

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 429 OF 2013
ALONGWITH
CIVIL APPLICATION NO. 1840 OF 2012

Shri. Shankar Vitthal Koli
: V/S :
Gangaram Shripati Sutar and Ors.

.....Appellant
.....Respondents

* * * * *

Mr. Sandeep Salunkhe, Advocate for the appellant.

Mr. Bhushan A. Walimbe, Advocate for the respondents.

Coram :- Smt. R.P. SondurBaldota, J.

11th February, 2015.

P.C. :-

1). The appellant is original defendant no.2 who files this Second Appeal to challenge the concurrent findings of the Courts below on the basis of which suit filed by respondent no.1 for redemption of mortgage was decreed.

2). Original defendant no.1 is the wife of the appellant. By the deed of mortgage dated 19th June, 1981 the suit property had been mortgaged to original defendant no.1 for the amount of Rs.30,000/-. The document of mortgage duly registered reflects clearly the transaction of mortgage between the parties. Therefore, the findings of the Courts below that the transaction is of mortgage is fully borne out by the

document executed between the wife of the appellant and respondent no.1. It appears that, later the wife of the appellant assigned her rights under the mortgage deed to the appellant. Initially, there were other proceedings between the parties seeking perpetual injunction against each other for protection of the possession claimed by the appellant and respondent no.1. The suit filed by the appellant was dismissed on 25th August, 1994 and the suit filed by respondent no.1 was withdrawn on 3rd April, 2000 after which the suit for redemption of mortgage was filed.

3). Mr. Salunkhe, the learned Advocate appearing for the appellant submits that the suit filed by respondent no.1 was barred by the law of limitation. According to him, in view of transfer of the mortgaged property by wife of the appellant, the suit would be covered by Article 61(b) of the Limitation Act, which provides period of 12 years starting from the date on which the transfer becomes known to the plaintiff. It is the argument of the appellant that, the transfer was made on 2nd April, 1992 and was known by the respondent in the very year. The suit herein was filed in the year 1999 i.e. after 7 years after the knowledge. Hence, the suit was barred by the law of limitation. He submits that, this aspect was not even considered by the trial Court. He also points out that, there was no issue framed by the trial Court on limitation. However, as pointed out by Mr. Walimbe, the learned Advocate for the respondents that the trial Court has infact considered the question of bar of

limitation in paras-30 to 34 of the trial court's judgment. When the appellant preferred an appeal before the District Court, he had at ground no.7 vaguely alleged that the trial Court had erred in interpreting legal provisions of the Transfer of Property Act and Limitation Act. It is obvious from the record that the question of limitation was not taken up by the appellant before the lower Appellate Court. Consequently, it has not received any consideration from the Court. Since, the appellant has not raised the contention before the lower Appellate Court, it will not be appropriate to raise it for the first time in this Court. Therefore, any contention as regards the suit being barred by the law of limitation is required to be rejected. As against the other grounds, the same are disputed question of facts which are beyond the scope of Second Appeal. The Appeal is therefore dismissed.

4). With the dismissal of the Appeal, Civil Application No. 1840 of 2012 does not survive and becomes infructuous. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)