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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12652 OF 2016

Nemichand Shankarlal Sakla ..PETITIONER

VERSUS

Vikram Anilkumar Patel & anr. ..RESPONDENTS

**WITH
WRIT PETITION NO.12653 OF 2016**

Jivanbhai Narsinh Chavan ..PETITIONER

VERSUS

Vikram Anilkumar Patel & anr. ..RESPONDENTS

**WITH
WRIT PETITION NO.12654 OF 2016**

Charmoudyog Sahakari Audyogik
Utpadak Sanstha Ltd.,
Through its Chairman ..PETITIONER

VERSUS

Vikram Anilkumar Patel & anr. ..RESPONDENTS

**WITH
WRIT PETITION NO.12655 OF 2016**

Shabbir Akbarali Makra ..PETITIONER

VERSUS

Vikram Anilkumar Patel & anr. ..RESPONDENTS

**WITH
WRIT PETITION NO.12656 OF 2016**

Kamal Vasantrao Jadhav ..PETITIONER

VERSUS

Vikram Anilkumar Patel & ors. ..RESPONDENTS

(2)

Mr Girish S. Rane, Advocate for petitioner;
Mr S.P. Brahme, Advocate for respondent no.1

CORAM : NITIN W. SAMBRE, J.

DATE : 13th September, 2017

ORAL ORDER:

These petitions are by defendant no.2 questioning the order passed by the Trial Court exhibiting the document viz. gift deed.

2. Mr Rane, learned Counsel appearing on behalf of the petitioners submits that the Court below has committed an error in exhibiting the document viz. gift deed and further considering the same to be proved, though the procedure required under the provisions of Evidence Act is not followed.

3. The Apex Court has laid down law the matter of **Bipin Shantilal Panchal vs. State of Gujarat & anr.**, reported in **(2001) 3 SCC 1** dealing with objection to exhibiting a document and further reading the same in evidence. It is held in paragraphs 13 to 16 as under :-

“13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then

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proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

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15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

16. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.”

4. When confronted in the backdrop of law laid down in the matter of Bipin Panchal (supra), Mr Rane would urge that if given an opportunity by keeping the issue open, to be raised at the time of final hearing of the suit, particularly in regard to admissibility of the disputed document viz. a gift deed, the petitions can be disposed of.

5. Mr Brahme, learned Counsel appearing on behalf of respondent no.1 does not dispute the legal proposition as cited in the judgment of Bipin Panchal (supra).

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6. In view thereof, the present petitions stand disposed of as withdrawn with liberty to the petitioners to raise an issue as regards admissibility of the material in evidence including that of exhibiting and considering the document to be proved viz. a gift deed, which is subject-matter of the present petitions, at the time of final hearing of the suit.

With above observations and liberty, petitions stand disposed of.

(NITIN W. SAMBRE, J.)

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