

Limitation Act, Art. 61 - Usufructual mortgage - Right to redeem has been held to continue till the mortgage money is paid for which there is no time limit.

Suit was filed for a Judgment and Decree directing the defendant to receive the mortgage money and to return the mortgage deed after duly endorsing its discharge and to deliver possession of the suit property to the plaintiffs - The plaintiff executed a usufructuary mortgage in favour of the defendant in 1962 mortgaging the suit property for a sum of Rs.400/- - It was understood that the defendant shall enjoy the usufructs and appropriate the same towards the interest and the period of mortgage was five years from the date of execution of the deed - The plaintiffs claimed that after the expiry of five years, the defendant requested the plaintiff to permit him to continue in possession of the suit property - In 1989, the defendant filed a suit for the relief of declaration that he had perfected his title to the suit property by adverse possession and sought perpetual injunction to protect his possession - The said suit was decreed in part and possession of the defendant was protected - After disposal of the suit, the plaintiffs caused a notice to receive the mortgage money of Rs.400/- and deliver back possession - Since the defendant failed to comply, the plaintiffs deposited a sum of Rs.400/- before the Court and hence, sought redemption of mortgage and delivery of possession - Defendant claimed that the suit for redemption is filed after 30 years and hence it is barred by law of limitation and that since the plaintiffs had failed to seek redemption of the mortgage and in view of the decree of perpetual injunction, he had perfected his title to the suit property by adverse possession - Since the execution of the mortgage deed and the delivery of the possession under the mortgage deed is not disputed by the defendant, the First Appellate Court was justified in directing the redemption of the mortgage and delivery of possession.

[2022 PLRonline 0191, \(2022-2\)206 PLRIJ 024 \(Kar.\) \(SN\)](#)