



## FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

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# Lecture-26



## **Rights of Mortgagee -**

There are the following rights of a mortgagee -

### **I) Right to foreclosure or sale -**

Under Section 67 of the Transfer of Property Act, 1882, the Mortgagee has a right to foreclose or sale in case of non-payment of mortgage Money. Section 67 of the Transfer of Property Act run as follows -

In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage- money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.

A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed-

(a) to authorize any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or a usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorise a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorise the mortgagee of a railway, canal, or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

## **II) Right to sue for Mortgage-Money -**

Under Section 68 of the Transfer of Property Act, 1882, the mortgagee has a right to file a suit in case of default of payment of mortgage money. Section 68 of the Transfer of Property Act runs as follows -

The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely,-

(a) where the mortgagor binds himself to repay the same;

(b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of Section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

(c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

Provided: that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

Where a suit is brought under clause (a) or clause (b) of sub-section (1), the court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property.

### **III) Right to sale of mortgaged property in case of non-payment of mortgage money**

Under Section 69 of the Transfer of Property Act, 1882, the mortgagee has the right to sale of mortgaged property in case of non-payment of mortgage money

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official Gazette;

(b) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgagee is the government;

(c) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage-deed, situate within the towns of Calcutta, Madras, Bombay, or in any other town or area which the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) No such power shall be exercised unless and until -

(a) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(b) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not made subject, or after payment into court under Section 57 of a sum to meet any prior encumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(5) Nothing in this section or in section 69A applies to powers conferred before the first

day of July 1882.

#### **IV) Accession to mortgaged property -**

According to Section 70 of transfer of Property Act, 1882 - If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

#### **Illustrations -**

(a) 'A' mortgages to 'B' a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) 'A' mortgages a certain plot of building land to B and afterward erects a house on the plot. For the purposes of his security, 'B' is entitled to the house as well as the. plot.

#### **V) Renewal of mortgaged lease (Section 71 of T.P.A) -**

When the mortgaged property is a lease and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

## **VI) Rights of mortgagee, in possession -**

According to Section 72 of Transfer of Property Act, 1882 A mortgagee may spend such money as is necessary-

(a) for the preservation of the mortgaged property from destruction, forfeiture or sale;

(b) for supporting the mortgagor's title to the property;

(c) for making his own title thereto good against the mortgagor; and

(d) when the mortgaged property is a renewable lease-hold, for the renewal of the lease, and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine percent per annum:



## MCQ

1. Rights of a mortgage are

- (a) right to foreclose or sale
- (b) **Right to sue for Mortgage-Money**
- © **Accession to mortgaged property**
- (d) All of the above

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

- (a) 67
- (b) 68
- (c) 69
- (d) 70

3. Right to sue for Mortgage-Money is provided in section.....of TP Act 1882.

- (a) 67
- (b) 68
- (c) 69
- (d) 70

4. Right to sale of mortgaged property in case of non-payment of mortgage money is provided in section.....of TP Act 1882.

- (a) 67
- (b) 68
- (c) 69
- (d) 70

5. Under section 69 No such power shall be exercised unless and until

- (a) (a) notice in writing requiring payment of the principal money has been served on the mortgagor,
- (b) default has been made in payment of the principal money, or of part thereof, for three months after such service;
- © Both (a) and (b)
- (d) None of the above