Chullikana Shambatta and Others Vs Cherakoodlu Narayana Bhatta and Others

Appeal No. 364 of 1947

Court: Madras High Court

Date of Decision: Dec. 1, 1950

Acts Referred:
General Clauses Act, 1897 â€" Section 13#Transfer of Property Act, 1882 â€" Section 92

Citation: AIR 1951 Mad 917 : (1951) 64 LW 497 : (1951) 1 MLJ 596

Hon'ble Judges: Satyanarayana Rao, J; Raghava Rao, J

Bench: Division Bench

Advocate: T. Krishna Rao, for the Appellant; A. Narayana Pai, for the Respondent

Final Decision: Allowed

Judgement

Satyanarayana Rao, J.
This appeal raises an interesting & intricate question of law relating to subrogation. The case was ably argued on

both sides & the problem raised is bare of authority. The right of defts. 8, 9 & 11 who are the appellants, to subrogation in, respect of two earlier

mortgages, was denied by the lower Court & hence this appeal.

2. On 20-5-1910 one Krishna Bhatta & his two sons Venkatesa Bhatta & Govinda Bhatta borrowed a sum of Rs. 10,000, & created a

usufructuary mortgage as security on the properties described in the deed of mortgage Ex. D. 3. This mortgage was in favour of Madanna Bhatta

& Subbanna Bhatta. On 10-4-1926 Govinda Bhatta for himself & on behalf of his minor son Ganapathi Bhatta & Vishnu Bhatta, the younger

brother of Govinda Bhatta, Krishna Bhatta and Venkatesa Bhatta having died meanwhile, borrowed a sum of Rs. 4000 from one Atchuta Bhatta

and created a simple mortgage for the amount under Ex. D. 11. The family of Krishna Bhatta & his sons was undivided & at the time of Ex. D. 11, Govinda Bhatta & Vishnu Bhatta & Govinda Bhatta''g minor son, were the sole surviving members of the coparcenary. On 10-6-1930 under Ex.

P. 1 a third mortgage was created on the properties in favour of the pltf. for Rs. 5,000 borrowed on that date & this document was executed, by

Govinda Bhatta for himself & on behalf of his minor son & Vishnu Bhatta also for himself & on behalf of his minor son. In 1931, there was a

partition of the family properties between Govinda Bhatta''s branch & Vishnu Bhatta''s branch whereunder in consideration of Govinda Bhatta''s

branch discharging the family debts, it was allotted a larger share in the family properties while Vishnu Bhatta''s branch obtained a smaller share.

This partition arrangement Is evidenced by Ex. P. 13 dated 29-8-1931. It contains a covenant between the two branches ''inter se'' by which

Govinda Bhatta & his branch undertook to free the property allotted to Vishnu Bhatta & his branch from all debts & also a maintenance claim. The

relevant clause in the deed is in these terms:

As all the debts we have got as well as the maintenance have been allotted to the first individual among us (Govinda Bhatta), as, in so far as those

debts are concerned, the property also has been allotted to him in excess, & also as, the property allotted to the second individual (Vishnu Bhatta)

has been freed by us from all debts, all the said debts & their interest & also the maintenance should be paid by the said first individual only with

liability of the property belonging to his share, & receipt should be obtained. If, in that manner, payment is not made, & consequently, in respect of

the said debts, second individual incurs loss, the said first individual shall be bound to pay such entire losses together with interest thereon at 61/4

per cent with liability of the property belonging to his share, with liability of the income there-from & also upon his personal liability.

The usufructuary mortgage under Ex. D. 3 was for a period of 30 years to the end of the cultivation season of Vishnu Sankramana of the year

1940. To raise the money for discharging the usufructuary mortgage, Govinda Bhatta & his eon, who by then became a major & also on behalf of

the minor sons of Govinda Bhatta, a usufructuary mortgage for Rs. 14000 was executed on 7-5-1943 Ex. D. 2, in favour of defts. 8 & 9 with a

covenant that the mortgagees under Ex. D. 2 should be entitled to the benefit of, & be subrogated to, the rights of the mortgagee under Ex. D. 3.

After this mortgage, the mortgagees under Ex. D. 2 instituted O. S. No. 29 of 1944, Sub-Court, South Kanara for redemption of Ex. D. 3 & for

recovering possession of the properties & obtained a decree for redemption. The amount was paid & the mortgage was fully satisfied &

redeemed. The properties allotted to Vishnu Bhatta''s branch were given possession of to Vishnu Bhatta''s representatives, i.e., his widow & the

two sons, as he died during the pendency of the suit. On 28-7-1943 Govinda Bhatta & his sons executed a simple mortgage, Ex. D. 10, of their

share of the properties & raised Rs. 6500 for discharging the second mortgage Ex. D. 11 as by that time O. S. No. 28 of 1942 was filed & a decree obtained in pursuance of that mortgage & even execution proceedings to bring the properties to sale were impending. With this amount the second mortgage debt was fully discharged. This mortgage also contained a covenant between the mortgagors & the mortgagee that the mortgagee should be entitled to be subrogated to the rights of the mortgagees under Ex. D. 11.

3. The pltf., the third mortgagee under Ex. P. 1 instituted the present suit out of which this appeal arises for enforcing his rights under the mortgage & impleaded as parties to the suit, Govinda Bhatta & his sons & also defts. 8, 9 & 11, the first two being the mortgagees under Exs. D. 2 & D. 10 & the third a sub-mortgagee under the first two. These mortgagee defts. claim in their written statement that by virtue of the covenants contained in Exs. D. 2 & D. 10 they were entitled to be subrogated to the rights of the first & second mortgagees. This right was negatived by the learned subordinate Judge, who tried the case, on the ground that the covenant in the partition deed Ex. P. 13 put the appellants out of Court & he applied the principle that where there is a personal covenant to pay, the right of subrogation does not exist.

4. In this appeal by defts. 8, 9 & 11 it is contended on their behalf by their learned counsel Mr. T. Krishna Rao that under para. 3 of Section 92, T. P. Act, his clients are entitled to be subrogated to the rights of the first & second mortgagees who have been redeemed by the moneys advanced by them with specific covenants contained in registered documents that they should be subrogated. The agreement "inter se", it is contended, between Govinda Bhatta & Vishnu Bhatta in the partition deed, would not in any way affect the rights of his clients as there was no personal obligation by them to pay the mortgage amount to the third mortgagee, the pltf. This contention, in our opinion, is well founded. Merely because there was an agreement between the mortgagors "inter se" it would not take away the right of the appellants to claim a right of subrogation where the requirements of para. 3 to Section 92, T. P. Act have been fully satisfied.

5. On behalf of resp.-pltf. 1 the contention raised was that the mortgagors under Ex. D. 3 & Ex. D. 11 are different from the person with whom the appellants had entered into an agreement, securing under it the rights of subrogation. The argument is that at the time the earlier three mortgages were executed, the family of the mortgagors was a joint undivided family & that therefore the mortgagor in substance & in effect was the joint family while the agreement by the appellants was only an agreement with Govinda Bhatta & his sons personally, since the joint family ceased to exist after the partition of 1931. In support of this contention, he relied on the analogy of cases decided under Madras Act IV (4) of 1938 where it was held that if a debt due by a joint Hindu family is substituted by another debt due by an individual who formerly constituted a member of the joint family but became separated after partition, he was a different debtor since the original debtor was the joint family & the substituted debtor is

a divided member of the family notwithstanding the fact that the liability substituted was in place of a pre-partition liability--Vide "Karuppanna

Goundan v. Marutha Pillai", 1941-1 MLJ 773. This line of cases under Madras Act IV (4) of 1938, in our opinion, bears no analogy to the

situation that arises under the T. P. Act for the reason that a ""person"" is defined under Madras Act IV (4) of 1938 as including an undivided Hindu

family. In view of the recent amendment of Madras Act IV (4) of 1938, even the line of decisions of which Karuppanna Goundan Vs. Marutha

Pillai, , is the type, is no longer good law. There is no definition of the word ""person"" in the T. P. Act & therefore one has to fall back upon the

definition contained in the General Clauses Act, X (10) of 1897, which includes in that definition, a company or association or body of individuals,

whether incorporated or not, but does not include a joint Hindu family. Section 58, T. P. Act defines the mortgagor as the transferor of the

property mortgaged, which implies that all the members of the family interested in the property are transferors whether they are "eo nomine" parties

to the deed of mortgage or whether they are represented by the manager of the family who has the power to create a mortgage under

circumstances permitted by Hindu law. The mortgagors therefore under Ex. D. 3, the first of the mortgages were Krishna Bhatta & his two sons,

Venkatesa Bhatta & Govinda Bhatta. Vishnu Bhatta apparently was a minor at that time & was not impleaded as a party & must therefore be

deemed to have been represented by Krishna Bhatta, the father, who was in law the manager of the family. Govinda Bhatta and Vishnu Bhatta

were the mortgagors under the second mortgage Ex. D. 11. Vishnu Bhatta died & his interest devolved upon his representatives, the sons. They

will be mortgagors under the inclusive definition of mortgagor in Section 59A, T. P. Act. The agreement between the appellants & Govinda Bhatta

was one between one of the mortgagors under Ex. D. 3 & Ex. D. 11 & the appellants & it cannot be said that the person with whom the covenant

was entered into was not a mortgagor under Exs. D. 3 & D. 11. Under the third para, of Section 92, the agreement is required to be with the

mortgagor under the mortgage which has been redeemed by payment out of the money advanced by a person. In the present case Govinda Bhatta

was the mortgagor under the two ""mortgages which have been redeemed & in respect of which a right of subrogation is claimed by the persons

who advanced the money, i.e., the appellants & they obtained agreements that they should be entitled to be subrogated to the rights of the

mortgagees whose mortgages have been redeemed.

6. This leads us on to the next contention which raises a more difficult problem. It is argued that where there is more than one mortgagor, the

agreement under the third para. of Section 92 must be with the mortgagors & an agreement with only one of them would not entitle the person

advancing the money to be subrogated to the rights of the mortgagee whose mortgage has been redeemed notwithstanding the fact that the mortgage was redeemed in full. Section 13, General Clauses Act, which is strongly relied on in support of this contention, is as follows:

In all Central Acts & Regulations, unless there is anything repugnant in the subject or context... (2) words in the singular shall include the plural &

vice versa.

It is therefore argued that the word "mortgagor" must be construed as including all the mortgagors when there is more than one mortgagor & that

the agreement must be by all of them. Section 13, General Clauses Act, is an inclusive definition & therefore extends the meaning of the singular

word so as to include the plural & is not a restrictive definition. The definition applies only if there is nothing repugnant in the subject or context.

The function of an interpretation clause is not, as is very often supposed, to substitute one set of words for another or to apply the meaning of the

term under all circumstances, but merely to declare what may be included in the term when the circumstances required that it should be so

interpreted. Craies in his book on "Statute Law" observes at p. 195:

If therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more

than once in the Act, it is on each occasion used in the extended meaning, & it may be always a matter for argument whether or not the

interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration. "It appears to me" said Lord

Selborne in "Meux v. Jacobes", (1875) LR 7 HL 481 , "that the interpretation clause does no more than say that, where you find these words in

the Act, they shall, unless there be something repugnant in the context, or in the sense, include fixtures".

It is an elementary rule of interpretation of statutes that in construing a statute, all its parts should be considered together & must be reconciled, if

possible. The ""context"" in a statute implies that a Court in construing a statute, should not

isolate words or give them their abstract meaning or consider the different parts of a statute separately & independently. Every part of the statute

must be considered together & considered as an integral part of the whole & kept subservient to the general intent of the whole enactment. Each

part of section of the statute subject to construction should be construed in connection with every other part or section, even sections which are

invalid or in conflict. Indeed all of the parts must be given effect according to the intent expressed or clearly revealed."" (See Crawford on

"Statutory Construction", pp. 352 & 353"").

7. It has to be considered therefore in interpreting the word ""mortgagor"" in para. 3 of Section 92, T. P. Act, whether there is anything repugnant in

the subject or context to compel a Court to interpret the word as meaning "only mortgagors" & does not permit the construction that it may be

taken as meaning "mortgagor" or "mortgagors", according to the circumstances particularly as the definition to the General Clauses Act is an inclusive definition & not a restrictive definition. All that Section 13, General Clauses Act, means is that the word need not be construed as

singular"" under ''all'' circumstances but merely as indicates the intention of the Legislature that the word may be interpreted in the plural wherever

the circumstances require that it should be so construed. In other words, it means ""mortgagor"" in singular & if circumstances require it may be

interpreted as ""mortgagors"" in plural & not that it should always be interpreted as meaning ""mortgagors"" only.

8. The subject matter of Section 92 is the right of subrogation & defines the limitations under which the right may be exercised. It is a section newly

introduced by the amending Act of 1929 & deals with two kinds of subrogation, ''conventional'' or ''contractual'' subrogation & ''legal''

subrogation. Subrogation means the substitution of one creditor for the other. In the first paragraph of the section which deals with legal

subrogation the right is conferred upon the persons referred to in Section 91 ""other than the mortgagor"" & also a co-mortgagor. It excludes the

mortgagor from the benefit of the section as he is under a personal obligation to pay the debt & also as he cannot derogate from his own grant to

the prejudice of the mortgagees. The third para deals with conventional subrogation. Under the first para., the person entitled to the benefit must

have had a pre-existing interest in the property & the right is conferred when he redeems the mortgage for protection of his own interest. If,

however, a person acquires an interest in property only by reason of the advance of money he makes to the mortgagor to redeem the prior

mortgage, he is not entitled to a right of subrogation unless he advanced the money under an agreement with the mortgagor in writing registered that

he should be entitled to the right of subrogation. To some extent, the law as it stood prior to 1929 when the section was introduced, is altered. The

previous law was summarised by Lord Romer in ''Janakinath Roy v. Pramathanath'', 67 IA 82 , as follows:

Taking first the law as it stood in December 1927, it has nowhere been better expressed than it was by Mookerjee in ''Gurdeo Singh v.

Chandraika Singh'', 36 Cal 193. That learned Judge said this: ''It may be said, in general, that to entitle one to invoke the equitable right of

subrogation, he must either occupy the position of a surety of the debt or must have made the payment under an agreement with the debtor or

creditor that he should receive & hold an assignment of the debt as security, or he must stand in such a relation to the mortgage premises that his

interest cannot otherwise be adequately protected.

Under the previous law, a right by conventional subrogation could be claimed even though the agreement was not in writing registered but was only

implied by conduct, even very slight evidence was considered sufficient to imply such an agreement. After the amendment of the Act, the right can

be claimed by the person advancing the money only if the mortgagor has by a registered instrument agreed that he should be entitled to a right of subrogation. The first para. of Section 92 confers upon a co-mortgagor a right of subrogaition. Is there any reason for denying to one of several

mortgagors a right to borrow money from a person in order to redeem the mortgage in its entirety & to give the lender a registered agreement

enabling the lender to claim a right of subrogation? The object of the advance of the money under the third para., to the mortgagor, is undoubtedly

to redeem the mortgage on the property. If a co-mortgagor is entitled to redeem the entire mortgage without the occurrence or consent of the other

mortgagors, is there any reason to prevent him from borrowing money from a person to redeem the mortgage after giving him an agreement that he

should be entitled to subrogation? A co-mortgagor is entitled to redeem the mortgage either from & out of his funds or with money borrowed from

a lender. If so much is conceded, there is no reason or justification for denying the co-mortgagor the right to give an agreement to his lender as

contemplated by the third para. of Section 92. The subject matter of the section is the right of subrogation and if in the first paragraph of the

section, the right of subrogation in a co-mortgagor who redeems the mortgage is recognised, it would be repugnant to the subject & to the context

to construe the word mortgagor in the third para, as meaning only all the mortgagors & not one of several mortgagors.

9. This conclusion gains support from an examination of the other sections of the Act in which the word ""mortgagor"" occurs. Sections 92 & 95

which expressly refer to one of several mortgagors assume that a co-mortgagor is entitled to redeem the mortgage. But which is the section in the

Act which confers upon a co-mortgagor the right to redeem? Section 91 begins by stating that ""besides the mortgagor"", the three classes of

persons enumerated in Clauses (a), (b) & (c) of that section, are entitled to redeem & to institute a suit for redemption of the mortgaged property.

Section 91, therefore, cannot be considered as conferring a right of redemption on a mortgagor. One must, therefore, go back to Section 60 which

is the section conferring a right of redemption on the mortgagor. In this section, again, the word is used in singular & not in plural. Does it mean,

therefore, that if the word is to be interpreted in the manner contended for by the first respondent, that the right of redemption inheres in, & is

exercisable by, only all the mortgagors & not by any one of them? There is no other section in the Act conferring a right of redemption on the co-

mortgagor but the sections already referred to undoubtedly proceed on the assumption that he has such a right. The interpretation contended for by

respondent 1, if accepted, would negative altogether the right of a co-mortgagor to redeem the mortgage. This cannot certainly be the intention of

the legislature in using the word mortgagor in singular in Section 60. The word in Section 60 must be interpreted as meaning mortgagor or

mortgagors if the circumstances so require & not as meaning only mortgagors under all circumstances & for all purposes. Sections 60-A, 60B &

61 also use the word in singular & for the reasons already stated, there is no reason to put a restrictive construction upon the definition clause in

Section 13, General Clauses Act, particularly as the word ""include"" is used in the section & not the word ""meaning"". The contention, therefore, that

all the mortgagors under Exs. D. 3 & D. 11 should have joined in the agreements given to the appellants & in their absence, the right of

subrogation is not exercisable by the appellants cannot be accepted.

10. The decision in ''Budhai Sheik v. Emperor'', 33 Cal 292, is an instance where Section 13, General Clauses Act, was not applied having regard

to the context. The decision of Russel J. in ''In re Clayton''s Settled Estates'', 1926 Ch 279, which deals with Section 1, English Interpretation Act,

1889, where also a similar provision as in Section 13, General Clauses Act, occurs, is instructive in so far as that judgment deals with the method

of approach to be adopted in arriving at a contrary intention.

11. There is also another difficulty raised in the interpretation of the word ""mortgagor"" in the third para, of Section 92. If the word is restricted to

the original mortgagor, that is to the person who is ''eo nomine'' a party to the mortgage which has been redeemed with the money advanced by the

appellants, it would be confined to Govinda Bhatta under Exs. D. 3 & D. 11 as Vishnu Bhatta who joined in the execution of Ex. D. 11 died by

the time of the execution of the two mortgages in favour of the appellants, Exs. D. 2 & D. 10. Section 59A, T. P. Act lays down an inclusive

definition of mortgagor & mortgagee. It states:

Unless otherwise expressly provided, reference in this chapter to mortgagors & mortgagees shall be deemed to include references to persons

deriving title from them respectively.

Krishna Bhatta represented his minor son Vishnu Bhatta also in executing the mortgage under Ex. D. 3 as he was the family manager. No doubt,

the name of Vishnu Bhatta was not mentioned as one of the executants of Ex. D. 3; but that would not make any difference. On the death of

Krishna Bhatta & Venkatesa Bhatta, the entire property devolved on Govinda Bhatta & Vishnu Bhatta & Vishnu Bhatta will therefore be a person

deriving title under the mortgagor under Ex. D. 3. Similarly, after the death of Vishnu Bhatta his sons would be the mortgagors along with Govinda

Bhatta under Ex. D. 11 in view of Section 59A of the Act. Govinda Bhatta & Vishnu Bhatta''s sons will therefore be the mortgagors under the two

mortgages which were redeemed with the moneys advanced by the appellants. There is no reason to restrict the meaning of the word mortgagor to

the original mortgagor who is ''eo nomine'' a party. u/s 92 in the first para., from the persons referred to in Section 91, the mortgagor is excluded

by the words, ""other than the mortgagor"". The mortgagor in the expression ""other than the mortgagor"" undoubtedly refers to the original mortgagor

& not to persons deriving title through the mortgagor & for this the reason that a mortgagor who discharged his own mortgage is not entitled to a

right of subrogation. Persons deriving title from a mortgagor & becoming mortgagors by virtue of Section 59A must be excluded from ""mortgagor in the expression ""other than the mortgagor"" in Section 92 as u/s 91 persons deriving title or interest are enumerated in juxtaposition to mortgagor

which is a clear indication that the word mort- gagor in Section 91 is used in a restricted sense & the persons deriving title from the mortgagor are

independently entitled to redeem u/s 91 & are also entiled to claim rights of subrogation u/s 92 as the definition in Section 59A is applicable unless

otherwise expressly provided. The rights of persons deriving title through a mortgagor are expressly provided in Section 91 in juxtaposition to the

mortgagor--See "Narayana Divakarappa v. Parameswarappa", ILR (1942) Bom 169. The mortgagor in the third para, of Section 92 therefore

includes persons deriving title through a mortgagor & in the present case, Govinda Bhatta & the sons of Vishnu Bhatta will be mortgagors but in

the view expressed above, it is open to even one of the several mortgagors to give a covenant in terms of the third para, of Section 92 to a lender

who advanced money to redeem the mortgage. It follows that the agreement given by Govinda Bhatta & his sons under Ex. D. 2 & Ex. D. 10 in

favour of the appellants conferring upon them a right of subrogation would be valid.

12. The matter in the present case may also be looked at from one other aspect. The covenant in the partition deed between Vishnu Bhatta &

Govinda Bhatta throws the entire liability of discharging the mortgages on Govinda Bhatta. As between Vishnu Bhatta & Govinda Bhatta, the

agreement is certainly binding. They agreed, as between themselves, to treat Govinda Bhatta as the mortgagor. In other words, Govinda Bhatta in

giving the covenant under the third para, to Section 92 would be acting not only on his behalf but also on behalf of Vishnu Bhatta & his

representatives. Therefore even if the concurrence of all the mortgagors is required such a requirement is satisfied in the case in view of the

covenant contained in the partition deed.

13. The argument most strenuously pressed on behalf of respondent 1 is that if one of several mortgagors is permitted to give such a covenant & is

permitted to confer a right of subrogation by agreement, it would be detrimental to the interests of the other co-mortgagors & would prejudice their

rights. It is difficult to accept this argument. Subrogation implies the substitution of one creditor for another. Even a surety for the payment of a

mortgage debt is entitled to redeem the mortgage though he is not interested in the property & is entitled to give a covenant conferring a right of

subrogation. Even a simple money creditor who advances money would similarly be entitled to stipulate at the time the money is advanced that he

should have the right of subrogation in respect of the mortgage which is redeemed with the money advanced by him. No additional burden is

thrown on the other co-mortgagors by the redemption of the mortgage by one of several mortgagors. It is as if for the previous mortgagee the new

person is substituted. The co-mortgagors who have not joined in the redemption would be liable to pay exactly the same amount of debt & with the same stipulations as under the original mortgage & their liability is not enhanced in any manner by the substitution effected by their co-

mortgagor. The rights of a subrogee are restricted only to the rights of the mortgagee in whose shoes he steps & it is that mortgage that he is

entitled to enforce.

14. For the foregoing reasons we are of opinion that the view taken by the learned Subordinate Judge is erroneous & his decision therefore must

be reversed. The appellants are entitled to be subrogated to the rights of the mortgagees under Exs. D. 3 & D. 11. The appeal will be allowed &

the decree of the lower Court must be modified accordingly with costs here & in the Court below.

Raghava Rao, J.

15. I agree, but wish to deliver a supplemental judgment in view of the importance, in particular, of the second of the points raised for respondent 1

which is so far in its precise form destitute of authority & accordingly requires for its decision a careful consideration of the words of the material

enactment in the light of the relevant first principles.

16. The first of the points developed by Mr. Narayana Pai in his well-informed & interesting argument--that is, the one founded on the analogy of

cases decided under the Madras Agriculturists Relief Act--calls for but slight notice. I need only observe that that Act & the statute under

consideration here are not at all in "pari materia", & that the object & purpose as well as the language of the two enactments are so far dissimilar

that cases decided under the former can have no bearing on cases arising under the latter.

17. It was not contended before us for the pltf.-respondent that if the first point should fail, Govinda Bhatta, "eo nomine" a party to both Exs. D. 3

& D. 11 would not be a co-mortgagor with Vishnu Bhatta constructively & through his father a party to Ex. D. 3 & in his own name a party to Ex.

D. 11. What was contended was that while a co-mortgagor is undoubtedly & expressedly within the first para, of Section 92, T. P. Act, entitled to

the legal subrogation provided for therein, a mortgagee from him only in exclusion of the other mortgagor with a covenant for subrogation from, him

is not within the third para, of the section, entitled to the conventional subrogation enacted by it. The argument is that a mortgagor in para. 3 means

necessarily all the mortgagors where there are more than one, by force of Section 13, General Clauses Act. The argument, however, is fallacious,

as that section, an inclusive & not an exclusive provision, which says that, unless there is anything repugnant in the subject or context of a Central

Act or Regulation, words in the singular shall include the plural, does not say & cannot mean that words in the singular shall exclude the singular.

All that results from the language of the section is that the extended plural connotation entailed by the inclusion referred to therein may stand

excluded by repugnancy in the subject or context, not that the original, singular connotation should stand thus excluded.

18. It is said that expressions like ""a co-mortgagor"" of the first para, of Section 92 & ""one of several mortgagors"" & ""against his co-mortgagors"" of

Section 95 afford a verbal contrast with ""a mortgagor"" of the third para, of Section 92, the significance"" of which ought not to be lightly ignored.

This again is not sound or cogent reasoning; it is just plausible & no more. The expression ""a co-mortgagor"" occurs in the first para, of Section 92

in order statedly to preserve for the co-mortgagor a right which by reason of the words ""other than the mortgagor"" may stand otherwise denied to

him prima facie, because ""other than the mortgagor"" may prima facie mean not only ""other than the sole mortgagor"" where there is only one, but

also any or all of the mortgagors where there are more than one. Likewise, in Section 95 the words used are quite natural in & appropriate to the

context of the relative rights of the several mortgagors ''inter se'' arising in the situation envisaged therein. There is consequently no verbal contrast

of the kind relied upon by counsel which has to be reckoned with here as in any way detracting from the ordinary connotation attaching to the

indefinite article. As observed in the ''Cyclopaedia of Law and Procedure'', Vol. 1, page 1, this article properly placed before a singular noun &

having the meaning of ""one"" is not necessarily a singular term & is often used in the sense of ""any"", & is then applied to more than one individual

object. Then again, as pointed out in Stroud''s ''Judicial Dictionary'', Vol. I, page 1, ""A"" may sometimes be read as ""The"" (''Ex parte Hill; In re

Bird'', (1883) 52 L J Ch 903: 23 Ch D 695, sometimes as ""some"" (''Rex v. Riley'', (1891) 59 LJMC 122: 63 LT 119, & sometimes as ""one

(''Combridge v. Harrison'', (1895) 72 L T 592 : 64 LJMC 175, but more frequently ""A"" is the equivalent of ""any"". To the same effect is the

annotation in Bouvier''s ''Law Dictionary'', Vol. I, page 1, which is as follows:

The article ''A'' is not necessarily a singular term. It is often used in the sense of ''any'' & is then applied to more than one individual object.

If this last mentioned sense in which it is capable of application to more than one individual object is given to ""A"" in the expression ""A mortgagor

occurring in the third paragraph of Section 92, T. P. Act, the expression although singular in form may well be treated as including the plural, in

terms of and without violation to the interpretation clause of the General Clauses Act. The contention of the pltf. respondent cannot in this view be

regarded as well founded.

19. Even assuming that the effect of the opening words of Section 13, General Clauses Act, is to exclude the original unextended singular

connotation of the expression ""a mortgagor"" in para. 3 of Section 92, T. P. Act, or the connotation of ""a mortgagor"" as the equivalent of ""any

mortgagor"" in that para, in a given case of repugnancy in the subject or context, the point next for consideration is whether there is any such

repugnancy in the present case as to necessitate the inference of such exclusion. On principle, it is contended that if A & B are the holders of the entirety of the right of redemption which is the mortgagor''s interest, one of them only cannot, unless occupying a representative position in relation

to the other, enter into a covenant with C for subrogation in respect of a prior mortgage redeemed with the money advanced by the covenantee

from (sic.) (to ?) such one mortgagor. Here, says learned counsel, there is a fundamental distinction to take note of between legal subrogation in

favour of a co-mortgagor redeeming & conventional subrogation in favour of a covenantee from a mortgagor. The particular subject & context of

subrogation under the first para, of Section 92 is, it is submitted, so far different from that of subrogation under the third, that because a co-

mortgagor redeeming falls within the former provision, it does not follow that a covenantee from him to the exclusion of the other mortgagor

necessarily falls within the latter. There is nothing, it is said, in the subject & context of the general law of subrogation or the particular topic of

conventional subrogation, dealt with by the statute which renders the construction of the third para, contended for on behalf of the pltf.-respondent

repugnant to such subject & context. The Statute itself, it is pointed out, makes distinct & different provisions for the two types of subrogation in

distinct and different wordings. Govinda Bhatta did not represent Vishnu Bhatta in entering into the covenant for subrogation, & the pltf. is not

therefore bound by the subrogation claimed. All this may be; the respondent is however confronted on this branch of the argument with the

difficulty that under the partition arrangement between Govinda Bhatta & Vishnu Bhatta, the former is constituted the sole debtor in relation to the

prior mortgages. In order to surmount the difficulty Mr. Narayana Pai argues that this arrangement behind the back of the prior mortgagees does

not bind them. But then, what matters it that it does not? How does it concern the prior mortgagees, who it is that actually pays them--one

mortgagor or all, the covenantee from one or the covenantee from all ? Is there any principle inherent in the nature of conventional subrogation

which makes it material that the prior mortgagees should be parties to the arrangement? Mr. Narayana Pai has suggested none; nor have I been

able to find any.

20. To examine the matter from this standpoint, I have first to observe that subrogation in the realm of the law of mortgages means no more than

the substitution of one secured creditor for another arising either by operation of law or from out of a covenant on the part of the new creditor with

the original creditor or the debtor. The doctrine is derived from the civil law & rests on the ''fiction'' of an equitable assignment of the security

traceable to presumed intent in the case of the legal subrogation a fiction similar to that of a quasi contract underlying Sections 69 & 70 of the

Indian Contract Act--& on the ''fact'' of such assignment attributable to an express covenant with the party interested--the original creditor or the

original debtor in the case of conventional subrogation. In either case, the person making the payment is not a mere volunteer; for if he were so, there would be no legal foundation for the equitable right of subrogation in his favour. In either case, he has an interest in the property--in the case

of legal subrogation, a pre-existing interest entitling him to subrogation as the result of redemption, by the intendment & operation of law; in the

case of conventional subrogation, interest acquired by a covenant for subrogation with the debtor or the creditor. In either case there is no merger

of relationship of creditor & debtor resulting from payment, no extinction or destruction of the debt but a presentation of it, a keeping alive as a

shield against puisne incumbrances, resting on the theory of an implied equitable assignment of the debt to the person paying it up.

21. In India under the law as it obtained before the amendment of the T. P. Act in 1929 as in America where the law of subrogation in relation to

mortgages was more fully developed & elaborately discussed than in England in cases & text books alike, the doctrine could only apply where the

payment operated as a purchase or equitable assignment & not as an extinguishment of the claim. It only applied in favour of one who bought the

debt either expressly or by paying it under circumstances which rendered the payment equal to a purchase. Whether the payment amounted to a

purchase or extinguishment was really a question of intention, either express or presumed from the relation of the party to the debt or other

circumstances under which the payment was made. Although the doctrine was sometimes described as so highly benevolent & inherently just that it

could be moulded by Courts so as to ensure the rendering of complete justice & equity in every possible case, subrogation was held to arise only

in those cases where the party claiming it advanced the money to pay a debt which in the event of default of payment by the debtor he would be

bound to pay or where he had some interest to protect or where he advanced the money under an agreement, express or implied, made either with

the debtor or with the creditor that he would be surrogated to the rights & remedies of the creditor. Vide Jones on "Mortgages", Edn. 6, Vol. 1,

Section 874 & "Gurdeo Singh v. Chandrika Singh", 36 Cal 193 .

22. The law as embodied in Section 92, T. P. Act newly enacted in 1929 is in some respects different. The statute as amended requires that a

party claiming subrogation must either fall within the one or other of the categories of persons mentioned in the first para. of Section 92 or must

hold a covenant for subrogation from the mortgagor in writing registered, as provided in the third paragraph. An agreement with the mortgagee

although in writing registered is not specifically mentioned in or recognised by the section, & it may well be a question whether that sort of

agreement with the mortgagee can be relied on as a ground for subrogation. I am inclined to think, though not called upon to express any final

opinion in this case on that point, that it can be, as that amounts in substance to a legally valid & effective assignment of the secured debt by the

mortgagee redeemed. Where there is no such covenant with the mortgagee in writing registered, of course there can be no subrogation as under the old law on the basis of an implied agreement with the mortgagee.

23. Bearing these principles of subrogation law in mind if we ask ourselves the question whether there is anything therein which precludes

subrogation in the present case, how does the matter stand? It seems to me that the question must be answered in the negative. There is nothing in

my opinion, in essence to distinguish the present case in which after the partition Govinda Bhatta alone entered into a covenant for subrogation with

the present appellants from a case in which without such partition or such provision in the partition deed both Govinda Bhatta & Vishnu Bhatta

together entered into such a covenant. Only, in the latter case there is but one step of procedure--that of an agreement by both the mortgagors,

while in the former there are two steps--an agreement between the two mortgagors substituting one of them as the person bound to pay the debt,

for both of them & thereafter an agreement by that one with a third party conferring on him a right of subrogation. The result reached in both the

cases is, however, the same. A position of difference may perhaps arise on a question as to the availability of this limited ground of decision which I

am dealing with, if after the partition constituting Govinda Bhatta the sole debtor, Vishnu Bhatta himself actually entered into a covenant for

subrogation with a third party. In that case it may perhaps be arguable that having parted with his right of redemption in favour of Govinda Bhatta,

Vishnu Bhatta would not be competent to covenant with another in respect of subrogation, which is necessarily a right appellant to a pre-existing

right of redemption without which it cannot spring into or continue existence. I do not propose however to pursue the point further or express any

opinion on this by no means easy aspect of the matter which does not arise for decision in the case on hand. I am, however, clearly of opinion that

quite apart from the meaning to be assigned in this as well as any other case to the expression ""a mortgagor"" in the third para. of Section 92, as

already indicated as the first ground of decision, the appellants in the present case are in the alternative entitled to claim subrogation, although under

a covenant from one mortgagor only without regard to the other, by force of the provision in the partition deed constituting Govinda Bhatta, as

between the brothers, the sole debtor in respect of the prior mortgages.

24. The provision in the partition deed has really the effect of making of Govinda Bhatta ''sole owner of the equity of redemption'', & as pointed

out in Sheldon on ''Subrogation'', Edn. 2, page 28, Section 19, where a person advances money to pay off a mortgage debt under an agreement

with ''the owner of the equity of redemption'' or his representative that he shall hold the mortgage as security for his advance, but the mortgage,

instead of being assigned to him, is discharged, he is yet entitled as against subsequent parties in interest to be subrogated to the rights of the

mortgagee & to enforce the mortgage. How the principles of subrogation law are to be applied to joint mortgagors & to the grantees of a mortgagor is dealt with at p. 270 in Section 178 of that same work in a passage which embodies the decision in "Cherry v. Monro", 2 Barb Ch

(N. Y.) 618, & runs in these terms:

C & S purchased a plot of land, & gave their joint note & mortgage for the price thereof. C afterwards conveyed his undivided half to S, subject

to the mortgage, which S assumed & agreed to pay, & gave to C a bond of indemnity against the same. S subsequetly conveyed the lot to a

grantee with full covenants of warrantee & against incumbrances, & then became insolvent & left the State, having failed to pay the mortgage debt.

The mortgagee having brought a suit against C on the note, instead of proceeding against the land, C thereupon tendered to the mortgage the full

amount due, & demanded an assignment of the note & mortgage to a third person for his benefit, so that he might enforce them against the land for

his indemnity, but the mortgagees refused to make such an assignment. It was held, on a bill in equity then brought by C against the mortgagee &

the grantee of S, that the arrangement between C & S & the conveyance from the former to the latter constituted in equity the relation of principal

& surety, not only between themselves personally, but also with reference to their interests in mortgaged property; "that the equitable rights of C &

S were now the same as if S had originally owned the whole lot, & had given the mortgage for his own debt", & C had been merely his surety; that

accordingly the land was the primary fund for the payment of the debt, & the surety, if compelled by the mortgagee to pay the debt, would be

entitled to be subrogated to the charge of the mortgage upon the land; & that C"s rights were not affected by the fact that he had taken a bond of

indemnity from S, for, as S was insolvent, his sureties on that bond might well insist that the land should be first resorted to for the payment of the

mortgage debt, instead of its being collected from C, & their liability to him upon the bond thus become fixed.

It follows from the principle of the passage quoted & the decision dealt with therein that in the present case after & by virtue of the provision in the

partition deed Govinda Bhatta became the sole mortgagor & Vishnu Bhatta became a surety for him in relation to the rights of the prior

mortgagees. If at that juncture Govinda Bhatta entered into a covenant for subrogation with the present appellants, there is no reason why it should

not be given effect to merely because Vishnu Bhatta did not join in so doing.

25. Mr. Narayana Pai next urges that far from supporting the appellants the provision in question in the partition deed constituting Govinda Bhatta

the sole debtor creates for another reason an insuperable obstacle in their way; for, as the maxim goes, covenant excludes subrogation. This point

of view is dealt with in paragraph 20 of the judgment under appeal, & the essence of the reasoning in support of the conclusion therein expressed

against the present appellants, leaving alone the cases cited, is to be found in certain passages from Mullah"s "Commentary on the Transfer of

Property Act'', Edn. 2, as applied to the present case on the facts found by the learned Subordinate Judge. His reasoning comes to this: that the

covenants in the partition deed binding Govinda Bhatta''s branch to pay off not only the present pltf''s mortgage but also the mortgages covered by

Exs. D. 3 & D. 11 & in default, to indemnify Vishnu Bhatta''s branch, exclude the subrogation now claimed by defts. 8 to 11 as under Exs. D. 2 &

D. 10 because the rule that covenant excludes subrogation has been not only applied to the original mortgagor but also extended to the case of any

purchaser of the equity of redemption or incumbrancer who discharges a prior incumbrance which he is by contract, express or implied, bound to

discharge & even to the case of a transferee from the purchaser with notice of the covenant.

26. In order to determine the correctness of the reasoning & the soundness of the conclusion of the learned Subordinate Judge, it is necessary to

bear in mind certain propositions which are well-settled & cannot be disputed; (1) when a mortgagor himself pays oft a certain mortgage he cannot

use it as a shield against a subsequent mortgage of his own, & this for the simple reason that he cannot derogate from his own grant & claim

subrogation where he has simply performed his own obligation or covenant. Yet, he can agree in the manner laid down in the third para. of Section

92, T. P. Act & confer a right of subrogation on the person advancing money under that para. (2). A co-mortgagor whose right to redeem by

payment of the whole debt & not of his proportionate share only was recognised in England as long ago as 1820 at the earliest (vide

''Cholmondeley v. Clinton'', 1820 2 J & W 1 , cited in the ''Law of Mortgages'' by H. G. Hanbury & C. H. M. Waldock, p. 233 & in India by the

Privy Council as long ago as 1878 at the earliest that is, four years before the T. P. Act (vide ''Norendar Narain v. Dwarkalal Mundur'', 3 Cal 397

is indisputably entitled so to redeem after the Act, although to what section of the statute the right should be ascribed has been a matter of some

debate before us. That the right is not only implicit in Sections like 92 & 95 where it is assumed but may well be assigned to Section 60 does not,

in my opinion, admit of any doubt in view of the last para. of Section 60 which refers to a person interested in a share only of the equity of

redemption. That on the exercise of such right the co-mortgagor becomes entitled to legal subrogation is enacted by the first para. of Section 92,

T. P. Act, the principle as I apprehend it being that a co-debtor is a principal debtor in respect of his own share & a surety in respect of his co-

debtor''s share, & when a surety has paid the debt, he is entitled to avail himself of all the creditor''s securities.

27. It may be that if the redeeming mortgagor binds himself by a bargain with his co-mortgagor that he shall himself discharge a certain mortgage

by them both & that his co-mortgagor shall not be liable therefor, the bargain binds the redeeming mortgagor so far as to preclude him from

asserting a claim of subrogation thereafter. So, in the present case, if Govinda or his branch claimed subrogation after themselves redeeming, their claim would be untenable in view of the covenants in the partition deed. But do the covenants disable them from entering into a covenant with a

third party conferring on him a right of subrogation where his money is advanced & utilised for the discharge of a prior mortgage? If, in the case to

which proposition No. 1 above set forth relates, the mortgagor although under disability to claim subrogation by virtue of his redemption is under

no disability to enter into a covenant for subrogation with such third party, there is no reason why the redeeming co-mortgagor although under

disability to claim subrogation should be under a disability to enter into such covenant. There is nothing in the covenants in the partition deed which

in express language or by necessary implication deprives Govinda of his right to enter into such a covenant. In fact, Govinda has become by the

partition arrangement between himself & Vishnu virtually the sole mortgagor himself & there is no reason why his disability to claim subrogation in

his own redemption should involve disability to create a right of subrogation by way of covenant in favour of another which does not exist in the

case of the sole mortgagor himself.

28. The reasoning of the learned Judge in the present case suffers from the infirmity that he is mistaking the covenants in the partition deed between

Govinda & Vishnu for covenants which exclude subrogation on the part of person or persons contemplated by the third para. of Section 92, T. P.

Act on the assumption for which there is no warrant that such person or persons in spite of the covenant or covenants for subrogation in his or their

favour fulfilling the requirements of form & substance alike enjoined by the statute must however go without the benefit of such covenant or

covenants. The learned Subordinate Judge does not seem to be alive at all to the true legal point of view governing the situation, which I may

observe is tersely brought out by Somayya J. in his judgment in Nachappa Goundan Vs. Samiappa Goundan and Another, , delivered on behalf of

the Court consisting of himself & Yahya Ali, J. At "page 28" in the first column of the report occurs the relevant observation:

The equitable rule of subrogation gives a vendee a higher right than what the vendor has if certain conditions are fulfilled. Though the original

mortgagor who is personally bound to pay is not entitled to subrogation when he pays an earlier mortgage a vendee or a mortgagee from him may

be entitled to this right if the case satisfies the requirements of law as already discussed.

The whole judgment in that case which is closely & carefully reasoned contains, if I may say so with respect, a learned & lucid exposition of more

aspects than one of the law of subrogation. In particular, it deals with the rule that "covenant excludes subrogation" & its limitations at "pp. 24 to

29" of the report. First, the learned Judges observe "at p. 24", second column:

That a covenant excludes subrogation, though a compendious method of expressing one aspect of the law of subrogation is really a misleading

statement unless we bear in mind the true implications of that statement.

Then they say:

If there are two mortgages, A & B, & a subsequent alienee undertakes to pay off both the mortgages & pays A & does not pay B, he cannot

take advantage of his own default & claim subrogation as against the holder of the mortgage B. In such a case his covenant to pay both the

mortgages A & B prevents him from claiming the right of subrogation when he pays off A & defaults in payment of the mortgage B in other words,

covenant excludes subrogation.

Then, they deal with the question whether if an alienee undertakes to pay certain mortgages from & out of the amount payable under the alienation

taken by him he cannot claim subrogation in respect of those mortgages. They hold that he can after an exhaustive discussion of the relevant case

law. In the course of the discussion they refer to the Privy Council ruling in ''Malireddi Ayyareddi v. Gopalakrishnayya'''', 47. Mad 190, as declaring

''first'' that it is settled law that the purchaser may by paying off an earlier charge treat himself as buying it & stand in the same position as his

vendor, & as declaring ''next'' the limitation to the rule viz., ""that it would not apply if the owner of the property (by which expression is meant the

purchaser) had covenanted to pay the later mortgage debt"". The basis of the limitation to the rule as expounded by Varadachariar J. in ''Lakshmi

Amma v. Sankarayanarayana Menon'', 59 Mad 359, is then referred to as being not that in paying off the prior mortgage the purchaser or puisne

incumbrancer merely acts as the agent of the mortgagor but that there is the disability founded on the fact that the person claiming subrogation has

covenanted to discharge the debt due to the very person against whom he seeks to claim priority. The learned Judges then proceed to refer to

another point to be noticed in connection with the expression ""covenant excludes subrogation"" namely that the covenant must be with the original

mortgagor who was personally bound to pay the mortgage or his heir-at-law. In the course of the discussion of that point they observe that a

person entitled to legal subrogation under the first para. of Section 92, T. P. Act may well convey that right to his vendee as in the case before

them. Then they refer to the equitable rule of subrogation as giving the vendee a higher right than what the vendor has, in the passage which I have

quoted as embodying the principle governing the situation here, to which the learned Subordinate Judge was not alive. Although the expression

already discussed"" occurring in the ''locus cita-tus'' may suggest at first sight its relevancy only to legal subrogation, there is nothing in the principle

rendering it inapplicable to conventional subrogation or showing that the learned Judges did not intend it to govern the latter kind of subrogation as

well as the former. Then there follows a discussion of the two Privy Council decisions in ''Jankinath Roy v. Pramathanath'', ILR 1940 1 Cal 291, &

in ''Mano-mohandas v. Janki Prasad 1945 1 MLJ 97, which have, since the amendment of Section 92, T. P. Act in 1929, expounded the law of subrogation with reference to the amendment. The learned Judges thereafter dealt with the argument advanced before them that the covenant

required for conventional subrogation was not present in that case and repel it by holding that the stipulation that the sale was to be free of all in-

cumbrances implied a covenant that the vendee was to be entitled to subrogation on redeeming prior morgages from out of the consideration for

the sale.

29. I have given this resume of the decision of Somayya & Yahya Ali, JJ. in Nachappa Goundan Vs. Samiappa Goundan and Another, in order to

show that the passage in their judgment on which I am relying is in the nature of a considered dictum occurring in the course of an erudite &

exhaustive treatment of the subject of subrogation which is highly instructive. It is significant too to notice in this connection what the learned Judges

say about the ruling of the Privy Council in "Janakinath Ray v. Pramathanath Malia", ILR 1940 1 Cal 291. They refer first to the facts of that case

thus:

There were five mortgages in succession: (1) First mortgage by respondent 1 of his property A in favour of the appellant on 8-4-1924 for a sum

of Rs. two lakhs, the said sum being repayable on 8-4-1925, (2) second morgage by respondent 1 of property A as well as property B in favour

of the same person on 30-11-1925 for a sum of Rs. 100,000, repayable on 30-11-1926. Property B was also to be additional security for the

first mortgage. (3) Third mortgage by respondent 1 in favour of the same person of properties A, B & C & 29-11-1926 for a sum of Rs. 100,000

repayable on 28-11-1927 with similar stipulations with regard to properties B & C forming respectively additional security for the earlier

mortgages. (4) Fourth mortgage of properties A, B & C & D by the same person in favour of the mortgagee of the three previous mortgages &

another on 11-11-1927 for a sum of Rs. 1,50,000 repayable on 11-11-1929. Stipulations similar to those in the previous mortgages were

repeated. (5) Fifth mortgage of A, B, C & D & other properties in favour of a different person, respondent 4 on 27-11-1927 for Rs. 7,00,000 &

a quarter. The mortgage money was left with respondent 4 to pay off all the four prior mort- gages. By that time the time for payment of the first

three mortgages had elapsed but the fourth mortgage was repayable only much later in 1929. So it was stipulated in the fifth mortgage that upon

payment of the fifth mortgagee of the amount due under the first three mortgages he should be subrogated to the rights under these three

mortgages. The mortgagee paid the first three mortgages ""in full"" but did not pay the fourth mortgage of 11-11-1927. The fourth mortgagee sued

upon his mortgage in 1931 for sale of all the four items on the averment that the first three mortgages had been discharged & extinguished.

Upon these facts"", observe the learned Judges ""the High Court held that respondent 4 (the fifth & last mortgagee) stood subrogated to the rights under the first three mortgages which he paid off. The Privy Council affirmed the decree of the High Court on the question of subrogation"".

30. It seems to me that the position in the light of this Privy Council ruling is, shortly stated, this. If there is an express agreement for subrogation, it

is immaterial that the discharged mortgages were paid off in pursuance of a covenant for the purpose or that the mortgage against which

subrogation is claimed was also covenanted to be discharged. Where there is no such agreement for subrogation, the fact that there is a covenant

to pay a certain mortgage negatives any claim to subrogation as against that mortgage, & no priority can be asserted as against it by the discharge

of earlier incumbrances (Vide Mr. G.C. Venkatasubba Rao''s ''Law of Property'', Edn. 2, page 760).

31. It follows from the foregoing, that the learned Subordinate Judge in the present case has, in negativing the right of subrogation, claimed by

defts. 8 & 9 & 11, allowed himself to be influenced by a number of decisions which did not have to deal with a specific covenant for subrogation in

relation to the effect that it has upon the operation of a mere covenant to discharge prior mortgages without more. Such a specific covenant has the

effect of rebutting the presumption against subrogation arising from a person''s performance of his own obligation or covenant to discharge prior

mortgages & of preserving for the person so discharging the conventional subrogation enacted in the third para. of Section 92, T. P. Act.

32. There was an argument advanced before us by Mr. Krishna Rao, the learned counsel for the appellants, that if regard were had to the

provision of Section 60A(1), T. P. Act his clients as transferees from & covenantees with Govinda''s branch would be entitled to the right of

subrogation now claimed by them. The argument still raises the question of the proper interpretation of the expression ""a mortgagor"" occuring in

that section as well as in the third para. of Section 92. The argument of Mr. Krishna Rao founded on the analogy of Section 60A(1) has therefore

no independent merits about it, such as would conclude the matter in favour of his clients.

33. I agree for the reasons indicated in the foregoing as well as for the reasons given by my learned brother in his judgment that this appeal should

be allowed.