BLOGS

Doctrine of Subrogation: Definition, Types and Elements

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Understanding the Doctrine of Subrogation

The Doctrine of Subrogation, outlined in **Section 92 of the Transfer of Property Act, 1882,** finds its roots in Roman Law. Subrogation involves the substitution of one person or thing for another, resulting in the transfer of the same rights and obligations from the original entity to the substitute. Essentially, it entails placing oneself in the shoes of another.

What is Subrogation?

Section 92 specifically addresses the application of subrogation in the context of property mortgages. When a person, other than the mortgagor, or a co-mortgagor redeems a property subject to a mortgage, they acquire the same rights as the mortgagee they redeemed the mortgage from, concerning redemption, foreclosure, or sale of the property.

This right is officially termed the “right of subrogation,” and the individual obtaining it is said to be subrogated to the rights of the redeemed mortgagee. The section further outlines conditions under which a person advancing money to redeem a mortgage becomes subrogated to the rights of the redeemed mortgagee. It is essential to note that the right of subrogation is recognized only when the mortgage, in question, has been fully redeemed.

Subrogation can be invoked when an insured individual incurs injuries due to a third party’s negligence and seeks to cover their expenses. For instance, if an insured person claims Rs. 5 lakh from their health insurance, the company can recover this amount from the responsible party as part of the subrogation process.

Application of the Doctrine of Subrogation

- A person with an interest in the mortgaged property or a right of redemption.
- Any creditor of the mortgage.
- Co-mortgagor.
- Mortgagor’s surety redeeming the mortgage.

Essentials of a Valid Subrogation

- The claimant for Subrogation must not be a mortgagor; only a co-mortgagor can claim if they pay off the other mortgagor’s part.
- Partial Subrogation is not valid; the redemption of the property must be complete for a valid claim.
- Only individuals with a legitimate interest in the mortgaged property can demand Subrogation.
- The property must be redeemed through payment to the mortgagor, and a written acknowledgment of being subrogated to the mortgagee’s rights is necessary.

Types of Subrogation

1. Legal Subrogation: Legal subrogation, arising by operation of law, is based on the reimbursement principle. This occurs when a person, intending to make a payment another is legally obligated to make, must be reimbursed upon doing so. Legal subrogation can be claimed by puisne mortgagees, co-mortgagors, sureties, and purchasers of equity by redemption.

- Puisne Mortgagee: If a prior mortgagee wins a decree without suing the puisne mortgagee, they gain the right to sue for redemption of the earlier mortgage.
- Co-mortgagor: When a co-mortgagor redeems their own share and pays off the share of the other mortgagor, they obtain the right to be subrogated in place of the other mortgagor.
- Surety: A surety for the mortgagor has the right to redeem the mortgaged property under Section 91 of the Transfer of Property Act. Upon redemption, the surety is subrogated to the creditor’s position and rights.
- Purchaser of Equity of Redemption: The purchaser of the equity of redemption becomes the owner of the property.

2. Conventional Subrogation: Conventional subrogation occurs when a stranger makes a payment to a creditor with the anticipation of being substituted in place of the creditor. However, this can result only from a direct agreement made with either the creditor or the debtor. While a formal assignment is not required, the agreement may be shown by subsequence.

Doctrine of Subrogation under the Indian Contract Act

In accordance with **Section 140 of the Indian Contract Act of 1872**, subrogation is a legal concept that comes into play after a guarantor fulfills their obligation by paying off the debt of the principal debtor.

Once the guarantor has settled the debt, they are entitled to step into the shoes of the creditor. This means that the guarantor, now subrogated, assumes all the rights that the original creditor possesses against the principal debtor.

Subrogation essentially allows the guarantor to take the place of the creditor and exercise the same legal rights and remedies. It serves as a mechanism to ensure that the party ultimately responsible for the debt, the principal debtor, remains accountable, and the guarantor, having fulfilled their role, inherits the creditor's position in pursuing any legal recourses or claims against the debtor.

Conclusion

The Doctrine of Subrogation, as codified in Section 92 of the Transfer of Property Act, facilitates the substitution of one entity for another in the context of property mortgages. This grants the person redeeming a mortgage the same rights as the mortgagee they paid, known as the "right of subrogation."

This right is recognized when conditions outlined in the section are met, including full redemption of the mortgage. Subrogation is invoked in various scenarios, such as insurance claims, and encompasses two main types: legal subrogation, arising by operation of law, and conventional subrogation, resulting from a direct agreement.

The Indian Contract Act, Section 140, outlines subrogation in the context of guarantors, allowing them to step into the shoes of the creditor after paying off the principal debtor's debt. Overall, subrogation serves as a critical legal principle ensuring fairness and protecting the rights of those fulfilling obligations.