

MONEY SUIT

A money recovery suit is a legal mechanism that allows individuals or entities to seek payment of outstanding dues through a civil court. It provides a legal remedy to recover money owed under various circumstances, such as unpaid loans, unpaid invoices, dishonored cheques, breach of contract, or non-payment of rent. The money recovery process is governed by the provisions of the Civil Procedure Code (CPC) and other relevant laws.

Money recovery suits are primarily governed by the following key legislations:

1. Civil Procedure Code (CPC): The CPC provides the procedural framework for filing and adjudicating civil suits, including money recovery suits. It outlines the process for initiating a suit, presenting evidence, and obtaining a judgment.

2. Limitation Act: The Limitation Act prescribes the time limits within which a money recovery suit must be filed. It is essential to adhere to the prescribed time limit, as a delay may result in the suit being time-barred.

3. Indian Contract Act: In cases where the non-payment issue arises due to a breach of contract, the Indian Contract Act becomes relevant. It governs the rights and obligations of parties involved in contractual agreements.

Limitation Period and court fees for money recovery suits

The time period for filing a suit for money recovery is 3 years from the date promissory note as per Art 35 of Limitation Act 1963 and as per sec 19 of Limitation Act, the fresh period of limitation must be computed in case of any payment was made or otherwise acknowledged the debt.

Court-fee for Promissory note:

Section 20 of A.P.C.F & S.V. Act. Suits for money :

In a suit for money (including a suit for damages, or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically), fee shall be computed on the amount claimed.

Recovery of an amount on more than one promissory note:- Separate court fee is to be paid for each promissory note because such claim under each promissory note shall be considered as a separate suit in view of sec 6(2) A.P.C.F & S.V Act.

Jurisdiction

In order to file any suit, the court must have “jurisdiction over your person” and “jurisdiction over the subject matter of the suit” for a valid judgment.

Territorial Jurisdiction

This is the first thing to look at before instituting a suit and while you decide where to file the case is to see if the court has territorial jurisdiction over the person. Under the Code, while deciding the territorial jurisdiction, these factors are looked into:

- place of residence of the defendant
- place where the defendant has his/ her business and earns thereof.
- the place of cause of action wholly or partially.

Pecuniary Jurisdiction

Alongside the territorial jurisdiction, the pecuniary jurisdiction has to be taken into consideration. This is related to the subject matter of the suit. This criterion is mainly important to decide the place of suing in relation to the monetary value of the suit. The case will be filed as per the monetary value of the suit. one has to keep in mind that the territorial jurisdiction is determined -before looking into the pecuniary jurisdiction.

Mortgage Suits:

Mortgage is the transfer of an interest in specific immovable 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, Section 58(a), Transfer of Property Act, 1882. A mortgage is the creation of an interest in property, defeasible (i.e.,annullable) upon performing the condition of paying a given sum of money, with

interest thereon, at a certain time. This conditional assurance is resorted to when a debt has been incurred or a loan of money or credit effected, in order to secure either the repayment of the one or the liquidation of the other. The debtor or borrower, is then the mortgagor, who has charged or transferred his property in favour of or to the creditor or lender, who thus becomes the mortgagee. If the mortgagor pay the debt or loan and interest within the time mentioned in a clause technically called the proviso for redemption, he will be entitled to have his property again free from the mortgagee's claim.

Types of mortgages

Simple Mortgage— Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee, Section 58(b), Transfer of Property

Mortgage By Conditional Sale— Where, the mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute or on condition that on such payment being made the sale shall become void or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale, [Section 58(c), Transfer of Property Act, 1882 .

Prakash(died) By LR v. G.Aradhya @ Ors has explained the concepts of 'mortgage by condition of retransfer'. Referring to section 58(c) of the Transfer of Property Act,1882(TPA), the court observed,"A deeming fiction was added in the negative that a transaction shall not be deemed to be a mortgage unless the condition for recoveyance is contained in the document which purports to effect the sale"

Usufructuary Mortgage — Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage-money and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage-money or partly in lieu of interest or

partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee, [Section 58(d), Transfer of Property Act, 1882 .

Mortgage By Deposit Of Title-Deeds — Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds, Section 58(f), Transfer of Property Act, 1882 .

Anomalous Mortgage— A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage, Section 58(g), Transfer of Property Act, 1882 .

English mortgage — 1. Where the mortgagor binds himself to repay the mortgage-money on a certain date and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage, Section 58(e), Transfer of Property Act, 1882 .
Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247.

The other types of mortgages:

Equitable mortgage —

1. The requisites of an equitable mortgage are:

- (i) a debt;
- (ii) a deposit of title deeds; and
- (iii) an intention that the deeds shall be security for the debt, Syndicate Bank v. APIIC Ltd., (2007) 8 SCC 361.

2. The following mortgages are equitable —

- (1) Where the subject of a mortgage is trust property, which security is effected either by a formal deed of a written memorandum, notice being given to the trustees in order to preserve the priority.
- (2) Where it is an equity of redemption, which is merely a right to bring an action to redeem the estate.
- (3) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land.
- (4) Where a debtor deposits the title-deeds of his state with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate. This transaction is known in practice as an equitable mortgage by deposit of title-deeds. An equitable mortgage being a contract for a mortgage, the mortgagee might file a bill or claim in Equity, either for a legal mortgage, a foreclosure and conveyance or a sale.

Mortgage or lease — Mortgages are not always simple, English or usufructuary or such other types as defined in the Transfer of Property Act. They are anomalous too and sometimes more anomalous than what is defined in the said Act. Even so, there is one most essential feature in a mortgage which is absent in a lease, that is, that the property transferred is a security for the repayment of debt in a mortgage whereas in a lease it is a transfer of a right to enjoy the property, Puzhakkal Kuttappu v. C. Bhargavi, (1977) 1 SCC .

Limitation, Admissibility and Appreciation of Evidence vis-a-vis burden of proof and onus of proof:-

When an appeal is filed against preliminary decree in mortgage suit, period of limitation to file application for passing final decree begins to run from the date of appellate decree and not from the date of preliminary decree even though no stay application was filed in appeal.(Paras 8 and 9). – Bank of India rep. by its Branch Manger, Dommeru v. Pothula Veera Krishna Rao and others – 2010 (5) ALT 534. P.S. NARAYANA,j.

Admissibility and Appreciation of Evidence

Sec.60 of the Evidence Act lays down that the oral evidence must be direct. Which Eschews hearsay evidence for consideration and, therefore reliance on the same is impermissible in law and such evidence is not admissible. Regarding appreciation of oral evidence there is no Hard and Fast

rule. The trial court has to sieve the evidence, remove chaff from the grain and consider so much of the oral evidence as it appears to be relevant. Probable trustworthy having regard to the facts of the case and surrounding circumstances.

Whereas admissibility of documentary evidence the mere marking of a document as an exhibit does not dispense with its proof as laid down in “**AIR 1971 Supreme Court 1865**”. The Two Division Benches of Madras High Court have held that permitting document to be marked by consent only means that the consenting party is willing to waive his right to have the document in question proved. Certainly it did not mean that such a party accepted correctness of every statement made herein (AIR 1948 MADRAS 298 and AIR 1986 MADRAS 341).

Another principle to be borne in mind that a document not “inter parties” is not admissible. The person concerned with such a document has to be summoned to produce or cause the production.

Certified copies of public document may be admitted in evidence and it is presumed and that their contents are proved (Sec.77). Various categories of official documents and their methods of proof is laid down in Sec.78 of Evidence Act. Likewise sec.78 to 90 of Evidence enumerate the various kinds of documents of which presumptions has to its genuineness can be drawn. A word has to be said of Sec.90 which speaks of presumption as to documents of 30 years old which are usually referred as “ancient documents”. They are not only admissible in evidence but further it is presumed that the signature and hand writing contained therein are those of the particular person, whose signature is bear or in whose hand writings are purports to be.

About documents which require to be stamped, Sec.35 of Stamp Act mandates that documents are not stamped or insufficiently stamped, are inadmissible in evidence for any purpose. But such instruments can be received in evidence for payment of stamp duty and penalty. However there are certain exceptions enumerated in proviso Sec.35, important among them being Promissory note or bills of exchange. Un stamped or not duly stamped promissory note can not be received in evidence at all, and the defect is not cured by collecting stamp duty and penalty. They are useless scraps of paper. If an instrument not duly stamped has been admitted in evidence without objection is raised by the opposite party, such admission cannot be called in question at any later stage of the same Suit or proceeding on the ground of its not being duly stamped. This is laid down in Sec.36 of Stamps Act. Then passing an instrument which are compulsorily registerable, Sec.17

of Registration Act deals with the class of instruments whose registration is compulsory. Those documents shall not be admitted in the evidence, if they are not registered. It should be borne in mind that the nomenclature given to a particular document will not by itself determine the nature of the transaction covered by such documents. To decide the nature of the document one has to read it as a whole and construe the true nature of the transaction.

When documentary evidence is produced there are several aspects that have to be examined depending on the evidence adduced. Whether the document is actually written by the persons alleged to have written it. If the execution it self is denied, that is, a plea of forgery is raised the genuineness of the document has to be established by evidence. The Court has power vested in it by Sec.73 of Evidence Act to compare the signature in the disputed document with the admitted signature or writing of the person. The party to a suit who relies on a disputed document may send the document with a leave of the Court to a Finger Print or Hand Writing Expert for comparison of disputed writings or signatures with the admitted writings or signatures and seeking the expert's opinion according the Sec.45 of Indian Evidence Act.

Certain types of documents are required by law to be attested and without due attestation, they are not to be acted upon. Mortgage deed is one of the such documents which requires attestation atleast by two persons. Sec.68 of Evidence act enjoined, that compulsorily attestable documents, shall not be used as evidence until one attesting witness atleast is examined to prove their execution. If its execution is denied. If an attestable document is not duly attested, Courts have no option but to eschew them from consideration. In the interpretation or construction of a document, the salutary principle is that the document should be read as a whole and construed in a reasonable manner which Court fee is, is consistent with the intention of the executant.

Primary evidence is evidence which the law required to be given first; secondary evidence is evidence which may be given in the absence of that better evidence, when a proper explanation of its absence has been given. Sec.91 of the Evidence Act excludes the oral evidence when there is documentary evidence. Therefore if oral evidence is adduced in respect of the contents of the documents, you have to ignore the oral evidence, if it contradict, varies, adds to or subtracts, from its terms. The rules laid down in sec.91 and 92 are applicable only to the parties to an instruments or their representatives with interest. If persons who are not parties to the documents give evidence of any facts regarding a contemporaneous agreements varying the terms of the document, Courts may consider the same which is permissible u/s.99 of the Evidence Act.

Another rule regarding admissibility of evidence is that no amount of evidence can be looked in to on a plea not raised in the pleadings. If evidence is tendered regarding a fact not alleged in the pleadings, such evidence should not be allowed and it recorded such evidence should not be considered.

Burden of Proof and Onus Of Proof

The person asserting that a particular fact is in existence has to prove that fact, unless law says that the burden lies on any one else. The fact ascertained by a person must be proved by adducing evidence which is admissible in accordance with law. In civil matters the facts relating to alienation, execution of bills of exchange, bonds, execution of promissory notes, claim cases etc., it is the plaintiff that will have to prove the claim made by him. Of course, there are exception, in a suit brought by the plaintiff in respect of propitiatory interest in a certain land and another suit in respect of lease hold in that suit. The onus on the defendant to show that were the same. Similarly in a suit on a foreign judgment, the onus is on the defendant to prove that it is not subject to foreign judgment. Other instances where the plaintiff need not prove or where the law lays down that certain matters are presumed. For example consideration under a promissory note is to be presumed and the burden of proof that there was no consideration is upon the executant. Even there, the usual presumption of consideration upon admission of execution cannot however, be drawn in the case of documents executed by ignorant and illiterate persons. Where the defendant admitted that he put his signature or thumb mark on some other document, the onus of proving execution is on the plaintiff.

The adverse inference against a party is usually drawn during the course of trial, if he deliberately obstrains from better evidence, which he is in a position to adduce. Where a person is proved to have suppressed any species of evidence or to have defeated or destroyed any written statement, a presumption will arise that it would have been against his interest and that his conduct is attributable to his knowledge of the circumstances. The Court may presume that if a man refused to answer a question which he is not compelled to answer by law, the answer if given, would be unfavourable to him. Both on general grounds and on reason of Sec.114 the burden is one who shifts easily as evidence is developed.

Sec.56 to 58 in Chapter 3, laid down that facts judicially noticeable need not be proved. These are part of legal presumption which the Courts are bound to be draw which do not required

further proof. Though Sec.58 does not strictly lay down a legal presumption, it is also akin to a presumption to be drawn by the Court. No fact need be proved if admitted by the other party in writing. It may be an agreement between the parties, admissions made at or before him it may be even an admission by a counsel.

Sec.79 and 90 in chapter 3 deals with presumption to be drawn with regard to documents. Certified copies, gazettes, news papers, act of parliament, map or plans purporting to be made by authority by Central or State Govt., power of attorney, authentication by a public etc., certified copies of foreign telegraphic messages from a telephone office, memorandum of evidence recorded in judicial proceedings, documents purporting are proved are 30 years old, are genuine.

In appreciating evidence certain principles can be kept in mind.

1. The credibility of evidence does not depend on number of witnesses.,
2. Generally the testimony of single witness, no matter, what the issue or who the person may legally suffices, as evidence upon which the court may come to a conclusion.
3. The mere accretion of any witness does not by itself need be believed, even though he is unimpeachable in any manner, because require such believe, would be given a quantitative and impersonal measure to testimony.
4. In determining of the credit, due to the witness, the judge should have regard to the integrity, ability, the number of witnesses and the consistency with each other, the conformity of their testimony with experience and the conformity of their evidence with collateral circumstances. While weighing evidence, the judge has to first find out on whom the burden of proof lies, what presumptions apply, which documents are conclusive and which documents are merely prima-facie of evidence of facts recorded and that direct and positive evidence is preferable, to this speculative opinions of experts. The power of the judge to put questions or to order production of evidence is incorporation in Sec.165 of the Act whenever it appears to the judges that all factors are necessary for proper determination of the issues have been elicited or that party has avoided discloser of matter which goes against him or which may lead to discovery of relevant facts pointing to the truth of the matter under enquiry, it is not only the right, but it is the duty of the judge to participate in the examination and ask questions, he pleases in any form at any stage of the proceedings.

Evidence of classified as direct evidence, circumstantial and hearsay evidence, real and personal evidence, original and un-original evidence, positive and negative evidence, substantive

and non substantive evidence. Inference, guess, conclusions and opinions cannot be treated as evidence. Affidavits can be used as evidence under order 19 CPC for a limited purpose and can be used for mode of proof. Under sec.13 (c) of CPC, the court is empowered to order any fact to be proved by affidavit. 'under 19(2) the deponent of an affidavit can be cross examined. Affidavits are mainly used in interlocutory applications. In appreciating evidence, regard must be have to human conduct and normal course of events, no standards to a judge whether a fact has been proved, disproved or not proved has been given in the Evidence Act, nor can such standard be prescribed.

Court-fee for mortgage suits:

Section 31.of A.P.C.F & S.V. Act. Suits relating to mortgages :-

- (1) In a suit to recover the money due on a mortgage, whether the sale of the mortgaged property is prayed for or not, fee shall be computed on the amount claimed.
- (2) If the holder of a prior mortgage or charge impleaded as a defendant in such a suit prays in his written statement for the determination of the amount due on his mortgage or charge and for a direction in the decree for the payment of such amount to him, fee shall be payable on the written statement computed on the amount claimed : Provided that, where the holder of the prior mortgage or charge has paid a fee in any other proceeding on the claim to which his written statement relates, credit shall be given for the fee paid by him in such other proceeding.
- (3) Where, in such a suit, the mortgaged property is sold and the holder of a prior or subsequent mortgage or charge applies for payment to him out of the sale proceeds of the amount due on his mortgage or charge, such holder of the prior or subsequent mortgage or charge shall pay on his application a fee computed on the amount claimed by him: Provided that, where the holder of a prior or subsequent mortgage or charge is a party to the suit in which the sale was held and has paid fee on the written statement filed by him in the suit, no fee shall be payable by him on the application for payment out of the sale proceeds : Provided further that, where the holder of a prior or subsequent mortgage or charge, not being a party to the suit in which the sale is held, has paid a fee in any other proceeding on the claim to which his application relates, credit shall be given for the fee paid by him in such other proceeding.
- (4) In a suit by a co-mortgagee, fee shall be computed on the amount claimed on the entire mortgage: Provided that, where any other co-mortgagee impleaded as defendant in such suit claims on the entire mortgage a sum larger than that claimed in the plaint the difference between the fee

computed on the entire sum claimed in such defendants written statement and the fee computed on the entire sum claimed in the plaint shall be payable on the written statement.

(5) (a) In a suit by a sub-mortgagee to recover the amount claimed on the submortgage by sale of the mortgagees interest in the mortgaged property, fee shall be computed on the amount claimed under the sub-mortgage. (b) In a suit by a sub-mortgagee, if the prayer is for the sale of the property mortgaged to the original mortgagee and the original mortgagor is also impleaded as a defendant, fee shall be computed on the entire amount claimed on the original mortgage which is sub-mortgaged to him.

(6) Where the holder of a prior or subsequent mortgage or charge is impleaded in a suit by a co-mortgagee to which sub-section (4) applies, or in a suit by a sub-mortgagee to which sub-section (5) applies, the provisions of sub-sections (2) and (3) shall apply mutatis mutandis to a written statement or an application filed by such holder of mortgage or charge.

(7) Where the original mortgagee who is impleaded in a suit to which the provisions of sub-section (5)(b) apply claims on the mortgage sub-mortgaged by him a larger amount than is claimed in the plaint, the provisions of sub-section (4) shall apply mutatis mutandis to the written statement of such original mortgagee.

(8) In a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint or on one -fourth of the principal amount secured under the mortgage, whichever is higher: Provided that where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit fee is paid: Provided further that, in the case of any usufructuary or anomalous mortgagee, if the plaintiff prays for redemption as well as for accounts of surplus profits, fee shall be levied separately on the relief for accounts as in a suit for accounts.

(9) In a suit by a mortgagee to foreclose the mortgage or, in the case of a mortgage by conditional sale to have the sale declared absolute, fee shall be computed on the amount claimed in the plaint.

Mortgage suits limitation :

Limitation- Twelve Years(12 yrs) as per Art 62 of the Limitation Act,1963.

A fresh period of limitation shall be computed from any payment or acknowledgement is made,in view of sec 19 of the limitation Act,1963.

(b) Costs and Interests – Case law:-

Interest: Meaning:-

Black's Law Dictionary (Fifth Edition) defines these expressions as follows :

“Interest”. – Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money...Payments a borrower pays a lender for the use of the money.”

The Constitution Bench of the Hon'ble Apex Court in Central Bank of India Vs Ravindra held that, the general idea is that the creditor is entitled to compensation for the deprivation; the money due to creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute.

Three Divisions of interest:

1. Pre-lite;
2. Pendent-lite; and
3. Post lite.

Pre-lite:-

(1) Pre-lite: *interest accrued due prior to the institution of the suit on the principal sum (due) adjudged. Interest for the period anterior to institution of suit is not a matter of Procedure as it is referable to substantive law and can be sub-divided into two sub-heads;*

- (i) where there is a stipulation for the payment of interest at a fixed rate (contract rate) and*
- (ii) where there is no such stipulation as per statutory provisions providing certain rate of interest and in its absence as per the interest Act (from date of demand (from date of service of demand notice) and at prevailing market rate and bank lending rate as guidance). (See M.Rajeswar Rao & others... Vs.Chitluri Satyam (Died) & others (2013).)*

Though, the pre lite interest was awarding on grounds of equity also(from common law principle of justice, equity and good conscience) by the courts as per certain precedents including from, Bengal Nagpur Rly Co Ltd Vs Ruttamji Ramji of Privy Council and following it of the Apex Court in Satinder Singh Vs Amrao Singh and Hirachand Kothari Vs State of Rajasthan and from the wording of old Interest Act, 1839 proviso to Section -1- which reads that “interest shall be payable in all cases in which it is now payable by law” and the same since repealed by the Interest Act,

1978 with no such and similar provision, no interest appears to be awarded on equitable grounds so far as pre-lite substantive interest concerned, however held that it requires a detailed examination in an appropriate case as expressed in *LIC of India Vs S Sindhu* . Thus, the observations in the larger bench (five judges bench) decision of the High Court in *APSRTC Vs. B.Vijaya* may also require reconsideration to the extent of interest pre lite can be awarded on equitable grounds as a Court of equity, though as on date, it is a binding precedent If there is a stipulation for the rate of interest, from the parties voluntarily agreed upon, the Court must allow that rate up to the date of the suit subject to three exceptions; (i) any provision of law applicable to money lending transactions, or Usurious Loans Act or any other debt relief law governing the parties and having an overriding effect on any stipulation for payment of interest voluntarily entered into between the parties;

(ii) if the rate is penal (under any debt relief law or market rate), the Court must award at such rate as it deems reasonable (as per prevailing market rate);

(iii) even if the rate is not penal the Court may reduce it if the interest is found excessive and the transaction was substantially unfair (subject to such observations and conditions supported by reasons). If there is no express stipulation for payment of interest and rate of interest; the plaintiff is not entitled to interest much less at the rate claimed except on proof of mercantile

or trade usage having the force of law or statutory right to interest like by Section 80 of the Negotiable Instruments Act & Section 23 of the Trusts Act or Section 61 of the Sale of Goods Act or the like or an implied agreement and under the provisions of the Interest Act vide decision *Vithal Das Vs. Rup Chand*.

Pendent-lite:-

(2) Pendent-lite: In addition to pre-lite interest, it is the additional interest on the principal sum adjudged or declared due from the date of the suit either at contract rate if reasonable or at such rate as the Court deems reasonable in the discretion of the Court (as per Section 34 CPC till date of decree or under Order 34 Rule 11 C.P.C. in case of mortgage debt if contract rate is unreasonable and excessive to reduce even from date of suit till expiry of the period of redemption) as not a substantive law; (See *M.Rajeswar Rao & others... Vs.Chitluri Satyam (Died) & others (2013).*)

Post-lite:-

(3) Post-lite: *In addition to pre-lite interest on principal sum and pendent-lite interest on the principal sum adjudged or found due, it is the further interest on such principal sum (as per Section 34 CPC or under Order 34 C.P.C. as not a substantive law, from the date of the decree to the date of the payment and in mortgage decree from date of preliminary decree till expiry of period of redemption and thereafter till realization/payment as the case may be in any decree for money held due with or without charge preliminary or final or partly final decree) or to such earlier date as the Court thinks fit, in the discretion of the Court, at a rate not exceeding 6 per cent per annum except where the transaction is a business or commercial one to grant above 6 percent but does not exceed contract rate as also laid down by the larger bench of the AP High court in APSRTC Vs. Vijaya . (See Rulings APSRTC Vs. Vijaya; and M.Rajeswar Rao & others... Vs.Chitluri Satyam (Died) & others (2013).) due. The creditor needs to be compensated for deprivation. (See M.Rajeswar Rao & others... Vs.Chitluri Satyam (Died) & others (2013).)*

'Penal interest' :-

However, 'penal interest' has to be distinguished from 'interest'. Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrong-doer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Penal interest can be charged only once for one period of default and, therefore, penal interest cannot be permitted to be capitalized. Further interest i.e., interest on interest, whether simple or compound or penal cannot be claimed on the amount of penal interest. (See M.Rajeswar Rao & others... Vs.Chitluri Satyam (Died) & others (2013)). No doubt, agricultural borrowings are to be treated on a different pedestal. Even the banks cannot charge interest for agricultural lending other than half yearly rests for seasonal crops and annual rests for other purposes even to compound only as per the RBI circular instructions and directions being guidelines. Even coming to private lending/borrowing, agriculturists cannot be charged with more than 12% p.a. as per Act 4 of 38 for the other than Telangana area of the state of Andhra Pradesh and Act 16 of 1956 in Telangana area of the state of Andhra Pradesh apart from the fact that the Usurious Loans Act always applies to the private lending in considering rate of interest is excessive or reasonable. Even the decision relied upon by the respondents- defendants in State Bank of India Vs. S.H. Associates which speaks that even in commercial transactions, Court is empowered to grant interest lesser than contract rate is not in dispute but for to say what is the

reasonable rate of interest applicable to consider. Even in a business transaction for charging pre-lite compound interest, there must be a clear written stipulation/contract or from any statutory provision- as held in State of Haryana Vs SL Arora & Company . (See M.Rajeswar Rao & others... Vs.Chitluri Satyam (Died) & others (2013)) 'So far as bank transactions concerned as per the contract rate and as per RBI Guidelines fixing interest rate from time to time with a minimum and maximum not exceeding the ceiling on rate of interest to exercise within and as per Section 21A of the Banking Regulation Act, 1949 amended by Act 1 of 1984; the debt relief laws and Usurious loans Act to apply and to scale down interest there under have no application, However the Court can under Order 34 Rule 11 and/ or under Section 34 CPC reduce the pendent-lite an post-lite interest rate even from contract rate.' – M.Rajeswar Rao & others Vs. Chitluri Satyam (Died) & others (2013). See the ruling in Corp. Bank Vs. DS Gowda & M Veerappa Vs. Canara Bank .

Burden of proof:-

On the point that the burden to prove whether the interest charged is penal or usurious in the facts and circumstances is on the respondent and he had not chosen to enter into the witness box at all and hence in such a case, an adverse inference has to be drawn for non- examination of such a party. Strong reliance was placed on Rajappa Hanamantha Ranoji Vs. Mahadev Channabasappa, AIR 2000 S.C. 2108. Konakalla Venkata Satyanarayana Vs. State Bank of India, 1974(2) An. W.R. 217, Vijaya Bank, Guntur Branch Vs. Kommareddy Jaji Reddy, 2002(2) A.L.D. 71, Central Bank of India Vs. Ravindra, 2002(2) A.L.D. 97 (SC).

Rate of interest :-

M.Rajeswar Rao & others. Vs.Chitluri Satyam (Died) & others (2013) observed that from steep fall in bank lending rate of interest, the reduction from 24% to 12% interest awarded by the Court from date of suit to date of decree is since just and reasonable, there is nothing to interfere. However, insofar as post lite interest from date of decree till realization concerned, from the transaction is a commercial one within the meaning of Section 34 C.P.C. and the rate of interest can be charged above 6% p.a. and there are no special reasons given by the appellate Court even to reduce to 6% p.a. though for pendent lite fixed at 12% p.a. and from the several expressions referred indicate the rate of interest awarded after decree at 9% to 12% is reasonable in such lending and there is no reason to reduce from 12% that is what the rate of interest awarded for pendent-lite, the same rate is just to award in the commercial transaction for post-lite also within the discretionary power of the appellate court Best Choice Enterprises vs M/S J. Sons Agencies (2011), the Hon'ble Delhi High Court held that the Interest Act, 1978 gives power to the Court to allow interest at a rate not exceeding current rate of interest.

In 2003 (66) DRJ 46 R.C. Datta Vs. Dr. Rajiv Anand a Bench of the Hon'ble Delhi High Court had held that in the absence of any documentary evidence to support the grant of interest @ 24% per annum, interest granted @ 10% per annum from the demand raised i.e. from the date of notice which in that case was 08.5.1995 would be justifiable. In (1997) 10 SCC 681 Mahesh Chandra Bansal Vs. Krishna Swaroop Singhal & Ors. the Hon'ble Supreme Court had the occasion to examine the percentage of interest to be awarded on a suit for recovery for the period during which the suit was pending before the trial court which was of the year 1980; 12% per annum had been allowed in that case. M. V. Mahalinga Aiyar v. Union Bank Ltd., AIR 1943 Mad 216, where it was held that any interest awardable from the date of the plaint to the date of the decree can be only upon the principal sum due.

Compound interest :-

There is nothing wrong in the parties voluntarily entering into transactions, evidenced by deeds incorporating covenant or stipulation for payment of compound interest at reasonable rates, and authorising the creditor to capitalise the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalised sum for the succeeding period. Interest once capitalised, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower.”

The right to receive the interest:-

In Satinder Singh v. Umrao Singh, AIR 1961 SC 908 their Lordships held that the right to receive the interest takes the place of the right to retain possession and a deprived owner can base his claim for interest on the general rule and if he is deprived of his land, he should immediately put in possession of the compensation money.

Interest can be awarded for that period?

Civil court has discretion under Order 34 Rule 11, CPC to reduce the contractual rate of interest depending upon the facts and circumstances of each case in spite of the provision of Section 21-A of Banking Regulation Act providing for charging compound interest at contractual rate. (Paras 23 and 24). – State Bank of India, Settippalle Branch, Tirupati rep. By its Chief Manager Vs. P. Veerananarayana – 2014 (1) ALT 714. VILAS V. AFZULPURKAR,j.

The very purpose of the enactment of Usurious Loans Act is to ensure that the persons in need of money are not exploited by the lenders – The reasonableness of the rate of interest mentioned in the contract falls within the realm of adjudication by Court on the touchstone of settled principles.(Paras 10 and 11). – Investment Trust of India Limited, Chennai Vs. P.Varahamma and another – 2013 (6) ALT 212 (D.B.). L. NARASIMHA REDDY and S.V. BHATT,jj.

Contours of Judgment Writing in Money and Mortgage Suits – Special Reference to Operative

Portion – Precedents:-

The suits relating to mortgages stand for the principle “once a mortgage, always a mortgage“, meaning a borrower cannot contract to give up his automatic right to redeem title to his property once the debt is paid. The Transfer of Property Act, 1882 deals with the mortgage of immovable property in our country. Mortgage is the transfer of an interest in an immovable property for the purpose of securing a loan or the performance of an engagement. A mortgage to be valid must be in relation to payment of any definite amount either already advanced or to be advanced, by way of loan. This was observed in Sita Bai Vs. South Indian Bank Ltd.,

Trichur, Kerala State and others, 2013 (5) ALT 430 (D.B.). A personal decree passed under Order 34 Rule 6 is a decree within the meaning of the definition in Sec. 2 (2). Under Sec. 48, the terminus quo is the date of the decree. An execution application filed within 12 years of the passing of a personal decree under O. 34 R. 6 is within time. – Adabala Satyanarayana Vs. Damisetty Nagaraju and others, 1955 (1) ALT 389(D.B.).

Who are necessary and proper parties in a mortgage suit?:-

- (1) The provisions Or. 1 R. 10 (2) C. P. C. as held by the Supreme Court in Kazuu Begum’s case (A. I. R. 1958 S. C. 886), should be construed very liberally and all persons who are found to have direct interest in the mortgaged properties must be held to be proper, though not necessary, parties for a complete and effective adjudication of the rights of the parties.*
- (2) The object of the Legislature in making rule 1 to Order 34 C.P.C. is to define the scope of a mortgage suit, pure and simple.*
- (3) The provisions of O. 34, R. 1 C.P.C. are subject to the provision; of Or. 1 R, 10(2), but the provisions of Or. 1 R. 10(2), are not controlled by Or. 1 R. 3 C.P.C.*

- (4) *The question as to who are all the necessary parties to be impleaded as party defendants in a suit on mortgage is not one of jurisdiction but at most one of misjoinder or non-joinder of parties.*
- (5) *Where a suit for redemption, fore-closure or sale of mortgaged property is brought by the respective parties to the mortgage, all persons interested in the equity of redemption and all those who claim right and interest through the mortgagee should ordinarily be necessary parties, and the persons who claim adverse title paramount in some or all of the mortgaged properties but not through the mortgagor or mortgage, need not be implead as parties normally to such a suit.*
- (6) *But, the aforesaid rule is not inflexible or absolute and the court, in each case, has to see whether such a course will lead to inconvenience or confusion and exercise its discretion judiciously and properly.*
- (7) *In certain cases, where the court thinks it just, proper and necessary in the interests of all parties to adjudicate on the questions relating to paramount title, it is not only proper but even desirable to implead such parties and avoid multiplicity of litigation.*
- (8) *Where it is alleged that the person claiming adversely or by title paramount is a benamidar of the mortgagee, or is claiming to be in possession and enjoyment of all or some of the mortgaged properties, those who are likely to resist the decree-holder in case the decree is passed in terms of the plaint, must be held to be proper, though not necessary, parties to such a suit on mortgage.*
- (9) *Where the court, on a consideration of the facts and circumstances of each case, is of the opinion that it would be just and convenient and desirable to decide the title of the persons who set up a paramount title, then those persons must be impleaded as party defendants, and in the interests of all parties the question of title also should be adjudicated upon after framing appropriate and proper issues and giving opportunity to all the parties concerned. –*

R. Veeraswamy Vs. R. Jangamayya – 1969 (2) ALT(NRC) 12. KONDAIAH,j An application under Sec. 19 A (1) of Madras Agriculturists Relief Act (IV of 1938) has power to decide all questions arising between the mortgagee and the mortgagor:- A court deciding an application under Sec. 19 A (1) has power to decide all questions arising between the mortgagee and the mortgagor as well as other' owners of the equity of redemption, as in a regular mortgage suit. If the mortgagee does not relinquish his security, the court would have to pass a mortgage', decree under Sub-section (5) of Sec. 19- A. Appeal dismissed. – Kotipalli Thammayya and others Vs. Mattapalli Raju and others – 1955 (1) ALT(NRC) 111.1 (D.B.). N.D. KRISHNA RAO and VISWANATHA SASTRY,jj.

Second suit for mortgage not barred either on principle of res judicata or under Order 2 Rule 2 CPC.:-

Till mortgage debt is discharged and rights are determined by parties or by Court decree, any number of suits can be filed, subject to period of limitation. – Gummuluru Sansyasinaidu and others v. State Bank of India, rep. by the Manager, Narsipatnam – 2011 (3) ALT 731. N.R.L. NAGESWARA RAO,j. Even if E.P. is not filed in execution of earlier decree or if it is time barred- second suit maintainable:- Even if E.P. is not filed in execution of earlier decree or if it is time barred, still second suit maintainable – Second suit not barred either on principle of res judicata or under Order 2 Rule 2 CPC. – Gummuluru Sansyasinaidu and others v. State Bank of India, rep. by the Manager, Narsipatnam – 2011 (3) ALT 731. N.R.L. NAGESWARA RAO,j.

Execution of preliminary decree:-

Preliminary decree in a mortgage suit is not executable in the absence of a final decree obtained in the suit. (Para 85). – Lanka Babu Surendra Mohana Benarji Vs. Canara Bank, Unguturu and another – 2015 (6) ALT 473. M.S. RAMACHANDRA RAO,j. Preliminary decree- Not Executable:- Execution petition for execution of preliminary decree in mortgage suit is not maintainable – What is executable is only final decree.(Para 5). – K. Anuradha Vs. Ramadevi and another – 2012 (4) ALT 410. C.V. NAGARJUNA REDDY,j. Specific performance of an agreement to mortgage:- Specific performance of an agreement to mortgage is different from relief for redemption of mortgage as such. – Booz Allen and Hamilton Inc Vs. SBI Home Finance Ltd. and others – 2011 (4) SCJ 604 (D.B.). J.M. PANCHAL and R.V. RAVEENDRAN,jj.

Preliminary decree/final decree:-

In cases where there is a prior charge or mortgage before suit is filed, the case falls under Order 34 Rule 15 (1), CPC and the properties charged or mortgaged cannot be brought to sale without a final decree Order 34 Rule 15 (2), CPC covers a situation where a charge is created for the first time under the decree and it permits the property charged to be brought to sale in execution of a preliminary decree without a final decree. (Paras 60 and 64). – Lanka Babu Surendra Mohana Benarji Vs. Canara Bank, Unguturu and another, 2015 (6) ALT 473 . M.S. RAMACHANDRA RAO,j.

Right of redemption:-

Till the passing of final decree and even till the confirmation of the sale made in pursuance of the final decree or the disposal of any appeal against orders passed under Order 21 Rule 89 or

90, CPC, a right to redeem continues to subsist in the mortgagor. (Para 50). – Lanka Babu Surendra Mohana Benarji Vs. Canara Bank, Unguturu and another, 2015 (6) ALT 473 . M.S. RAMACHANDRA RAO,j. No Claim petition:- No claim petition under Section 47 or under Order 21 Rule 58, CPC would be maintainable in an execution taken out in a suit based on a mortgage. (Para39). – Indian Bank, Nidadavole, rep. by its Zonal Manager Vs. Nallam Veera Swamy and others – 2014 (5) ALT 631. NOOTY RAMAMOZHANA RAO,j.

Appeal against preliminary decree:-

In a mortgage suit, appeal filed against suit claim to the extent disallowed in the preliminary decree passed cannot be said to be not maintainable on the ground that a final decree application was made in respect of suit claim allowed in the preliminary decree and that it was allowed pending appeal. (Para 8). – State Bank of India, Settipalle Branch, Tirupati rep. by its Chief Manager Vs. P. Veerananarayana – 2014 (1) ALT 714. VILAS V. AFZULPURKAR,j.

Doctrine of lis pendens in mortgage suit:-

Doctrine of lis pendens applies to mortgage suits as well. – Sunita Jugalkishore Gilda Vs. Ramanlal Udhoji Tanna (Dead) thr. Lrs. and others – 2014 (1) ALT(SC) 15 (D.B.). K.S. Radhakrishnan and Arjan Kumar Sikri,jj

Sale in mortgage suit:-

J.Dr. in mortgage suit can seek annulment of sale by depositing the amounts as stipulated in Order 34 Rule 5, CPC at any stage before confirmation of sale.(Para 10). – Patnam Subbalakshamma v. Sunkugari Sreenivasa Reddy and another – 2011 (3) ALT 591. L. NARASIMHA REDDY,j. Execution of mortgage final decree:- A decreeholder in a mortgage suit has to proceed against mortgaged property and then to resort to other steps, in case the sale does not result in satisfaction of decree.(Para 6). – P. Ravinder v. Manohar Reddy – 2010 (1) ALT 365. L. NARASIMHA REDDY,j.

Mortgage decree against company:- Where the J.Dr. in a mortgage decree is a company, E.P. be filed against company itself. Filing of EP against Managing Director of Company straightaway is not just.(Para 5). – P. Ravinder v. Manohar Reddy – 2010 (1) ALT 365. L. NARASIMHA REDDY,j.

Final decree in partition suit is different from the final decree in mortgage suit:-

1. A preliminary decree in a mortgage suit decides all the issues and what is left out is only the action to be taken in the event of non payment of the amount. When the amount is not paid the plaintiff gets a right to seek a final decree for foreclosure or for sale.
2. In a partition suit the preliminary decrees only decide a part of the suit and therefore an application for passing a final decree is only an application in a pending suit, seeking further progress. In partition suits, there can be a preliminary decree followed by a final decree, or there can be a decree which is a combination of preliminary decree and final decree or there can be merely a single decree with certain further steps to be taken by the court. In fact several applications for final decree are permissible in a partition suit. A decree in a partition suit enures to the benefit of all the co-owners and therefore, it is sometimes said that there is really no judgment-debtor in a partition decree. A preliminary decree for partition only identifies the properties to be subjected to partition, defines and declares the shares/rights of the parties. That part of the prayer relating to actual division by metes and bounds and allotment is left for being completed under the final decree proceedings. Thus the application for final decree as and when made is considered to be an application in a pending suit for granting the relief of division by metes and bounds. – Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna and others – 2009 (8) SCJ 281 (D.B.) R.V. RAVEENDRAN and B. SUDERSHAN REDDY,jj.

Revision petition filed challenging the order passed on application made for passing final decree

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Application to pass final decree for sale of mortgaged property in terms of preliminary decree filed. Final decree passed. Execution proceedings initiated – Revision petition filed challenging the order passed on application made for passing final decree. Not maintainable. – Kommuru Bhaskararao and another Petitioners (R-4 and R-5). vs. Aremanda Sivanagendramma Respondent (Plaintiff-Petitioner). – 1996 (4) ALT 915. D.H. NASIR,j.

Limitation to file final decree in mortgage suit:-

Preliminary decree passed granting instalments to pay decretal amount – Right to apply for final decree accrues from the date of default in payment of any instalment – Limitation period of three years starts from the date of default. – Manotosh Kumar Mitra (dead) by LRs. Vs. Amarendranath Shaw (dead) and others –2000 (2) ALT(SC) 29 (D.B.) Y.K. SABHARWAL and S. SAGHIR AHMAD,jj.

Usufructuary mortgage:-

Suit for possession of land by redemption – Claim by heirs of mortgagor not traceable. Whether acceptable. Mortgagor not traceable or heard of for the last more than seven years before institution of suit – Mortgagee not able to establish his plea that mortgagor was alive. Evidence of plaintiffs' witnesses accepted by trial Court. Rejection of their evidence by appellate Court held to be wholly unfounded and unjustifiable. Decree passed by trial Court upheld. – Rati Ram and another Vs. Salig Ram – 1996 (1) ALT(D.N.) 3.3 (D.B.). FAIZAN UDDIN and S.C. SEN,jj

Mortgage by deposit of title deeds:-

Deeds may be delivered as security for a debt. Contract between debtor and creditor need not be by a written document. Intention to created security is a question of fact to be decided on presumptions and on oral, documentary and circumstantial evidence. Defendant delivered title deeds as security for repayment of amounts due under promissory notes. Order of lower Court directing office to register the suit as simple money suit instead of registering it as mortgage suit by deposit of title deeds. Not legal and unjustified. Whether there was intention to create security while delivering title deeds is a matter to be decided on evidence after registering the suit and not at the stage of registering it. – Shaik Mastanamma Vs. Kadiyala Gopalaiah – 1993 (3) ALT 617. BHASKARA RAO,j.

A suit cannot be dismissed except on appeal or by review after a preliminary decree is passed.:-

It follows that there cannot be abatement of the suit even if the L.Rs of the deceased party are not brought on record during the final decree proceedings. But, even a final decree cannot be passed for or against a dead person. So, it is necessary to bring on record the L.Rs. of the deceased before a final decree is passed. It has to be seen as to what provision is applicable when Or. 22 Rules 1, 3 and 4 are not applicable in case of death of parties during the final decree proceedings. – Siddavatam Mohan Reddy Vs. P. Chinnaswamy And Ors – 1991 (3) ALT 513. NEELADRI RAO,j
Applicability of Order 22 Rule 10 C.P.C:- Order 22 Rule 10 C.P.C lays down that in cases of an assignment, creation or devolution of any interest other than the cases referred to in remaining Rules of Or. 22, the suit may by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. When Or. 22 Rules 3 or 4 is not applicable in cases of death during the final decree proceedings, one has to invoke Or. 22 Rule 10 C.P.C. to bring the L.Rs. on record. (Para 7). – Siddavatam Mohan Reddy Vs. P. Chinnaswamy And Ors – 1991 (3) ALT 513. NEELADRI RAO,j

Or. 34, Rules 3 and 4:-

Preliminary decree in a mortgage suit for sale of land belonging to mortgagor. Final decree passed for delivery of possession of land to mortgagee. Not legal. – Nagamma Vs. S.P. Manipal Reddy – 1990 (2) ALT(NRC) 21.2. J. ESWARA PRASAD,j. No bar To record payments under a preliminary decree in a mortgage suit:- Application by judgment-debtor to record payments under a preliminary decree in a mortgage suit. No execution petition pending. Not a bar to maintainability of application under Or.21, Rule 2. Right to apply under Or. 34, Rule 3 (I) for passing a final decree. Also not a bar to entertain application, under Order 21 Rule 2. – Messrs Sri Lakshminartiyana Sago Manufacturing Co. rep. by its Partner Chintapalli Ramakrishna and another Vs. State Bank of India, Samalkota – 1988 (1) ALT 837. SYED SHAH MOHAMMED QUADRI,j.

Death of plaintiff in mortgage suit:-

Held – Under Order 1, Rule 10 C.P.C., in order to effectually dispose of the suit, it is necessary to bring the legal representatives on record. (para 2). – Kuragayala Savithri and others Vs. Konduri Chinnayamma and others –1988 (1) ALT 528. A. SEETHARAM REDDI,j.

Limitation Act not applicable to Or 34, Rule 5:-

Sale of mortgaged property not confirmed till judgment debtor filed application an under Or. 34, Rule 5 for setting aside sale and for depositing amounts due to auction purchaser-Court can allow petition of judgment debtor-Limitation Act not applicable to Or 34, Rule 5. – S. Subba Rao Vs. B. Suryaprakasa Rao – 1988 (1) ALT(NRC) 33.1. P.A. CHOUDARY,j.

Prior mortgage- Burden of proof :-

Decree passed in a mortgage suit and sale of hypothec of the mortgagor-Subsequent suit filed by the son-in-law of mortgagor setting up prior mortgage. Burden of proof lies on the prior mortgagee. – D. Pera Reddy Vs. D. Kondareddy and others –1985 (1) ALT(NRC) 75.2. P.A. CHOUDARY,j.Hindu son- Not a mortgage suit :- A Hindu son is bound by the court sale of properties mortgaged by his father though he is not a party to the mortgage suit. – V. Narasimhulu Vs. V. Ramaiah & another – 1978 (2) ALT 435. A. GANGADHARA RAO,j.

Conclusion:-

A mortgagor is a borrower in the mortgage. Mortgagor owes the obligation secured by the mortgage. The borrower must meet the conditions of the underlying loan or other obligation in

order to redeem the mortgage. If the mortgagor fails to meet these conditions, the mortgagee may foreclose to recover the outstanding loan. As to ‘ Once a mortgage, always mortgage’, as was observed by Lord Henley in Vernon Vs. Bethel that_ “This court as a conscience is very jealous of persons taking securities for a loan and converting such securities into purchases and therefore I take it to be an established rule, that a mortgagee can never provide at the time of making the loan for any event or condition on which the equity of redemption shall be discharged and the conveyance made absolute and there is great reason and justice in this rule for necessitous men or not will submit to any terms that the crafty may impose upon them.” The equity of redemption has been well recognized in common law as well as in the Transfer of Property Act, 1882 which explicitly substantiate this principle. There may be various conditions whereby the stipulations in the mortgage- deed have turned to be the clog on the equity of redemption. The equity of redemption can be brought to an end either by the act of parties or by a decree of the court. The sale, exchange, mortgage are the alienation s as defined within the meaning of the provisions of the Transfer of Property Act, 1882. The sale and exchange are absolute alienations, but the mortgage is condition alienation. As long as the mortgage amount is not discharged, the mortgagee has got a right over the mortgaged property and insofar as mortgage amount the right of mortgager is only to redeem the mortgaged amount.

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