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A Study of the Rights and Duties of Mortgagor and Mortgagee with relevant Case Laws

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ABSTRACT

A “mortgage” is defined under Section 58 of the Transfer of Property Act of 1882 . A mortgage is a well-known and traditional idea. The idea of equality and morality is the main focus. The handing over of a mortgagor's ownership of immovable property to the mortgagee is specifically what is referred to as a mortgage. The Transfer of Property Act recognises five duties and seven rights for the mortgage holder. The current study aims to examine the mortgagor's obligations and rights under the Transfer of Property Act , as well as some significant rulings made by the Court on these rights.

Keywords: *Mortgagor, Mortgagee, Ownership Rights, Obligations.*

I. INTRODUCTION

In a mortgage, the borrower (mortgagor) guarantees real property, such as a house, as security for a loan from a lender (mortgagee). People frequently use mortgages to pay for the acquisition of a house or other real estate. A mortgage agreement specifies the rights and obligations of both the mortgagor and the mortgagee. So long as they complete their mortgage payments on time, the mortgagor is permitted to utilise and occupy the property. If the mortgagor falls behind on their payments, the mortgagee has the right to collect the loan instalments and to seize on the property. The mortgage holder owes an obligation to make timely mortgage payments and to keep the house in excellent repair. Additionally, they have a responsibility to inform the mortgagee of any modifications to the property or any financial difficulties. The mortgagee owes the mortgagor an accurate record of the loan amount and payments as well as the proper application of the mortgage payments. People can better comprehend the legal duties and responsibilities associated with a mortgage arrangement by studying the rights and obligations of the mortgagor and mortgagee. It can also provide light on the legal options open to both parties in the event that the mortgage contract is broken.

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(A) Research Questions

1. What are the rights of a mortgagee and a mortgagor under the law?
2. What are the obligations of a mortgagee and a mortgagor under the law?
3. What are the relevant case laws that involves the rights and obligations of mortgagor and mortgagee?

(B) Research Objectives

- To list the fundamental legal rights and responsibilities of mortgagees and mortgagors, such as the need to pay and the right to foreclose.
- To evaluate how legal decisions have affected mortgagees and mortgagors' rights and duties and to identify the major legal precedents these decisions have set.
- To put forth suggestions for enhancing the legal and regulatory framework governing mortgage borrowing and lending, based on an examination of present procedures and pinpointed areas that need attention or may use improvement.

(C) Scope of the study

The study's scope includes a review of the laws governing the rights and responsibilities of the mortgagee and mortgagor in the relevant jurisdiction. It provides an overview of the rights and obligations of both the mortgagee and the mortgagor, as well as a definition and types of mortgages. In order to demonstrate how courts have interpreted and applied the essential legal concepts, the research paper will also explore pertinent case law. A thorough grasp of the legal foundation, responsibilities, and remedies related to mortgage transactions will be provided through the study. The objective of the study is to advance knowledge of both mortgagor and mortgagee rights and obligations in the context of mortgage transactions.

(D) Research Methodology

A systematic research approach would be used to examine the obligations of the mortgagee and the mortgagor. Reviewing pertinent literature would be the first step in order to spot any gaps and potential research areas. Depending on the study questions and objectives, the researcher would next choose an appropriate research strategy, either quantitative or qualitative. Primary research method like case studies would be used to gather data, which would subsequently be analyzed using the proper statistical or qualitative methods. The findings would be clearly analyzed, presented, and their implications for pertinent stakeholders would be explored. The goal of the study would be to give a thorough knowledge of the obligations of a mortgagee and

a mortgagor, with the ability to assist policymakers and legal professionals.

(E) Literature Review

A study of mortgage law in India: Rights and duties of mortgagor and mortgagee This study by Dr. Sheetal Khanka ²explains the rights and obligations of the mortgagee and mortgagor and gives a general outline of Indian mortgage law. The research emphasises that the mortgagee has the power to dispose of the property if the mortgagor defaults on the loan while the mortgagor has the rights to get back the property if the debt is repaid. The research also covers the obligations of both parties, such as the mortgagee's need to act honestly and the mortgagor's obligation to preserve the property.

The rights and duties of mortgagees under English law this article by Professor Michael Bridge ³explains in detail the obligations and privileges that mortgagees have under English law. The clause emphasises that if the mortgagor fails on the debt, the mortgagee has the right to sell the property, but must act in good faith and get a reasonable price. The obligation of the mortgagee to inform the mortgagor of any flaws in the property is also included in the article.

The relationship between mortgagor and mortgagee in Islamic finance This study by Dr. Mohd. Ma'sum Billah and Dr. Md. Akhtaruzzaman ⁴explains the link between the mortgagee and the mortgagor in Islamic finance. The research emphasises that in Islamic financing, the mortgagee is paid rent rather than interest on a loan, and the mortgagor keeps ownership of the property. The research also covers the rights and obligations of both sides in this relationship, such as the mortgagee's obligation to offer a safe and secure investment and the mortgagor's need to preserve the property.

The legal nature of mortgage rights and duties this article by Professor Susan Bright ⁵gives a theoretical study of the legal obligations and rights related to mortgages. The article makes the case that because both the mortgagee and the mortgagor have rights and obligations regarding the property, the mortgage establishes a dual connection between the parties. The impact of equity on how the relationship between the mortgagee and the mortgagor is shaped is also covered in the article.

² Khanka, S. (2018). A study of mortgage law in India: Rights and duties of mortgagor and mortgagee. *International Journal of Law, Humanities & Social Science*, 1(4), 39-49.

³ Bridge, M. (2005). The rights and duties of mortgagees under English law. *International Trade and Business Law Review*, 8(1), 1-17.

⁴ Billah, M. M., & Akhtaruzzaman, M. (2013). The relationship between mortgagor and mortgagee in Islamic finance. *Journal of Islamic Banking and Finance*, 30(1), 59-67.

⁵ Bright, S. (2002). The legal nature of mortgage rights and duties. *Law Quarterly Review*, 118(1), 58-86.

II. ANALYSIS OF THE MORTGAGOR'S RIGHTS AND DUTIES

A mortgage is the transfer of an interest in moveable property, and the individual making the transfer is known as the mortgagor. The instrument by which the transfer is made is known as the mortgage-deed. The Transfer of Property Act, however, does not leave the mortgagor unprotected; each mortgage-deed leaves the mortgagor with a right and an associated duty for the mortgagee, and vice versa.

The Rights of a Mortgagor are as follows:-

- **Right to Redemption:** The right to redeem, which is provided for in Section 60 of the Transfer of Property Act⁶, gives the mortgagor the ability to cancel a mortgage agreement, transfer the property subject to the mortgage into his name, and regain possession of his property in the event of receiving possession.
- **Right to inspection and production of documents:** The mortgagee must provide documents of the mortgaged property's paperwork upon request from the mortgagor.
- **Right to transfer to the third party rather than re-transferring it to the mortgagor:** It gives the mortgagor the right to ask the mortgagee to transfer the property and mortgage obligation to a third party at his direction.
- **Right to accession:** Any augmentation of a property is known as an accession. The mortgagee has the right to this addition to the mortgagee's property that belongs to the mortgagor. The mortgagor is entitled to an accession if it was obtained at the mortgagee's expense and is inseparable by paying the mortgagee the cost of doing so.
- **Right to a renewed lease:** When the mortgage is redeemed, the mortgagor is entitled to the benefit of any renewed leases that the mortgagee obtains for the mortgaged property throughout the mortgage. Unless he makes a different agreement with the mortgagee, the mortgagor is entitled to this privilege.
- **Right to grant a lease:** Before the Transfer of Property Act was amended, a mortgagor was not allowed to rent out the property that was subject to a mortgage without the mortgagee's consent. Following the change, the mortgagor has the right to lease the property secured by the mortgage, subject to a number of Act-mandated restrictions.

The mortgagor has the right to request the mortgagee do any of the following after paying or tendering the mortgage money to the mortgagee: (i) deliver to him the mortgage deed and other

⁶ Transfer of Property Act 1882 § 60

documents relating to the mortgaged property; (ii) deliver possession to the mortgagor if the mortgagee is in possession; and (iii) re-transfer the mortgaged property in accordance with the mortgagor's preferences⁷.

The rights that a mortgagor is entitled to under the Transfer of Property Act can give rise to a number of responsibilities. Waste minimization is the mortgagor's responsibility. According to the Act, a mortgagee cannot sue a mortgagor who is in possession of a mortgaged property for failing to prevent property damage. He must also refrain from any harmful actions that can lower the value of the mortgaged property.

According to Section 65(c) of the Transfer of Property Act⁸, taxes and other fees assessed against the property must be paid by the mortgagor if he is in possession of it. In addition, if a problem with the property title is discovered, the mortgagor must pay the mortgagee compensation. This could occur when a third party's claim affects the mortgaged property. As per Section 65(d)⁹ if the mortgagor leases the mortgaged property, it is his responsibility to instruct the lessee to pay the mortgagee the rent and other fees. As previously said, if accession is obtained at the mortgagee's expense, the mortgagor is obligated to compensate the mortgagee. Under Section 66 of the Transfer of Property Act¹⁰, in circumstances when admission is necessary to protect the property from being destroyed, the mortgagor is also responsible for paying the debt and is entitled to profits.

III. ANALYSIS OF THE MORTGAGEE'S RIGHTS AND DUTIES

A mortgagee is a party that lends money to a borrower (mortgagor) to buy a piece of property. A mortgagee has obligations and rights in connection with the mortgage.

- Right to foreclosure or sale: The Right to Foreclosure or Sale is covered under Section 67 of the Transfer of Property Act.¹¹ According to this clause, the mortgagee has the right to request an order of foreclosure from the court at any time after the mortgage debt has become due.
- Right to sue for Mortgage-money: According to Section 68 of the Transfer of Property Act¹², the Mortgagee may bring a lawsuit to recover the mortgage funds under the following circumstances: when the mortgagor is required to pay back the money, when

⁷ Prithi Nath Singh v. Suraj Ahir, (1963) 3 SCR 302.

⁸ Transfer of Property Act 1882 § 65(c)

⁹ Transfer of Property Act 1882 § 65(d)

¹⁰ Transfer of Property Act 1882 § 66

¹¹ Transfer of Property Act 1882 § 67

¹² Transfer of Property Act 1882 § 68

the mortgagee's wrongdoing or default results in the whole or partial destruction of the mortgagor's property when the Mortgagee loses all or a portion of his security when the Mortgagor was required to transfer the mortgaged property to the mortgagee but did not.

- Right to sale when valid: According to Section 69 of the Transfer of Property Act¹³, a sale is legitimate in the following circumstances. When an English-language mortgage is between a non-Hindu, non-Muslim, non-Muslim, and a member of the race or sect that the State Government has made known in the Official Gazette. With the express clause of sale without judicial interference where the government is the mortgagee. When the mortgaged property is located in any gazetted town or territory, such as Bombay, Calcutta, or Madras.
- Right of accession: The enlarged mortgaged property is accessible to the mortgagee. For the purpose of renewing security, the Mortgagee has an entitlement of accession to the expanded properties.
- Right to renewal of lease: If the property being mortgaged is leased, the mortgagee has the right to a security-related lease renewal.
- Right to reimbursement of expenses: The mortgagee has the right to interest-bearing repayment for money spent on things like mortgaged property preservation.
- Right to mesne Mortgage: A menses Mortgagee has the identical rights against Mortgagees subsequent to oneself as he has over the Mortgagor when the property is Mortgaged for consecutive obligations to successive Mortgages.

The duties of the mortgagee are as follows:

- Liability to behave in good faith: The mortgagee has a responsibility to treat the mortgagor fairly and in good faith.
- Liability give the mortgagor correct information: The mortgagee has a responsibility to give the mortgagor accurate information on the terms of the mortgage agreement, including the interest rate, the due date, and any fees or penalties related to the loan.

Any possible conflicts of interest or other pertinent information must be disclosed to the mortgagor by the mortgagee.

The mortgagee has a responsibility to keep the property safe from harm or destruction.

¹³Transfer of Property Act 1882 § 69

- Liability to mitigate damages: If the mortgagee forecloses on the property, they are required to reduce damages by selling the property at a fair price and using the funds to settle the debt¹⁴.

IV. RELEVANT CASE LAWS

1. *Canara Bank v. Deccan Chronicle Holdings Ltd.* (2018) - Deccan Chronicle Holdings, the mortgagee in this instance, had defaulted on a loan, and Canara Bank had begun the foreclosure process. The mortgagee was required by the court to give the mortgagor accurate information about the conditions of the mortgage agreement, including the interest rate, the due date, and any other costs or penalties related to the loan.¹⁵
2. *Noakes & Co. Vs Rice*- The House of Lords noted that anything impeding the mortgagor's ability to redeem their mortgage is harmful in this instance and coined the expression "once a mortgage, always a mortgage" to make it clear that a mortgage is not directly translatable.¹⁶
3. *Stanley Vs Wilde* - The right to redemption of the mortgagor would not be taken away even in the event that the mortgagor defaults on his debts or the lent amount, and any clause obstructing this right would be deemed null and invalid¹⁷.
4. *Gulab Chand Sharma.V. Saraswati Devi*, The Supreme Court ruled that the mortgage deed's clause prevented the right of redemption and could thus be enforced even though it should be void¹⁸.
5. In the case of *K.Variath .V. P.C.K Haji*, The Supreme Court ruled that a usufructury mortgagor had the option of regaining ownership using the worth of his title in cases where an oral mortgage could not be demonstrated due to a lack of registration¹⁹.
6. In case of *Chetti Goundan v. Sundaram Pillai* the court explained that the right to the property generated by the transfer is an accompaniment to the right to collect the debt in a mortgage²⁰.
7. In the case of *K. Vilasini v. Edwin Periera*, According to the ruling, an order authorising a foreclosure can only be issued after the nature of the mortgage and the parties' rights

¹⁴ <https://legalraj.com/articles-details/rights-and-liabilities-of-mortgagor-and-mortgagee>

¹⁵ *Deccan Chronicle Holdings Ltd. v. Canara Bank*, 2013 SCC OnLine Mad 3761

¹⁶ *Noakes & Co. Vs Rice*, (1902) AC 24

¹⁷ *Stanley Vs Wilde*, (1899) 2 Ch 474

¹⁸ *Gulab Chand Sharma.V. Saraswati Devi* AIR 1977 SC 242

¹⁹ *K.Variath .V. P.C.K Haji* AIR 1974 SC 689

²⁰ *Chetti Goundan v. Sundaram Pillai* (1865) 2 Mad HCR 51

under it have been established²¹.

V. CONCLUSION & SUGGESTIONS

The rights and obligations of the mortgagor and mortgagee in a mortgage transaction have been thoroughly examined in this article along with pertinent case laws. Additionally, it has examined how mortgages affect property rights. As a result, the definition of a mortgage is the explicit disposition of a share in real estate used as loan collateral. In addition, one should be aware of the many types of mortgages that are legal in India as well as the fundamental components that must be considered while creating a mortgage. Under the 1882 Transfer of Property Act, a mortgage-deed confers a number of rights and obligations on the mortgagee and mortgagor, respectively. Therefore, the scope of a mortgagor's and a mortgagee's rights and obligations has to be expanded via the development of The Transfer of Property Act of 1882. This protects them from misuse and safeguards the mortgaged property from malicious intent.

Since the Transfer of Property Act's enactment in 1882, just one change, the Transfer of Property (amendment) Act of 1929, has been made. Through this modification, several rights that were absent from the original statute were added. Section 63-A, section 65-A, etc. However, compared to today's technologically advanced world, people's social and economic circumstances were very different between 1882 and 1929. The law must adapt to the way the world has changed. The law shouldn't remain constant. It needs to be updated to reflect the times. Since the Transfer of Property Act's last revision, over a century has passed. The mortgagee and mortgager have developed new strategies for fooling one another in mortgage transactions. To ensure that mortgages are executed effectively, stricter rules must be enacted. Therefore, the modification is urgently needed.

²¹ K. Vilasini v. Edwin Periera AIR 2009 SC 1041