

brother Blair, following and approving of the opinion of my brother Knox in the *Delhi and London Bank, Ltd., v. Chaudhri Partab Bhaskar* (1), I expressed at length my opinion as to the true construction of section 317 of the Code of Civil Procedure. To the considered opinion I expressed in that case I still adhere. I have heard nothing in the arguments in the present case which causes me in any way to alter or modify that opinion. Whatever be the meaning of the last clause of section 317, it is admitted that it does not affect this case. I would dismiss this appeal.

AIKMAN, J.—I also am of opinion that this appeal should be dismissed. I do not propose to consider the conflicting views that have been expressed regarding the obscurely worded section 317 of the Code of Civil Procedure. I think it is sufficient for the decision of this appeal to say that it is quite clear that Ram Sahai could not have maintained a suit against the certified purchaser, Musammât Mohanian. Such a suit beyond any doubt is barred by the provisions of section 317, and if Ram Sahai could not have maintained such a suit, it appears to me clear that the plaintiffs, who derive their title from him, cannot maintain their present claim against Musammât Mohanian.

By THE COURT.—The order of the Court is that the appeal be dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Aikman.*

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GANESH PRASAD (PLAINTIFF) v. KASHI NATH TIWARI (DEFENDANT)\*  
*Civil Procedure Code, section 283—Execution of decree—Suit by purchaser of the rights of a person who had unsuccessfully filed an objection under section 278.*

A person who had filed an objection under section 278 of the Code of Civil Procedure to the sale of certain immovable property in execution of a decree, after his objection had been disallowed, sold his interest in the property. *Hold* that there was nothing to prevent the purchaser of such interest from bringing a suit under section 283 of the Code. The right conferred by section 283 is not a personal right confined to the original claimant.

In this case Kashî Nath obtained a simple money decree against Achhaibar Rai, and in execution thereof attached a

\* Second Appeal No. 353 of 1902, from a decree of J. Sanders, Esq., District Judge of Benares, dated the 27th of January 1902, confirming a decree of Babu Sris Chander Bose, Munsif of Benares, dated the 22nd of May 1901.

(1) (1898) I. L. R., 21 All., 29.

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certain house as being the property of the judgment-debtor. One Gulab Das preferred an objection under section 278 of the Code of Civil Procedure alleging that the house was his property. On the 15th of September 1900 this objection was dismissed. On the 24th of October 1900 Gulab Das sold his rights and interests in the house to Ganesh Prasad. On the 31st of October 1900 the house was put up to auction and was purchased by the decree-holder Kashi Nath. On the 9th of April 1901 Ganesh Prasad filed a suit asking for a declaration that the house was his, and for possession thereof. The Court of first instance, Munsif of Benares, dismissed the suit, and the plaintiff's appeal to the District Judge was also dismissed, the District Judge being of opinion that the sale by Gulab Das to the plaintiff was a transfer to which section 52 of the Transfer of Property Act applied. The plaintiff thereupon appealed to the High Court.

Munshi *Gulzari Lal*, for the appellant.

Munshi *Gokul Prasad*, for the respondent.

AIKMAN, J.—The respondent, Kashi Nath, obtained a simple money decree against one Achhaibar Rai, in execution of which he attached a certain house. One Gulab Das objected under section 278 of the Code of Civil Procedure, claiming the house as his property. On the 15th of September, 1900, his objection was dismissed. On the 24th of October, 1900, Gulab Das sold his rights and interests in the house to the present plaintiff. On the 31st of October, 1900, the house was put up to auction, and was purchased by Kashi Nath, the decree-holder, himself. On the 9th of April, 1901, the plaintiff brought the suit out of which this appeal arises for a declaration that the house was his and also for possession thereof. The Courts below have dismissed the suit. The learned Judge holds that the transfer by Gulab Das to the plaintiff was a transfer to which section 52 of the Transfer of Property Act applies. In my opinion that view cannot be sustained. So far as the execution proceedings were concerned, Gulab's connection with them was at an end when his objection under section 278 was dismissed. But the dismissal of his objection did not by any means finally determine that the house was not his. He had a right of suit

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under section 283 of the Code of Civil Procedure. It cannot be contended that the right of suit given by that section is a personal right of the particular claimant whose objection has been dismissed under section 278. If this were the case, the death of a claimant whose objection had been so dismissed might finally put an end to a claim to valuable property. If a claimant's heir can bring a suit under section 283, I see no reason why a representative in interest like the plaintiff cannot do so. In my judgment the view taken by the learned Judge upon this preliminary point is wrong. I allow the appeal, and, setting aside the decree of the Court below, remand the appeal to that Court, with instructions to re-admit it under its original number in the register, and dispose of it on the merits. Costs here and hitherto will abide the event.

*Appeal decreed and cause remanded.*

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*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.*

BARHMA DIN (OPPOSITE PARTY) v. BAJI LAL (PETITIONER).\*

*Civil Procedure Code, section 273—Attachment of decree for foreclosure—*

*Procedure—Execution of decree.*

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Where, on application to a Court which was not the Court which passed it, a decree for foreclosure was attached by a creditor of the decree-holder, it was held that it was not competent to the Court which passed the decree to follow up the attachment by substituting the name of the attaching creditor in place of that of the decree-holder.

THE facts of this case are as follows :—

Baji Lal held a simple money decree against Barhma Din. Barhma Din and four other persons held a decree for foreclosure against Beni Madho and Musammat Sundar. An application was made by Baji Lal for the attachment of Barhma Din's rights and interests in the decree for foreclosure. This application was granted. Upon this Baji Lal applied to the Court executing the decree for foreclosure asking that this name might be substituted in that decree for the name of his debtor Barhma Din. This application was granted by the executing Court (Subordinate Judge of Cawnpore) and an appeal preferred by

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\* Second Appeal No. 783 of 1901, from an order of H. Dupernax, Esq., District Judge of Cawnpore, dated the 10th of May 1901, confirming an order of Munshi Shiva Sahai, Subordinate Judge of Cawnpore, dated the 11th of December 1900.