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MUHAMMAD  
HUSEN ALI  
KHAN  
DINARAM  
SINGH.

could not be permitted to throw the whole burden of the mortgage-debt on the other moiety of the mortgaged property.

In *Ballam Das v. Amar Raj* (1) the mortgagee obtained two decrees on separate bonds for the sale of the same property and purchased the property in execution of one of the decrees. His purchase was subject to liability for the amount of the decree. That case has therefore no bearing on the present question.

The other two cases cited by Mr. *Reid* are distinguishable, as in those cases the equity of redemption only was purchased by the mortgagee.

I am of opinion that the Court below has rightly held that the respondent decree-holder was entitled to take out execution for the balance which remained due to him after giving credit for the amount of the proceeds of the sale at which he had purchased a part of the mortgaged property, and I dismiss this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Burkitt.*

KALIAN SINGH (JUDGMENT-DEBTOR) v. RAM CHARAN (DECREE-HOLDER).  
Act No. VII of 1889 (Succession Certificate Act), section 4(b)—Execution of  
decree—Application for execution made before production of certificate.

In cases where a certificate of succession is required before execution of a decree can be taken out, all that is necessary is that the certificate should be produced before an order for execution can be made. It is not necessary that the certificate should be produced along with the application for execution. *Brojo Nath Surma v. Iswar Chandra Dutt* (2) and *Mangal Khan v. Salim-ullah* (3) referred to.

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

Mr. *Roshan Lal* for the appellant.

Maulvi *Ghulam Mujtaba* for the respondent.

BURKITT, J.—This is an appeal in an execution of decree case. In the memorandum of appeal three grounds were set forth. Of those three grounds the second and third were abandoned at the hearing; the first only was pressed. That objection is to the effect

\* First Appeal No. 177 of 1894, from a decree of Maulvi Muhammed Unwar Hussain Khan. Subordinate Judge of Fatehgarh, dated 30th June 1894.

(1) I. L. R., 12 All., 537.

(2) I. L. R., 19 Calc., 482.

(3) Weekly Notes, 1893, p. 197.

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that the lower Court had no power to proceed with the execution of the decree until a certificate under section 4 (b) of Act No. VII of 1889 had been produced. On a perusal of the record it appears that the respondent decree-holder did apply for execution of the decree without putting in a certificate, and that he stoutly contended that for certain reasons given by him, which are now admitted to be unsound, he was not bound to take out a certificate. It also appears that the respondent decree-holder has since then taken the proper steps to obtain a certificate, and I am informed that he now holds the necessary certificate. The Court below, wrongly, I think, held that, as the respondent had now taken all steps necessary to obtain a certificate, execution could proceed without the production of that certificate. In that matter I have no doubt that the Court below was wrong, seeing that the words of clause (b) of section 4 of Act No. VII of 1889 expressly prohibit an execution Court from proceeding to execute a decree where a certificate is required unless such certificate be produced. But here, although the Court has been wrong in its ruling as to the non-production of the certificate, I still see no reason to interfere with the order under appeal. That order is not an order directing execution to issue, but is an order overruling the objections made by the judgment-debtor. If the Court had gone on to direct that execution should issue, notwithstanding the non-production of the certificate, this appeal must have been allowed; but, as matters now stand, the appeal is premature, as no order has as yet been made, or, at any rate, has been appealed against, by which the Court directs execution to proceed on the decree. It is still open to the respondent decree-holder, by production of the certificate, to cure the flaw which at present exists. It is not necessary that the certificate should be produced with the application for execution; it is sufficient if it be produced and tendered in Court at any time before the Court proceeds to pass an order for the execution of the decree. Such is the law laid down by the Calcutta High Court in *Brojo Nath Surma v. Isswar Chandra Dutt* (1) and by this Court in *Mangal Khan v. Salim-ullah* (2). I fully concur in the rule laid down in those cases and in the reasoning

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(1) I. L. R., 19 Cal., 482.

(2) Weekly Notes, 1893, p. 197.

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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.*

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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.

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