



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

**UNDERSTANDING THE RIGHT OF REDEMPTION:
ANALYSING SHANKAR SAKHARAM KENJALE(D) BY
... VS NARAYAN KRISHNA GADE**

AUTHORED BY- SURYAANSH KISHAN RAZDAN¹

AMITY LAW SCHOOL, NOIDA

AMITY UNIVERSITY, UP

• **Introduction:**

Real estate law is indeed extensive, but there are various concepts which form a major part of it, and the concept of “Mortgage” is definitely one of them. Mortgage is a term which has become a part of common human terminology. In the simplest of terms, Mortgage is the transfer of an interest in some specific immovable property, where said property is given as a security for a loan.

When someone puts up their immovable property as mortgage they do it in order to secure a loan in return, and the possession of the property remains with the creditor (the person who granted the loan) and the person putting up their property as mortgage has various rights, the most basic and integral right of them all is the Right of Redemption or the right to redeem the mortgage i.e. to get back the property once the amount of the loan is repaid.

In the following article, we will first briefly discuss about the Concept of Mortgage and the Right of Redemption in order to get a proper understanding and appreciation of the case analysis.

The case of **Shankar Sakharam Kenjale(D) By ... vs Narayan Krishna Gade²** is an interesting case when it comes to the concept of Mortgage as although it provided simple observations as to the concept of mortgage, but the situation presented before the court required an intensive interpretation of various provisions and the facts of the case.

Now, let us discuss in brief about the concept of Mortgage.

¹Law Student, B.A. LL.B(Hons), 5th Year, Amity Law School, Noida, Amity University Noida (U.P.).

² CIVIL APPEAL NO. 4594 OF 2010

• About Mortgage:

Mortgage is defined under Section 58 of the Transfer of Property Act. The concept of Mortgage in India as stated by **Mahmood, J in the case of Gopal v. Parsotam**³ “cannot be defined better than the definition adopted by the Legislature in Section 58 of the Act.”

On that note, let us look at the definition as under Section 58.

“(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.”⁴

The definition talks about the Mortgagor and the Mortgagee, who are the Parties to a Mortgage. The Mortgagor, as the definition puts it, is the Transferor, that is, he puts up the property which acts as a security for the loan which is going to be advanced by the Transferee or in this case, the Mortgagee.

The section then goes on to talk about the various kinds of mortgages which are recognised under Indian Law.

• The Right to Redeem:

A Mortgagor has the following rights:

1. Right of Redemption;
2. Right of transfer to a third party instead of re-transference to himself;
3. Right to inspection and production of documents;
4. Right to accession;
5. Right to grant a lease;
6. Right to reasonable waste.

³ Second Appeal Nos. 1152 and 509 of 1881

⁴The Transfer of Property Act, 1882 (Act No. 4 of 1882), s.58

Section 60⁵ of the Transfer of Property Act confers on the mortgagor the right of redemption which is a statutory right.

The most important (and obvious) right of the mortgagor is the right to redeem the Mortgage to pay off the mortgage-money and get back the property. The mortgagor has the right to demand that the mortgagee reconvey the mortgaged property to him upon payment or tender of the mortgage money at any time after the principal amount has become due. The right of redemption refers to the mortgagor's ability to receive his property back immediately after his debt has been satisfied. The mortgagor has the right to reclaim the mortgage deed or the mortgaged property in order to exercise his ownership rights since he is an owner who has ceded some ownership rights.

“The right of redemption recognised under the Transfer of Property Act is thus a statutory and legal right which cannot be extinguished by any agreement made at the time of mortgage as part of the mortgage transaction.”⁶ Any clause included in the mortgage deed that would hinder or impede redemption would be void. It is not possible to make a mortgage irredeemable and deem the possibility of redemption as being void.

● **Case Analysis:**

The case of **Shankar Sakharam Kenjale(D) By ... vs Narayan Krishna Gade** is a case which strengthens the position of the Mortgagor while enhancing the ambit of his Right to Redeem. The judgement does not put forth the principles in a twisted manner which need to be construed later on, but it analyses the facts of the case in great depth and presents us with a judgement which presents us with an example as to how much judicial thought goes into it when it comes to framing judgements over cases which have been going on since decades.

The following judgement is from an appeal before the Supreme Court. The appeal arises out of the judgement of the Bombay High Court where it set aside the findings of the trial court and the appellate trial court and directed the Trial Court to draw a preliminary decree of redemption of mortgage in favour of the Respondents herein.

⁵ The Transfer of Property Act, 1882 (Act No. 4 of 1882), s.60

⁶ Narayan Deorao Javle (D) through LRS. Vs. Krishna, CIVIL APPEAL NO. 4726 OF 2021

○ Facts:

The disputed land in the following case was **Paraganawatan property/Inam land** and Smt. Laxmibai who was the watandar of the suit land had inducted one Mr. Ramchandra (Respondent) as a permanent Mirashi tenant of the land. Such tenancy was hereditary in nature.

(Note: The High Court of Bombay in the case of **Shrimantibai Ramu Nargude&Anr.Vs.Bhimrao Appa Nargude&Ors.**⁷ elucidated upon the meaning of Mirashi Tenant. The court stated that the term “**Mirashi Tenant is a permanent tenant** - He can assign his right to tenancy - Hence, he can also bequeath the same by a Will.”⁸ The court also stated that this definition falls under the meaning and provisions of a “Permanent Tenant” as prescribed under the Bombay Tenancy and Agricultural Lands Act (1948)⁹”

In 1947, Mr. Ramchandra executed a mortgage deed in favour of one Shankar Sakharam Kenjale (hereinafter mortgagee or appellant) mortgaging the suit land for an amount of Rs. 900. Per the terms of this deed, a period of ten years was envisaged for the repayment of the mortgage money and the mortgagee was placed in possession of the suit land.¹⁰

As stated, the deed was for a period of 10 years, but during this period, **the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950**¹¹ (hereinafter **the Abolition Act**) came into force and under this Act, “Paragana and Kulkarni watans were abolished”¹² and watan lands were resumed to the Government and **the disputed land being one of them, was also resumed to the government.** But the act was not discriminatory to the prior holders (or in this case, the Watandars) of the Lands which have now been resumed to the Government. It had provisions in its text which allowed the previous Watandars to once again attain the ownership of the land in their name upon the payment of “the requisite occupancy price within prescribed period.”¹³

But, as might be obvious, the Respondents in this case did not apply for the same. However, a Government Resolution was passed during this period which allowed any person who was in Possession of the lands in question which had been resumed to the Government can apply for seeking re-grant for the same. Similarly, the Appellant, who at time was the Mortgagee of the

⁷Second Appeal No.204 of 1991

⁸Shrimantibai Ramu Nargude&Anr.Vs.Bhimrao Appa Nargude&Ors, Second Appeal No.204 of 1991

⁹The Bombay Tenancy and Agricultural Lands Act, 1948 (Act No. 67 of 1948)

¹⁰CIVIL APPEAL NO. 4594 OF 2010

¹¹The Maharashtra Paragana and Kulkarni Watans (Abolition) Act, 1950(Act No. 60 of 1950)

¹²CIVIL APPEAL NO. 4594 OF 2010

¹³CIVIL APPEAL NO. 4594 OF 2010

Land, paid the required amount and obtained re-grant of the suit land in his favour in the year 1960.

○ **Timeline of Hearings:**

1. The Mortgagor viewed said regrant sought and granted to the Mortgagee as wrong as the land was still under a period of Mortgage while all the abovementioned events transpired. The Mortgagor had even requested the Mortgagee to accept the Mortgage money and return the land to him in exercise of the Mortgagor's Right to Redeem, but as might be evident, the Mortgagee did not comply.
2. In response to the same, the Respondents (Mortgagor) in the present case filed a suit for Redemption of Mortgage Property before the Civil Judge, Vaduj in 1978 against the Mortgagee.
3. The court held, that since the Mortgagor did not apply for a regrant the land resumed to the Government as per the provisions of the Abolition Act and this meant that the relationship between the Mortgagor and the Mortgagee came to an end and that the act of the Mortgagee to have the land be made up to his name is justified, even though he is not the original owner (or watandar) of the land.
4. **The Appellate Trial Court reiterated the point of the Trial Court that in light of the facts, the right of the Mortgagor to Redeem the property is deemed to have been extinguished.¹⁴**
5. The aggrieved Mortgagors then approached the Bombay High Court. The High Court set aside the judgements of the previous 2 courts and decreed a suit for Redemption.
6. According to the High Court's justification, the mortgagee would not have been in possession of the suit land and would not have been able to acquire the re-grant order in his favor if it weren't for the mortgage. The benefit acquired by the mortgagee as a result of this re-grant must go to the Mirashi renter since it was predicated on the underlying mortgagor-mortgagee relationship.

It was against abovementioned judgement of the Hight Court that the appeal was brought before the Supreme Court.

¹⁴CIVIL APPEAL NO. 4594 OF 2010

○ Issue Brought Before the Supreme Court:

The issue before the Court was “Whether the permanent Mirashi tenantmortgagors (Respondents) right of redemption ceased to exist by virtue of the resumption of the suit land under the Abolition Act and its subsequent re-grant in favour of the mortgagee (Appellants)?”¹⁵

• Judgement of the Supreme Court:

The Supreme Court taking note of the various provisions and case laws cited by both the sides presented its judgement, completely blocking the Legal Loophole which the Mortgagee thought that he had exploited in this scenario.

The following section will elucidate upon the important points which have been elucidated upon and pointed out by the Supreme Court.

The Court stated that the Mortgagee contended that once the Abolition Act came into force and all the events regarding the regrant of land took place, the position of the Mortgagee as the Mirashi Tenant came to end and so did the Mortgagor-Mortgagee relationship between the 2 parties.

The Mortgagor however, citing case laws and **taking support especially of Section 90 of the Indian Trusts Act¹⁶(Advantage Gained by Qualified Owner) contended the contrary** that although the land resumed to the Government, the position of the Mortgagor as the Mirashi Tenant of the Land continued to survive and in turn so did his position as the Mortgagor to the Appellant in the instant case.

The court pointed out that “it is not disputed that Ramchandra was a permanent Mirashi tenant of the watandar of the suit land. **Admittedly, such lease was subsisting as on 25.01.1951, i.e., the day on which the Abolition Act came into force.**”¹⁷

As the mortgagee had sought regrant of the land in his name by construing the basic essence of the Abolition Act, the court took notice of certain provisions of the Act in order to establish the position of the Mortgagor.

¹⁵CIVIL APPEAL NO. 4594 OF 2010

¹⁶The Indian Trusts Act, 1882 (Act No. 2 of 1882)

¹⁷CIVIL APPEAL NO. 4594 OF 2010

The court focused on Section 8 of the Abolition Act which talked about the application of the Bombay Tenancy and Agricultural Lands Act, 1948¹⁸. **The Section made it clear that the tenancy of Ramchandra (Mortgagee) was well protected under the Bombay Tenancy Act as the tenancy created in favour of the Mirashi tenant subsisted as on the day on which the Abolition Act came into force.** The following observation aligned with the general principle of primacy of **tenancy laws over other legislations** which forms the crux of Section 8 of the Abolition Act. “Thus, it is amply clear that the rights of permanent tenants over watan lands were intended to subsist even after the coming into force of the Abolition Act.”¹⁹

Now the interpretation of the provisions made it clear that the rights of the Mortgagor over the suit property were still subsisting but the Appellants claimed that it was through a Government Resolution (which the court had taken into consideration in previous cases as well) they were eligible to apply for re-grant of the land as the Mortgagee was the one who was in possession of the land at that point of time and therefore, the regrant of land in his name has been made justly.

The court stated that the regrant made in the name of the Mortgagee is not the question here, as on the basis of the Government Resolution it is nothing to question. **The central question here is that even though the regrant has been made in the name of the Mortgagee, how does it affect the rights of the Mortgagor as the Mirashi Tenant Mortgagor.**

The Court reiterated their point that even after coming of the Abolition Act the rights of the Mortgagor continue to subsist and so does the Mortgage and hence the relationship of Mortgagor-Mortgagee between the two parties.

In order to solidify their point, the court went on to emphasise upon the essence of the Right of Redemption as under Section 60 of the Transfer of Property Act by stating that **“right of redemption under a mortgage deed can come to an end or be extinguished only by a process known to law, i.e., either by way of a contract between the parties to such effect, by a merger, or by a statutory provision that debars the mortgagor from redeeming the mortgage. In other words, a mortgagee who has entered into possession of the mortgaged property will have to give up such possession when a suit for redemption is filed, unless he**

¹⁸The Bombay Tenancy and Agricultural Lands Act, 1948 (Act No. 67 of 1948)

¹⁹CIVIL APPEAL NO. 4594 OF 2010

is able to establish that the right of redemption has come to an end as per law.”²⁰

The following perspective of the court emanates from the Legal Principle **“Once a mortgage, always a mortgage.”**

As stated in the beginning, **the court did not give an ambiguous judgement but it reiterated certain basic principles very clearly** and the 2 passages from the judgement stated above show the same.

The Court held:

- a) As none of the conditions which result in the end of the Right of Redemption are being fulfilled in the present suit, the Mortgage Deed is still subsisting and as for the regrant made in the name of the Mortgagee, the court stated that such regrant couldn't have been made if it wasn't for the position of the Appellant as the “Possessory Mortgagee”.
- b) It is obvious that if it was the Mortgagor who was the one who applied for the regrant then he would have been granted the same as his rights as a Mirashi Tenant continued to subsist even after the coming of the Abolition Act.
- c) Therefore, the re-grant to the Appellants based on actual possession as mortgagee cannot be divorced from the existence of the underlying mortgagor-mortgagee relationship between the parties.

- **Concluding Remarks:**

As has been stated multiple times in the following paper, the Right to Redemption is the most basic right of the Mortgagor when it comes to the Mortgaged property. It is the point where the most basic rights and duties of the Mortgagor and Mortgagee coincide i.e. the Mortgagor's right to get his property back upon payment of the Mortgage Money and his duty to repay said Mortgage Money to the Mortgagee; the Right of the Mortgagee to receive his money loaned to the Mortgagor and his Duty to return all items related to the Immovable Property mortgaged back to the Mortgagee upon repayment of the loaned amount.

The present suit did present certain scenarios where it seemed that the Right to Redemption had been extinguished and based on said analysis the Trial Court and Appellate Trial Court dismissed the Suit for Redemption.

²⁰CIVIL APPEAL NO. 4594 OF 2010

But as time passed and the suit was brought before the High Court (which overturned the judgement of the Trial Court and the Appellate Trial Court) and then eventually the Supreme Court (which upheld the High Court Judgement) the basic essence of the Right to Redemption came to be embodied in the legal principle “Once a Mortgage, Always a Mortgage.”

The appellant thought that he had found a loophole in regards to the provisions on the basis of the Abolition Act and certain Government Resolutions and was thus eligible to officially earn the possession of the land as the true owner of it as in his opinion, the Mortgage came to an end. But as clarified by the Court, a **“right of redemption under a mortgage deed can come to an end or be extinguished only by a process known to law.”** This did include Statutory provisions, but the statutory provisions on the basis of which the Appellant Claimed the regrant and the end of the Mortgage did not debar the Mortgagor from exercising his right.

The following case law went on for decades but after much deliberation, the Judgement presented made it clear that the Right to Redemption is truly the most basic of rights of the Mortgagor and no loophole can be brought up as a ground to prevent the Mortgagor from exercising said right unless it complies with the conditions which have been discussed above.