CASE COMMENT ON *GANGA DHAR V. SHANKAR LAL: THE* RIGHT OF MORTGAGOR TO REDEEM UNDER SECTION 60 OF THE TRANSFER OF PROPERTY ACT, 1882

Nayana J M, School of Law, Christ University

GANGA DHAR V. SHANKAR LAL[1]

AIR 1958 SC 770: 1959 SCR 509

INTRODUCTION

Section 60 of the Transfer of Property Act, 1882 assigns the right of redemption on the mortgagor. It deals with the right of mortgagor to tender the money after the principal amount is due, and further, get the possession of the property or the documents restored with him from the mortgagee.

However, Section 60 is restricted by the proviso to the same, which states that it can only be exercised until it is not extinguished by any act of the parties or by decree passed by a court. Section 60 of the Transfer of Property Act has three main parts, which include: The right to Redemption, The Clog on Redemption and the principle which states, 'Once a Mortgage, Always a Mortgage.' The main essentials of Section 60 include the validity of the deed, the time period of the mortgage, the payment of money that is unpaid and the filing of a suit.

FACTS

The appeal arises out of a suit for mortgage created by Purushottamdas, who is now dead, on August 1, 1899. The mortgagee was Dhanrupmal. As per the mortgage instrument, the property had been usufructuary mortgaged and was left with the mortgagee to redeem a prior mortgage on the same along with one with a commercial mortgage refinancing system. The mortgage contract stated that after a period of eighty-five years, the mortgagor had to redeem the mortgage within six months, and if he didn't do the same, he would lose claim over the

[1] Ganga Dhar v. Shankar Lal AIR 1958 SC 770 : 1959 SCR 509

mortgaged property. In 1939, Dhanrupmal assigned his rights under mortgage to Motilal, who is now dead. In 1947, the son of Purushottamdas (appellant) filed a suit, and the sons of Motilal (respondents) contested that the suit was premature since the mortgage contract had no right of redemption for eighty-five years. The Sub-Judge in Ajmer held the said provision invalid since it led to a clog on redemption on the equity of redemption. On appeal, the Judicial Commissioner of Ajmer gave the opposite verdict, and the case was brought on an appeal to the Supreme Court.

ISSUES

The case essentially dealt with the issue of:

"Whether a term period in a mortgage instrument, so far as it precludes the right to redeem from accumulating for a time, a clog on the equity of redemption?"

LAW

Section 60 of The Transfer of Property Act states:

***"Right of mortgagor to redeem**.—At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee*

(a) to deliver [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],

(b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and

(c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been affected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by the act of the parties or by [decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property*.—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor."*

JUDGEMENT

Referring to Section 60 of the Transfer of Property Act, the court stated that once the principal amount is due, the mortgagor has the right to redeem the property, and once such a right arises, it cannot be taken away. The courts are to hold invalid any contract which deprives the mortgagor's right to redeem the mortgage. In the term in this case, which states that if the mortgagor does not redeem his mortgage within a specified time period, he will lose his right, makes this a contract of sale and hence, cannot be sustained. The court held that the right to redeem exists forever, and this can be neither finished nor limited, and it relieved the mortgagor from the effect of the bargain.

TREND FOLLOWED AND ANALYSIS

In ***Santley v Wilde***[2]**,** the court held that "*any provision inserted to prevent redemption or payment or performance of the debt… is a clog or fetter on the equity to redemption and is therefore invalid*". This established the rule that the right of redemption cannot ever be taken away, and any contract which deprives the mortgagor of such right shall be ignored by the courts. The trend of *'once a mortgage always a mortgage'* was established.

In ***Mohammed Sher Khan v Seth Swami Dayal***[3]**,** the court held that an anomalous mortgage in the absence of redemption to receive interest after a lapse of time would be admissible only

[2] Santley v Wilde 1899 2 Ch 474

[3] Mohammed Sher Khan v Seth Swami Dayal AIR 1992 PC 17

if it didn't hinder an existing right to redeem. On Applying these decided principles in the case at hand, the provision of the contract, which stated that after a period of six months, the right to redeem should expire, becomes invalid as per Section 60 of the TPA. Further, the contention of the respondents that setting the period of eighty-five years amounts to a clog on redemption of mortgage does not stand because it only fixes a time for the principal amount being due.

In ***Vermon v Bethell***[4] the court stated, "*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*". Furthermore, in ***G&C Krelinger v New Patagonia Meat and Cold Storage Company Ltd***[5], the court emphasized understanding the origin of jurisdiction and that a mortgage should be placed on the footing to determine if it was unconscientious and interfered with the freedom of contract. In this case, the court's decision to relieve the mortgagor of bargain depended on whether the mortgagor was oppressed or disadvantageous, and whether the agreement was unconscionable, the pecuniary condition of parties and thereby in consideration of all facts and circumstances, it decided that the suit was premature and it fails.

CONCLUSION

Section 60 of the Transfer of Property Act deals with the right of the mortgagor to redeem the mortgage, specifically with the right to redemption, clog on redemption, and the principle of "once a mortgage always a mortgage". In the case of *Knocks v Rould*[25]*s*, Lord Dev made an amendment in the commonly accepted principle- *"once a mortgage always a mortgage"* into one which states *"Once a mortgage, always a mortgage and nothing but a mortgage",* which implies that the mortgagor has the right to take the property or the respective documents back from the mortgagee no matter what. The legislation does not fix any limitation period for the redemption of mortgage since this deprives the mortgagor of his right, as held by courts in various cases.

REFERENCES

[4] Vermon v Bethell 1762 28 ER 838

[5] G and C Krelinger v New Patagonia Meat and Cold Storage Company Ltd

1. DINSHAH FARDUNJI MULLA; MOTILAL CHIMANLAL SETALVAD and ATUL MOTILAL SETALVAD, MULLA ON THE TRANSFER OF PROPERTY ACT, 1882, 8th Edition, 1997
2. MALLIKA TALY, VEPA P SARATHI'S LAW OF TRANSFER OF PROPERTY, 6th Edition, 2020
3. The Transfer of Property Act, No. 04 of 1882, https://legislative.gov.in/sites/default/files/A1882-04.pdf