

(1918) 06 PRI CK 0007

In the Privy Council

Case No : Privy Council Appeal No. 47 of 1917

Gaurishankar Balmukund

APPELLANT

Vs

Chinnumiya and others

RESPONDENT

Date of Decision : 13-06-1918

Acts Referred:

Citation : (1918) AIR(PC) 168

Hon'ble Judges : Bart, Walter Phillimore, Ameer Ali, John Edge, Lord Shaw, JJ.

Advocate : E. Dalgado, J.M. Parikh, DeGruyther, for the Appearing Parties.

Judgement

Lord Shaw

By section 325 A of the Code of Civil Procedure (Act XIV of 1882) it is provided that :-

"So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money."

In the present case the two salient facts are simply these:

That in 1891 the Collector of the district came under the Act into possession of the property in question; and that, secondly, while he was still in possession of that property, a mortgage upon it was granted on the 22nd July, 1892, by the judgment-debtor. It is now sought to make that mortgage operative in the appellant's favour by reason of this : that the construction, it is alleged, of section 325-A is not to be read in the complete and operative sense natural to the words that is to say, of incompetency to mortgage such property, but must be read with an implied limitation. The limitation suggested is that there still

remained in the judgment-debtor a power to mortgage the property so as to become operative over any residue that might arise to the latter after the Collector's regime had ended. It is the fact that the Collector's regime has now ended, but it is also the fact that, pending his regime, namely, on the 22nd July, 1892, the mortgage which is now founded upon was granted.

Their Lordships have been referred to authority upon this question. That which is founded on by the appellant particularly is the case of *Magniram Vithuram v. Bakubai* 1912 36 Bom 510 = 16 I.C. 570 = 14 Bom L. R. 598. Their Lordships are of opinion that that case was erroneously decided. Upon the contrary, the case of *Murray v. Marat Singh*, 1907 3 N. L. R. 171, referred to in the judgment under appeal, and the case which has been decided, recently by the Full Bench of the Central Provinces in *Salu Bai v. Bajat Khan*, 1917 13 N. L. R. 130 = 42 I.C. 200 (F.B.), are in the opinion of the Board proper decisions and sound in law.

In short, the solo point in this appeal is whether a declaration by statute that a judgment-debtor shall be incompetent to mortgage his property is or is not to be read in the exact and plain sense which the words imply. It is not necessary to go into reasons for the statute, but if reasons were to be implied, it is manifest that a confusion of title of a somewhat extraordinary kind would arise if it was held that there was a competency on the one hand to mortgage the residuary interest, so to speak, of the judgment-debtor by him, leaving, on the other, uncontrolled and unimpaired during the same time, all those acts of administration by a Collector, which it is admitted in argument would be perfectly competent. The confusion emerging from such a situation is not hard to figure. Their Lordships content themselves with holding that the judgments of the Courts below on this point are right, and they will humbly advise His Majesty that the appeal should be disallowed. No other point was taken upon the appeal. The respondents not having appeared, there will be no order as to costs.