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"related by descent from a common ancestor." Having regard to these considerations, I have, as I have said, some doubt as to the correctness of the unreported decision, but I do not feel myself justified in dissenting from that case and from the judgment which has just been delivered, and I therefore, though with some hesitation, agree with the order which has just been passed.

Decree modified.

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August 3.

Before Mr. Justice Aikman.

DURGA (DEFENDANT) v. BHAGWAN DAS AND ANOTHER (PLAINTIFFS).^{*}
Civil Procedure Code, section 317—Execution of decree—Sale in execution—Suit against certified purchaser for recovery of part of the property purchased.

Kishan Lal and Tokha Mal were joint mortgagees. After their death Durga, the adopted son of Kishan Lal, and Todar, the son of Tokha Mal, brought a suit upon the mortgage, and obtained a decree for sale. After this decree had been obtained it was settled, by a suit ending in a consent decree, that one Musammat Pano was entitled along with Durga to a certain portion of the property of Kishan Lal. Kishan Lal and Todar brought their ~~decree~~ into execution, and caused the mortgaged property to be sold, and purchased it themselves. Thereupon the representatives of Musammat Pano sued Durga to recover that portion of the property which they alleged ought to have come to Pano.

Held that the suit would not lie, as being in contravention of section 317 of the Code of Civil Procedure.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu Sital Prasad Ghose, for the appellant.

Pandit Tej Bahadur Sapru, for the respondents.

AIKMAN, J.—It appears that two brothers Kishan Lal and Tokha Mal held a mortgage over a certain property. After the death of the mortgagees, Durga, the adopted son of Kishan, who is appellant here, and Todar, the son of Tokha Mal, brought a suit upon the mortgage, and got a decree on the 25th of April, 1884. Some dispute had arisen on Kishan Lal's death as to the title of Durga to his property, and a suit was brought by Kishan

^{*} Second Appeal No. 841 of 1899, from a decree of Munshi Shiva Sahai, Additional Subordinate Judge of Meerut, dated the 25th August, 1899, confirming a decree of Maulvi Muhammad Abbas Ali, Additional Munsif of Meerut, dated the 16th June, 1899.

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Lal's daughters against Durga and the widow of Kishan Lal to get possession of Kishan Lal's property. This suit ended in a decree of the 16th of February, 1885, which was based upon a compromise. By this compromise decree Musammat Pano, the predecessor in title of the plaintiffs in the present suit, was held to be entitled to one quarter of Kishan Lal's property. Durga and Todar, the decree-holders under the mortgage decree, brought the mortgaged property to sale, and purchased it themselves on the 20th of March, 1888, a certificate of sale being issued in their name. On the 18th of March, 1899, the present plaintiffs brought this suit against Durga to recover their share of the property, which he had purchased at auction on the 20th of March, 1888. The allegation in the plaint is that the purchase made by Durga was made on behalf of himself and on behalf of Musammat Pano, the mother of the plaintiffs. The defendant pleaded that with reference to the provisions of section 317 of the Code of Civil Procedure the suit was not maintainable. Other pleas were raised, which were all overruled by the Courts below. A decree was made by the Munsif in the plaintiff's favour. That decree was affirmed on appeal by the Subordinate Judge. The defendant Durga comes here in second appeal. The main contention in this appeal is that, which was also put forward in the lower Courts, namely that the suit is barred by section 317. There is no doubt that the suit is one against a certified purchaser, and is based on the allegation that the property claimed was purchased by the certified purchaser on behalf of Musammat Pano. It appears to me that it is impossible to hold that such a suit is not barred by the language of section 317. It is in my opinion immaterial that the claim is not for the whole of the property of which the defendant is the certified purchaser. He is the certified purchaser of the property claimed, and the suit is based on the allegation that the purchase was made on behalf of some other person. The provisions of section 82 of the Trusts Act, No. II of 1882, might have helped the plaintiffs had it not been for the proviso to that section which declares that nothing therein shall be deemed to affect section 317 of the Code of Civil Procedure. It was contended on behalf of the respondents that under the compromise decree they were entitled to one-half of any property

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which might be brought under the compromise decree. I cannot put any such construction upon the language of that decree. It appears that on the 30th of October, 1890, the defendant before the revenue authorities admitted the plaintiffs' right to the share now claimed, provided they paid to him the proportionate amount due to him on account of the expenditure which he had incurred in the Civil Court, but the plaintiffs declining to pay this, their application to the revenue authorities to have the property entered in their names was dismissed. The learned vakil for the respondents professes his willingness on behalf of his clients now to pay the amount which Durga then claimed; but the learned vakil for the appellant says that he has no authority to accept such an offer. The mere acknowledgment by Durga that a portion of the property which he had bought was purchased on behalf of the plaintiffs' predecessor in title would not of itself justify the plaintiffs in maintaining the present suit in the face of the language of section 317, unless that acknowledgment were accompanied by some act which would operate as a valid transfer of the property [see *Monappa v. Surappa*, (1)]. In the present case there was no such act on the part of the certified purchaser. For the reasons set forth above I am of opinion that, even if on the compromise decree the plaintiffs are entitled to recover a share of the property purchased at the execution sale of the 20th of March, 1888, which I think is very doubtful, their present suit is barred by section 317 of the Code of Civil Procedure. I allow the appeal, and, setting aside the decrees of the Courts below, dismiss the plaintiffs' suit with costs in all Courts.

Appeal decreed.

(1) (1887) I. L. R., 11 Mad., 234.