

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8346 OF 2016

Mark Edward Gomes,
Kevni Amboli Naka, Andheri (W),
Mumbai – 400 058. ... Petitioner

v/s

Peter Edward Gomes (since deceased)
John Edward Gomes & ors.
R/at Matilda Villa, 34, Everest Road,
Kevni, Amboli Naka,
Andheri (W), Mumbai – 400 058. ... Respondents

Mr. Jayesh Bhatt for the petitioner.

Mr. Clive D'Souza for the respondents.

Coram: N.M. Jamdar, J.

Dated: 28 September 2016

ORAL ORDER:

Rule. Rule made returnable forthwith. Learned counsel for the Respondents waives service. By consent of parties, taken up for final disposal.

2 Heard learned counsel for the parties.

3 By the order impugned dated 8 July 2016 in the petition, the

learned City Civil Court Judge has refused to register the notice of motion taken out by the Petitioner.

4 The Petitioner/Plaintiff had sought leave to register the notice of motion for recalling himself to prove certain additional documents. In this notice of motion, notice was given to the Defendants and the learned Judge came to the conclusion that since the evidence is completed in April 2016 and the Petitioner is not the author of the documents, recalling of witnesses is not necessary, and refused to register a notice of motion. No notice was given to the Respondents. Curiously, when an application for an adjournment was moved by the Petitioner, the learned City Civil Court Judge thought it fit to issue notice to the Defendants calling upon the Defendants to file their say.

5 The learned counsel for the Petitioner submitted that the Petitioner is a senior citizen and since the documents have come into his possession subsequently, evidence has to be led. Learned counsel for the Respondents has controverted the submission and submitted that the suit is being delayed and, therefore, the order is correct. Both the learned counsel for the parties have sought to advance various contentions as to whether the Petitioner can be permitted to recall the witnesses and prove the documents. Instead of adjudicating this issue for the first time, as the version of the Respondents was not placed before the learned City Civil Court Judge, and that the Petitioner does appear to be of advanced age and will suffer prejudice if the

impugned order is maintained as it is, it will be appropriate that the learned City Civil Court Judge decides the notice of motion after hearing both sides on merits and pass appropriate orders.

6 Accordingly, the writ petition is disposed of by quashing and setting aside the order dated 8 July 2016 and restoring the notice of motion taken out by the Petitioner.

7 The learned City Civil Court Judge will make an endeavour to decide the notice of motion as early as possible, subject to earlier commitments, after giving an opportunity to both sides. All contentions of the parties on merits of the notice of motion, are kept open.

8 In view of the above order passed, the learned City Civil Court Judge, will accordingly grant leave and decide the notice of motion on merits.

(N. M. Jamdar, J.)