

Mortgage - Redemption - When the sale is brought about by the default of the mortgagee, the mortgage is not extinguished and the relationship of mortgagor and mortgagee continues to exist and, therefore, there will not be any necessity for setting aside the sale.

The legal position may be stated thus:

(1) The governing principle is “once a mortgage always a mortgage” till the mortgage is terminated by the act of the parties themselves, by merger or by order of the court.

(2) Where a mortgagee purchases the equity of redemption in execution of his mortgage decree with the leave of court or in execution of a mortgage or money decree obtained by a third party, the equity of redemption may be extinguished; and, in that event, the mortgagor cannot sue for redemption without getting the sale set aside.

(3) Where a mortgagor purchases the mortgaged property by reason of a default committed by him the mortgage is not extinguished and the relationship of mortgagor and mortgagee continues to subsist even thereafter, for his purchase of the equity of redemption is only in trust for the mortgagor.”

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