

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7844/2017

Dinesh Uttam Gavai and others Vs. Suryakant Uttam Gavai and others

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Alok Daga, Advocate for petitioners.
Shri A.V.Bhide, Advocate for respondent nos. 1 to 4.
Mrs. M.A.Barabde, Assistant Government Pleader for respondent no.7.

CORAM : A.S.CHANDURKAR, J.
DATED : September 27, 2019

The challenge raised in the present writ petition is to the order dated 13.10.2017 passed by the trial Court. During the course of examination of the witness of the defendant nos. 1 to 4, said witness was confronted with a gift deed dated 08.07.1988 so as to prove its contents. The counsel for the plaintiff raised an objection before the trial Court that since the gift deed was not registered, it may not be exhibited. The trial Court observed that the objection being raised by the plaintiff would be considered at the stage of final hearing of the proceedings. Keeping that right open, the gift deed was exhibited as Exhibit 121. Being aggrieved, that order has been challenged in the present writ petition.

Shri Alok Daga, learned counsel for the petitioners submits that the objection as raised ought to have decided on that stage itself instead of postponing such adjudication. Placing reliance on the decision in *Hemendra Rasiklal Ghia & ors. Vs. Subodh Mody and Ors. 2008 (6) Mh L.J.886*, it is submitted that since the gift deed was also insufficiently stamped, the objection in that regard ought to have been adjudicated at that stage itself.

Shri A.V.Bhide, learned counsel for the respondent nos. 1 to 4 supported the impugned order. According to him, no prejudice has been

caused to the petitioners as the objections raised have been kept open. According to him, in view of the fact that the gift deed was not registered the trial Court was justified in observing that the question of its evidentiary value would be decided at the stage of final adjudication. Hence no interference was called for.

On hearing the learned counsel for the parties and after perusing the judgment of the Full Bench in *Hemendra Rasiiklal Ghia* (supra), it is found that the trial Court has rightly observed that the objection with regard to non-registration of the gift deed would be adjudicated along the suit itself. Paragraph 92 of the said decision supports that contention. Hence that direction reserving the right of the plaintiff does not deserve to be interfered with. It is however submitted that the gift deed is also insufficiently stamped and hence it is not admissible in evidence. The deposition of the said witness does not indicate such objection being raised. It is open for the plaintiff to raise such objections as are permissible in law during the course of deposition of the witness and the trial Court shall proceed to decide the same in accordance with law.

With these observations, the writ petition is disposed of with no orders as to costs.

JUDGE

Andurkar.