**Shankar Sakharam Kenjale (Died) Through His Legal Heir vs Narayan Krishna Gade & Another**

Supreme Court of India

April 17, 2020

**Bench:**
Justice Mohan M. Shantanagoudar & Justice R. Subhash Reddy

**Legislation Cited**
1.Section 90, The Indian Trusts Act, 1882
2.Section 4, The Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950
3.Sections 58 to 61 of the Transfer of Property Act, 1882

**Case Digest**
**Summary:** Facts pertains to a land which was governed by the Bombay Hereditary Offices Act, 1874.The original watandar put Ramchandra as a permanent tenant of the land in 1947, who mortgaged the land for the span of 10 years, to the Appellants. During the said period, the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 was passed, which abolished all watans and resumed the land to the govt (Abolition Act). This Act, empowered the holder of the watan to hunt re-grant of the land upon payment of the requisite occupancy price. The first watandar failed to apply for re-grant on the premise that he was in possession of the land, and he got the re-grant eventually. The Mortgagor filed a suit for redemption of mortgage and recovery of possession of the land upon receipt of the mortgage money. The Trial Court dismissed the suit, holding that the Mortgagor’s right to redemption was annulled by the Abolition Act. The primary appeal against this order of the Court was dismissed and in second appeal before the HC was allowed. The HC held that the Mortgagor’s right to redemption wasn't lost.

After that moment appeal before the Supreme Court was filed against the judgment given by the HC of Judicature at Bombay in Second Appeal (Impugned Judgment). Vide the Impugned Judgment, the HC put aside the findings of the Trial Court and the First court of appeals and ordered the Trial Court to draw a preliminary decree of redemption of mortgage in favour of the Respondents herein.

**Issue:** How the right to redeem a mortgage be extinguished?

**Judgement:** The SC dismissed appeal in question and upheld the premise of High Court. It was held that the right of redemption in a mortgage deed can be ended or extinguished by (1)a contract between the parties (2) through a statutory provision which prevents the mortgagor from redeeming the mortgage. It was observed that if a suit for redemption is filed the mortgagee is bound to give the possession he had. However, if he is able to establish that the right of redemption has come to an end according to the law the possession can be retained. The court based the judgment on the principle – “Once a mortgage, always a mortgage”. The court observed that re-grant which was made in favour of the original defendant was an advantage traceable to the possession of the property.