

**Narayan Ganesh Ghatate, since deceased (now
represented by Madhorao)** - - - *Appellant*

Baliram and Another - - - *Respondents.*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 9TH MAY, 1918.

Present at the Hearing:

LORD SUMNER.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR WALTER PHILLIMORE, BART.

[*Delivered by* LORD SUMNER.]

This is an appeal against a judgment of the Court of the Judicial Commissioner of the Central Provinces, which affirmed an order of the District Judge made in execution proceedings on a foreclosure decree. The point has been very clearly argued, but their Lordships do not think it necessary to take time to consider the matter further.

The history of the case, which is rather complicated, is set out chronologically and very conveniently in the judgment appealed against. The point for decision is one dependent on the construction of Section 45 of the Central Provinces Tenancy Act of 1898, Chapter IV, "Of Occupancy-Tenants," and particularly sub-section 6 of that section.

The substance of the decision of the Court below was that the Conciliation Award of February 1905 was, for the purposes of this case, a fresh origin of the rights between the parties, and that, although it came into existence in consequence of the mortgages of 1881 and 1884, and transactions thereunder, it was, both for the purpose of enforcement and for the purpose of the application of this particular section, the transaction between the parties which was the foundation of their rights. Accordingly they concluded that the transfer made or decreed by the proceedings under review could not be said to be in

pursuance of the older mortgages of 1881 and 1884 which, as documents expressly providing for the transfer of the right to occupy *Sir* land as a proprietor within sub-section 6, would have been saved from the operation of sub-section 1, but that in truth sub-section 1 of Section 45 must be applied, and that therefore, in spite of the terms of the award, which in virtue of the agreement of reference became the agreement of the parties, the mortgagor could not so transfer his right to occupy *Sir* land as to divest himself of his right as an occupancy tenant under the Act.

The reasons, their Lordships think, are sufficiently and fully given in the judgment appealed against and do not require repetition. It is a question of construction, not incapable of being argued and even decided either way, but their Lordships see no reason to differ from the decision appealed against, and will humbly advise His Majesty that the appeal be dismissed, but without costs, as the respondents have not appeared.



In the Privy Council.

NARAYAN GANESH GHATATE, SINCE
DECEASED (NOW REPRESENTED
BY MADHORAO)

v.

BALIRAM AND ANOTHER.

DELIVERED BY LORD SUMNER.