



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.B. 1st Semester

SUBJECT: Law of Property

SUBJECT CODE: LL. B.104

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Lecture-24



Rights of the Mortgagor

Every mortgage-deed leaves a right to the mortgagor and a corresponding liability for mortgagee and vice versa. Following are the rights given to a mortgagor given by the Transfer of Property Act, 1882:

1. Right to redemption
2. Right to transfer mortgaged property to a third party instead of retransferring
3. Right of inspection and production of documents
4. Right to accession
5. Right to improvements
6. Right to a renewed lease
7. Right to grant a lease

Right to Redemption (section-60):

It is one of the most important rights of a mortgagor given under section of the Act. This right puts an end to mortgage by returning the property of mortgagor. The right to redeem further grants three rights to the mortgagor:

1. Right to end mortgage deal
2. Right to transfer mortgaged property to his name
3. To take back possession of property in case of delivery of possession

In the case of *Noakes & Co. vs. Rice (1902) AC 24*, Rice was a dealer who mortgaged his property, premise and goodwill to N subject to the provision that if R paid back the whole amount, the property would be transferred back to his name or any other person's. A covenant was attached that stated whether or not the amount is due, R would only sell Malt liquor by N in his premises. Because of this covenant, R had difficulty in redemption and it didn't give him absolute right over his property. House of Lords held that anything which clogs this right is bad and they came up with the concept that '*once a mortgage always a mortgage*' and said that mortgage could never be irreducible.

This principle was added to protect the interest of a mortgagor. Any condition or provision which prevents a mortgagor from redeeming his mortgaged property is a clog on the right of redemption. The right to redemption continues even though the mortgagor fails to repay the loan amount to mortgagee. In the case of *Stanley v. Wilde, (1899) 2 Ch 474*, it was held that any provision mentioned in the mortgage-deed which has an effect of preventing or impeding the right to redemption is void as a clog on redemption.

Exceptions to the right- The right to redeem has three exceptions. It can be extinguished under the following cases:

- By the act of parties
- By operation of law
- By decree passed by the court

Obligation to transfer to the third party instead of transferring it to mortgagor (section-60A):

This right was added in the Act by Amendment Act of 1929. This right provides the mortgagor with authority to ask the mortgagee to assign the mortgage debt and transfer the property to a third person directed by him. The purpose of this right is to help the mortgagor to pay off the mortgagee by taking a loan from a third person on the same security.

Right to inspection and production of documents (section-60B):

This section is also inserted by the Amendment Act of 1929. It is the right of mortgagor to ask mortgagee for the production of copies of documents of the mortgaged property in his possession for inspection on notice of reasonable time. The expenses incurred on production or copies of documents or travel expenses of a mortgagee are to be paid by the mortgagor. This right is available to the mortgagor only as long as his right to redeem exists.

Right to Accession (section-63):

Basically, accession means any addition to property. According to this right mortgagor is entitled to such accession to his property which is in the custody of mortgagee. There are two types of accession:

- **Artificial accession-** It is when mortgagor made some efforts and it increased the value of land.
- **Natural accession-** The name itself defines i.e. without any man-made efforts.

In case an accession is made to the property due to the efforts of mortgagee or at his expense and such accession is inseparable, mortgagor, in order to be entitled to such succession, needs to pay the mortgagee the expense of acquiring such accession.

If such separate possession or enjoyment is not possible, the accession must be delivered with the property; it is the liability of mortgagor, in the case of an acquisition which is necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, with interest at the same rate as is payable on the principal amount, or, where no such rate is fixed, at the rate of nine percent per annum.

Right to Improvements (section-63A):

According to this right if the mortgaged property has been improved while it was in possession of mortgagee, then on redemption and in the absence of any contract to the contrary mortgagor is entitled to such improvement. The mortgagor is not liable to pay mortgagee unless:

- Improvements made by the mortgagee were to protect the property or with the prior permission of mortgagor.
- Improvements were made by the mortgagee with the permission of the public authority.

Right to Renewed Lease (section-64)

If the mortgagor is entitled the mortgaged property is a leasehold property and during the duration of mortgage the lease gets renewed then, on redemption the mortgagor is entitled to have the benefit of the new lease. This right is available to the mortgagor unless he enters into any contract to the contrary with mortgagee.

Right to grant a Lease (section-65A):

This right was introduced by the Amendment Act of 1929. Prior to this right, the Transfer of Property Act did not allow a mortgagor to lease out the mortgaged property on his own but only with the permission of mortgagee. Now, a mortgagor has the right to lease out the mortgaged property while he is in lawful possession of that property, subject to the following conditions:

- All conditions in the lease should be according to the local laws and customs to prevent any fraudulent transaction.
- No rent or premium shall be paid in advance or promised by mortgagee.
- The contract shall not contain any provision for the renewal of the lease.
- Every such lease shall come into effect within a period of six months from the date of its execution.

Where the mortgaged property is a building, the term of the lease should not exceed three years in total.

MCQ

1. Mortgagor has

- (a) Right to redemption
- (b) Right to transfer mortgaged property to a third party instead of retransferring
- © Right of inspection and production of documents
- (d) All of the above

2. Right to redemption is provided in section.....of TP Act 1882.

- (a) 60
- (b) 60-A
- (c) 60-B
- (d) 63

3. Right to transfer mortgaged property to a third party instead of retransferring is provided in section.....of TP Act 1882.

- (a) 60
- (b) 60-A
- (c) 60-B
- (d) 63

4. Right to accession is provided in section.....of TP Act 1882.

- (a) 60
- (b) 60-A
- (c) 60-B
- (d) 63

5. Section 60-A and 60-B inserted by the Amendment in.....

- (a) 2001
- (b) 1929
- (c) 2002
- (d) 2019

