

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2635 OF 2015

Gulab A. Upadhyay .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

Mr. A. Mishra i/b. R. Vasudeo for Petitioner.
Mr. B. K. Bali i/b. M/s. Bali Associates for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 18 MARCH 2015

P.C. :-

1] Rule. With the consent of and the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 8 November 2014 made by the City Civil Court, Mumbai, holding that the document submitted at Sr. No. 6 with list Exhibit '3' is not admissible in evidence unless formalities with regard to payment of stamp duty and registration are complied with. The City Civil Court has held that the document in question is a Deed of Partition.

3] The learned counsel for the respondent no. 2 – plaintiff places on record objection dated 1 August 2014 which had been filed by and on behalf of the plaintiff, *inter alia* in relation to the document in question. In the said objection, it was not the case of the respondent no. 2 – plaintiff that the document in question is a Deed of Partition.

Rather, it was the case of the respondent no. 2 - plaintiff, that the document in question was a Deed of Relinquishment and the same ought to have been stamped and registered accordingly.

4] If the impugned order is perused, it is clear that such contention raised by and on behalf of the plaintiff has not at all been considered. Further, even contentions raised by and on behalf of the petitioner herein that the document in question was merely an arrangement as a precursor to the filing of the consent terms, has not been considered.

5] For all the aforesaid reasons, the impugned order dated 8 November 2014 is set aside. The City Civil Court is directed to consider afresh the issue of exhibition and admissibility of the said document, in the light of contentions raised by the rival parties.

6] It is clarified that this Court has not examined the merits of the matter and accordingly all contentions of all parties are left open.

7] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.