

**Gaurishankar Balmukund** - - - - *Appellant*  
*v.*  
**Chinnumiya and Others** - - - - *Respondents.*

FROM

**THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 13TH JUNE, 1918.

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*Present at the Hearing:*

LORD SHAW.  
SIR JOHN EDGE.  
MR. AMEER ALI.  
SIR WALTER PHILLIMORE, Bart.

[*Delivered by* LORD SHAW.]

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BY section 325 A of the Code of Civil Procedure (Act 14 of 1882) it is provided that:—

“So long as the collector can exercise or perform in respect of the judgment debtor's immovable 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.”

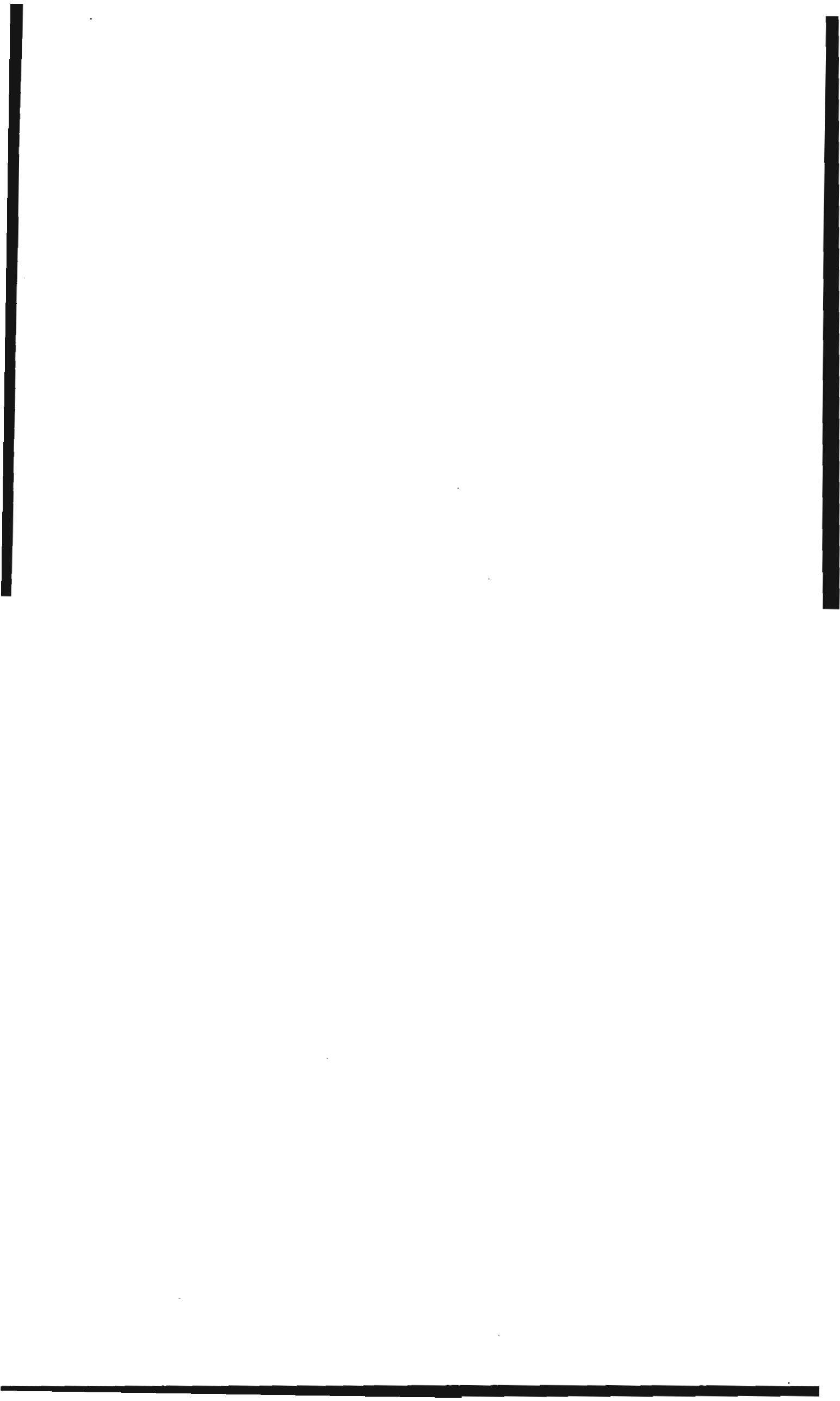
In the present case the two salient facts are simply these: That in 1891 the collector of the district came under the Act into possession of the property in question; and that secondly, while he was still in possession of that property, a mortgage upon it was granted on the 22nd July, 1892, by the judgment 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 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. Bakubaimard Rakhma Lohar and others* (36, Bomb., 510). Their Lordships are of opinion that that case was erroneously decided. Upon the contrary, the case of *Murray v. Muratsingh* (3 Nagpur Law Reports, p. 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 13 Nagpur Law Reports, p. 130, 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

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In the Privy Council.

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GAURISHANKAR BALMUKUND

vs.

CHINNUMIYA AND OTHERS.

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DELIVERED BY

LORD SHAW.

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