

Redeemability of Mortgage *Hypotheca*: Exercise and Deferral from Bangladesh Perspective

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Abstract: *The right of redemption is the most significant legal right that protects the interest of a mortgagor, in addition to other rights shaped by the mortgage deed, among the numerous statutory privileges that any mortgagor can assert. The discussion on this right pertains to redemption following the completion of the equity of redemption, its exercise by the parties and the operation of the law, procedural aspects of redemption, such as subrogation, suits, limitation, and lis pendens, certain collateral advantages after redemption, deferral of redemption, and numerous innuendoes with current case laws. In fast-paced environments, the right of redemption in mortgages is examined to see whether it is equitable or statutory in substantive laws and numerous court decisions. It must be noted that the redeemability of the mortgage hypotheca ascends when ownership of the property is transferred in a qualified form. This article emphasizes the right of redemption, its exercise, deferral, sporadic factors, implications, and aftermath in the context of Bangladesh, as supported by legal precedent.*

Key-words: *Mortgage, redemption, hypotheca, clog on mortgage, immovable property*

1. Introduction

The term ‘mortgage’ forms part of the law of obligations, and the term ‘law’ in Hans Kelsen’s *Pure Theory of Law* is considered as a contraption of compulsion in a precise *modus operandi*. This apparatus varies along with new interests and necessities of life. The legal elements keep expanding out of the other, new content in a new form, gradually fitted to time.¹ The mutual dealings indicated through the law of contract are full of the law of obligations, i.e., the law of debtor and creditor. Among these, the law of security fulfilling the law of obligations approaches for safeguarding the creditors against the hitches of debtors. However, security may be ‘personal or real’ depending on the person concerned or property. In case of personal security, it is the person who is liable, but in case of real security, the debtor has a right to release the property by paying his dues, and in case of failure, the liability devolves on the property.² Among these obligatory rights, the redeemability of the mortgage *hypotheca* is concerned with the law of mortgage.

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¹ Oliver Wendell Holmes Jr, *The Common Law* (Little Brown and Company 1923) 26–27, 34–38.

² H F Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law* (3rd edn, CUP 1965) 313–314.

A mortgage can be a right *in rem* when it enables the entitled person to secure the payment of a pecuniary claim involving the property that is pledged to him as collateral. This is usually effected by the mortgagor³ without parting with his possession or ownership. Sometimes it can be done conditionally with some of the components of ownership, and this time mortgage can be termed as right *in re aliena*. Mortgagee⁴ at this juncture, he can gratify his demand by the sale of the mortgaged property.⁵ However, in our country, according to the general property law, a mortgage is defined as a transfer of an immoveable property with partial interest for securing the payment of money advanced as a loan.⁶ The subject matter of a mortgage is an immoveable property which needs to be subject to alienation. Security can be given not only for debt but also for other obligations that end in pecuniary liability. This security can be classified as a legal mortgage created merely by operation of law and a conventional mortgage formed with the voluntary consent of the parties.⁷ In Bangladesh, according to the general property law, there are simple mortgages, mortgage by conditional sale, usufructuary mortgages, English mortgages, mortgages by deposit of title deeds, and anomalous mortgages.⁸

These types of mortgages, except for certain exceptions, can be effected only by a registered instrument when the principal money secured is one hundred taka or upwards. The mortgage deed also needs to be signed by the mortgagor and attested by not less than two witnesses. If the principal money secured is less than the above-mentioned, the deed can be effected in two ways i.e. either by a registered instrument as aforesaid, or by delivery of the property.⁹ Parties of any mortgage deed i.e. mortgagor and mortgagee consist of persons deriving title from them correspondingly.¹⁰ As a contracting party rights of a mortgagor according to our general property law are specified in sections 60, 60B, 61 to 63, 63A, 64, 65A, 91 and 95. Right of redemption, inspection and production of documents, right to any accession of mortgaged property, right to any improvement to mortgaged property are numerous statutory privileges which any mortgagor along with other rights molded by mortgage deed can assert.

³ The transferor is called a mortgagor: Transfer of Property Act, 1882 (TPA 1882), s 58(a).

⁴ The transferee is called a mortgagee: *ibid* s 58(a).

⁵ AR Biswas, *Rashbehary Ghose on Law of Mortgage* (6th edn, Kamal Law House 1988) 21.

⁶ TPA 1882 (n 3); See Mohammad Towhidul Islam, *Land Law: Text, Cases and Materials* (3rd edn, CHRLR 2023) 201.

⁷ Biswas (n 5) 21.

⁸ TPA 1882 (n 3) s 58(b-g).

⁹ *ibid* s 59.

¹⁰ *ibid* s 59A.

Among these rights, right to redeem the most important legal right shielding the interest of a mortgagor is the theme of this article.

This article will elucidate inclusive notions concerning redemption over and done with equity of redemption; its exercise by the parties and operation of law; procedural aspects of redemption as in subrogation, suits, limitation, and *lis pendens*; certain collateral advantages after redemption, deferral of it, and numerous *innuendoes* with prevalent case laws.

2. Equity of Redemption and its Exercise

Mortgagor, the owner of the mortgaged property, who has ceded his ownership, has the right to resume what he has yielded, and it is called equity of redemption.¹¹ It is the incident to and heart of every mortgage.¹² It is not a liability for which the mortgagor can be compelled to be discharged, but is a right which he can seek to enforce.¹³ Section 60 of the Transfer of Property Act, 1882, gives this right to the mortgagor¹⁴ and, in the main, got its statutory recognition in *Thumbaswamy Mudelly v Mohd. Hosain Rowthen* (1874-75) 2 IA 241. In essence, it does not override legal exceptions even though equity will not permit this inherent right to impede, since, in nature, a mortgage is always redeemable,¹⁵ cannot be made illusory, and is altogether irredeemable.¹⁶ In addition, it is a settled principle of law that “once a mortgage is always a mortgage and nothing but a mortgage”.¹⁷ It is inseparable and coextensive with the mortgage itself¹⁸ unless it becomes a past and closed transaction.¹⁹ This right goes along with

¹¹ Solil Paul (ed), *Mulla On The Transfer of Property Act 1882* (9th edn, LexisNexis 2003) 655.

¹² B B Mitra and S P Sen Gupta, *Transfer of Property Act* (21st edn, Kamal Law House 2021) 764.

¹³ Shaukat Mahmood and Nadeem Shaukat, *Transfer of Property Act* (4th edn, Legal Research Centre 2006) 494.

¹⁴ *Philomina Jose v Federal Bank Ltd and Others* [2006] AIR 1162 (SC); See Mohammad Towhidul Islam and Shirin Sultana, ‘Nature of Land and Pre-emption Suits: Demystifying Ambiguities’ (2019) 29 Dhaka University Law Journal 71–86.

¹⁵ *Seth Ganga Dhar v Shankar Lal* [1958] AIR 770 (SC).

¹⁶ *Abdur Rashid Bepary being dead his legal heirs, Jahanara Begum and Others v Abdul Ohab Khan being dead his legal heirs Md. Shajahan Khan and Others* [2025] LEX/BDHC/0033/2025 (HCD); *Murarila v Devkaran* [1965] AIR 225 (SC).

¹⁷ *Ram Kishan v Sheo Ram* [2008] AIR 77 (P & H); *Parasram v Bindeshri* [1953] AIR 33 (All); *Ram Prasad v Bishambhar* [1946] AIR 400 (All); *Noakes & Co v Rice* [1902] AC 24.

¹⁸ Biswas (n 5) 234; See also *Urmila v Sohan Lal* [2010] AIR NOC 654 (P&H); *Mangalal Velji Co v S. Mohon Kumari* [2004] AIR 276 (Del); *Vora Aminbai Ibrahim v Vora Taherali* [1998] AIR 31 (Guj); *Ghanchi v Gusai* [1995] AIHC 134.

¹⁹ *Makhlasur Rahman and Others v Nurul Alam and Others* [2024] LEX/BDHC/0917/2024 (HCD); *Shamim Ahmed and Others v Nikhil Kumar Malakar*

mortgaged property, even if by auction sale.²⁰ It follows the mortgagor's interest and may be exercised by him or those taking an absolute interest by assignment *inter vivos* or by devolution on death.²¹ Mortgagor has every right to recover the mortgaged property as he has an interest in that, and mortgagor's right of redemption is protected by sections 91 and 92 of the Transfer of Property Act, 1882.²²

However, this right arises after the mortgage money, which includes both principal, interest²³ and costs correctly incurred by the mortgagee²⁴ has become due²⁵ and payment must be made before a suit for the enforcement of the mortgage has been instituted by the mortgagee. Redemption right also embraces three reliefs to which mortgagors are entitled.²⁶ Besides, it continues notwithstanding that he fails to pay the debt.²⁷ And if any overpayment is made by the mortgagor, he may recover the same.²⁸ Also, where it is less than the due required, the mortgagee can claim the deficit,

and Others (2020) 25 BLC 230 (HCD); *Golzar Hossain and Others v Abdul Kadir and Others* (2017) 22 BLC 30(AD); *Guljar Singh v Financial Commissioner* [2010] AIR 114 (P & H); *Parichhan Mistry v Achhibar Mistry* (1996) 5 SCC 526; *Jayasingh v Krishna* [1985] AIR 1646 (SC); *Howard v Harries* (1683) 23 ER 288; *Abu Bakkar vs Nazir Ahmed* (1982) 34 DLR 237(AD); *Bangladesh v Haji Abdul Gani Biswas & Others* (1981) 1 BLD 8 (AD); *Sidhukamal Narayan v Bira Nayak* [1954] AIR 336 (SC); *Mritunjoy Parui v Naramanda Bala* [1961] AIR 1353 (SC); *Noakes v Rice* (n 17).

²⁰ *A Gnanam v Palaniappa* [2001] AIR 14 (Mad); *Parichhan Mistry v Acchiabar Mistry* (n 19); *C V Raghavachar v Lakshminarasamma* [1981] AIR 160 (SC); *Samarendra v Krishna Kumar* [1967] AIR 1440 (SC).

²¹ *Hiraguri Ratilal v Hajam Sumar* [2007] AIR 76 (Guj); *Harbans v Om Prakash* (2006) 1 SCC 129; *Villikat TVL Amma v Villikat TVD Menon* [1997] AIR 1909 (SC).

²² *Mostafa Sadique and Others v Artha Rin Adalat No 4, Dhaka and Others* (2021) 23 ALR 19 (HCD); *Sachindra Lal Das & Others v Hriday Ranjan Das Being Dead His Heirs Bimal Kanti Das & Others* (1988) 8 BLD 14 (AD); *Arab Ali and others v Abdul Khaleque Prodhania & Others* (1981) 33 DLR 11 (HCD).

²³ TPA 1882 (n 3) s 58(a); *Bangladesh House Building Finance Corporation v Abdul Mannan, Advocate & Others* (1989) 41 DLR 143 (AD); *Hewanchal v Jawahir* (1889) 16 ILR Cal 307 (PC).

²⁴ TPA 1882 (n 3) s72; See also *Rewti Nandan v Ram Swarup and others* [1984] AIR NOC 297.

²⁵ *Seth Gangadhar v Shankar Lal* (n 15); *Odappayee v Ramanathan* [1997] AIR 74 (Mad).

²⁶ TPA 1882 (n 3) s 60 (a), (b), (c); These clauses provide for delivery of mortgage deed and documents of title, restoration of possession and reconveyance or acknowledgement. See also *Permeswaran Govindan v Krishnan Bhaskaran & others* (1993) Supp 1 SCC 572, 579; *M. Manickchand v Elias Saleh* [1969] AIR 751 (SC); *Shah Ram Chand v Prabhu Dayal* [1942] AIR 50 (PC).

²⁷ *Singh Ram v Sheo Ram* (2014) 9 SCC 185, *Haji Isufali v Fijabhai* [2011] AIR 61 (Guj); *Gambanji v Behara* [1984] AIR 1728 (SC); *Shah Mathuradas v Nagappa* [1976] AIR 1565 (SC); *K Variath v PCK Haji* [1974] AIR 689 (SC).

²⁸ *Royal Bank of Canada v LVG Auctions Ltd* (1984) 2 DLR (4th) 95.

subject to any issue of estoppel.²⁹ In addition, contractual relationships of mortgagor and mortgagee cease on the deposit of the mortgage amount.³⁰ Along with, once the suit is filed, remedies accessible under section 60 of the general property law are unavailable.³¹ Hence, redemption can be done by contracting parties as well as by operation of law, which are summarised in the following:

2.1 Equity of Redemption by Contracting Parties

Equity of redemption when dealing with parties of a mortgage can be in the mold of absolute or partial. It is a statutory right.³² Mortgagor as owner of the mortgaged property discarding a certain part of his ownership in the mortgage. Right to redeem is that right which he exercises by dint of his residuary ownership to carry on what he has parted with. It will subsist so long as the mortgage subsists.³³

Redemption may be exercised either by payment or tender to the mortgagee the mortgage money at a proper place and time. If in the deed of mortgage no time is mentioned, the due amount needs to be paid instantaneously on the date of the mortgage.³⁴ Where there is no specification regarding the period of limitation, it can be redeemed at any time.³⁵ Regarding evidence of payment, it can be endorsed on the mortgage deed itself. However, in the case of redemption of mortgaged property, mortgage debt means the current due amount comprising interest and the principal amount secured by the mortgage.³⁶ Sometimes, it is held that section 60 of general property law is applied to redeem by private agreement alone, and therefore, non-payment of the due amount before suit cannot be a bar to a suit for redemption.³⁷ And a payment made by mortgagor to one of the mortgagees where there are two or joint mortgagees will not maneuver as a discharge

²⁹ *Avon County Council v Hewlett* (1983) All ER 10730 (CA).

³⁰ *Parameswaran Govindan v Krishnan Bhaskaran & others* [1992] AIR 1135, 1137 (SC).

³¹ *Poulose v State Bank of Travancore* [1989] AIR 79 (Ker).

³² *MA Hashem v The Artha Rin Adalat No 2, Dhaka and Others* (2022) 27 BLT 82 (HCD); *Snow View Properties Ltd v Punjab & Sind Bank* [2010] AIR 94 (Cal).

³³ *Achamma v Kerala Financial Corporation* [1997] AIR 75 (Ker); *Ram Prasad v Bishambhar* (n 17).

³⁴ *L K Trust v EDC Ltd* (2011) 6 SCC 780; *Des Raj v Hargurdial Singh* [1959] AIR 249 (Punj).

³⁵ *P Sharma v Basudeo Prasad* (1995) Supp 2 SCC 574.

³⁶ *Dasabhai v Vasan* [1953] AIR 4 (Kutch); *Ganga v Tejpal* [1944] AIR 232 (All); *Ganga Ram v Nathu Ram* [1924] AIR 183 (PC); Rashbehary Ghose, *Law of Mortgage in India* (5th edn, Thacker, Spink & Co 1914) 241–242.

³⁷ *Deopato Kuer v KP Singh* [1976] AIR 18 (Pat); *Asarfi Mahaseth v Ram Swaroop* [1972] AIR 183 (Pat); *Amba Prasad v Mooga Ram* [1930] AIR 523 (All).

of debt so far as others are concerned,³⁸ and it is unconditional³⁹ since each lends his own money and has to take back his own⁴⁰ unless there is an express stipulation exists to the contrary.⁴¹ However, a registered deed to prove redemption is not necessary;⁴² it can be done by payment, conduct of parties, and through other facts.⁴³ On the other hand, redemption right cannot be pleaded in defence where the suit is for the recovery of possession instituted by the mortgagee in line with the terms of the mortgage.⁴⁴ After the deposit of mortgage money, the mortgagee is not entitled to any expenses made by the mortgagor in the name of improvements.⁴⁵

Also, in this redemption right, the mortgagor gets back his property in his own right and not as successor-in-interest of the transferee.⁴⁶ When the deed of mortgage provides that the landlord on redemption will get possession, it is the mortgagor who will get actual physical possession according to the said terms.⁴⁷ The continuance in possession of a mortgagee after the redemption period arises is not necessarily adverse to the owner. Mortgagor on equitable, fair, and just grounds may be allowed to redeem before expiration of the fixed period.⁴⁸ The question is always one of the intentions of the parties concerned,⁴⁹ and as a question of fact, it has to be decided on the circumstances of each case.⁵⁰ Furthermore, it is worth mentioning that, as it is a qualified right,⁵¹ it can be exercised when the mortgagor has already performed all his obligations under the mortgage⁵²

³⁸ *Mahadeosingh v Balmukund* [1948] AIR 279 (Nag); *Venkatarayanim v Venkata* [1923] AIR 26 (PC).

³⁹ *Narain v Abinash* [1922] AIR 347 (PC).

⁴⁰ *Morley v Bird* (1798) 3 Ves 631; *Decharms v Horwood* (1834) 10 Bing 526; *Powell v Broadhurst* (1901) 2 Ch 160.

⁴¹ *Prabhakaran v M Azhagiri Pillai* (2006) 4 SCC 484; *Gopaljee v Upendra* [1942] AIR 408 (Pat).

⁴² *Abdus Salam Sheikh and others v Puspa Rani Shil and others* (1996) 16 BLD 299 (AD).

⁴³ *Dattajirao v Prahladas* [1956] AIR 72 (MB); *Ram Kripal v Baleswar* [1941] AIR 246 (Pat).

⁴⁴ Mahmood and Shaukat (n 13) 541.

⁴⁵ *Chinnathamp Nadar v Ponnamma Pillai* [2004] AIR 123 (Ker).

⁴⁶ *Carona Shoe Co Ltd v KC Bhaskaran Nair* [1989] AIR 1110 (SC); *State of Punjab v Labu Singh* [1985] AIR 1380 (SC).

⁴⁷ *Chand Mal v Sumer Mal* [2001] AIR 95 (Raj).

⁴⁸ *Ghanchi v Gusai* (n 18); *Narayana Chettiar v Rangaswami Naidu* (1968) 2 MLJ 445; *Narasimha v Sheshayya* [1925] AIR 825 (Mad).

⁴⁹ *Amina Bee v Khamurunnissa* [1974] AIR 54 (Mad).

⁵⁰ *Harbans v Om Prakash* (n 21).

⁵¹ *Achaldas Durgaji v Ramvilas* (2003) 3 SCC 614.

⁵² *Shankarlal v Balkrishna* [2010] AIR 4 (Bom); *Ushabai v Balakrishna Biharilal* (2006) 3 SCC 686; *Abdul Kader and another v Abdul Aziz having died his heirs, (1) Musammat*

and is not extinguished through the act of the parties⁵³ or as long as the subject matter is not foreclosed or sold.⁵⁴

Also, it is noteworthy in a usufructuary mortgage that the mortgagee legally gets the possession of the mortgage property until repayment of the mortgage money to retain possession and receive rents and profits thereby. Redemption here, in the name of suit for possession, arises when the due amount is paid by the mortgagor or is discharged from enjoyment. And a remedy by foreclosure or sale is not available here.⁵⁵ Even before the time fixed, as soon as the mortgage money has been satisfied from rents and profits of the subject matter, the mortgagor's right to redeem arises, since time is not the essence of the contract for this type of mortgage.⁵⁶ Although in various cases it is well settled that the mortgagor needed to redeem in a particular month (*jeth*) of the year.⁵⁷ Thus, there is nothing in the Transfer of Property Act 1882 averting them⁵⁸ from making provisions regarding the mortgagor's discharge of debt and taking his mortgaged property back from the mortgagee.⁵⁹

2.2 Indivisibility of Mortgage Security

Right of redemption, integral in rights of the mortgagor, has to be exercised unabridged. Gaze steadily at the indivisibility of mortgage security; it is necessary to point out that mortgage security is indivisible, and redemption needs to be done as a whole, not in part, subject to a contract to the contrary.⁶⁰ It is supposed to be taken as a unit and cannot be divisible for

Masuda Begum and others (1995) 47 DLR 67 (HCD); *Chhanganlal v Patel Narandas* (1982) 1 SCC 223; *Ali Ekabbar Farazi v Government of Bangladesh* (1974) 26 DLR 394 (HCD); *Dhanki Mahajan v Rana Chandubhai* [1969] AIR 69 (SC).

⁵³ *Sree Jayalakshmi Textiles, Chitradurga v International Asset Reconstruction Company Private Limited, Mumbai* [2016] AIR 40 (Karn); *Vedica Procon (P) Ltd v Balleshwar Greens (P) Ltd* [2015] AIR 3103 (SC); *Sadashiv Prasad Singh v Harendar Singh* [2014] AIR 1078 (SC).

⁵⁴ TPA 1882 (n 3) s 60 provisos; *Singh Ram v Sheo Ram* (n 27); *Raghunath v Hansraj* [1934] AIR 205 (PC).

⁵⁵ *Achaldas Durgaji v Ramvilas* (n 51).

⁵⁶ *Narasimha v Sheshayya* (n 48).

⁵⁷ *Kripal v Sheoambar* [1930] AIR 283, 285 (All).

⁵⁸ *Mostafa Sadique and Others v Artha Rin Adalat No 4, Dhaka and Others* (n 22); *Saleh Ahmed and Others v Kabir Ahmed and Others* (2020) 72 DLR 685 (HCD); TPA 1882 (n 3) ss. 91 and 92.

⁵⁹ *Haquik Mian v Rajendra Prasad* [1997] AIR 59 (Pat); *Abdur v Vithaldas* [1981] AIR 58 (Bom); *Yendru v Satyavatamma* [1957] AIR 30 (AP); *Ashrafi v Zamir* [1940] AIR 29 (All).

⁶⁰ Circumstances in contrary arise where the mortgagee allows partial redemption or the mortgagee acquires a part of mortgaged property by any legal means, like purchasing, inheriting or otherwise. See *K Ramchandra v Muregesen* [2004] AIR 245 (Mad); *M K*

redemption. It must be redeemed entirely or not at all. Redemption of the whole mortgage property is possible even when the concerned person is a part purchaser of the mortgaged property, but he is not entitled to redeem part of that property regarding his portion alone.⁶¹ However, the mortgagee would suffer in the devaluation which may be caused to it in consequence if the mortgagor is allowed to redeem the mortgaged property piecemeal. But the fusion takes place where the mortgagee acquires a part of the mortgaged property, and the rights of both parties are vested in the same person. Indivisibility here is broken up, and in such a case, co-mortgagors can redeem their own part after payment of their proportionate part of the mortgage money.⁶² Indivisibility of mortgage security has application as long as the mortgage subsists without being split up by the parties, and it can be modified by consent of the parties.⁶³

Thus, the mortgagor who has already redeemed in full has the power to get rateable contribution from other mortgagors, and it is his right to hold the entire mortgaged property in charge until, with all incidental expenses, he is in turn redeemed.⁶⁴ But, where there is no release of any portion of mortgage debt, the owner of a portion of mortgaged property cannot claim rateable abatement unless the mortgagee agrees. And a suit by a co-mortgagor to redeem his portion of the mortgaged property only is not maintainable.⁶⁵ The rule of indivisibility of a mortgage security applies both in the case of mortgagors and mortgagees, though inconvenient where the number of these parties is numerous.⁶⁶ Also, in case of consolidation of mortgages, parties are free to make an agreement that is expressed and unequivocal⁶⁷ among themselves that in case of redemption of mortgages which are enforceable and not barred by limitation, the mortgagor of two

Seetharama v Poovammal [2001] AIR 343 (Mad); *Madhavan v Ramankutty* [1994] AIR 75 (Ker); *Surjit Kaur v Kewal Singh* [1991] AIR 205 (P & H); *CV Raghavachar v Lakshminarasamma* (n 20); *Patel Kempegowda v Channaveeriah* [1958] AIR 43 (Mys); *Venkatasubramania Ayyar v Vadasseri Tarward Kamavan* [1956] AIR 434 (Mad); *Narain Singh v Teza Singh* [1955] AIR 96 (Punj); *Maulabux v Sardarmal* [1952] AIR 341 (Nag); *Nathu Mal v Raman Mal* [1937] AIR 124 (PC).

⁶¹ *Madhavan Pillai v Subbayyan* (2002) 6 SCC 196; *Girja Singh v Gaynwanti* [2001] AIR 20 (Pat); *Chhaganlal v Patel Narandas* (n 52); *Canpatia v Chhati* [1974] AIR 77 (Raj).

⁶² *Mitra and Gupta* (n 12) 827. See also *Chiva Harakh v Akbar Ali* [1948] AIR 55 (All); *Shah Ram Chand v Parbhu Dayal* [1942] AIR 50, 54 (PC); *Nilakant v Suresh Chandra* [1886] 12 ILR Cal 414; *State of Kerala v Koliyat Estates* (1999) 8 SCC 419.

⁶³ *Purukutha Amma v Balameenakshi Amma* [1953] AIR 318 (AM).

⁶⁴ TPA 1882 (n 3) ss 92 and 95.

⁶⁵ *Chhaganlal v Narandas* (n 52); *Dadoo v Venkatrao* [1954] AIR 84 (Nag); *Moideen v Subraminia* [1953] AIR 283 (Tr-Co) *Bagga Singh v Lal Chand* [1952] AIR 6 (Pepsu).

⁶⁶ *Lachhmi Narain v Babu Ram* [1935] AIR 391 (All).

⁶⁷ *Jai Narain v Gokul Singh* [1937] AIR 321 (Oudh).

properties shall not redeem one without redeeming the other properties.⁶⁸ Also, partial redemption can happen when a special condition for partial redemption is included in the mortgage deed,⁶⁹ and it is not a clog on the equity of redemption. Regarding the successive enlargement of the time of redemption in certain appropriate circumstances, it can be made, but for this, it is required to reveal that the estate value greatly surpasses the debt, and the delay in getting the money is inadvertent.⁷⁰ However, in a mortgage deed, any unreasonable obstruction regarding redemption can be invalidated by the court.⁷¹ But subsequent and independent transactions between mortgagor and mortgagee regarding mortgaged property do not invalidate by the rule against clogging.⁷² The court is empowered to grant relief against clog on redemption, and freedom of contract in this situation is subject to the court's discretion.⁷³

2.3 Equity of Redemption by Operation of Law

Ordinarily, in mortgage transactions, any mortgage can come to an end as an inference of law after full dues are paid.⁷⁴ When claims of the mortgagee are satisfied, the court concerned has enough power to allow redemption.⁷⁵ This ample power of courts of law ascends when the law aids mortgagors to retrieve the mortgaged property. And all three rights or one of the three rights specified in section 60 of the general property law, when claimed in a suit that will be termed as a suit for redemption,⁷⁶ mortgagor, along with the people specified in section 91 of the Transfer of Property Act 1882. Contracting parties have an obligation to show that the mortgage is an existing one.⁷⁷ In a redemption suit other than a conditional sale or anomalous mortgage, the debtor's right to deposit full sale money along with other expenses is secured on the assumption that the sale is not

⁶⁸ *Narayana Jois v Alamelamma* [1972] AIR 17 (Mys); *Hasan Ali v Laxmichand* [1972] AIR 230 (Raj).

⁶⁹ *Thommi v Devasai* [1963] AIR 75 (Ker).

⁷⁰ *Halsbury's Laws of England* (4th edn, Butterworth, 1999) vol 32, paras 903–907.

⁷¹ *Shivdev Singh v Sucha Singh* [2000] AIR 1935 (SC).

⁷² *Halsbury's* (n 70) 589.

⁷³ *Pomal v Vrajlal* [1989] AIR 436 (SC).

⁷⁴ *Ram Kumar v Ram Nath* [1942] AIR 315 (Pat).

⁷⁵ *Mostafa Sadique and Others v Artha Rin Adalat No 4, Dhaka and Others* (n 22).

⁷⁶ *Jamila Begum (D) their Legal Representatives v Shami Mohd (D) their Legal Representatives and Others* [2019] AIR 72 (SC); *Bhandaru Ram v Sukh Ram* [2012] AIR 1 (HP) (FB); *Harbans v Om Prakash* (n 21); *Prabhakaran v Azhagiri Pillai* (n 41); *M Manikchand v Elias Saleh* [1969] AIR 751 (SC); *Seth Gangadhar v Shankar Lal* (n 15).

⁷⁷ *Larho Devi & others v Chiranji Lal & others* [1984] AIR NOC 45 (Pat); *Bhailal Ganpatram v Keshavji* [1952] AIR 1 (Kutch).

confirmed. And the court concerned, having a statutory duty, should direct redemption after acceptance of payment.⁷⁸ Also, when a mortgage has acquired a share in the equity of redemption, a suit for partial redemption will lie, which *pro tanto* extinguishes the mortgage. And being a privilege, a partial suit for redemption is given to avoid multiplicity of suits. Therefore, this type of suit is an amalgamation of a redemption suit and a suit for contribution. However, about the rest of the property, the right of any other sharer is to redeem the whole of the rest debt as per law.⁷⁹

Moreover, judicial trend indicates that dismissal of an earlier suit for redemption as abated or withdrawn or in default would not debar the mortgagor from filing a second suit for redemption when the mortgage is a subsisting one and it is also the effect of a compromise.⁸⁰ A second suit for redemption is barred specifically by *res judicata* when a final decree is passed in a redemption suit.⁸¹ Also, where a suit for redemption was dropped based on two instruments; one is executed by the mortgagor and the other is by the mortgagee, it was held that the right of redemption was not extinguished.⁸² Conversely, where a redemption suit is dismissed by way of compromise, an abatement of a previous suit or for default of parties, will not be a bar for a subsequent suit for redemption unless anything contrary appears, like a decree involving a decision of extinguishment of the mortgagor's right to redeem.⁸³ There is a consensus of judicial opinions that when a mortgagee comes into possession of mortgaged property as a mortgagee, he cannot compel the mortgagor to come to court for a redemption suit merely by affirming a proprietary title.

⁷⁸ *Maganlal v Jaiswal* [1989] AIR 2113 (SC); *New Keniworth Hotels v Ashoka Industries* (1995) 1 SCC 161.

⁷⁹ *Narendra Narain v Dwarka Lal Mundur* (1877) 3 ILR Cal 397; *Madhavan Nair & another v Ramankutty Menon & others* (n 60).

⁸⁰ *L K Trust v EDC Ltd* (n 34); *Vora Aminabai v Vora Taheral* (n 18); *Rajaram Vithal v Ram Chandra Pandu* [1948] AIR 227 (Bom).

⁸¹ Code of Civil Procedure, 1908 (CPC 1908), O 34, rr 3, 8; *Jashim Uddin and Others v Safat Ullah and Others* [2024] LEX/BDHC/1708/2024 (HCD); *Rehmani v Bhoorji* [2010] AIR 151 (P & H); *K Vilasini v Edwin Periera* [2009] AIR 1041 (SC); *Abdul Aziz and Others v Kabir Ahmed Patwary and Others* (2008) 13 BLC 208 (HCD); *Bishwanath Prasad Singh v Rajendra Prasad and Others* [2006] AIR 2965 (SC); *Philomina Jose v Federal Bank Ltd* (n 14); *Abdul Goni Kha v Md Abdul Aziz Azizur Rahman and others* (1997) 49 DLR 172 (HCD); *Sachindra Lal Das and Others v Hriday Ranjan Das and Others* (n 22); *Mhadagonda Ramgonda Patil v Shripal Balwant Rainade* [1988] AIR 1200 (SC); *Edumban Chettiar v Ramalakshmi Pichamma* [1965] AIR 153 (Ker); *Ambalal Jasraj v Ambalal Bodarmal* [1957] AIR 321 (Raj); *S Krishnan Nambodiri v Karunakaran* [1957] Ker LT 1237.

⁸² *Subba Rao v Raju* [1950] AIR 1 (FC).

⁸³ *Raghunath v Hansraj* (n 54) 207; *Kashiram v Maheshwar* [1929] AIR 116, 118 (Bom); *Shridhar v Ganu* [1928] AIR 67 (Bom); *Basangouda v Rudrappa* [1927] AIR 87, 90 (Bom).

The mortgagor can ponder his rights until the statutory limitation period is over.⁸⁴ Regarding the date of registration of the document of mortgage is the date of deemed knowledge, it is to be regarded as the material date for purposes of determining the limitation period for suit.⁸⁵ While for usufructuary mortgage, mere expiry of the limitation period does not put an end right of the mortgagor under section 62 of the Transfer of Property Act, 1882, where a special right is provided to the usufructuary mortgagor to recover possession, and that time commences in the manner specified therein.⁸⁶

3. Deferral of Redemption

Deferring redemption can happen only as provided by section 60 of the Transfer of Property Act, 1882.⁸⁷ In mortgage-deed deferral of redemption cannot be completely done away with, but it may be postponed for a certain

⁸⁴ Limitation Act 1908, art 148 provides “limitation period of suit for redemption is 60 years from the time when right to redeem accrues”; See *Nur Mohammad Bhuiyan being dead his heirs Rumana and others v Aysha Khanon and others* [2025] LEX/BDHC/0033/2025 (HCD); *Belayeth Hossain and Others v Nasrin Akhter and Others* (2021) 26 BLC 91 (AD); *Ganpati Babji Alamwar (D) by Legal Representatives and Others v Digambarrao Venkatrao Bhadke and Others* [2019] AIR 4292 (SC); *Srinivasaiah v HR Channabasappa (since dead) by his Legal Representatives and Others* [2017] AIR 2141 (SC); *Asek Elahi v Jalal Ahmed and others* (2015) 20 BLC 4 (AD); *Palo Ram v Gauri* [2013] AIR 1 (HP); *Jagadish Chandra Bose and Others v Ajnacharan Biswas and Another* (2012) 32 BLD 439 (HCD); *Bhandaru Ram v Sukh Ram* (n 76); *MR Satwaji Rao (D) by Legal Representatives v B Shama Rao (Dead) by Legal Representatives and Others* [2008] AIR 2328 (SC); *Prabhakaran v Azhagiri Pillai* (n 41); *Rukmani Ammal v Jagdesa Gounder* (2006) 1 SCC 65; *Sangar Gagu v Shah Laxmiben* [2002] AIHC 465; *Asmat Ali v Abdur Rafique Mridha and Others* (2001) 9 BLT 12 (AD); *Shivdev v Sucha* (n 71); *Sampuran v Niranjana* [1999] AIR 1047 (SC); *State of Punjab v Ram Rakha* (1997) 10 SCC 172; *Rajgor v Sonbai* (1993) 2 Guj L H 286; *Pomal v Vraj Lal* (n 73); *Parmanand v Babu Ram* [1986] AIR 233 (P & H); *Jaye Singh v Krishna* [1985] AIR 1646 (SC); *Soni v Hiralal* (1981) 22 Guj LR 473; *Rama Subramania v Soonanarayan* [1977] AIR 297 (Mad); *Maganlal v Balchandra* (1974) 15 Guj LR 193; *K. Gopalan Thanthri v Ittira Kelan* [1970] AIR 305 (Ker); *Murarilal v Devkaran* (n 16); *Beepathuma v Shankaranarayan* [1965] AIR 241 (SC); *Gangadhar v Shankarlal* (n 25); *Nagubai v Ammal v B Shama Rao* [1956] AIR 593 (SC); *Baldeo Singh v S K Muhammad* [1939] AIR 498 (Pat); *Jiwan Singh v Ghasita* (1926) 95 IC 9 (Lah).

⁸⁵ *Budhimante Bose and Others v Ajnacharan Biswas and Others* (2012) 17 BLC 674 (HCD); *Vasanthamma v Siddaveerappa* [2011] AIR 54 (Kant); *Banshilal v Raj Bai* [2004] AIR 92 (Raj); *Dilboo v Dhanraji* [2000] AIR 3146 (SC).

⁸⁶ A catena decisions to writ: *Singh Ram v Sheo Ram* (n 27); *Bhandaru Ram v Sukh Ram* (n 76); *Tara Chand v Sagarbai* [2007] AIR 2059 (SC); *Prabhakaran v M. Azhagiri Pillai* (n 41); *Hamzabi v Syed Karimuddin* (2001) 1 SCC 414; *State of Punjab v Ram Rakha* (n 84); *Sampuran Singh v Niranjana Kaur* (n 84); *Jayasingh Dhyanu Mhoplekar v Krishna Babaji Patil* (n 19); *Narandas Karsondas v SA Kamtam* [1977] AIR 774 (SC).

⁸⁷ *Jayasingh v Krishna* (n 19).

time by an agreement. This can come to an end only in a legal manner.⁸⁸ Qualified constraints on mortgagor's remedies are allowed, and the Court of Law will not interfere as long as the requirements of the mortgage are observed and those are not oppressive or unconscionable.⁸⁹ This right to redeem may be extinguished either by the act of the parties or by the decree of a court.⁹⁰ After the mortgage, by lapse of a reasonable time,⁹¹ on sale or resale of equity of redemption by the mortgagor to the mortgagee or by a valid sale or an order of foreclosure by process of the court, etc., are instances when the right of redemption will be lost⁹² and these are held forth in the following:

3.1 Deferral by Act of Parties

Deferral of redemption in a mortgage may be feasible by the contracting parties of the mortgage through deliberate and unambiguous legal transactions. In 'deferral by act of parties', the term 'act of parties' clarifies parties of the mortgage and not an outsider.⁹³ The 'act' here is a subsequent act done after the mortgage transaction, as section 60 prevents the mortgagor from contracting himself out of the mortgage.⁹⁴ The right of redemption comes to an end when the extinguishment of the mortgage is agreed upon by both parties.⁹⁵ It must be recalled that when the right to redeem is extinguished by the act of parties, the concerned acts need to take the form and observe the formalities prescribed by law.⁹⁶ It also requires clear and definite intentions of parties, which are expressed by them to that

⁸⁸ *Kizhekke Kizhukott Kunhothi v Payikkat Mammad Koya* [1949] AIR 443 (Mad).

⁸⁹ ELG Tyler and P W Young, *Fisher & Lightwood's Law of Mortgage* (9th edn, LexisNexis Butterworths 1977) 522.

⁹⁰ *K Vilasini v Edwin Periera* (n 81); *Nagammal v Vallianmal* [2007] AIR 177 (Mad); *Philomonia Jose v Federal Bank* (n 14); *Achaldas Durgaji Oswal v Ramvilas Gangabisan* (n 51); *Samadh v Surta* [2002] AIR 108 (P & H); *Mhadagonda Ramgonda Patil v Shripal Balwant Rainade* (n 81); *Jaya Singh v Krishna Babaji* (n 86); *Jalappa v Narashima Shetty* [1963] AIR 420 (AP); *Kunhothi v Koya* (n 88); *Kunjabihari Lal v Riseshnath* [1934] AIR 98 (Oudh).

⁹¹ *Manjit Kaur v Kaushalya Devi* [2011] AIR 75 (P & H); *State of Punjab v Ram Rakha* (n 84); *Banarsi Dass v Jiwan Ram* [1991] AIR 85 (P & H).

⁹² *New Keniworth Hotels v Ashoka Industries* (n 78).

⁹³ Mitra and Gupta (n 12) 809.

⁹⁴ *Gowamma and Others v Kalingappa (D) represented by Legal Representatives and Others* [2019] AIR 1012 (SC); *Murarilal v Dev Karan* (n 16); *Fulchand v Kanhaiyalal* [1962] MPLJ 423; *Hirabai v Ganesh* [1959] AIR 172 (Bom); *Seth Gangadhar v Shankar Lal* (n 15); *Ambu v Kelu* [1930] AIR 305, 313 (Mad); *Sher Khan v Seth Swami Doyal* [1922] AIR 17 (PC); *Santley v Wilde* (1899) 2 Ch 474.

⁹⁵ Mahmood and Shaukat (n 13) 509.

⁹⁶ *Ganesh Prasad v Rajeshwar Prasad and Others* (2023) 6 SCR 893; *Md Shamsul Huq Paik and Others v Arab Ali Dewan and Others* (2022) 12 LM 115 (AD); *L K Trust v EDC Ltd* (n 34).

effect and cannot be lightly anecdotal. Also, where redemption right is extinguished through any document that is independent of the mortgage transaction, not part and parcel of it, it was held that the instrument concerned must be deemed to be an act of the parties.⁹⁷

Furthermore, where a mortgagee enters into an agreement for sale with a third party, it does not extinguish the mortgagor's right of redemption.⁹⁸ But under section 69, if the mortgagee exercises his power of sale, the right to redeem extinguishes at the time when the entire purchase money is paid and not at the time of registration of the sale deed.⁹⁹ Over and above that, where the mortgagee purchased mortgaged property in satisfaction of the entire due amount, it was held that the mortgage debt was extinguished.¹⁰⁰ But a mere admission regarding the mortgagee's becoming the owner of the mortgaged property does not destroy the mortgagor's right to redeem, even if possession is transferred to the mortgagee.¹⁰¹ And in case of a mortgage by conditional sale, it remains unaffected even by the expiry of the fixed period unless the restrictive condition is entered into by a subsequent transaction.¹⁰²

3.2 Clog on Redemption

Clog on redemption is a direct or indirect constraint or an impediment¹⁰³ to making redemption of mortgaged property undeniably impossible. This doctrine of "clog on equity of redemption" is a rule of justice, equity, and good conscience, and has been reaffirmed in *Murarilal v Dev Karan*¹⁰⁴ which provides that any clog on redemption is unfair and inequitable. Whether anything in a mortgage transaction amounts to a clog is a mixed question of law and fact. In every circumstance, this doctrine must be

⁹⁷ Mahmood and Shaukat (n 13) 508, 509.

⁹⁸ *H K Dasappa v MC Jayakriti* [1974] AIR 128 (Kant); *Dadoo v Venkatrao* (n 65).

⁹⁹ *Celir LLP v Bafna Motors (Mumbai) Pvt Ltd and Others* [2023] AIR 4568 (SC); *K Narayana Rao v Meenakshi Velu* (1973) 2 MLJ 467; *Suraj Narayan Prasad v Rameshwar Prasad* [1956] PLJR 495.

¹⁰⁰ *CV Raghavachar v Lakshminarasamma* (n 20); *Badri Singh v Baldeo Singh* [1962] AIR 198 (Pat); *Mritunjay Pani v Narmanda Bala Sasmal* (n 19); *Eapen v Manachee* [1957] AIR 101 (Tr-Coch); *Kedar v Bhagwat* [1936] AIR 404, 405 (Pat); *Kunj Behari v Bisheshwar* [1934] AIR 98 (Oudh).

¹⁰¹ *Eilappa SivasuBramaniam* [1937] AIR 293 (Mad); *Sitla Sahai v Dhum Singh* [1925] AIR 114, 115 (Oudh).

¹⁰² *Dulchand v Dharanidhar* [1961] MPLJ 404; *Lalta Prasad v Jagdish* [1927] AIR 137, 140 (All).

¹⁰³ *Pomal v Vrajlal* (n 73) 447–448; *Gangadhar v Shankar Lal* (n 25).

¹⁰⁴ [1965] AIR 225 (SC); *Ismail Nathabhai Khatri v Muljibhai Shankerbhai Bhramabhatt* [1994] AIR 8, 14 (Guj); *Pomal Kanji Govindji & ors v Vrajlal Karsandas Purohit* (n 73) 446.

adapted to the reality of the situation and individuality of the transaction, though obstacles that are temporary regarding mortgages would not amount to a clog.¹⁰⁵ However, authorized departure can be possible where period, condition, spiral of price, nature of bargain, custom (if any, prevalent in that particular society), fiscal conditions as well as obligations of parties, clauses for redemption along with possible or probable effects of such clauses not particular events are occurrences that Courts of law must take into consideration while adjudicating any clog on redemption. There is no scope in this compass to look with favour as prevention akin to this is bad in law, opposed to public policy, and is void. And not only against the mortgagor but also against the purchaser or any subsequent mortgagee, these types of clogging provisions are void.¹⁰⁶ In addition, analogous provisions like this in a mortgage deed will not be enforced by law.¹⁰⁷

Moreover, any stipulation in the mortgage deed specifying redemption after 95 years will be treated as an indication of clogs on the equity of redemption,¹⁰⁸ and instances like this will be considered having regard to the circumstances of the case, since it is a question of fact.¹⁰⁹ Along these lines, stipulations converting a mortgage into a sale¹¹⁰ not a condition of a sale which is a component of a mortgage,¹¹¹ any context that is unreasonable and unconscionable,¹¹² terms postponing redemption in the matter of default¹¹³ or as a penalty of default,¹¹⁴ provision restraining alienation by mortgagor being a non-recognition of his right to redeem,¹¹⁵ any unfair and reprehensible collateral stipulation to mortgagee¹¹⁶ are instances of clog. Conversely, this doctrine won't apply if the concerned

¹⁰⁵ Mahmood and Shaukat (n 13) 516.

¹⁰⁶ *ibid* 526.

¹⁰⁷ Contract Act, 1872, s 23; *Hamzabi v Syed Karimuddin* (n 86); *Shivdev v Sucha* (n 71).

¹⁰⁸ *Ajit Singh v Kakhbir Singh & others* [1992] AIR 193, 194 (P & H); *Soni Bhailal Danji v Hiralal Lakhamshi* (n 84).

¹⁰⁹ *Pormal Kanji Govindji & others v Vrajlal Karsandas Purohit* (n 73) 447.

¹¹⁰ *Leela Agrawal v Sarkar and Others* (2024) 11 SCR 1130; *Rama Shankar Singh & others v M/s Silver Screen Corporation (P) Ltd* [1988] AIR 46, 53 (Cal); *Banarsilal v Puranchand* [1985] AIR 189 (P & H); *Gulab Chand Sharma v Saraswati Devi* [1977] AIR 242 (SC).

¹¹¹ *Jalappa v Narasimha Setty* (n 90).

¹¹² *Khatubai v Rajgor* [1979] AIR 171 (Guj).

¹¹³ *Narsingh Prasad v Rupan Singh* [1929] AIR 388 (All).

¹¹⁴ *Sarju Ram v Taji Bibi* [1962] AIR 422 (All); *Shubratn v Dhanpat Godaraiyu* [1933] AIR 70 (All); *Gajraj Singh v Maharaj Munnu Lal* [1930] AIR 173 (Oudh).

¹¹⁵ *Kirpal Singh v Sheoambar* [1930] AIR 283 (All).

¹¹⁶ *Rama Shankar Singh & others v M/s Silver Screen Corporation (P) Ltd* (n 110) 46; *Maina Devi v Thakur Mansinh & others* [1986] AIR 44 (Raj); *Gobind Ram v Rajphul Singh* [1973] AIR 94 (P & H); *V Habra v Chhaganlal* [1970] AIR 203 (Guj).

transaction is not, in its spirit, a mortgage¹¹⁷ and relief against clog is an equitable relief, which needs to be impeached within a reasonable time.¹¹⁸

3.3 Deferral by Decree of a Court

Deferral by operation of law may take place by passing a final decree in a suit for foreclosure¹¹⁹ and a final decree in a redemption suit.¹²⁰ Any money decree for arrears of rent got by the mortgagee where he leased out the property to the mortgagor cannot be treated as an extinguishment of the right of redemption.¹²¹ It can also happen in circumstances where the mortgagee obtains the right to redeem by succession, by adverse possession, or the mortgagor gets the mortgagee's right by inheritance.¹²² A decree-holder, in the absence of any decree for possession in any suit for redemption, cannot execute the decree.¹²³ In case of adverse possession, the mortgagor and mortgagee need to enter into a subsequent agreement where the mortgagee is holding the mortgaged property as the owner¹²⁴ which is sufficient to start a plea of adverse possession against the mortgagor, albeit the transaction is legally inoperative.¹²⁵

And any final decree or order of court, not the preliminary decree for foreclosure, extinguishes the mortgagor's right of redemption.¹²⁶ After a preliminary decree, the court can extend the period of payment of dues, and until final decree to the effect of extinguishment of redemption, the mortgagor's right to redeem exists.¹²⁷ Before this final decree, a mortgagee,

¹¹⁷ *Seth Ganga Dhar v Shankar Lal* (n 15); *Tularam v Kishorilal* [1956] AIR 83 (MB).

¹¹⁸ *Mahmood and Shaukat* (n 13) 526.

¹¹⁹ CPC 1908 (n 81); *K Vilasini v Edwin Periera* (n 81).

¹²⁰ CPC 1908 (n 81) O 34, rr 8; *Philomina Jose v Federal Bank Ltd* (n 14).

¹²¹ *Rosamma v BV Ramachandrappa* [2000] AIHC 4782 (Kant); *Parichhan Mistry v Acchibar Mistry* (n 19); *Sidappa v Mariyappa* (1994) 1 ILR Kant 145; *Maganlal v Jaiswal Industries* (n 78); *Mhadagonda v Shripal Balwant* (n 81); *Mathuralal v Keshar Bai* [1971] AIR 310 (SC); *Sachindra v Sheoprasad* [1966] AIR 126 (SC).

¹²² *Mitra and Gupta* (n 12) 811.

¹²³ *Gurdev Singh v Darya Singh* (2005) 12 SCC 349.

¹²⁴ *Rukmani Ammal v Jagdesa Gounder* (n 84); *L Sankaran Lekshmi v Adima Kunju Abdhurahiman Kunju* [1965] AIR 132 (Ker).

¹²⁵ *Soni Lalji Jatha v Soni Kalidas* [1967] AIR 978 (SC); *Mangru Mahto v Thakur Taraknathji* [1967] AIR 1390 (SC).

¹²⁶ *L K Trust v EDC Ltd* (n 34); *Allokam Peddabhayya v Allahabad Bank* [2006] AIR 236 (AP); *Madurambigai Ammal v D Somasundaram* (2005) 10 SCC 166; *Maganlal v Jaiswal Industries* (n 78); *M R Patil v S B Rainade* (n 81); *Karam Chand v Telu Ram* [1968] AIR 473 (Punj).

¹²⁷ *Kandhumarathi Ratnam and Others v Karri Veerajulu and Others* [2021] MANU/AP/1356/2021 (AP); *Namdev Sripati v Babu Ganapati* (1997) 5 SCC 185; *Nabha Yathu Ummal v Mohd Mytheen* [1964] AIR 225 (Ker); *Mrutunjay Pani v Narmada Bala*

even, can be allowed to sojourn in possession; staying in possession of the mortgaged property will not affect the mortgagor's equity of redemption.¹²⁸ And after deposition of the amount payable by the mortgagor, without preliminary decree, a final decree can be passed by the court.¹²⁹ Also, at a court sale, as the purchaser of equity of redemption does not redeem the mortgage, his right of redemption is extinguished in execution of a mortgage decree, and his suit for redemption after actual sale is wholly indefensible.¹³⁰ Likewise, where mortgaged property vests in the government during the pendency of a suit for redemption, which is free from all encumbrances, that decree for redemption will be infructuous.¹³¹

4. Collateral Advantages and Mortgagor's Right after Redemption

After tendering the mortgage money, the obligations of a mortgagee, when so required, will be compelled by the mortgagor. Mortgagee will do certain things like to deliver the required instruments which are in his possession, and he shall not detain, to deliver the possession of mortgaged property and to retransfer that to him or any directed third party¹³² or to execute a registered acknowledgement regarding cease of mortgagee's rights subject to it is not already extinguished by act of parties or by operation of law.¹³³ Regarding to deliver mortgaged property, mortgagee is destined to account and restore the property in its entirety and free from any encumbrance unless anything contrary exists.¹³⁴

Sasmal (n 19); *Ram Rao v Bhim Rao* [1955] AIR 190 (Hyd); *Raghunath v Krishnadas* [1937] AIR 196 (Nag).

¹²⁸ *Achaldas Durgaji Oswal v Ramvilas Gangabisan Heda* (n 51); *Govinda v Narain* [1956] AIR 107 Hyd; *Ram Rup v Jang Bahadur* [1951] AIR 566 (Pat).

¹²⁹ *Patel Prabhudas v Heirs of PB Kacharbhai* [2007] AIR 149 (Guj); *Sarojini v Pappikuly* [2007] AIR 44 (Ker); *Durga Prasad v Kallaram* [2005] AIR 224 (MP).

¹³⁰ *PTC India Financial Services Limited v Venkateswarlu Kari and Others* (2022) 9 SCC 704; *Shakeena and Others v Bank of India and Others* (2021) 12 SCC 761; *Allokam Peddabbayya and Others v Allahabad Bank and Others* [2017] AIR 3069 (SC); *Afser Molla and Others v Abdul Aziz and Others* (1977) 29 DLR 416 (HCD); *Sachidananda v Sheo Prasad* [1966] AIR 126 (SC); *Sankaran Lakshmi v Adima Kunju* (n 124); *Mohon Chandra Datta v Dinai Keot* [1963] AIR 176 (Assam); *Naki Yathu Ummal v Muhammad Mythun* [1963] Ker L J 1177; *Barti Kuer v Brahmachari Singh* [1961] AIR 439 (Pat); *Mritunjay Pani v Narmanda Bala Sasmal* (n 19); *Abdul Gahafoor v Pahama* [1957] AIR 136 (Pat); *Eapen v Manachee* (n 100); *Jay Prasad v Jasoda* [1958] AIR 649 (Pat); *Minor Pachi v Perumal Thevor* [1955] Mad WN 662; *Bhailal v Keshavji* (n 77); *Gangaram v Butrusao* [1952] AIR 202 (Nag); *Baiju Lal v Thakur Prasad* [1939] AIR 7, 12 (Pat).

¹³¹ *Raja Sailendra Narayan v Kumar Jagat Prasad* [1962] AIR 914 (SC); *Markanda v Varada* [1949] AIR 197 (Pat).

¹³² TPA 1882 (n 3) s 60A; *Afsar Uddin v Bangladesh and Others* (2015) 3 CLR 77 (HCD).

¹³³ TPA 1882 (n 3) s 60 (a), (b), (c) and proviso.

¹³⁴ *Hanumant v Mohan* [1988] AIR 299 (SC); *Om Prakash v Ganga* [1988] AIR 108 (SC); *Jadavji v Navnitbhai* [1987] AIR 2146 (SC); *Munni v Phuddi* [1987] AIR 155 (All);

This power in legal connotation cannot be exercised by the mortgagor where the mortgagee is or has been in possession of since heaven after the transfer remains accountable for profits and other matters regarding the mortgage unless anything contrary appears. Before transferring the mortgaged property to the mortgagor or his nominee, the mortgagee needs to take consent from any subsequent encumbrancer of whom he has notice.¹³⁵ And while in a subsisting mortgage,¹³⁶ upon redemption,¹³⁷ if the mortgaged property has a mortgagee, in the first place, any accession appears to that property, and in the second place, any improvements have been made by him,¹³⁸ it is the mortgagor who is entitled to such accession and improvements, along with paying costs if liable,¹³⁹ in the absence of any contract to the contrary.¹⁴⁰ And if there is any profit and it is due to improvements, it will be credited to the mortgagor.¹⁴¹ However, the purpose of section 63A regarding improvements where the mortgagee has to act *bona fide*,¹⁴² is to prevent the mortgagee from making any improvement that may cause hardship on the mortgagor in redeeming the mortgaged property.¹⁴³ These improvements have to be properly and reasonably incurred. And what is property and that creates necessary expenditure, is a question of fact which depends on a case-by-case basis.¹⁴⁴ Also, it is to be considered that even if, according to section 63A, the mortgagee may be liable for all such improvements. And any condition in the mortgage deed, like a hard-hitting condition, may amount to a clog on the equity of redemption.¹⁴⁵ And it needs a nudge that improvements must always be reasonable regarding the nature and value of the estate. However,

Dattajirao v Prahladas (n 46); *Gurunnath v Suryakant* [1940] AIR 225 (Bom); *Harihar v Lachman* [1934] AIR 246, 250 (Oudh); *Pranpati v Hasiban* [1932] AIR 57 (Oudh); *Dildar v Shukrullah* [1924] AIR 444 (All); *Anandrao v Bhikaji* [1922] AIR 156 (Bom).

¹³⁵ *Halsbury's* (n 70) 639.

¹³⁶ *Kapniah Sivananjiah v Sithay Goundan* [1921] AIR 627 (Mad).

¹³⁷ *Maheshwar v Babu Ram* [1921] AIR 69 (Pat).

¹³⁸ TPA 1882 (n 3) s 63A.

¹³⁹ *George v Muthalier* [1953] AIR 507 (Tr-Co); *Kukaji v Misri Lal* [1952] AIR 6 (MB); *Ram Asray v Hira Lal* [1949] AIR 681 (All); *Sundaram v Mannadiar* [1947] AIR 197 (Mad).

¹⁴⁰ TPA 1882 (n 3) s 63; *Park View Enterprise v State of Tamil Nadu* [1990] AIR 251 (Mad); *Rewti v Ram Swarup* (n 24); *Muhammad Mohideen v N N H Muhammad Mohideen* [1960] AIR 24 (Mad); *Neelakantani v Ummeni* [1952] AIR 295 (Tr-Coch); *Jetha v Ashpar* [1950] AIR 74 (Kutch).

¹⁴¹ *Wasu Ram v Mahomed Ramzan* [1940] AIR 199 (Lah).

¹⁴² *Varadappa Naicker v Appavi Gounder* [1973] AIR 454 (Mad).

¹⁴³ *Md Mohideen Rowther v N N H Mohd Mohideen Rowther* (n 140); *Kukaji v Misri Lal* (n 139).

¹⁴⁴ *Mahmood and Shaukat* (n 13) 557.

¹⁴⁵ *Mammunhi Beary v Neelamma* [1976] AIR 21 (Kant).

the cost of improvements of the mortgaged property incurred by the mortgagee in possession during *pendent lite* cannot be recovered from the mortgagor.¹⁴⁶

When a mortgagee has acquired any benefit and interest over the mortgaged property, there is no absolute assumption in all cases that the mortgagee will hold these benefits or interests in trust for the mortgagor unless the mortgagee obtained that by fraud and behind the back of the mortgagor.¹⁴⁷ Regarding the rate of interest under these sections, the 1929 Amendment was necessary to substantiate circumstances where the mortgage deed is silent about the rate of interest.¹⁴⁸ Besides, the term ‘accession’ is not defined in the general property law, and it is not confined to physical acquisition or addition to mortgaged property, but will include the acquisition of an interest in property.¹⁴⁹ And, dealing with an accession which was acquired at the expense of the mortgagee, in sections 63 and 70, the mortgagor, at his option, may, along with the addition of those expenses upon redemption, obtain the benefits of them.¹⁵⁰ It is a question of fact, decided on the intention of the parties and gathered from the degree and purpose of annexation.¹⁵¹ Accessions and improvements are both based on maxims “*accessio cedit principale* (the increase follows the principle) and *accessorium non ducit, sed sequitur suum principale* (that which the accessory or incident does not lead but follows, its principal). Also, in case of a subsisting mortgage, renewal of the lease of the mortgaged property is there. Upon redemption, it is the mortgagor who will have the benefits of the new lease unless anything contrary appears.¹⁵² And about the cost of renewal, like English law, it is the mortgagee who is entitled to recover and make addition of it to the mortgage money.¹⁵³ Mortgagor, as long as his redemption right subsists, at his own cost, can inspect and make copies where it is required, from documents of title in mortgagee’s custody or power. Moreover, the mortgagee may refuse to produce the deeds of mortgage when the time fixed for redemption is over.¹⁵⁴

¹⁴⁶ Mahmood and Shaukat (n 13) 557.

¹⁴⁷ *Parvathi v Cherian* [1951] AIR 94 (Tr & Coch).

¹⁴⁸ Paul (n 11) 722.

¹⁴⁹ Mahmood and Shaukat (n 13) 552.

¹⁵⁰ *Mammunhi Beavy v Neelamma* (n 145); *Umraon Singh v Chakauri Singh* [1958] AIR 302 (Pat) (FB); *Maya Devi Rajlakshmi Devi* [1950] AIR 1 (Cal); *Sorabjee v Dwarkadas* [1932] AIR 199 (PC).

¹⁵¹ Mahmood and Shaukat (n 13) 552.

¹⁵² TPA 1882 (n 3) s 64.

¹⁵³ ELG Tyler and P W Young, *Fisher & Lightwood’s Law of Mortgage* (n 89) 562.

¹⁵⁴ TPA 1882 (n 3) s 60B.

5. Sporadic Factors regarding Redemption

In the course of redemption of mortgaged property, certain factors are so patchy that mark the mortgagor in categorical sites resembling *lis pendens*, subrogation, etc. Redemption in *lis pendens* modelling the mortgagor's right of redemption is a thorny one. After a redemption suit is filed, a share of equity of redemption, when purchased by the mortgagee, will be subject to the doctrine of *lis pendens*, and that property has to be redeemed as a whole.¹⁵⁵ Per the court's decision, purchasing mortgaged property without leave of the concerned court during the pendency of the suit does not appear to be *bona fide* of the parties, and it has become a trend to muddle and delay the pending suit, which is improbable in the club.¹⁵⁶

Moreover, section 60 of the Transfer of Property Act 1882 provides that the sale of mortgaged property by the mortgagor to a third party can be made since the mortgagor is still the owner, and the buyer will get the right to redeem the property. Simply noted, the third-party purchaser, after the purchase, steps into the shoes of the mortgagor and can redeem the property and enjoy subrogation unless anything contrary appears resembling fraud or illegal transactions by the mortgagor.¹⁵⁷ Subrogation hinges not on the privity of contract but on the canon of equity and principles of natural justice. It recognises equity of reimbursement and sometimes bears with it a charge of an equitable nature. Section 92 of the general property law does not have the impact that a substitute is becoming a mortgagee. It confers specific rights upon redemption on the redeeming co-mortgagor and provides remedies of redemption, sale, along with foreclosure accessible to the substitute as they were at hand to the substituted.¹⁵⁸ And even if it is a statutory right, it is not over and above the right of ownership. Any owner of mortgaged property, whether he becomes the owner by way of sale or otherwise, who has superseded the mortgagor before filing suit for foreclosure, is empowered with the redemption right in terms of section 60 of the general property law of the country.¹⁵⁹

¹⁵⁵ *Naro Hari v Vithalbhat* (1886) 10 ILR Bom 648; *Ammthappa v Abdul Rasool* [1988] AIR 215 (AP).

¹⁵⁶ *Bibi Zubaida Khatoon and Others v Nabi Hassan Saheb and Others* [2004] AIR 173 (SC).

¹⁵⁷ *Sarder Shafiqul Islam v Mahbubur Rahman and Others* (2024) 29 BLC 396 (HCD); *Syed Jubayer Hossain v Artha Rin Adalat* (2023) 28 BLC 50 (AD); *Amin Md Lands Development Limited v Monira Munni and Others* 25 (2020) BLC 930 (HCD).

¹⁵⁸ *Krishna Pillai Rajasekharan Nair (D) by Legal Representatives. v Padmanabha Pillai (D) by Legal Representatives and Others* [2004] AIR 1206 (SC).

¹⁵⁹ *Narayan Deorao Javle (Deceased) through L.Rs. v Krishna and Others* [2021] AIR 3920 (SC).

6. Implications and Aftermath

Being corporate in most modern systems, the growth of mortgages as security has been extremely gradual. With a view to elucidating the exact nature of a mortgage, it is imperative to consider the mortgage deal along with other concurrent documents. Redemption, a very valuable right possessed by the mortgagor should not be misled. It is indispensable that the law should grasp facts of every case to acknowledge and be receptive to the distinct compulsions of circumstances and act accordingly. Sometimes, people are entitled to extinguish their rights of redemption. This deferral of redemption can be endorsed in certain circumstances where, conspicuously, those are not against commandment and public policy. Also, there are instances where partial redemption by severance of security at the instance, along with the consent of the mortgagee, is sporadically acquired statutory sanction.

Resembling the UK trend, in Bangladesh, mortgagees may provide for KFI (Key Facts Illustration) to potential mortgagors, which provides a precise sketch of the concerned mortgage. This can aid the mortgagors to have an all-inclusive and transparent overview regarding terms and conditions associated with a particular mortgage. Also, this can be a part of the mortgage deed itself. This exemplifies a perfect balance between the rights and obligations of both parties. Also, like India, a special committee may be constituted to facilitate the snags in the recovery of dues and suggest remedial measures. It ensures the mortgagor's safety from oppressive amelioration from the mortgagee and serves as a safeguard against permanent loss of property. Also, while taking legal actions regarding redemption, numerous procedural matters or complications cause raspery for the mortgagor. In case of recovery of dues in Artha Rin Adalat, there is a need to emphasise on summary procedure, which in fact will summarily follow procedural laws impeccably. Also, currently it is a pressing priority to have a smaller amount in expenses and less protracted remedies in this sector while placing and implementing this right of redemption before courts of law, as the law of this country ensures this inherent right of the mortgagor.

7. Conclusion

History divulges a motif of remedial measure after remedial measure, but mortgage law evolves at glacial speed. The mortgagee having the estate in meaningless form, in mortgage, it is the mortgagor who continues to be the owner, even if it is a qualified one of the mortgaged property, notwithstanding default in payment, and the right to redeem may be successfully asserted by him against the mortgagee. Originally, this right was not recognised by the courts of this subcontinent, and a forfeiture

clause had been introduced *in terrorem* as a penalty. It is the Bombay High Court in 1864¹⁶⁰ and so did the Madras High Court¹⁶¹ that accorded recognition to the right of redemption. In Bengal, it is the Bengal Regulation XVII of 1806 that modified the redemption date, which is within one year from the date of suit for foreclosure, in case of failure, that right is extinguished¹⁶² and this equitable doctrine of redemption, as ancient law was followed in subsequent cases.¹⁶³ However, after that, to complete the mortgagor's right to redeem, section 60 of the Transfer of Property Act, 1882 again conferred this statutory right. This section confers redemption at any time after the principal money becomes due.¹⁶⁴

In the context of a fast-changing milieu and economic stability, certain rubrics of equity of redemption may be evaded but must not be infringed. Catching a bargain in the name of clogs on the equity of redemption is extortionate and oppressive. Covenants negating and hampering the redemption right of mortgagors are over and done with by comprising these sorts of terms in the mortgage deed becomes an intolerable grievance and needs to be revised. Since property rights are constitutional and valuable, regulatory authorities here need to verbalise liberal policies for granting financial facilities, particularly loans, along with the present ones. Also, where instances require, special tribunals can also be set up for the prompt execution of cases. Along with other exhortations, conferment of power upon adjudicating bodies for the speedy disposal of cases and application of harmonious construction in construing rights of both parties of mortgage ought to be the immediate concern at this moment in time in Bangladesh.

¹⁶⁰ *Ramji v Chinto* (1864) 1 ILR Bom 199.

¹⁶¹ *Lakshmi v Krishna* (1872) 7 MHC 6.

¹⁶² *Forbes v Ameeroonissa Begum* (1865) 10 Moo Ind App 340.

¹⁶³ *Bapuji v Senavaraji* (1877) 2 ILR Bom 236; *Kanayalal v Pyarabai* (1883) 7 ILR Bom 139; *Ramchandra v Janardan* (1890) 14 ILR Bom 19.

¹⁶⁴ *Seth Gangadhar v Shankarlal* (n 15); *Md Sher Khan v Sath Swami* (n 94).