

PRIVY COUNCIL.

GAURISHANKAR BALMUKUND

v.

CHINNUMIYA.

P. C.*
1918

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[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.]

Civil Procedure Code (Act XIV of 1882), s. 325A—Disability of judgment-debtor to mortgage the property attached in execution of decree whilst under management of the Collector—Proper interpretation of section is to give it the exact and plain sense of the words used—No implied limitation can be read into it.

The incompetency imposed on a judgment-debtor by s. 325 of the Civil Procedure Code, 1882, to mortgage the property attached in execution of a decree whilst it is in the possession and under the management of the Collector, is, on the proper interpretation of the section in the exact and plain sense which the words imply, absolute, and no implied limitation can be read into it.

Where, therefore, a judgment-debtor executed a mortgage of such property during the period of the Collector's management, the mortgage is void, notwithstanding it might have been intended only to be effective over any residue that might belong to the judgment-debtor after the management of the Collector came to an end.

Murray v. Murat Singh (1), and *Salu Bai v. Rajat Khan* (2) upheld.

Magniram Vithuram Marwadi v. Bakubai (3) dissented from.

APPEAL 47 of 1917 from a judgment and decree (26th April 1913) of the Judicial Commissioner of the Central Provinces, which partly reversed, and partly affirmed, a judgment and decree (22nd December 1911) of the Court of the District Judge of Amraoti.

The plaintiff was the appellant to His Majesty in Council.

* Present : LORD SHAW, SIR JOHN EDGE, MR. AMEER ALI AND SIR WALTER PHILLIMORE, BART.

(1) (1907) 3 Nagpur L. R. 171. (2) (1917) 13 Nagpur L. R. 130.

(3) (1912) I. L. R. 36 Bom. 510.

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The only question for determination on this appeal was whether on the construction of section 325A of the Code of Civil Procedure, 1882, a mortgage made by the judgment-debtor of property during the time it was under the management of the Collector was void, though it was not intended to be effective as a mortgage until the Collector's management had come to an end.

The property (an agricultural estate in Berar) in dispute in the suit out of which the present appeal arose, formerly belonged to one Sardar Khan who became involved in debt, and in order to make an adjustment of them with his creditors, executed on 10th March 1886 in favour of a firm Devidas Balmukund a zuripeshgi lease for Rs. 8,000. Of this amount Sardar Khan only received Rs. 300, the remainder Rs. 7,700 being retained by the lessee for payment to the creditors. The term of the lease was for 11 years.

In 1889 two suits, 464 and 920 of that year, were brought against Sardar Khan, the former by Balmukund his lessee, and the latter by another creditor. In those suits decrees were made in execution of which Sardar Khan's property was attached and, in December 1891, came under the management of the Collector. About this time Sardar Khan died and his estate devolved upon his nephew Chinnumiya, the first defendant in the present suit. The estate, however, remained under the Collector's management under the decrees until some date in 1897; and during this period Chinnumiya remained subject to the incompetency to deal with the attached property, which was imposed on him by section 325A of the Code of Civil Procedure, 1882, as applied to Berar.

Chinnumiya, however, on 10th March 1892, executed a usufructuary mortgage in favour of one Bhagatram for Rs. 500 repayable in 10 years with interest at 2 per

cent. per month, and made expressly subject to the zuripeshgi lease of 1886; and on 22nd July 1892 he also executed the deed of usufructuary mortgage in favour of Balmukund for a consideration of Rs. 4,500, which is sought to be enforced in the present suit. Both these deeds mortgaged some of the property then in the hands of the Collector.

In 1899* Bhagatram sued Chinnumiya and one Chaganlal Asaram on the mortgage of 10th March 1892 and obtained a decree and, in September 1901, in execution of the decree obtained possession of the property mortgaged. Subsequently, on 16th June 1902, Chinnumiya sold some of the property to Chaganlal Asaram, who on 20th June 1904 settled with the heirs of Bhagatram who was then dead. He satisfied the mortgage of 10th March 1892 and all claims under it by a payment of Rs. 1,155-5, and on the same date obtained possession of the mortgaged property.

The present suit was brought on 31st March 1909 to enforce the mortgage of 22nd July 1892. The plaintiff, now the sole owner of the mortgagee's firm, claimed Rs. 41,024-4 due thereon, and prayed for a foreclosure decree against the mortgaged property. He made defendants Chinnumiya, Chaganlal Asaram as vendee of the mortgagor and so having the equity of redemption, and others now immaterial as the question for decision lay on the contest between the plaintiff and Chaganlal Asaram the second defendant, who pleaded that the mortgage was void under section 325A of the Code of Civil Procedure, 1882.

The District Judge relied on *Murray v. Murat Singh* (1) and held that the mortgage was absolutely void as to all the attached property.

On appeal by the plaintiff to the Court of the Judicial Commissioner (J. K. BATTEN and H. J.

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STANYON, Additional Judicial Commissioners). the only material ground of appeal was that the case relied on was wrongly decided. As to that point the Court said "we had the dictum in *Jhabulal v. Rampershad* (1) pressed upon us as a correct interpretation of the law. That case was considered and dissented from by one of us in *Murray v. Murat Singh* (2), and, as at present advised, we see no reason to differ from the later ruling. This objection therefore fails. It was not very seriously pressed in this Court, but only raised in anticipation of this case going before a higher tribunal."

On this point the Appellate Court, therefore, affirmed the decision of the District Judge.

On this appeal, which was heard *ex parte*,

De Gruyther, K. C., and *J. M. Parikh*, for the appellant, contended that section 325A of the Civil Procedure Code, 1882, afforded no defence as regarded the residue of the property returned to the judgment-debtor on the termination of the execution proceedings. It only avoids alienations as against the Collector or those claiming under him. Reference was made to *Magniram Vithuram Marwadi v. Bakubai* (3) as being in accordance with that view. It was submitted that the contrary view taken in the Central Provinces in *Murray v. Murat Singh* (2), in the present case, and in *Salu Bai v. Rajat Khan* (4) was erroneous.

The judgment of their Lordships was delivered by
 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

(1) 4 C. P. L. R. 156.

(3) (1912) I. L. R. 36 Bom. 510.

(2) (1907) 3 Nagpur L. R. 171.

(4) (1917) 13 Nagpur L. R. 130.

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powers or duties conferred or imposed on him by sections 323 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."

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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 325A 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 régime had ended. It is the fact that the Collector's régime has now ended, but it is also the fact that, pending his régime, 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 Marwadi v. Bakubai* (1). Their Lordships are of opinion that that case was erroneously decided. Upon the contrary, the case of *Murray v. Murat Singh* (2) referred to in the judgment under appeal, and the case which has been decided recently by the Full

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Bench of the Central Provinces in *Salu Bai v. Rajat Khan* (1) are, in the opinion of the Board, proper decisions and sound in law.

In short, the sole 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.

J. V. W.

Appeal dismissed.

Solicitor for the appellant: *Edward Dalgudo.*

(1) (1917) 13 Nagpur L. R. 130.