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QUEEN-  
EMPRESS  
v.  
MAKHAN.

AIKMAN, J.—The prisoner Makhan appeals against his conviction by the learned Sessions Judge of Meerut for an offence punishable under s. 411, Indian Penal Code. It appears from the record that on the 5th of September 1892, the prisoner's house was searched by the police in the presence of witnesses and certain property found to have been stolen was found in his possession. Amongst that stolen property was a shawl. For the dishonest possession of that shawl the prisoner was convicted by a Magistrate of the first class on the 7th of November 1892, and sentenced to nine months' rigorous imprisonment under the provisions of s. 411, Indian Penal Code, which imprisonment he is now undergoing. The conviction against which he now appeals is in respect of the dishonest possession of certain other stolen property belonging to a different complainant which was found in his possession at the same time as the shawl. In my opinion this second conviction cannot be sustained. The mere fact that property stolen on two different occasions from different persons is found at one and the same time in the possession of an accused person is not of itself sufficient to prove that that accused person has committed two different offences under s. 411, Indian Penal Code, as it is quite possible that the property, though stolen on two different occasions, may have been received from the same thief at one time, *Vide Isham Muchi v. The Queen-Empress* (1). I am therefore constrained to allow this appeal. I set aside the conviction of and the sentence passed on Makhan by the Sessions Judge on the 22nd of February 1893.

## REVISIONAL CIVIL.

*Before Mr. Justice Aikman.*

AJUDHIA PRASAD AND ANOTHER (APPLICANTS) v. NAND LAL SINGH AND OTHERS (OPPOSITE PARTIES).\*

*Civil Procedure Code, s. 311—Execution of decree—“Decree-holder.”*

The term “decree-holder” in s. 311 of the Code of Civil Procedure is not limited to the decree-holder who instituted the execution-proceedings, but may include a

\* Application No. 54 of 1892, under s. 622 of the Code of Civil Procedure, for revision of an order of H. F. Evans, Esq., District Judge of Sháhjáhpur, dated the 13th July 1892.

decree-holder who is entitled to come in and share in the proceeds under s. 295 of the Code, *Lakshmi v. Kuttanni* (1) approved.

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ASUDHA  
PRASAD  
v.  
NAND LAL  
SINGH.

The facts of this case sufficiently appear from the judgment of Aikman, J.

Pandit *Sundar Lal*, for the applicants.

Mr. *Scott Howell*, for the opposite parties.

AIKMAN, J.—This is an application under s. 622 of the Code of Civil Procedure for revision of an appellate order of the District Judge of Sháhjahánpur from which no second appeal lies to this Court. The following are the facts of the case. The applicants held three decrees against the property of certain judgment-debtors. One Dharam Das held a decree against the same property, on which decree he took out execution. The applicants have applied for execution of their decrees, praying that under s. 295 of the Code the sale-proceeds of the property, after satisfying the decree of Dharam Das, which was passed on a prior incumbrance, might be given to them. Their application was granted. The property, which is said to be worth over 1,000 rupees, was sold for less than 300 rupees. The sale-price was, however, sufficient to nearly satisfy the decree of Dharam Das, who also had other security for his money. He was not therefore interested in setting aside the sale. The applicants, under the provisions of s. 311 of the Code, moved the Court to set aside the sale on the ground of material irregularity. If, as is alleged, there was material irregularity which resulted in the property fetching so low a price that there was nothing over for the applicants after satisfaction of Dharam Das's claim, it is quite clear that the applicants did suffer substantial injury by reason of this irregularity. The Mansif granted the application and set aside the sale. From this order the auction-purchaser appealed to the District Judge. The District Judge being of opinion that the words "the decree-holder" in s. 311 applied solely to the decree-holder at whose instance the execution-proceedings were instituted, held that the applicants were not entitled to put in an application under s. 311 of the Code of Civil Procedure, and set aside the

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Munsif's order as having been passed without jurisdiction. The learned District Judge in support of this view relied on a ruling of this Court, *Mun Kuar v. Tara Singh*. (1). The facts of that case were quite different from those in the present case. In that case the application was made not by a decree-holder, but by a judgment-debtor, to set aside the sale of the property of another judgment-debtor, and the Court held, following the clear words of the section, that only a judgment-debtor whose property has been sold under Chapter XIX, can apply to set aside the sale, and as the applicants there were judgment-debtors whose property had not been sold, the Court held that they were not entitled to apply under s. 311 of the Code of Civil Procedure. The learned District Judge speaks of the applicants in the case he relied on as not having previously applied under s. 295. From this expression it is clear he has misunderstood the facts of the case. The applicants in that case being judgment-debtors could not apply under s. 295 which refers only to applications by decree-holders. It has been held by the Madras High Court in the case of *Lakshmi v. Kuttunni* (2), that the words "decree-holders" in s. 311, indicate any decree-holder who is entitled to share in the proceeds of a sale under s. 295, and the view of the Madras High Court is apparently endorsed by the Bombay High Court in the case of *Sorabji Eddulji Warden v. Govind Ramji* (3). I entirely concur in the view taken by the Madras High Court. I can find nothing in the wording of the section to limit the meaning of the words the "decree-holder," in s. 311 to the decree-holders who instituted the execution-proceedings. In my opinion these words are quite wide enough to cover the case of a decree-holder who is entitled to come in and share in the proceeds of the sale under s. 295. It is but just that this should be so, for whereas the decree-holder who instituted the proceedings might, as in the present case, sustain no substantial injury from an irregularity in the sale-proceedings, other decree-holders entitled to share in the proceeds might be most seriously prejudiced, and it would be inequitable to deny them the power of obtaining relief. For the above

(1) Weekly Notes, 1885, p. 124.

(2) I. L. R., 10 Mad., 57.

(3) I. L. R., 16 Bom., 91.

reasons, I am of opinion, that the Munsif had jurisdiction to entertain the application of the applicants. I set aside the order of the District Judge, and direct him to restore the case to his file and dispose of the appeal according to law. The costs of this Court will be the costs in the cause.

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*Cause remanded.*


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APPELLATE CIVIL.

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May 2.*Before Mr. Justice Tyrrell and Mr. Justice Blair.*

MUHAMMAD AZIZ-UD-DIN AHMAD KHAN (DEPENDANT) c. THE LEGAL  
REMEMBRANCER TO GOVERNMENT, N.-W. P. AND OGDH (PLAINIFF).\*

*Muhammadan law—Sunni—Waqf—Relinquishment of possession on the part of  
the waqif essential.*

According to the law of *Sunni* Muhammadans it is essential to the validity of a *waqf* that the *waqif* should actually divest himself of possession of the *waqf* property.

Hence where a *Sunni* Muhammadan executed and registered what purported to be a deed of *waqf*, but never acted upon it and retained possession until his death of the property dealt with by the deed, which property subsequently passed to his two sons by inheritance.

*Held* that no valid *waqf* of the property mentioned in the said deed was constituted.

The facts of this case are sufficiently stated in the judgment of the Court.

Pandit *Saukur Lal* and Maulvi *Ghulam Muftaba*, for the appellant.

The Government Pleader, Munshi *Ram Prasad*, for the respondent.

TYRRELL and BLAIR, JJ.—The appellant was defendant in a suit brought under s. 539 of the Code of Civil Procedure in respect of an alleged endowment made in June 1882, by the defendant's father. The latter died on the 27th of February 1886. The plaintiff's case was that under a registered deed made on the 1st of June 1882, the appellant's father set apart the income of his village Para up to the limit of ninety rupees a month after the payment of the

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\* First appeal No. 8 of 1891 from a decree of H. F. Evans, Esq., District Judge of Moradabad, dated the 29th September 1890.