

RIGHT OF REDEMPTION

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The term right of redemption has been widely stated in the section 60 of the Transfer of property act 1882.

Before getting on o the right of redemption it is of utmost importance to know what is right to redeem.

Right to redeem in a very general or layman sense means when you have a particular asset at that time you or any person authorised by you can get such an asset in other person's possession as a you redeem it.

E.g: -

You have a food coupon so on a fine day you use it, or in other words you redeem that coupon.

In legal sense it different and more specific.

Section 60 of the Transfer of Property Act,1882 talks about Right of Mortgagor to redeem

At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and a proper place, of the mortgage-money, to require the mortgagee,

- (a) To deliver the mortgager the mortgage deed and all documents relating to the mortgaged property which are in possession of the mortgagee.
- (b) Where the mortgagee is in possession of the mortgaged property to deliver possession thereof to the mortgagor, and
- (c) At the cost of the mortgagor either to re-transfer the mortgaged property to him or any third person he may direct, or to execute and to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished.

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of court.

The right conferred by this part is known as right to redeem and the suit for enforcement of such a right is known as right of redemption.

A mortgage transaction is primarily a contract to ensure re-payment of loan when an immovable property is kept as a security.

The person who gives property as a security for loan is known as mortgagor and the person who gives loan is known as mortgagee.

The mortgagor remains the owner of the property its only the possession of the property that has passed to the mortgagee.

The mortgagor is capable of obtaining the mortgaged property form the mortgagee, when he repays the loan. This statutory right of mortgagor to take back the property on repayment of the loan amount in full plus the interest that is supposed to be paid, if any.

A right to redeem and a suit enforcing such a right of the mortgagor to redeem the mortgaged property is called right of redemption.

The right to redeem only arises after the principal amount has become due and it continues till the time the mortgagee sues for the enforcement of mortgage, such a right cannot be defeated or taken away with an agreement to the contrary, in case there is such an agreement, the agreement is invalid and can be challenged in the court of law.

For an Instance,

A executes a mortgage in favour of B and secures a loan of Rs. 5 lakhs. In the contract of mortgage or mortgage deed it was clearly stated that A would pay such an amount after period of fifteen years, failing which, his right to redeem would come to an end and the mortgaged property would pass to the mortgagee.

Here it is the duty of the mortgagor to pay back the principal amount of Rs. 5 lakhs and plus interest if any on the completion of period of fifteen years. If after the expiry of the term the mortgagee is not capable of paying the mortgaged amount then in such a situation his right to redeem won't come to end, even if the mortgagor comes to pay the mortgagee in the sixteenth year then the mortgagee has to accept such a payment and in case he does not accept such a payment then the mortgagor can deposit the complete amount in the court after filing suit of Redemption.

Theoretically, the right to redeem the property does come to an end after the expiry of the period for which the loan had been taken by the mortgagor.

Thus time period is immaterial in the mortgage deed unless the mortgagor files a foreclosure suit.

FORECLOSURE SUIT:-

In a mortgage deed when a time period lapses and the mortgagor want to sell the mortgaged property in such a case he needs to file a foreclosure suit in court and if the court grants so then only he can sell it, foreclosure means that the contract has come to an end and since the respondent has not fulfilled the terms to the contract and the petitioner wishes to sell the security property and recover the principal debt amount as well as the interest pending and if there is any amount left after sale and recovery then such an amount is to be returned to the respondent.

Theoretically,

The right to redeem come to an end after filing of suit of foreclosure, but practically, such a right to redeem is still valid till the matter goes on in the court, and the mortgagor is entitled to deposit entire amount in the court and redeem his property.

In case of

AchalDas Durgaji Oswal VS Gangabisan Heda

(2003) 3 SCC 614

Facts:-

- a. GangabisanHeda will be herein stated as the mortgagor unless stated to the contrary.
- b. AchaldasDurgajiOswal will be herein stated as the mortgagee unless stated to the contrary.
- c. The mortgagor took loan from the mortgagee through usufruct mortgage where the possession would be delivered to the mortgagee for a period of 5 years.
- d. The mortgagor failed to repay the mortgage amount to the mortgagee within the stipulated period.
- e. The mortgagee filed a suit of foreclosure and the mortgagor filed a suit of redemption of the property.
- f. The lower court was the judgment that the mortgagor had to deposit the said amount within period of three months.
- g. The mortgagee failed to pay within three months, but deposited it after three years, and applied for the final decree from the court.
- h. The lower court rejected the prayer as barring the time period provided by the court.

JUDGEMENT:-

The matter went to the higher court and the higher court reversed the judgement given by the lower court.

Upon which the matter went to the Supreme Court and the apex court upheld the decision of high court and stated that though the mortgagor had created a default but he still has a right to redeem his property. The mortgagor had deposited the amount in accord to the act of limitation which prescribes it to be 30 years and such a deposition was in that time frame only.

I personally feel that this provision is highly tilted towards the benefit of the mortgagor as this right is though safeguarding his interest but in return is hampering the interest of the mortgagee.

One would say to the contrary that the mortgagor can simply file a foreclosure suit to gain his money but as seen in the prior or aforementioned case that even if a foreclosure suit has been

filed, if the mortgagee files redemption suit in such a condition the mortgagee still has to wait for the period of 30 years for the money he has lent.

If according to the mortgage deed there is only the title has been given to the mortgagee and he has no property to enjoy in such a case also the right of the mortgagee is being hampered and I personally believe that this provision is to the benefit of the mortgagor and gives a sort of ease to the mortgagor.

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- a. Property law, Dr.Poonam Pradhan Saxena.