

Ms. Anjali Shiledar Baxi for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 25th FEBRUARY 2025

ORDER :

the earlier suit i.e. Regular Civil Suit No. 7 of 1975 filed by this plaintiffs' for declaration that the suit document was not executed by Housabai for legal necessity was dismissed. She therefore submits that the dismissal of the earlier suit would prevent the plaintiffs from re-agitating their claim based on the same document. She submits that once the suit for declaration and cancellation of the said document was dismissed, the present suit for redemption of mortgage was barred by principles of resjudicata.

3. Learned counsel for the appellants further submits that the mortgage period as per the document was five years. She submits that the plaintiffs never offered for repayment and asked for redemption of the mortgage as per the document dated 18th July 1974. She therefore submits that the suit filed in the year 1984 was barred by limitation. She therefore submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law.

4. To examine the grounds raised on behalf of the appellants, I have perused both the judgments. Both the courts held that the issue involved in Regular Civil Suit No. 7 of 1975 was the challenge to the document executed by Housabai on the ground that it was not executed for legal necessity. In the present suit the prayer is for

redemption of mortgage of the same document. However, in the earlier suit the challenge to the nature of the document, was not the subject matter of the suit. Thus, the issue in the present suit for redemption of mortgage was not an issue in the earlier suit, as the earlier suit was limited to the challenge on the ground of legal necessity. Hence, both courts concurrently held that decision in the earlier suit would not effect the issues involved in the present suit. Hence, it is concurrently held that the suit was not barred by the principles of resjudicata.

5. A copy of the judgment in Regular Civil Suit No. 7 of 1975 is placed on record. I have perused the judgment. The issue involved in the earlier suit was only on the point of legal necessity. The issue as to whether the document in question was a document of outright sale or mortgage was not an issue involved in the earlier suit. The suit was dismissed by holding that the plaintiffs failed to prove that the document executed by Housabai was without any legal necessity. Thus, in view of the issue involved and decided in the earlier suit, the reasons recorded by both the courts for holding that the suit will not be barred by the principles of resjudicata, would require no consideration by this court.

6. The second point with regard to the suit barred by limitation is

concerned, the same was not raised in the trial court or the first appellate court. The document of mortgage is dated 18th July 1974. Mortgage period is five years. Hence, the limitation period for seeking redemption of mortgage and possession would be 30 years in view of provisions governed by Article 61 of the Limitation Act, 1963. Article 61 provides limitation period of 30 years from the date when the right to redeem or recover possession accrues. Considering the date of the mortgage document and the period of mortgage the suit filed on 4th January 1974 cannot be said to be barred by limitation. Hence, the second ground argued on behalf of the appellants would not require any consideration by this court.

7. I do not see any illegality or perversity in the reasons recorded by both the courts. The second appeal does not raise any other substantial question of law. Hence, second appeal is dismissed.

8. In view of the dismissal of the second appeal, pending interim application and civil applications are disposed of as infructuous.

[GAURI GODSE, J.]