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the proceeds of the sale, after defraying thereout the expenses of the sale, shall be paid into Court "and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same." The words "what is found due to the plaintiff" refer to what is found due in the account or by the declaration of the Court mentioned in section 86. The order under section 89 can only be an order that the property, or a sufficient part thereof, be sold and that the proceeds of the sale be dealt with as is mentioned in section 88. There is no provision in section 88 or section 89 such as those contained in the proviso to section 87, which is the section relating to suits for foreclosure, or in section 93, which is the section relating to suits for redemption. We can only come to the conclusion that a decree for sale under section 88 of the Transfer of Property Act can only be executed as provided by that Act, that is, for the amount decreed or found in account to be due, and that the order for sale cannot, except with regard to any additional costs which may be provided for by section 94, extend in any way the liability of the judgment-debtor or his property under the decree. All that this decree-holder is entitled to under the order under section 89 is to have his decree executed for the amount decreed and the expenses of the sale and for any additional costs which may be incurred under section 94. He cannot have execution of the agreement by which time was given. As the application was one for execution of the agreement, we allow this appeal and dismiss the application with costs.

*Appeal decreed.**Before Mr. Justice Aikman.*

CHIDDO (PLAINTIFF) v. PIARI LAL AND ANOTHER (DEFENDANTS).\*

*Civil Procedure Code, section 316—Sale certificate—Title of auction purchaser who has not obtained a sale certificate—Execution of decree.*

Although the auction purchaser at a sale held in execution of a decree may not obtain a full title until a certificate has been granted, this must not

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\* Second Appeal, No. 107 of 1896, from a decree of Maulvi Muhammad Mazhar Hasain Khan, Subordinate Judge of Mainpuri, dated the 3rd December 1894, reversing a decree of Babu Achal Behari, Munsif of Etah, dated the 25th September 1894.

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be considered as necessarily destroying any lesser interest which arises by reason of general equitable principles. *Dagdu v. Pancham Sing Gangaram* (1) and *Het Ram v. Baldeo* (2) approved.

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

Babu *Badri Das*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondents.

AIKMAN, J.—This appeal arises out of a suit brought by the plaintiff for the redemption of a mortgage. The plaintiff succeeded in the Court of first instance, but on appeal the learned Subordinate Judge reversed the decree of the Munsif and dismissed plaintiff's suit. The plaintiff comes here in second appeal. It appears that, on the 27th of July 1877, Hiranman and Jauhari, the plaintiff's predecessors in title, executed a simple mortgage of a shop in favour of one Baldeo Das, the representative in title of the defendants respondents. The plaintiff's allegation was that, although the mortgage was a simple one, the mortgagors and mortgagee entered into an oral agreement whereby the mortgagee was put into possession of the property for a term of seventeen years, and it was covenanted that after the expiry of the seventeen years the property was to be restored to the mortgagors and the mortgage-debt considered to be discharged. The plaintiff alleged that the defendants, when called upon to vacate the shop after the expiry of the seventeen years, refused to deliver up possession, and hence he was obliged to sue to recover possession. The lower appellate Court has found that the plaintiff has failed to prove the allegation upon which he came into Court, and has not succeeded in showing that defendants are in the possession in virtue of the mortgage. It appears that, after the mortgage above referred to, Mathura Das and Jamna Das obtained a simple money decree against the plaintiff in this suit, in execution of which the plaintiff's equity of redemption in respect the property in dispute was brought to sale, and purchased by one Mohan. It is found that the defendants respondents are the heirs of Mohan. Consequently,

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(1) I. L. R., 17 Bom., 375.

(2) Weekly Notes, 1894, p. 54.

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as they are also the representatives of the mortgagees, they have, if the sale to Mohan was a good one, become full owners of the property. The plaintiff contends that, notwithstanding that sale of the equity of redemption, he is nevertheless entitled to maintain the present suit, because Mohan, the auction purchaser, failed to obtain from the Court a certificate of sale. Reliance is placed upon section 316 of the Code of Civil Procedure, which provides that, "so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before." It must be allowed that these words, the interpretation of which has caused considerable difficulty to the Court, lend some colour to the appellant's contention, but I am of opinion that it cannot prevail. It is not denied that the sale to Mohan was confirmed by the Court. Section 314 of the Code provides that no sale of immovable property in execution of a decree shall become absolute until it is confirmed by a Court. Moreover, the date of the certificate referred to in section 316 is not to be the date on which the certificate is drawn up, but the date upon which the sale is confirmed. It has further been held that, as it is the duty of the Court to grant a certificate, no limitation applies to an application for a sale certificate. It was held by the Privy Council that section 259 of Act No. VIII of 1859, which corresponds to section 316 of the present Code, did no more than create statutory evidence of the transfer in place of the old mode of transfer by a bill of sale. It is true that section 259 differs somewhat from section 316 of the present Code. By the former section the certificate, it is said, "shall be taken and deemed to be a valid transfer of the right, title and interest sold." But even under the present Act it has been held,—*vide Dagdu v. Pancham Sing Gangaram* (1),—that, although the auction purchaser may not obtain a full title until a certificate has been granted, this must not be considered as necessarily destroying any lesser interest which arises by reason of general equitable principles. This ruling was followed by this

(1) L. L. R., 17 Bom., 375.

Court in *Het Ram v. Baldeo* (1). As the plaintiff's equity of redemption was sold and that sale was confirmed, I hold that the mere fact of the auction purchaser not having as yet obtained a sale certificate will not entitle the plaintiff to treat the sale as a nullity, and maintain the present suit. For the above reasons I dismiss this appeal with costs.

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*Appeal dismissed.*

*Before Mr. Justice Banerji.*

NAKCHEDI RAM (PLAINTIFF) v. RAM CHARITAR RAI AND OTHERS  
 (DEFENDANTS).\*

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*Act No. IV of 1882 (Transfer of Property Act) section 68 (c)—Usufructuary mortgage—Dispossession of mortgagee by a trespasser—Suit for recovery of the mortgage money.*

The words "any other person" in the concluding portion of clause (c) of section 68 of the Transfer of Property Act mean "any other person having a title". The disturbance of the mortgagee's possession by a trespasser will not confer upon the mortgagee a right to sue the mortgagor for the mortgage money. *Gopatasami v. Arunachella* (2) followed:—

THE plaintiff appellant in this case being a usufructuary mortgagee sued his mortgagors and other defendants for the recovery of the mortgage money. The facts of the case are briefly as follows:—

The defendants Nos. 1 to 4 executed a mortgage deed in favour of the plaintiff's father on the 20th of June 1885, under which 6 bighas 10 biswas 19 dhurs of land cultivated by tenants were mortgaged. The defendant No. 5 was the vendee of the property of the defendant No. 1 under the document dated the 2nd of July 1889. The defendants Nos. 6 and 7, as stated by the plaintiff, alleged themselves to be the mortgagees of a portion of the mortgaged lands. The plaintiff complained that possession was not delivered to him and that he had sued several tenants, but the suits were dismissed by the Revenue Court. The plaintiff sued

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\* Second Appeal, No. 13 of 1896, from a decree of Maulvi Muhammad Ismail Khan, Additional Subordinate Judge of Gházipur, dated the 29th August 1895, confirming a decree of Maulvi Muhammad Abdul Ghafur, Munsif of Muhammadabad, dated the 29th May 1895.

(1) Weekly Notes, 1894, p. 54.

(2) I. L. R., 15 Mad., 304.