



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2540 OF 2025

Ashok Vadher

Aged – 65 years, inhabitant of UK
Occupation – Retired, Residing at 104,
Lynton Road, Rayners Lane, Harrow,
London, H A 29 N N, U. K.

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...Appellant/Org. Plaintiff

Versus

1. **Jayshree Suresh Pandya**

An adult, Indian inhabitant, Age – 53
Occupation – non known, residing at
B-2/5, Ajoy Apartment, Dahanukar
Wadi, Kandivali (West),
Mumbai – 400 067.

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2. **Bank of Baroda**

Constituted under the Banking
Companies (Acquisition and Transfer
of Undertakings) Act, 1970
Having its branch at S. V. Road,
Shantinath Shopping Centre, Malad
(East).

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**...Respondents/Org.
Defendant Nos. 1 and 2**

Ms. Shaila Pandey for Appellant.

Mr. Amit Meharia for Respondent No. 2.

Ms. Jayshree Suresh Pandya, Respondent No. 1 appearing in person.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 4th February, 2026

Pronounced on : 12th February, 2026.

Judgment :

1. The Appeal is at the instance of the original Plaintiff being aggrieved by the order dated 18th July, 2025 passed by City Civil Court for Greater Mumbai at Dindoshi, Borivali division, Mumbai in S.C. Suit No. 2052 of 2018 dismissing the suit on the preliminary issue of being barred by principle of *res judicata*.

2. S.C. Suit No. 2052 of 2018 was instituted seeking declaration that the Plaintiff is the sole and exclusive owner of the suit flat and that name of Defendant No. 1 is incorporated illegally and fraudulently and for direction to Defendant No. 1 to execute necessary document to remove her name from Agreement for sale in respect of the suit flat.

3. The Trial Court framed the preliminary issue below Exhibit-1 as under :

“Whether the suit is barred by principles of *res judicata*”.

4. The Trial Court noted that Defendant No. 1 had filed Written Statement and opposed the suit and had filed notice of motion for framing preliminary issue. After going through the papers and proceedings of S. C. Suit No. 2051 of 2013 and judgment dated 19th March, 2024 passed therein, the Trial Court held that the suit property was subject-matter of the earlier S. C. Suit No. 2501 of 2013 and rights of the parties in respect of the subject-matter was already decided by competent Civil Court. It further held that the judgment is not

challenged by the present Plaintiff and nothing has been produced to show that the judgment has been set aside by the Appellate Court. Applying the provisions of Section 11 of Code of Civil Procedure, 1908, the suit came to be dismissed as barred by principles of *res judicata*.

5. Learned counsel appearing for Appellant would submit that prior S. C. Suit No. 2051 of 2013 was filed by Defendant No. 1 herein seeking declaration of joint ownership of the subject flat. She submits that vide judgment dated 19th March, 2014 passed in S. C. Suit No. 2051 of 2013, the Plaintiff was declared joint owner of the suit flat. She submits that as against the said order, the First Appeal was preferred, which has been admitted by order of 7th January, 2025 and interim order has been passed staying the partition of the suit flat. She submits that in the earlier round of litigation, there was no issue of fraud adjudicated by the Trial Court whereas in the present case, the Plaintiff has specifically alleged fraud. She submits that as Appeal is pending, the bar of *res judicata* would not apply.

6. She would further submit that there was no notice of motion filed by Defendant No. 1 seeking framing of preliminary issue and the preliminary issue was framed by the Court *suo motu*. She would further submit that there is an erroneous finding in the order dated 18th July, 2025 that the judgment in S.C. Suit No. 2051 of 2013 is not challenged by the present Plaintiff.

7. The Respondent No. 1 who appears in person admits that she had not filed any notice of motion for framing of preliminary issue. She would further submit that the Trial Court on its own framed the preliminary issue. She submits that in the Affidavit-in-reply, the Respondent No. 1 has stated about filing of the Appeal by the present Plaintiff. She would further submit that in the earlier round of litigation, in Paragraph No. 29, the Trial Court has taken into consideration the aspect of fraud and the finding to that effect is against the Plaintiff. She submits that every contention which has been raised in the subsequent suit has already been decided in the earlier proceedings and therefore, the subsequent suit has rightly been held to be barred by *res judicata*.

8. The point arising for determination is whether during the pendency of First Appeal, the findings in S. C. Suit No. 2051/2013 can be said to have attained finality so as to attract the bar of *res judicata*.

9. Before proceeding to the facts of the present case, it would be appropriate to reproduce Section 11 of Code of Civil Procedure, 1908, which reads as under :

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

10. It cannot be debated that the plea of *res judicata* can be decided as preliminary issue and there is no bar on the power of the Trial Court to frame and try the said issue *suo motu*. In order to adjudicate on the

applicability of *res judicata*, what is required to be ascertained is whether the matter directly and substantially in issue in the present suit was also directly and substantially in issue in former suit and was conclusively decided in the prior suit between the same parties. For that purpose, it would be necessary to advert to the prior suit i.e. S. C. Suit No. 2051 of 2013. The suit was filed by Defendant No. 1 herein claiming to be joint owner along with the Plaintiff. In the prior suit, the substantial prayer sought was declaration of joint ownership of Plaintiff and Defendant No. 1 in respect of suit flat.

11. The Trial Court after recording evidence framed the issues as regards the joint ownership of the Plaintiff and Defendant No. 1 and vide the judgment dated 19th March, 2024 declared the Plaintiff therein to be joint owner of the property and held her to be entitled for half share therein and directed partition by metes and bounds.

12. The Defendant No. 1 in the prior suit preferred an Appeal against the judgment dated 19th March, 2024, which came to be admitted on 7th January, 2025.

13. In the subsequent S. C. Suit No. 2052 of 2018, the substantial relief sought by the Plaintiff is as regards the declaration of the Plaintiff's sole and exclusive ownership of the flat and for a declaration that the name of Defendant No. 1 is incorporated illegally and fraudulently and same is illegal, void and fraudulent and removal of her

name from the Agreement for sale dated 2nd November, 2002.

14. Despite the above, the bar of *res judicata* will apply only upon the decision in the prior suit attaining finality. In the decision of ***Satyadhyan Ghoshal and Others vs. Deorajin Debi (Smt) and Another¹***, the Hon'ble Apex Court has held as under :

“The principle of *res judicata* is based on the need of giving finality to judicial decision. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher Court or because appeal was dismissed or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvas the matter again....”

It is the finality of the decision which bars the subsequent litigation and the bar is not applicable when the Appeal is pending. The requirement of finality is absent in the present case as admittedly, the Plaintiff herein has already filed an Appeal which has been admitted. The finality of the decree on such appeal being filed is qualified by the appeal and does not constitute *res judicata* in subsequent proceedings. In fact, Defendant No. 1 in her Affidavit-in-reply has specifically pleaded about the Appeal being filed against the judgment of the prior suit. The order of Trial Court proceeds on an erroneous finding that the judgment in the prior suit has attained finality as it has not been

1 1960 SCC OnLine SC 15.

challenged. As the Appeal is pending and decision in the prior suit has not attained finality, the principles of *res judicata* would not apply in the present case. The impugned order dismissing the suit by applying the principles of *res judicata* is unsustainable and is hereby quashed and set aside.

15. Resultantly, First Appeal is allowed. S.C. Suit No. 2052 of 2018 is restored to file of the City Civil Court.

16. In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of.

[Sharmila U. Deshmukh, J.]