

Types of Mortgage

Kinds of mortgage

There are 6 kinds of mortgage.

- 1) Simple mortgage
- 2) Mortgage by conditional sale
- 3) Usufructuary mortgage
- 4) English mortgage
- 5) Mortgage by deposit of title-deeds

6)

Anomalous mortgage.

A) Simple mortgage S.58(b)

Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Essentials of simple mortgage

- 1) There must be a transfer of specific immovable property.
- 2) The position position of the property is retained by the mortgagor.
- 3) as the possession of the property is not given to the mortgagee, mortgagor has right to usufruct e.g. enjoyment of the property.
- 4) The title is not given to the mortgagee.
- 5) Mortgagor binds himself to pay mortgage money by Personal security.
- 6) Mortgagor has a right to sale on execution of decree against the mortgagor ,
- 7) Mortgagee has no right of foreclosure.

B) Mortgage by conditional sale section 58(c)

Where, the mortgagor ostensibly sells the mortgaged property- on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale . provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

Essentials of mortgaged by conditional sale -

- 1) Mortgagor ostensibly sells the immovable property by a sale. It is only ostensible and not real .
- 2) The Mortgagor has given title and possession to the mortgagee and hence mortgagee gets a right to usufruct property.
- 3) on default of payment of mortgage-money the sales Shall be absolute.
- 4) In case mortgagor repaid the loan , the sale shall become void .
- 5) that mortgagor is entitled to get the property transferred on such payment.
- 6) No Personal security and right to sale is given to the mortgagee.
- 7) Mortgagee gets a right to foreclose the property

C) Usufructuary Mortgage Sec 58(d)

Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of

the mortgage-money, the transaction is called a usufructuary mortgage and the mortgagee a usufructuary mortgagee.

Essentials of Usufructuary mortgage

- 1) No title is given to the mortgagee.
- 2) Mortgagor has given possession and hence mortgagee enjoy a right to usufruct.
- 3) Mortgagor has not given any personal security a right to sale a foreclosure toy the mortgagee.

D) English Mortgage S 58 (e)

Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Essentials of English mortgage.

- 1) The mortgagor has given title , possession, right to usufruct to the mortgagor ;
- 2) The mortgagor bind himself to repay the mortgage money on a certain day.
- 3) The mortgagee is not given the right to foreclosure.

E) Mortgage by deposit of title-deeds Sec .58 (e) -

Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

The requisite essential -

- 1) Debt ;
- 2) Deposit of title deeds ;
- 3) An intention that the deed shall be security for the debt ; the documents of title to immovable property with intend to create a security thereon . This mortgage can only be made in any of the following towns namely Calcutta , Madras, Bombay , Lucknow, Allahabad & Kanpur and in any other town which the state Government concern may specify on this behalf .

F) Anomalous mortgage - Sec. 58(f)

A mortgage which is not a simple mortgage, a mortgage by conditional sale, a usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

It does not fit in above five mortgages , which is a combination of two or more of above mentioned type mortgage