

## **A Survey on the Relationship between Legal Jurisprudence and the Mortgage Property Lease Laws in Iran Statutory Law**

Mohammad Mozaffar,

Department of law, Germi branch, Islamic Azad University, Germi, Iran

Corresponding Author Email: [Iranmbm.mozaffari@gmail.com](mailto:Iranmbm.mozaffari@gmail.com)

Yadollah Safari

Department of law, Germi branch, Islamic Azad University, Germi, Iran

**ABSTRACT** — One of the most important trade mortgage contract is a mortgage contract whereby the debtor gives the creditor some money for bail. Recognition of the rights and obligations of the mortgagor and the mortgagee that the mortgage contract comes into existence, can solve many of the legal disputes. One of the most important issues concerning the rights of the mortgagee, the legal status of contracts that carry the same mortgage property benefits, including rental mortgage by the mortgagor. In this regard, according to renowned jurists, the legal contracts require the permission or consent of the mortgagee. Regardless of the different views of jurists and lawyers, with a detailed study of Articles 793 and 794 of the civil code, it seems that the same rental mortgage property is not compatible with the objective right of incidental mortgaged person and due to the vagueness of the law in this area, it should be considered as correct, because Article 793 of the civil code only possessions incompatible with the right to require the mortgagee to leave and he did not know whether the same rental mortgage property is incompatible with the right of the mortgagee or not? The effect of the permission or consent of the mortgagee among jurists and lawyers and the famous rental mortgage property enforcement against its sale, the mortgagee's rights do not abortion.

**KEY WORDS:** Mortgage, The mortgagor, Mortgagee, Mortgage property, Lease, Lien

### **Introduction**

Mortgage contract is a contract that is interpreted due to the existence of debt and for the repayment of debt securities and were adopted by legislators. In this regard, some Shiite jurists (Allameh henly, 1414, p.85) mortgage contract is considered as a contract that is trust worthy of debt and in this direction, According to Article 771 of the civil code. The mortgage is a contract whereby financial debt was given for collateral as security to receiver's debt. The person who gives mortgage is called the mortgagor and the other side called housing mortgaged. In fact, the realization of the mortgage contract on the one hand, there is an incidental object right to the mortgage and on the other hand the owner's right of property will be maintained at the same mortgage property, because the owner has the right main objective and that is primarily due to his/her dominant right, the mortgagor must be able to seize the mortgaged property (sanhory, 1998, p.36) A bunch of possessions is legal possession where by the mortgagor may transfer the mortgage property interests to another, the clear example of this transfer is the rent of the mortgage property. The main objective of the discussion is that how the main objective right of the mortgagor and the subsidiary incidental right of the mortgagee are retractable with the transfer of consequential interest of mortgage property. In other words, mortgage contract may have right support to the mortgagee, at the same time before the end of maturity of debt and before being able to use their right to demand the same mortgage property inquiries into sale, in other words, concluding mortgage to the mortgagee may have the right support property mortgagor will keep his on the same mortgage property in other words, on the one hand for a mortgage, the mortgagee has the right to bail to the mortgage property, and on the other hand mortgagor is the same owner. Now one of the major questions raised is that and practiced results in the field of trade affect's people is that if the mortgage property and its benefits can be seized as an example of its lease on his mortgage property or not? And whether occupation requires the permission of the mortgagee or not. Meanwhile, the en for cement or lack of en for cement of such a deal by the mortgagee who has incidental objective right, what impact he will have on the fate of lien.

2. The lease status of mortgage property from jurists points of view in this case there are fiercely different points of view. Some of the rental mortgage by the mortgagor in known as absolutely Void and they believe that the invalidation what caused the failure of the mortgage such as rent there isn't any wrong. Because the mortgage is a bail to the mortgagee and the prohibition of mortgagor from the possession is on incentive to pay homage and if license issued, the mortgagor is not stimulated (critical, 1363, p.266, quoting the second martyr in masalek). But from Ardabil's Mohaggeq idea in sharholershad and from khorasani's Fazel idea in kafaieh, ban is not absolutely allowed, especially where no has an is not entered to the mortgage ( crisis, P.267).

Sheikh Tusi in *Alnahayeh* has said that: "It is not permissible for the mortgagor, capturing on what is given as the mortgage. It is not permissible to settle on that place and cannot sell it and rent it out and if it is a ground. It is not permissible for him (mortgagor) to cultivate, to sale as well as to rent." ( Sheikh Tusi, 1400, P.431). From *shahidin* points of view in *sharh' lom'eh* if the groups have some interest that with the same survival. Can achieve it with the agreement of both, they lease it, otherwise the ruler leases it. ( Sheikh – e – Sani, 1411, p.83). Imam Khomeini ( RAH) *an tahrir – o – lvasileh* states: "It is not permissible for the mortgagor to possess the mortgage except with the permission of the mortgagee if that seized mortgage was transporter or carrier, such as sale or use of its benefits, such as rent or merely its use although that was not harmful to the mortgage such as cars and housing for mortgages and the like. Yes, It is likely to be allowed to the captured mortgage that is a benefit to the mortgage. If the mortgage not out of the mortgagor like watering off the trees, feeding the animals, treating them and the like. So if captured in what is sin and what is not allowed except possessions are the transporter of the sin. He can not sell it and can not rent it and if the ground is not permissible for him (mortgagor) to cultivate, to sale and to rent" ( Sheikh Tusi, 1400, P.431). From *shahidin* points of view in *sharh' lome'h* if the groups have some interest that with the same survival can achieve it with the agreement of both, they lease it, otherwise the ruler leases it. ( shahid – e – sani, 1411, p.83). Imam Khomeini on *tahrir – o – lvasileh* States: "it is not permissible for the mortgagor to seize the mortgage unless it is wasted in this case it is required to sell the mortgage on its price and of they are occupied with the sale or rental or a toll, wed to allow the mortgagee and in case such as rent with the permission of mortgagee considered correct and ..." (Khomeini, 1366, p.9). From public jurists points of view, if your tenant is the mortgagor himself, the lease is void and liability is due to nickname and is not required waste it and the mortgagee can achieve it if he wants and if the tenant is mortgaged and review the bill for the rent or the person outside is mortgagor and mortgagee the mortgage contract becomes null or void and pay for the mortgage and any contractor can obtain it ( jaziri, 1414, p.336). Famous Shiite jurists believe that benefit carriers of possessions of mortgage property is not effective because these mortgaged possessions are on the loss of the mortgagee and cause decline in the value of the same mortgage property or cause inconvenience to the mortgagee or defects in mortgage property or the willingness of buyers is small so you need the permission of the mortgagee because the mortgagee has the same mortgage property as incidental capture and causing harm to his right t influence his permission is needed ( shahid – e – sani,1404,p.326. mohaggeg heli, 1415, p.234). Some jurists believe that all the possessions of the same carrier is prohibited whether these possessions carrier are the same or benefit carriers of possessions ( Allameh heli,1419, p.187) of course, such a view taken from the perspective of the number of jurists in relation to the purpose of the mortgage contract. The jurists believe that the aim of mortgage contract is creating a buffer between owner and property to ban him from any seizure of his property, driving in the early payment of the debt from the mortgagor and if we accept that the mortgagor has the right to transmit the interests of the same mortgage property. This view disagrees with the aim and the philosophy of the conclusion of the mortgage contract and in fact it is opposite to or is denying the mortgage contract. But the other group believe that the rent of the mortgage property as mortgage wed indebted to be curious, permission is not revoked and he is sure that, if the rent is less than the maturity of the debt does not make problem so either rent is good or bad ( corrupt) does not cause termination of the mortgage contract with the provisions of the tenant, It does not matter if the tenant is mortgagee or third in the same bill the permission of the mortgagee is required ( first martyr, 1414, P.408). Another group of jurists believe that the benefit transfers of the mortgage property till the maturing debt after the annulment and is subject to the content of the mortgagee. This group of jurists argue that the aim of signing mortgage contract to make sure the mortgaged their quest for satisfaction is receiving his debt, in the event of non – payment till the due date by the mortgagor. The aim of the mortgage contract is to create a buffer and it is not a prevention between the owner and the property until it will be a stimulus to solvency of the mortgagor, regarding the purpose of the mortgage contract only possessions are incompatible with the right the mortgagee, is not pervasive here. The transfer of the mortgage property benefits due to maturity of the debt since it doesn't make loss to the mortgaged is pervasive and after the maturity date of the debt is not pervasive because the mortgaged is prior to the tenant's right to verify the tenant's possessions, the permission of the copy right owner that is mortgagee is required. ( Allameh heli, ibid, P.188) Some Shiite jurists ( najafi, 1394, P.195) also believe that the mortgagor is the same owner of the mortgage property and the same benefits and right to any benefit from it as a result of owner ship, but this advantage is generally due to conflicting interest and rights mortgagee is missing. Accordingly they consensus on the lack of profit license of the same mortgagor from mortgage property owes. Al meftah-o-lkarameh in this regard, states:" mortgagor doesn't have any possessions on the mortgage property or other possessions and also the right to lease, for sale or lien, settlement and the others that make defects on the mortgage property. His argument is in addition to the famous quote of the consensus of jurists. In this review, we can say that with respect to property rights and interest of the mortgagor to the mortgagee must absolutely respect the non-profit's license possessions but in cases where the possession is not compatible with the rights of the mortgagee and the same price declines and lower interest of buyers are not made. We are entitled to permit this kind of profit was achieved, as some jurists like mohaggeg Ardabili due to losses in these cases and its incompatibility with the rights of the mortgagee, they accepted the influence of the possessions, so the profit possessions, such as home of the mortgage property and also became of renting. If cost is not to the detriment of the mortgagee does not permit it.

#### **Rental status of the mortgage property from lawyer's points of view**

In the rental mortgage property among lawyers also disagree that we will continue to investigate these views.

1. Rental mortgage property without the permission of the mortgagee is not true ( Haeri shahbagh, 1376, P.30 and 31 ). Since the number of lawyers view rental mortgage property as harmful to the rights of the mortgagee, such a view was expressed. In his view benefit carrier of possessions can defect the mortgage property and decrease its value. Since defect or decline value of the mortgage property of these possessions are not pervasive, if mortgagor himself gives permission and enforce that permission. He is absolutely aware of the same probability of failure and consequences of the devaluation of lease and in fact take an action to his own loss. In criticizing this view, it must be acknowledged that it is not always this way that transfer of the benefits of the mortgage property reduce the value of ( e.g. agricultural land) as well as the interest carriers of the possessions, the mortgagee is in conflict with the law are not such a case as long as the mortgagor rent the mortgage property debt on the due date or less and the tenant is a conventional person. The probability of failure or loss is not allowed in the mortgage property unless possible harm because the lease is terminated before or the due date of the debt or at same time and does not create any nuisance to demand his right (money) and in accordance with the above account. The mortgage does not reduce its deficit and value to say that possession is incompatible with the right of the mortgagee. Let me add that the former land lord and tenant according to the law on commercial sites and sites expiration of the lease term even interrupt business relationship was not leased and discharge of the same lease was not easy so at that time even the same rental mortgage property of the debt on the due date or less seems inconsistent with the right of the mortgagee, but according to the new law, rental locations of land lord and tenant all over again are subject to civil law the problem has been obviated. We also consider this group of lawyers about the effectlessness of leases on property where the mortgage in leased for more than the debt. We have the same options. (agree with them). Because rental of the mortgage property for a long time reduces the value of the mortgage property due to depreciation and also cause a nuisance for the mortgagee to demand his right from the same mortgage property, because the mortgaged possessions are in conflict with the law of the mortgagee. And possessions, according to Article 793 of the civil code incompatible with the rights of the mortgagee is defective.

As the comment below to an approval vote were:

The story of the case of 14/14/8045-3/12/72 the saderat bank of Mazandaran is given petition to invalidate offered Ga'emshahr court has argued that since the mortgagor property as collateral when lending to banks and, arguing that the transfer of good will and rental shop mortgaged without permission, but the mortgagor without resorting to the content of mortgaged document, one of his stores given to the defendant and his action is in contract with the content of the document, demand to terminate the contract deprive him of the store, according to article 793 of the civil code does not have legal justification of the verdict on cancellation of the deal between the defendants and the expropriation of the shop with the specifications to which branch 14 of the supreme court after hearing the case has issued such ratings and mentioned that " prompted by the case of an effective protest and the decision not to appeal to – non – legal forms is verified " Ja'fari langroodi, 1348, P.58).

2. The same rental period of mortgage property of the debt at the time or less is correct but if the time is more than the due time of the debt is annulment. As previously mentioned some lawyers consider carrier interest of possessions that is at the due debt time or less even without the permission of the mortgagor his enforcement as correct and they believe that such possessions are not detriment to the mortgagee since in this case it doesn't make any nuisance to the mortgagee, hence when the same renting house is given to the conventional person the society customs shows that any deficit or defect doesn't affect the mortgaged case unless there is divine force, possibility of any harm is meaningless. Some jurists have forbidden that mortgagor's interest him and the financial solvency is an incentive and drive to pay the debt is forbidden his view to an end is weak, because it is contrary to the philosophy of the mortgage contract. But if the mortgagor, the mortgage property was rented for more than maturity debt, they consider such rent as defective unless such rental or enforcement is permitted by mortgagee this group proposes that renting the mortgage property for more than the due date of debt causes amortization and depreciation of the value of the same mortgage property in addition to the mortgagee to demand the same mortgage property since its interfere, and this submission to the tenant makes the mortgaged right at risk but there is no choice but effectlessness recognition of such rent (Emami, 1364, P.369; Ja'fari langroodi, 1370, P.100).

3. Renting of the mortgage property does not is conflict with the rights of the mortgagee and absolutely is correct.

Some of these lawyers believe that the same rental mortgage property is incompatible with the right of the mortgagee and will be covered and the conclusion of the lease contract does not require the permission of the mortgagee. And mostly, and mostly higher than the rent or not to include the effects does not have any effect on the relationship of the mortgagor and mortgagee. Whether renting of the mortgage for some tome as a mortgage for more than of it. However, the mortgagor can get his credit by selling the mortgage property and, if necessary can take his property out of the bail. (Sadeghi Gildar, 1365, P.178; Savad Koochi, 1377, P.36)

It seems that believers in the idea think that since the mortgagee by mortgage contract can find the right on the mortgaged property and consequently has the track right and priority right and there is always the right on the mortgage property. The

owners of this right can demand their credit out of the bail however they don't pay their debt, so its rent does not enter any prejudice to the right of the mortgagee till recognizes it as effectless and with the lack of constraint lien if the mortgagee decided to sell the same mortgage property. Taking such decision damages and harms the rights of tenant and on the other hand, a tenant was unaware of the objective right on his property and can terminate the lease by preventing its loss and this problem will have no effect in the relations between the mortgagor and the mortgagee. In criticizing this idea we can say that the mortgagor absolutely and without taking into account the objective right of the mortgagee consider carrier of the mortgage property or his benefits. His goal was ignoring the right of the mortgagee and the transfer with financial fraud that belongs to other and it seems that his goal refusing to pay tribute and the transfer of the mortgage property to escape its paying, so according to Article 40 of the constitution, which prohibits the abuse of because of the infliction of harm as annulment and he also evades of paying his debt, which is one way of doing it is taking the mortgage property we know such renting that is without the permission of the mortgagee and its granting was over than the assigned due date of the debt as must be defective.

#### **Renting of the mortgage property by the mortgagor**

1. Renting of the mortgage property with the permission of the mortgagee.

According to those who carry the interests of the mortgagor.

Possession except by the permission of the mortgagee consider it as non-penetrating, renting of the same leased with the permission of the mortgagee is correct.

Some believe that mortgagor's possessions is absolutely right.

They believe that the mortgaged permission is an emphasis and is not treated as any legal effect, but it seems that the effect of permission is due to by the mortgagor to the mortgagee in the event of non-payment of debt just to be able to sell the same without-benefit property because he is satisfied to the same without – benefit property

2. Due permission of the mortgagee as renting property situation if the mortgagee give permission to lease the same mortgage property, according to the mortgagee under a mortgage on the same mortgage property interests have been subordinated to the objective, whether renting property which in turn is owned by the mortgagee's interest?

The answer to this question is negative because not only seize his property, but also reduce the mortgage interest and mortgage and the mortgagor also is the owner of the mortgage property and consequently this right is renting property of him.

In fact, the mortgagee has not the right to use or benefit the mortgage to say that consequently the right to benefit or right to benefit is a renting property to him but we shall interpret the right to a mortgagee's rights as keeping right and the right to seek satisfaction and credit that is the first as an introduction to the second right. So any branch of the same property and mortgage property interest don't transfer to the mortgagee to say that he has a right to renting property. Of course, this is clearly stated in Article 876 of the civil code the fruit of the property is the same interests that is explicitly recognized as the owner but connected interests as mortgage functions and its separation from the mortgage is impossible is considered as the mortgage, in so much the mortgagor has the mortgage property as his own, he owns its subsidiary, here, the lease is considered as fruits and inseparable interests of the mortgage so it belongs to the owner and he can benefit anyone who wants to transfer and in return what he gets from the transfer of the benefit belongs to himself.

3. Due permission of the mortgagee in lien if the mortgagee enforces the lease, what effect does the mortgage contract on the mortgagee? Does the mortgagee's permission makes void the mortgage contract? If mortgagee's contract has any effect on the mortgage contract and still the mortgage contract will remain as the mortgage? In response to this question, there is no unity. Imam Khomeini (RAH) of tahrir, States: It is not permissible except with the permission of the mortgagee to the mortgagor is taking possession of the carrier whether that is sale or lease, or otherwise if you capture them from toll, suspended to allow the mortgagee such as rent and mortgages. Permission remains right unlike the sale with permission it makes right and the mortgage gets void (Imam Khomeini ibid). Some other jurists consider the same mortgage vectors as non-penetrating, by allowing the mortgagee to know in validity and loss of lien that is they also see contradiction between the transfer of ownership of the property and the survival of lien. In other words they consider permission or authorization of the mortgagee's lien over thrown (Mohaggeg Helli, Ibid, P.336). It seems that the mortgagor's permission to the mortgagee on rent does not mean over throwing a lien or deviating from it because customary law consider the mortgagor's permission to contribute well the mortgagee on the optimal use of financial ownership of the property as with this practice, he prevents unemployment of the mortgage property. This impression is also seen in the works of some of the lawyers we refer to two of them.

Mohammad Boroujerdi Abdoh in his civil right said:

" Mortgagor is not allowed without permission of the mortgagee in the possession of the same mortgage property whether the same is quoted as sale or of benefits such as rent and if you sell it or rent it carriers its verification is wed to the mortgagee's permission and in the case of rent the mortgagee's permission only corrects the rent and a mortgage remains as the pawn but the sale permission will make a mortgage void if the sale mortgage was based on the permission of the mortgagee with the sale of the mortgage it will be cancelled (Boroujerdi Abdoh, 1329, pp.405 and 406).

The late Ali Haeri shabagh in Article 793 of the civil code stated: " Mortgagor is not entitled to sell the sane due possessions before giving the mortgage had its rightful possessions except by permission of the mortgagee, the mortgagor cannot sell or rent the mortgage property, or riding on the property that has a mortgage or trucking or dwelling on home mortgage as residence, but

if sold or mortgagee or mortgagee enforces lease, and mortgage remain true but if sold and allowed mortgage, mortgage will be cancelled if it pre-sale, the mortgagee allows not to sell if on pre-sale sold the mortgage remains the same, but after sale the mortgage becomes void" (Haeri Shahbagh *ibid*, p.30).

#### **Rental property without due permission of the mortgagee.**

Here we should consider separation between rental contracts that is signed as less or equal to the term of the rental contract.

According to some lawyers rental mortgage property for less or equal with the debt is true (Boroujerdi, the same) that we held with the group as well. Some lawyers consider absolute possession of the mortgagor is subject to permission of the mortgagee (Emami, 1390 P.369) and subsequently the lease is annulment and depends on the mortgaged or mortgaged enforce the lease, or not enforce it. The first hypothesis with the mortgaged permission the lease right and puts an extra effect on the day's contract, but the second hypothesis it is not confirmed if the mortgagee enforcement, whether it is rental or observe cancelled? Here it may be answered since the mortgaged rejected the lease contract and denied he had signed the contract so the rejection of the mortgaged rental lease are cancelled. Because of the lease contract the order of the deal is curious and is the curious deal if the contract is rejected because the contract has been signed without consent and we need intention and consent to accurate and reliable contract and in the other the consent is absent, so the rental contract is cancelled. In this sense, the criticism, the mortgagor has the same owner and the mortgage is interest only to the mortgaged property as a result of this contract, the objective has been made after the rental contract is signed by the mortgagor, the mortgagee is not the same owner and the interests are not the same mortgage property that is rejected the deal because only rejected curious deal is treated by the owner and in this case we can say that the mortgagee is not optional in cancellation of contract that is the rejection of the curious deal is not loaded on the deal. In other words, the argument the mortgagor deals in relation to the pawn since it brings loss to the right of third party is the curious sentence and its accuracy is dependent on the person, meet basic forms.

There are two different views on the permission of the mortgagee among lawyers and jurists. Some of the group know transactions subject to the permission of the mortgagor or mortgagee have right to verify and have her permission to wed is subject to the permission of the mortgagee to the mortgagee deal means annulment of contract but the suppression of the contract entitled only to verify the foresaid contract and does not have right in rejecting it.

If we consider with the rules of the law.

Mora'a is the legal situation that exists but is unknown and after obviating ignorance and discovering the fact the title of Mora'a is not lost. In the case of a legal situation that is observed, due to the legal situation is completely achieved.

There is no ignorance but fully meet expectations suspended is the legal action which comes into existence as fault and the other factor should be attached to the fault till the perfect cause comes about and appears the legal works like curious contract and duress contract that is because of the lack of consent comes into existence as fault and by attaching consent make the contract perfect and from the legal source gets effect (Ja'fari Langroodi, 1370, P.72) jurists call curious contract as suspended contract have also rental contract and legal situation of this cause absolutely delineated and the cause of intention and consent of the owner, legality of the deal and duress of the deal case and its capacity all completely delineated and in Article 190 of the civil code the main condition of the transaction is known. But here the mortgagee is not obstacle to the start of contract work, the contract is Mora'a until can stop that is same paying off the mortgage he wants to clear the obstacle and after that the contract works will be started and after removing the leases from the start turns out correct, but if the tenant loses the hold and uncertainty, he can terminate the rental contract. Now the question is whether the mortgagor transactions in the pledge are with or without permission or suppression of mora'a? It seems that the deal was suspended, because in any case, the cause of effect in this case is not complete and must be made another factor and join in the deal till the deal will be effective. The same understanding can be seen in the works of other writers of civil rights and jurist that some example either here. Mohaggeg helli in sharia – o – l islam," It is not permissible for mortgagor to seize the mortgage, the service commanding and neither resident nor rent, if he self it or forgive, suspend on the permission of the mortgagee" (Mohaggeg helli, *ibid*, vol.1, P.216). Imam Khomeini (RAH) in Tahrir – o – l vasileh states: " It into permission of the mortgagor to take possession of the mortgage, unless with the permission of the mortgagee whether that possession of carriers were sale, rent or interest, if your capture was sale, rent and at all, those carriers suspended to allow the mortgagee" (Imam Khomeini, the same).

Dr Mohammad Boroujerdi in his civil rights said," the mortgagor is not allowed to take possession of the mortgage without the permission of the mortgagee, whether the same is quoted as sale or carrier benefits such as rent sell or lease if it day, its accuracy wed to the allowance of the mortgagee (Noroujerdi Abdo, the same). The late Ali Haeri Shahbagh in the sixth volume of civil code" in Article 793 of the civil code stated that" the mortgagor is not entitled to take possession of the same mortgage property, before the mortgage has the right to the possession except by the permission of the mortgagee, for example, the mortgage cannot sell the mortgage property or lease or mortgage on the property that passenger is but if he sold or leased, its accuracy depended

on the mortgagee" haeri shahbagh, the same) Mortgage property rent in land lord and tenant. The lease agreement follows the relationship between the parties or civil law or the rules of the relationship between land lord and tenant in 1356, 1302 or 1376. Because it was considered that the situation of the mortgage property rent reviewed to determine which of the above is subject to the laws of the above that in some case the lease is without time and creating a right for the tenant which is incompatible with the right of the mortgagee and the tenant right is in conflict with the right of the mortgagee. Land lord and tenant relations Act 1376 has provided that the date of entry into force of the Act, all rental facilities including residential and commercial rent, a business, educational facilities, etc., shall be governed by the provisions of the civil code in this law. The same law and civil law has described the prescribed there limit for parties and after the expiry of the prescribed time limit both residential and commercial tenant the relationship is severed, as I have already mentioned, the same mortgage property is less the maturity date of the debt was forbidden and is incompatible with the right of the mortgagee. Residential rent to the land lord and tenant relationship on 01.07.1376 signed Act 1362, in this case the adjustment of the lease agreement for less than the mortgage term or at maturing based on the law is not incompatible with the right of the mortgagee. The main argument in this part related to the law of land lord and tenant in 1356 and places related to the date of 27/09/1365 under normal or official document or oral were rented are subject to the Act in 1356 and features of the rent is that the property owner cannot be discharged solely because of the expiration of the lease term and only discharge property is possible where the law predicted (keshavarz, 1369, P.187). No. 620 -20/08/1376 in this regard, the Supreme Court issued a precedent decision which has been remarkable and text is as follows: In accordance with the civil law, although the mortgage property would not leave the mortgagor property was established the objective right or priority right which he can obtain his credit through the sale of mortgage property and owner transactions to the mortgage property which is incompatible with the right of the mortgagee will not be enforced including whether actual deal was incompatible with the right of the mortgagor or mortgagee. The mortgagor potentially so far in which the realization of the mortgage, the mortgagor's mortgage property captured the possession. Mortgagor's action is the fields of mortgage, sale or transfer to the goodwill store mortgage to a third party without permission of the mortgagee including possession that is incompatible with the right of the mortgagee and not effective, as a result of the fourteen Branch of the supreme court agrees with the opinion of the majority and valid votes are diagnosed the vote according to the single article of the law approved is July 1328 for judicial precedent branches of supreme court and course of similar cases should be enforced "(Rasa'iee neya, 1373, P.461).

### **Conclusions and Recommendations**

Mortgage property rent due to different opinions on the same rental judicial and legal point of view, there is a group of jurists and lawyers that renting mortgage property by the mortgagor is absolutely wrong. Others know correct renting mortgage by the mortgagor to the mortgagee without the permission is ineffective and have the right to leave him. Another set of the group know the rent for a period equal or less than maturity date of debt and for more than a mortgage that they wed to the same rental mortgagee. Some experts also believe that the same rental mortgage property by the mortgagor is absolutely correct and does not need the permission of the mortgagee, because this occupation according to the objective incidental mortgaged does not have any effect on the relations between the mortgagor and mortgagee. According to what was said this is the statutory law is almost the same. What is certain is the by signing a mortgage contract, the mortgagor still remains the owner of the same mortgage property as well as owns the benefits of the mortgage. Article 786 of the civil code obviated any question of who has ownership interests in mortgage to the mortgagor. They any branch of the same property and interests of pledge to the mortgagee is not transferred. He or she does not have the right to use or benefit from the property. The ban on the provision of mortgage leases is in conflict with the rights of the mortgagee should be accepted proven. So renting of the same mortgage property by the mortgagor does not conflict with the mortgagee's rights, because on the one hand, the object right of mortgagee is reserved and on the other hand there is lack of accuracy on the clear law. It is true that Article 793 of the civil code with the right of the mortgagee but did not specify whether the same mortgage property is incompatible with the right of the mortgagee or not? So you have to consider the rent as the main objective right of the mortgagor especially when the mortgage property of immovable property is also correct. Because the mortgagee has the objective incidental right in case of non-payment by the mortgagor can obtain his credit by selling the same mortgage property – in the hands of who ever – in this case – given the current economic situation is not sought the possibility of decreasing value and interesting of the buyers. But if the same mortgage property is of movable property must be placed separately and the mortgage rent by the mortgagor is without difficulty to the long term debt is equal or less than that, even without the permission of the mortgagee he said. But if the mortgage property rent is signed for more than maturity date of debt on the assumption it would need the permission of the mortgagee. Because the defect may reduce the value and reduce the willingness of buyers and this is harmful to the mortgagee.

The existence or non-existence of the lien mortgagee, we can say that the mortgagee's permission for the same mortgage property rent does not mean of over throwing a lien or deviating from it but it's not allowed to contribute to the mortgagor for the optimal use of the same financial interests that owns the property is also his. So if the mortgagor permit rent and mortgage, rent is correct and mortgage remains valid and is like the mortgagee announces his agreement with a third mortgagee. It is recommended that the legislator with a comprehensive legislation which observe the mortgagor's rights and dealings are recognized officially in

respect to the same mortgage property and that the mortgagee has any effect can solve the created problem and prevent the incidence of various procedures based on civil law and does not meet the needs created.

### References

1. Allameh heli Hassan bin yusuf ibn Motahhar, 1419 AH, Qavaedolahkam, C2, Qom: Nashre eslami Teachers Institute.
2. Allameh heli, Hassan bin yusuf bin Mutahhari, 1414 AH, ID Alfogaha, vol.13 Almaktabat Almortazavieh Qom press.
3. Boroujerdi Abdoh, M, 1399, civil rights, Tehran academic book store.
4. Civil code
5. Crisis, Sheikh Yusuf, 1363 AH Al hadayeg fy Ahkame l etrat e tahereh, Qom: Seminary teachers society.
6. Imam Khomeini, Seyyed Rooh – o – llah, 1366, of Tahrir, vol.2, the sixth edition, Tehran: Payam Publication.
7. Imami, Hassan, 1390, civil rights, vol.1, Tehran, Islamic publications
8. Imami, Seyyed Hassan, 1364, civil right, vol.2, tenth edition, Tehran, Islamic book store.
9. Island, Abdul Rahman, in 1414 AH, Alfegh Alalmazaheb ol arba'a, C3, Beirut Darolfekr Publication.
10. Keshavarz, Bahman, 1369 good will and the right of business and trade in Iranian law Islamic Jurisprudence, the publisher of the universe.
11. Langroodi Ja'fari, MJ 1343, the supreme council of recorded votes, vol.1, Avicenna Publication.
12. Langroodi Ja'fari, MJ, 1370, Mortgages and peace, vol.2, Tehran: Ganj-e-danesh publication.
13. Martyr Sani, 1411 AH, Aldemeshgyeh, C4, Beirut: Press Daral ahya Altrataraby.
14. Mohaggeh heli najamaddin Ja'far ibn Hassan, 1415 BC, Sharayeol eslam, vol.1 and 2, Tehran: Esteghlal Publication.
15. Najafi, Mohammad al – bagir, 1394 AH Javaherol Kalam fi Sharay of islam, Tehran: the Ismailis publication.
16. Rasa'ie neya, N., 1373, the General Board of the Supreme Court precedents set of ideas from 1357 to 1375.
17. Sadeghi goldar, A., 1365, the paper on mortgage transactions is civil law and the rules of registration, entitle Quarterly No.8.
18. Sanhori, Abdorrazzagh Ahmad, 1993, Masaderolhag fylfegh al, second edition, published in Arabic in Beirut.
19. Savad Koochi, fathollah, 1377, doctoral thesis of comparative judicial mortgage.
20. Shahbagh Haeri, SA, 1376, as the civil code, vol.6, Tehran Ganj-e-danesh Publication.
21. Shahid Sany, 1404 AH, masalekolagham, Priniting, Qom: Institute of Islamic studies.
22. Sheikh Tusi Muhammad-ebn- el Hassan 1400 AH, Alnahah per single alfegh and Alfatavi, Printing, Beirut; Daralkta.
23. The first Martyr, 1414 AH, Aldrus sharia on Alamamyeh, Qom: Nashre eslami Institute of Teachers of Qom.
24. The land lord and tenant relations