

1896

KALMAN  
BENGH  
v.  
RAM CHARAN.

by which it is supported. The object of the appellant here, as I understand it, is to have the application for execution rejected because it was not accompanied by a certificate. Although I do not agree with the ruling of the lower Court, as noted above, I still am of opinion that there are no grounds for rejecting the application for execution. The respondent has a *locus penitentie* to put in the certificate before the Court proceeds to order execution, and if that be done, the only objection to the execution disappears.

I therefore dismiss this appeal, but I make no order as to costs.

*Appeal dismissed.*

*Before Mr. Justice Banerji.*

1895  
July 24th.

GHULAM SHABBIR (JUDGMENT-DEBTOR) v. DWARKA PRASAD AND OTHERS  
(DECREE-HOLDERS).

*Civil Procedure Code, sections 244, 319—Execution of decree—Purchase by decree-holder at auction sale—Order for delivery of possession—Appeal.*

Certain holders of a decree for sale upon a mortgage having brought the property ordered to be sold to sale purchased it themselves. Having taken out certificates of sale they applied to be put in possession of the property purchased by them, and obtained an order for possession. On appeal by the judgment-debtors against this order it was *held* that no appeal lay, the order objected to being one under section 319 and not under section 244 of the Code of Civil Procedure. *Sabhajit v. Sri Gopal* (1) referred to.

THE facts of this case sufficiently appear from the judgment of Banerji, J.

Munshi *Madho Prasad* and Maulvi *Ghulam Mujtaba* for the appellant.

Pandit *Baldeo Ram* for the respondents.

BANERJI, J.—A preliminary objection has been taken to the hearing of this appeal on the ground that no appeal lies. It appears that the respondents obtained a decree for sale against the appellant, and in execution of that decree purchased the mortgaged property. They have obtained certificates of sale and have applied under section 319 of the Code of Civil Procedure for delivery of possession. The Court below has ordered possession to be delivered,

\* First appeal No. 149 of 1894, from a decree of Pandit Bansidhar, Subordinate Judge of Meerut, dated the 12th May 1894.

and it is in respect of that order that this appeal has been brought. Section 588 of the Code of Civil Procedure does not allow an appeal from an order under section 319. Mr. *Madho Prasad* has contended that the order made by the Court below must be regarded as a decree under section 244, the parties being the decree-holders and the judgment-debtor. This contention is in my opinion unsound. The decree-holders, as such, were not entitled to obtain delivery of possession. It was only by reason of their having purchased the property of the judgment-debtor at auction that they could apply for possession, and it was only in their character as auction-purchasers that they did make their application for possession. Their status as auction-purchasers was distinct from their character as decree-holders and—as observed in the judgment of the Full Bench in *Sabhajit v. Sri Gopal* (1)—it was a pure accident that the decree-holders were also auction-purchasers. As I have said above, as decree-holders, the respondents could not claim possession, and therefore their application for delivery of possession was not, and could not be, one under section 244. It purported to have been made under section 319, and that was the only section under which it could have been made. As no appeal lies from an order under section 319, the preliminary objection must prevail and this appeal must be, and it is, dismissed with costs.

*Appeal dismissed.*

*Before Know, Offg. Chief Justice and Mr. Justice Aikman.*

JAGAN NATH (JUDGMENT-DEBTOR) v. MAKUND PRASAD (DECREE-HOLDER),  
AND BALDEO PRASAD (AUCTION PURCHASER).\*

*Civil Procedure Code, section 311—Execution of decree—Application to set aside sale in execution—What applicant must prove.*

It is not sufficient for an applicant under section 311 of the Code of Civil Procedure to show that there has been material irregularity in publishing or conducting a sale, and that a price below the market value has been realised; but he must go on to connect the one with the other, that is, the loss with the irregularity as effect and cause by means of direct evidence. *Tassaduk Rasool Khan v. Ahmad Husain* (2) referred to.

\* First Appeal, No. 36 of 1895, from an order of Syed Muhammad Jafar Husain Khan, Subordinate Judge of Barilly, dated the 5th January 1895.

(1) I. L. R., 17 All., 222.

(2) L. R. 20, I. A. 176.

1895.

GHULAM  
SHABIB  
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DWARNA  
PRASAD

1895.

July 11.