
Additional District & Sessions Judge,
Porbandar.