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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9896 OF 2017

Jerome T. Braganza ...Petitioner.
V/s.
Connelius Thomas Braganza and ors. ...Respondents.

Mr. V.Y. Sanglikar for the Petitioner.
Mr. V.P. Shastri i/b Ms Shruti Nai for Respondent No.1.

CORAM : N.R. BORKAR, J.
DATE : 21.08.2021.

P.C. :

1. This petition takes an exception to the order dated 5.8.2017 passed by the City Civil Court, Gr. Bombay in Civil Suit No. 108312 of 1995.

2. The petitioner herein had filed the suit for declaration, partition and separate possession against the respondents. The respondent No.5/original defendant No.5 alongwith her affidavit-in-lieu of examination-in-chief had filed two documents titled as 'Declarations'. The petitioner objected to marking the said declarations as exhibits on the following grounds.

(i) The declarations are inadmissible in evidence as they are neither stamped nor registered; and

(ii) The second declaration is not of deponent and the declarant's evidence is over.

3. The trial court by the impugned order rejected the objections and marked those declarations as Exhibit-29(1) and 29(2) respectively.

4. The learned counsel for the petitioner submits that in view of Full Bench judgment of this court reported in **2008 (6) Mh.L.J. 886** in the case of **Hemendra Ghia vs. Subodh Mody**, the objection in relation to deficiency of stamp duty needs to be decided before the document is marked as exhibit. It is submitted that there is no finding in the order impugned with regard to said objection. The learned counsel for the petitioner further submits that considering overall circumstances of the case, the petitioner may be permitted to raise all the objections in relation to the declarations in-question at the time of final hearing of the suit.

5. Mere marking of the document as an exhibit will not make the said document admissible in evidence, if it is otherwise, inadmissible in evidence in view of provisions of either the

Maharashtra Stamp Act, 1958 or Registration Act, 1908. Similarly, it would not be appropriate to record any findings in relation to the admissibility or inadmissibility of the said documents in evidence in writ jurisdiction. It would be therefore, appropriate to permit the petitioner to raise all the objections in relation to the documents in-question at the time of final hearing of the suit.

6. Needless to mention that the trial court shall deal with the said objections appropriately in its judgment in relation to the declarations at Exhibit - 29(1) and 29(2).

7. Considering the fact that the suit is of the year 1995 and the petitioner is senior citizen, the trial court shall endeavour to decide the suit as expeditiously as possible and in any case within one year from today.

8. Writ Petition is disposed of accordingly.

[N.R.BORKAR, J.]