

- 1888  
 KOOB LALL  
 CHOWDHRY  
 v.  
 NITYANUND  
 SINGH.
- held to have acquired only a money decree entitling him to recover the amount of the decree without any hypothecation of any particular property.
- Under such circumstances plaintiff, as purchaser of the property held by Imdad Ali, is entitled to recover the money paid to stay the resale of this property in execution of the decree held by Kooob Lall since the rights of the debtor have passed to him, and Kooob Lall can enforce no lien on it.
- We dismiss the appeal with costs. *Appeal dismissed.*

*Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.*

1888  
 March 16.

TARA PRASAD MYTTEE AND ANOTHER (DEFENDANTS) v. NUND  
 KISHORE GIRI AND OTHERS (PLAINTIFFS).\*

*Execution of Decree—Sale of immovable property—Confirmation of sale—  
 Sale certificate—Evidence.*

The order confirming a sale of immovable property in execution of a decree is sufficient to pass the title in the property to the purchaser, and its production is sufficient evidence of the purchaser's title. The production of the sale certificate is not essential.

*Doorga Narain Sen v. Baney Madhub Mozoomdar* (1) followed.

In this case the judgment appealed from was as follows:—

“The plaintiffs have brought this suit to recover possession of the property in dispute on the establishment of title as auction-purchasers at a sale in execution of a Civil Court's decree. It appears that the defendants have purchased the same property in execution of a decree for a share of the rent. The plaintiffs' purchase is prior to that of the defendants'. I think the sale *factum* and the proceedings confirming the sale in the name of the plaintiffs should be received as evidence in the case. The evidence and the circumstances of the case lead me to believe that the property in dispute is covered by the plaintiffs' auction-purchase, and the plaintiffs were in possession of the disputed property, and they paid rents. The receipts filed in the case substantiate their allegation. The appeal will be dismissed.”

\* Appeal from Appellate Decree No. 444 of 1882, against the decree of Baboo Kedar Nath Mozoomdar, Sub-Judge of Midnapore, dated the 31st December 1881, affirming the decree of Baboo Jodigowar Gupto, Officiating Munsif of Nermal, dated 24th March 1881.

(1) I. L. R., 7 Cal., 199.

The defendants appealed to the High Court.

Baboo *Omesh Chunder Banerjee* for the appellants.

Baboo *Bhowany Churn Dutt* for the respondents.

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was delivered by

PRINSEP, J.—The main objection taken before us in this case is that the plaintiffs' suit should be dismissed, because they have failed to produce the sale certificate on which they acquired their title. It has nowhere been denied, nor is it disputed before us, that the plaintiffs purchased in an execution sale the right, title and interest of the defendants, judgment-debtors, in the present case. We, therefore, think that this objection is untenable, and in this respect we agree with the judgment of a Division Bench of this Court in the case of *Doorga Narain Sen v. Baney Madhub Mozoomdar* (1), in which it was held that "the order affirming the sale would be sufficient to pass a title to the purchaser; and the certificate which might afterwards be obtained by him would be merely evidence that the property so passed."

We therefore dismiss the appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Cunningham and Mr. Justice Maclean.*

KALI KRISHNA TAGORE (PLAINTIFF) v. FUZLE ALI CHOWDHRY  
AND OTHERS (DEFENDANTS).\*

1883.  
*April 10.*

*Landlord and Tenant—Forfeiture—Waiver by acceptance of Rent.*

A lease provided that every four years a measurement should be made either by the lessor or by the lessees, and additional rent paid for accretion to the land leased. It then provided for failure on the lessee's part to execute a kabuliat for the excess lands in the following terms: "If at the fixed time stated above we do not take an amin and cause measurement to be made you will appoint an amin and cause the entire land of the said chur to be measured, and no objection on the ground of our recording or not, our presence on such measurement chitta shall be entertained, and we will duly file a separate dowl kabuliat for the excess rent that will be found

\* Appeal from Original Decree No. 228 of 1881, against the decree of Baboo Raj Chundra Sanyal, Officiating Second Sub-Judge of Backergunge, dated the 10th June 1881.

(1) I. L. R., 7 Calc., 199.

1883

TARA  
PRASAD  
MYTEE  
v.  
NUND  
KISHORE  
GIRI.