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Maudhanda Kurichi, Srirangam,

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Phone : +91 94896 71437 - [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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## RIGHT OF REDEMPTION UNDER TRANSFER OF PROPERTY

**AUTHOR** – SNEKHA VARADHAN\* & DR .P. BRINDA\*\*, LLM SCHOLAR\* & ASSOCIATE PROFESSOR\*\*, SCHOOL OF EXCELLENCE IN LAW, TNDALU

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### ABSTRACT

This article was written by Snekhya Varadhan. The author of this article gives explanation about the right of redemption under transfer of property 1882. The right of redemption is a legal mechanism that allows a debtor or property owner to reclaim foreclosed or repossessed property by paying off the outstanding debt or fulfilling specific legal requirements within a designated period. Additionally, the article analyzes recent legal trends and case law interpretations that shape the modern application of redemption rights. By providing a comparative analysis of different legal systems, this study aims to offer a comprehensive understanding of how redemption rights balance creditor and debtor interests while influencing foreclosure proceedings and property rights.

**KEYWORDS** : Right to redeem-mortgaged-repayment-get back-mortgagor

### 1. INTRODUCTION

The loan payment was secured by the mortgaged property. The mortgagor is entitled to his property back upon payment of the amount borrowed plus interest once the deadline for the repayment of the mortgagee's money is completed. The mortgagor's right is referred as the Right of Redemption. No condition that prevents redemption may limit the rights. The right can not be governed by any agreement to the contrary. Section 60<sup>1</sup> mentions this right. The term 'Redeem' means to restore.

The maxim "*once a mortgage is always a mortgage nothing but a mortgage*" expresses the concept of clogs on redemption. "The mortgagee shall not make any stipulation which will prevent the mortgagor who has paid principal, interest, and costs, from getting back his mortgaged property in the condition in which he parted with in it," explains the Lord Devey's explanation of this maxim in *Noakes & Co vs. Rice*. The transfer of property Act, 1882, section 60, recognises this concept.

The mortgagor can exercise his right to redeem within 30 years from the time of the accrued of the right to redeem," under Article 61(a) of the Limitation Act, 1963. Moreover Section 27 read together with Section 3 of the Limitation Act of 1963 states that "the right in mortgaged property is extinguished on the expiry of 30 years above said. The mortgagor may always claim the equity claim to redeem the property even if he has given the mortgagee a deadline to do it and forfeits it in the event of default. In this case, the mortgagor will not be held to his contractual right to redeem. According to the TP Act of 1882, which is referenced above, the mortgagor's advantage is known as the Equity of Redemption.

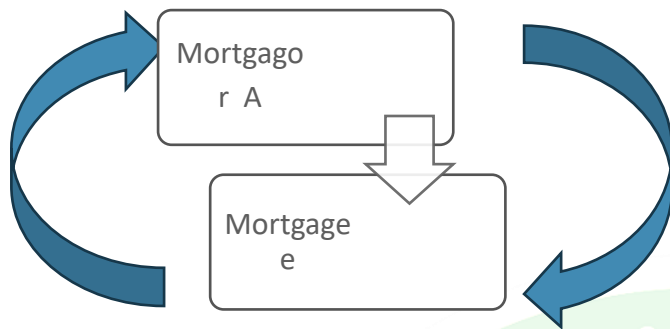
### WHAT IS REDEMPTION UNDER MORTGAGE

The right of redemption is the right of the mortgagor to get back his mortgaged property once he paid the principal amount with due interest back to the mortgagee.

### SIMPLE EXPLANATION

After completion of period a mortgagor has

<sup>1</sup> The transfer of property act 1882



right to get the property back after giving money to the mortgagee.

#### DEFINITION

Mortgage is a contract between two persons that was the Mortgagor and Mortgagee for an immovable property which is kept as security to the mortgagee by the mortgagor for the required sum amount of money as a loan.

#### WHAT IS RIGHT TO REDEMPTION

The mortgagor in return pays the money with interest until the fixed time period is completed as per the contract and the right to redeem only arises after completion of such fixed time period.

#### 4. RIGHTS OF MORTGAGOR

- i. Right of mortgagor to redeem the property [section 60]
- ii. Right to redeem separately or simultaneously (Section 61)

##### 4.1 RIGHT OF REDEMPTION

As per section 60 of the transfer of the Act 1882 one of the important rights of the mortgagor is the right to redeem the mortgaged property after paying the loan amount.

Once the money has become due on the specified date mortgagor has the right to get back his property after paying the mortgage money to the mortgagee.

**Seth Ganga Dhar v. Shankar Lal & Others,** <sup>2</sup>In this case a condition in the agreement between

<sup>2</sup> AIR 1958 SC 770, 1959 SCR 509 (Supreme Court of India, April 15, 1958).

parties regarding redemption of mortgaged property was in question, which was plainly taking away altogether, the mortgagor's right to redeem the mortgage after a specified period.

The Court held that the term that on the failure of the mortgagor to redeem within the specified period of six months, he would lose his right to do so and the mortgage deed was to be deemed to be a deed of sale in favor of the mortgagee, was clearly a clog on the equity of redemption and as such invalid.

**Sampuran Singh & Others v. Smt. Niranjani Kaur & Others,** <sup>3</sup>In this case the Supreme Court held that when there is no restriction in the mortgage deed, mortgagors have a right to redeem the mortgage from the very date when the mortgage was executed.

**Bhandaru Ram (Deceased) through his L.R. Rattan Lal v. Sukh Ram & Others,** <sup>4</sup>The period of limitation is filing a suit for recovery of immovable property or redemption of usufructuary mortgages which have not fixed any time for repayment of mortgage money is 30 years as mentioned under Article 61 to the Schedule to the Limitation Act, 1963.

**Section 60 has five different provisions described**

- a. Right of Redemption.
- b. Clog on Redemption.
- c. partial redemption
- d. collateral advantage
- e. premature redemption.

The section deals with the mortgage when the principal amount remains due. The redemption varies according to the form of mortgage.

**There are three kinds of primary kind of redemption:**

- i. Delivery of the possession back to the mortgagor

<sup>3</sup> AIR 1999 SC 1047, (1999) 2 SCC 679 (Supreme Court of India, February 23, 1999).

<sup>4</sup> AIR 2012 HP 50, 2012 (2) CTC 257 (Himachal Pradesh High Court, January 6, 2012).

ii. Delivery of the title documents and the mortgage deed.

iii. Returning the property in favor of the mortgagor.

## 6. EQUITY OF REDEMPTION

The borrower (mortgagor) has the legal right to repay the loan and any associated costs to recover ownership of the property free from the mortgage.

Equity of redemption is a legal right that allows the mortgagor to redeem their property after paying back the mortgage, if some payments were late. It's also called as the right of redemption or equitable right of redemption.<sup>5</sup>

### NOAKES & CO LTD V. RICE<sup>6</sup>

**Basic Facts:** The holder of a 26-year lease on a pub mortgaged it to a brewery, agreeing to purchase liquor exclusively from the brewery for the entire duration of the lease (a beer tie agreement), even after the loan was repaid.

#### Issue for the Court:

1. When will collateral terms be considered to be clogging and fettering?
2. Whether the judgment of the lower courts, affirming the validity of the mortgage agreement, is consistent with established principles of equity.

**Held:** The court ruled that any collateral advantage that extended beyond the mortgage term infringed the mortgagor's equity of redemption. The covenant becomes void upon redemption of the mortgage.

Equity does not permit terms that impede or prevent redemption of a mortgage.

Clogging the right to redeem by requiring continued obligations post-redemption is impermissible.

<sup>5</sup> In *Salt. Marquess of Northampton*, (1992) AC 11, Lord Bramwell defined the equity of redemption thus:

"An equity of redemption is a right not given by the terms of the agreement between the parties to it, but contrary to them to have back securities given by a borrower to a lender on payment of principal and interest at a day after that appointed for payment when by the terms of the agreement between the parties the securities were to be absolute property of the creditor. This is now legal right of debtor.

<sup>6</sup> (1902) AC 24 (HOUSE OF LORDS, DECEMBER 17, 1901)

The collateral term in this case was not inherently clogging if it did not affect the right of redemption directly.

**KNOCKS V. ROULDS<sup>7</sup>** is a case that established the principle of "once a mortgage, always a mortgage," meaning that a mortgagor (borrower) always has the right to redeem their property by paying back the loan, and any clause in a mortgage agreement that attempts to restrict this right was considered a "clog on the equity of redemption" and it's void; this case essentially solidified the idea that a mortgage is solely a security for a debt and cannot be used to permanently deprive the borrower of their property.

### Extinguishment of right to redemption

1. According to Section 61(a) of the Limitation Act, 1963, the right of redemption is available only for a period of 30 years from the date of redemption.

(a) In *Balkrishna v. Rangnatha*, it was held that the right to redeem can only be

Abrogated by either

(b) By Act of parties (or)

(i) Sale by Mortgagor

(ii) By Foreclosure u/s 67

(iii) Redemption u/s 60

(iv) By a subsequent Agreement for additional loan.

(c) By A Decree of Court.

### 7. CLOG ON REDEMPTION

"Clog on redemption" which means is a legal principle in property and mortgage law. It refers to any condition or provision in a mortgage agreement that unfairly prevents or restricts the mortgagor from redeeming their property after repaying the mortgage debt.

<sup>7</sup> (1902) AC 24

### Key Features of Clog on Redemption:

- 1. Unreasonable Restrictions:** Any clause in the mortgage that imposes unreasonable conditions or restrictions on the borrower's right to redeem.
- 2. Equitable Relief:** Courts often intervene to strike down such clauses to ensure fairness.
- 3. Time Limitations:** A clause that prevents redemption within a reasonable time may be considered a clog.

**Santley v. Wilde**<sup>8</sup> case of the facts are that the owner of a lease of a theatre wanted to carry on a theatre business there and took out a mortgage of in order to do this, secured against the lease, over five years. The mortgage also required that she also paid one third of the net profits to the lender until the end of the mortgage term. And the issue before the court was whether the term regarding sharing profits as demanded by the mortgagee was a "clog" or not. And the court in passing the judgement Lord Lindley said a mortgage in a conveyance of land or an assignment of chattels as a security for the payment of a debt, or the discharge of some other obligation for which it is given. This is the idea of a mortgage, and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. That, in my opinion, is the law. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given is what is meant by a clog or fetter on the equity of redemption, and is therefore void. It follows from this that once a mortgage always a mortgage

**Samuel v. Jarrah Timber and Wood Paving Corporation Ltd**<sup>9</sup> In Jarrah Timber & Wind Paving Corporation Sarniel (1904 appeal as an Irish case) Collins MR observed, "It is the right of a mortgagor of redemption by reason of the very common nature of a mortgage to get back the subject of mortgage to hold and enjoy as he

was entitled to hold and enjoy it before the mortgage. If he is prevented from doing so, that which he is entitled on redemption is prevented and to constitute such prevention it is not necessary that the subject of the mortgage should be directly charged with whatever causes the prevention if he be so prevented in fact, the equity of redemption is affected by what whether very aptly or not, has been always termed as a clog.

### Case Laws on Exceptions to Clog on Redemption

**Narandas Karsondas v. S.A. Kamtam & Anr, (1977) 3 SCC 247; AIR 1977 SC 774 (Supreme Court of India, December 7, 1976).** The only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. The conferment of power to sell the without intervention of the Court in a Mortgage Deed by itself will not deprive the mortgagor of his right to redemption. The extinction of the right of redemption has to be subsequent to the deed conferring such power. The right of redemption is not a extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for the sale. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by an registered deed.<sup>10</sup>

**Jayasingh Dnyanu Mhoplekar & Anr. v. Krishna Babaji Patil & Anr.,**<sup>11</sup> The right of redemption under a mortgage deed can come to an end only in a manner known to law. Such extinguishment of the right can take place by contract between the parties, by a merger or by

<sup>8</sup> [1899] 2 Ch 474 (Court of Appeal, April 4, 1899).

<sup>9</sup> [1904] AC 323 (House of Lords, May 16, 1904).

<sup>10</sup> L.K. Trust v. EDC Ltd. & Others, (2011) 6 SCC 780; AIR 2011 SC 2060 (Supreme Court of India, May 10, 2011). The mortgagor under Indian law is the owner who had parted with some rights of ownership and the right of redemption is the right which he exercises by virtue of his residuary ownership to resume what he has parted with. In India this right of redemption, however, is statutory one. A right of redemption is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists. The judicial trend indicates that dismissal of an earlier suit for redemption whether as abated or as withdrawn or in default would not debar the mortgagor from filing a second suit for redemption so long as the mortgage subsists. This right cannot be extinguished except by the act of parties or by decree of a court

<sup>11</sup> (1985) 4 SCC 162; AIR 1985 SC 1646 (Supreme Court of India, July 17, 1985).

statutory provision which debars the mortgagor from redeeming the mortgage. The mortgagor right of redemption is exercised by the payment or tender to the mortgagee at the proper time and at the proper place of the mortgage money. When it is extinguished by the act of parties, the act must take the shape and observe the formalities which the law prescribes. A mortgage being a security for the debt, the right of redemption continues although the mortgagor fails to pay the debt at the due date. Any provision inserted to prevent, evade or hamper redemption is void.

### 8. MORTGAGE BY CONDITIONAL SALE [SECTION 58 (C)]

A mortgage by conditional sale in redemption is a type of mortgage agreement where the borrower (mortgagor) transfers ownership of the property to the lender (mortgagee) with the condition that the borrower has the right to "redeem" the property by repurchasing it, usually by paying off the debt within a specified period.<sup>12</sup>

**In Vithal Tukaram Kadam and Another v. Vamanrao Sawalaram Bhosale and Others,**<sup>13</sup> the facts revolved around a loan which was taken by the plaintiff in the given case and if in case the plaintiff fails to repay the amount then the plaintiff would sell it. Apparently the borrowed amount for loan was 700 rupees while the plaintiff sold the land for 3500 Rupees. The very agreement for sale had a clause of reconveyance embodied in it upon the virtue of the clause the defendant demanded Rupees 3500 along with interest affecting relationship of the debtor and the creditor. The defendant was well aware of the nature of the transaction and he knew that he would be obliged to return the

land back if the amount was paid back by the plaintiff.

The Bombay High Court held that the transaction here was more in the nature of conditional sale and not an absolute sale by the defendant.

**Smt. Rajamma and Others v. Sri B. Renuka Murthy,**<sup>14</sup> the facts of the case were that there was a certain family property that was sold for the payment of a prolonged family debt. The possession of the property was delivered to the purchasers. An undertaking was provided by the mortgagors to the a mortgagee that they would repay the entire amount within the stipulated time frame that was 5 years and ensure that the sale deed gets executed. The Supreme Court in this case held that it was not a case of simple mortgage but was of conditional sale with an option to repurchase.

### 9. PARTIAL REDEMPTION

This means redeeming the property in parts or in multiple transfers. This is void ab initio and the right of redemption cannot be exercised in multiple transfers for the same mortgage.

Partial redemption refers to the process of redeeming only a portion of a financial instrument, such as bonds, shares, or other types of securities, rather than redeeming the entire amount.<sup>15</sup>

However Partial redemption usually not permitted . In some circumstances, such as when several properties are mortgaged jointly or when a jointly owned property is mortgaged, it might be possible.

**Bhaiya Raghunath Singh and Others v. Musammat Hansraj Kunwar and Others,**<sup>16</sup> This appeal from the High Court at Allahabad arises in a suit for redemption of a mortgage and further charge, the appellants being the heirs of some of the original mortgagees. The relevant facts leading up to the present litigation must

<sup>12</sup> Prakasam Alias Padmini v. Rajambal and Others, decided on 20 March 1974, reported in AIR 1975 Mad 282. The facts of the case are that the document was ascribed as sale deed but the stamp paper but the stamp paper was provided by the transferor while the price provided was much lesser than the actual price of the property. A specific condition was attached that post the payment of the principal amount the property shall be reconveyed. It was held by the Madras High Court that the transaction was not an outright sale rather was a mortgage by conditional sale.

<sup>13</sup> Decided on August 9, 2017, reported in (2018) 11 SCC 172 and AIR 2017 SC 3853.

<sup>14</sup> Regular Second Appeal No. 929 of 2011, decided on September 21, 2015, by the Karnataka High Court.

<sup>15</sup> Gopal Singh v. Massa Singh, (1997) 11 SCC 429.

Parmanand v. Babu Ram, AIR 1986

<sup>16</sup> Decided on July 19, 1934, reported in (1934) 36 BOMLR 1189

first be stated. The mortgage and further charge are both dated 22nd June 1864. By the mortgage certain shares in 5 villages were mortgaged by way of conditional sale, the mortgagees being placed in possession, with no liability to account for mesne profits. The principal money was repayable at the end of three years. A further principal sum was secured by the further charge. In the year 1892 the mortgagor instituted a redemption suit alleging that nothing was due under the securities, and claiming to be put into possession of the shares in the 5 villages, or, if the Court should find that any sum was due, that it might order redemption subject to the payment of such sum. The result of that suit was that as to the shares in 2 of the villages it was decided that (for reasons which need not here be stated) there was no right of redemption any longer existing, and that as to the shares in the other 3 villages the plaintiff could redeem them on payment of the proper proportion of the mortgage money, viz. A decree dated 25th September 1896 was accordingly made in the following terms :

"It is ordered and decreed that the plaintiff is entitled to a decree for possession by redemption of mortgage in the following terms, viz., 15th November 1896, that if he will pay the said sum he will get all the costs, except the pleader's fee incurred by him in this Court, and that in case of default his case will stand dismissed and the costs incurred by the defendants will be charged against him."

An appeal therefrom was dismissed with costs. No payment of the mortgag

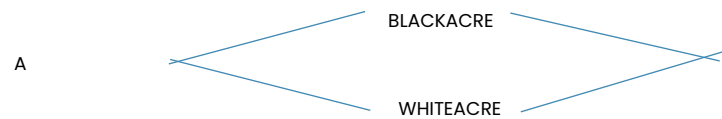
### Exceptions to partial redemption

The exceptions to partial redemption are as follows :

- 1) A share of the equity of redemption should be acquired by the Mortgagee.
- 2) In case of more than one Mortgagees, the acquisition should be by all.

mortgagees. If not, the Co-mortgagee is entitled to bring the whole property to sale.

- 3) If the mortgagee permits or releases a part of mortgaged property to one of the mortgagors.



It was single instrument. They can't get partial redemption.

If it was different instrument they can claim redemption.

### 10. COLLATERAL ADVANTAGE

The mortgagee is entitled to receive interest as a part of mortgage deed. Any benefit other than receipts of interest, principle amount and costs are deemed to be benefit of collateral advantage. Such collateral advantages can be enjoyed only till the completion of the mortgage deed. If the mortgagee enjoys such advantages after the completion of the deed, it is considered a clog and deemed to be void. Collateral benefits are permitted only if they are fair.

It's only a benefit in addition and should not be treated as a benefit of multiplication. Court of equity has the power to stick down any unconscionable or oppressive terms in the mortgaged.

The rule is that such a stipulation will not be enforceable if it's

- (1) Unfair and unconscionable, or<sup>17</sup>
- (2) In the nature of penalty clogging the equity of redemption or
- (3) Is inconsistent with or repugnant to the contractual and equitable right to redeem.

### CITYLAND & PROPERTY (HOLDINGS) LTD v. DABRAH<sup>18</sup>

**Facts:** The plaintiffs, Cityland, sold a house to a former tenant. The tenant paid a cash and took out a mortgage from the plaintiffs for the

<sup>17</sup> MULTISERVICE BOOKBINDING LTD v. MARDEN (1979) CH 84  
The plaintiff, Fairclough, was a tenant of a hotel with 17½ years remaining on the lease. The defendant, Swan Brewery, had lent money to Fairclough, using the lease as collateral. The mortgage agreement stated that Fairclough could not redeem the mortgage until six weeks before the lease's end.

<sup>18</sup> (1968) CH 166



remaining over six years. There was no provision for the payment of interest. Instead the mortgage contained a premium of that represented 19% interest per year, or 57% of the whole loan. The mortgage contained a term that in the event of a default the was payable.

**Issues :**The defendant sought equitable relief against the premium charged on the grounds that it was an unreasonable collateral advantage. The plaintiffs argued that *Kreglinger v New Patagonia Meat & Cold Storage Co Ltd*<sup>19</sup> meant there were no public policy grounds to oppose the existence of a collateral advantage. This was a commercial transaction and the defendant was not poor or ignorant.

**Decision:** The court held that it would grant relief against a collateral advantage if was unconscionable, paying particular attention to the size of the advantage. This meant the advantage could not be unfair or unreasonable. Reasonableness and fairness would depend on the circumstances. The agreement imposed an extremely high premium rate rather than interest, amounting to 57% of the loan. The plaintiffs could not justify charging such a high amount in lieu of interest. Also, in case of default the entire amount became due. This was unconscionable. Consequently, the court used its inherent jurisdiction to rewrite the agreement, and the borrower was allowed to repay the loan together with 7% interest, which was reasonable.

### **Kreglinger v. New Patagonia Meat & Cold Storage Co. Ltd**<sup>20</sup>

**Facts:** The appellants loaned money to the respondent meat company by way of a floating charge over the company's assets. One of the terms was that for five years the appellants would have the option of buying sheepskins from the meat company. The company paid off the loan after only two years. The appellants sought to exercise their option for the whole five year period.

**Issues:** The common law treats a mortgage as a contract and so the right to redeem, or pay off, the loan depends on the contract terms. However, in equity any unfair burdens imposed on the borrower that continue after the date of redemption are treated with disfavour as a 'clog' on the equity of redemption. The respondents claimed that the floating charge was the same as a mortgage and that the term amounted to a clog on the equity of redemption.

**Decision:** The House of Lords agreed that the doctrine concerning mortgages also applied to floating charges. The option to buy sheepskins was stipulated to be for five years. The option was not a clog but a collateral advantage which survived after the mortgage was paid off. It was not part of the charge, but a condition precedent to lending the money. Lord Parker said that a collateral advantage would be struck down if it was unfair and unconscionable, a penalty clogging the equity of redemption, or was inconsistent with or repugnant to the right to redeem. The option did not attach to any property and was a commercial agreement negotiated at arms' length by business people. Therefore, the term was upheld.

### **Fairclough v. Swan Brewery Co. Ltd**<sup>21</sup>

**Facts :**The plaintiff, Fairclough, was a tenant of a hotel with 17½ years remaining on the lease.

The defendant, Swan Brewery, had lent money to Fairclough, using the lease as collateral.

The mortgage agreement stated that Fairclough could not redeem the mortgage until six weeks before the lease's end.

**Legal Issue:** The question was whether the delay in the contractual redemption date was a restriction on the equitable right to redeem, and if it could be enforced.

**Judgment:** ruled that the delay in the contractual right to redeem was invalid as it rendered the equitable right to redeem meaningless. Since the equitable right only

<sup>19</sup> [1914] AC 25

<sup>20</sup> (1914) AC 25

<sup>21</sup> [1912] AC 565



came into effect after the contractual date had passed, the mortgage was essentially irredeemable. The court decided that Fairclough should be allowed to repay the debt early, and the clause delaying redemption was null and void.

## 11. PREMATURE REDEMPTION

Premature redemption of a mortgage, also known as early repayment, is when you pay off your mortgage before the end of its term.

Premature redemption under a mortgage, also known as early repayment, means paying off your mortgage loan before the agreed-upon term, and it may involve an early repayment charge or fee to compensate the lender for lost interest.

Instead of paying off your mortgage over the agreed-upon period (e.g., 15 or 30 years), you choose to pay off the entire outstanding loan amount sooner.

Many mortgage lenders charge an ERC if you repay the loan early, as they may lose out on the interest income they would have earned over the remaining loan term.

ERCs are designed to compensate lenders for the financial impact of losing the anticipated interest income from the mortgage.

ERCs are often calculated as a percentage of the outstanding loan amount or as a fixed fee, as outlined in your mortgage agreement.

Before deciding to pay off your mortgage early, review your mortgage agreement to understand if an ERC applies and how it's calculated.

Besides ERCs, you may also encounter redemption administration charges or other fees associated with early repayment.

### **Vadilal Chhaganlal Soni And Ors. vs Gokaldas Mansukh And Ors.**<sup>22</sup>

1. This is an appeal by the mortgagees against the preliminary decree for redemption which

has been passed by both the Courts below. The property in suit is an open plot bearing Tikka No. 17, Lot No. 11, measuring 34 sq. yds. It was mortgaged on 9-11-1384, for Rs. 176, The agreement between the parties was that the mortgagor was to redeem the mortgage 99 years after its execution and the mortgagee was given full authority to build any structure on this plot after spending any amount he liked. The mortgagor undertook to repay this amount to the mortgagee at the time of redemption. When the suit was filed by the plaintiffs to redeem this mortgage, the mortgagee pleaded that the claim was premature; 99 years had not still passed and so the amount under the mortgage could not be said to have become due within the meaning of Section 60, T. P. Act. This was the contention of the mortgagee. The Courts below have held that the two material stipulations in the mortgage amounted to a clog on the equity of redemption and so they have allowed the plaintiffs to redeem the mortgage and passed a preliminary decree in that behalf. In this appeal Mr. Patel has contended that the Courts below should have held that the suit was premature.

## 12. SUGGESTION

Redemption under a mortgage refers to the process by which a borrower can reclaim their property after defaulting on a mortgage loan, typically by paying off the outstanding debt. Here are some suggestions for navigating the redemption process:

**1. Review the Mortgage Terms:** Understand the specific terms of your mortgage, including the redemption period, interest rates, fees, and any penalties for late payment or foreclosure.

**2. Pay Off the Outstanding Debt:** Redemption generally involves paying the full amount of the outstanding mortgage debt, including any interest, fees, and penalties. If you're able to do this, it will stop the foreclosure process and allow you to retain ownership of the property.

**3. Negotiate with the Lender:** If you're unable to pay the full amount, consider negotiating with

<sup>22</sup> 6 November, 1952

the lender for a payment plan, loan modification, or a reduction in the amount due. Lenders may be willing to work with you to avoid foreclosure.

**4. Explore Refinancing:** If you're eligible, refinancing your mortgage might allow you to pay off the existing loan with a new one, potentially with better terms or a longer repayment period.

**5. Seek Legal Advice:** If you're in financial difficulty or facing foreclosure, it's advisable to consult with a legal professional who specializes in mortgage law to understand your rights and options for redemption.

**6. Consider a Short Sale or Deed in Lieu of Foreclosure:** If you're unable to redeem the property, you might explore alternatives like a short sale (selling the property for less than the mortgage balance) or deed in lieu of foreclosure (voluntarily transferring the property to the lender).

**7. Check for State-Specific Laws:** Redemption rights vary by jurisdiction. In some areas, borrowers may have a statutory right to redeem the property even after foreclosure. It's important to know your legal rights in your state or country.

### 13. CONCLUSION

The concept of redemption under a mortgage is a cornerstone of property and contract law, reflecting the principle of equity and fairness in financial dealings. It provides the mortgagor with the opportunity to regain ownership of their property upon fulfilling the obligations set forth in the mortgage agreement, typically through the repayment of the principal amount, interest, and any associated costs.

This right of redemption serves as a safeguard against the permanent loss of property due to financial distress, ensuring that the mortgagor is not unduly penalized or subjected to unjust enrichment by the mortgagee. Courts have consistently upheld the mortgagor's equitable right to redemption, emphasizing its

fundamental importance in preventing oppressive or unconscionable practices.

However, the exercise of this right is subject to certain limitations. The mortgagor must act within the prescribed time frame, as failure to redeem within the stipulated period may result in foreclosure, extinguishing their rights. Additionally, while the right of redemption is generally protected, contractual terms and legal provisions may impose restrictions or conditions, which both parties must adhere to.

In conclusion, the right of redemption under a mortgage embodies the balance between the rights and obligations of both mortgagor and mortgagee. It ensures that borrowers are given a fair chance to recover their property while enabling lenders to secure their financial interests. This equitable doctrine underscores the importance of fairness, transparency, and adherence to legal principles in mortgage transactions.

### 14. REFERENCES

#### BIBLIOGRAPHY

Bharuka, G.C., Mulla The Transfer of Property Act, New Delhi, LexisNexis Butterworths, 2006, Page No. 633.

Tripathi, G.P. Dr., The Transfer of Property Act, New Delhi, Central Law Publications, 2003, Page No. 267.

Sinha, R.K. Dr., The Transfer of Property Act, Allahabad, Central Law Agency, 2015, Page No. 293.

#### 15. WEBLIOGRAPHY

1. <http://www.investopia.com/personal.finance/home.ownership>.

2. <http://www.legalbites.in/right-of-redemption/>

3. [www.economic.indiatimes.com/redemption-rights-in-a-mortgage-process/articleshow/2625496.cms](http://www.economic.indiatimes.com/redemption-rights-in-a-mortgage-process/articleshow/2625496.cms)

4. [www.advocatekhoj.com/library/bareacts/trans ferofproperty](http://www.advocatekhoj.com/library/bareacts/trans ferofproperty).



5.  
[www.lawsfindia.org/pdf/haryana/1913/1913HR2.pdf](http://www.lawsfindia.org/pdf/haryana/1913/1913HR2.pdf)

6. Critical analysis of mortgagor's right of redemption - iPleaders

