

CPC O.34 R.1, TPA S. 59 , TPA S. 60 , TPA S. 91

Mortgage - Redemption - Mortgagor has a right of redemption even after sale has taken place pursuant to the final decree, but before the confirmation of sale - Plaintiffs lost the right to sue for redemption of the mortgaged property by virtue of the proviso to Section 60 of the Act, no sooner that the mortgaged property was put to auction sale in a suit for foreclosure and sale certificate was issued in favour of Defendant No.2. - There remained no property mortgaged to be redeemed - The right to redemption could not be claimed in the abstract.

The sale certificate was issued to Defendant 2 on 2-7-1997 followed by delivery of possession in Execution Petition No. 203 of 1997. The objection of the plaintiffs in Execution Appeal No. 996 of 1997 was also rejected. Only thereafter the plaintiffs instituted OS No. 96 of 1999 for redemption of the mortgage under Order 34 Rule 1 [CPC](#) contending that they were willing to deposit the mortgage dues and that the decree in OS No. 68 of 1987 was not binding on them because they had not been impleaded as party in the same. In cross-examination, the plaintiffs acknowledged having been informed by their lawyer at the time of purchase, of the mortgage created by deposit of title deeds, by Defendants 3 and 4.

xx xx x

No challenge was laid out in OS No. 96 of 1999, either to the auction- sale or to set aside the sale certificate issued to Defendant 2. The reliance upon Order 34 Rule 1 CPC is completely misconceived as under Rule 8 the right to redemption survived only till confirmation of the sale and not thereafter. The suit was instituted only after issuance of the sale certificate and the question for redemption had become irrelevant.

2017 SCeJ 006