

**Transfer of Property Act, 1882, Section 58(c) -Conditional Sale - Mortgage -** If the sale and agreement to repurchase are embodied in the separate documents then the transaction cannot be a “mortgage by conditional sale” irrespective of whether the documents are contemporaneously executed; but the converse does not hold good - Plaintiff has borrowed a sum of Rs.7000/- for the marriage of his daughter eight days prior to execution of the document - While executing document on 28.7.1967, the plaintiff borrowed an additional amount and a document titled as “mortgage by conditional sale” was executed for a consideration of Rs.2500/-, but the plaintiff received Rs.1800/- only - Court held that the intention of the parties in putting an end to the debtor creditor relationship with respect to the sum of Rs.700/- is clear from the recitals of the document - Held that clauses in the document are consistent with the intention of the parties making the transaction of a conditional sale with an option to repurchase - Held that there are no recitals in the document to establish creditor debtor relationship, nor does it contain the right of foreclosure, payment of interest etc. which are essential requirements in a mortgage deed - Held that undetermined mortgage amount for which the interest in the immovable property was created as security, indicates that the parties have never intended to create a mortgage deed.

[\*\*2019 PLRonline 3018\*\*](#)