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give a right of appeal from orders passed under section 549. But as the law at present stands we can find no provision in it under which this appeal can be brought. We may mention that a Full Bench of this Court has held in *Lekha v. Bhanna* (1) that an order rejecting an appeal under section 549 is not appealable either as an order or as a decree. The case may be a hard one, but under the circumstances we have no alternative but to sustain the respondent's preliminary objection and dismiss the appeal, which we hereby do. Under the circumstances of the case we make no order as to costs.

Appeal dismissed.

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January 29.

Before Mr. Justice Aikman and Mr. Justice Karamat Hussain.

KISHAN LAL (DECREE-HOLDER) v. UMRAO SINGH (JUDGMENT-DEBTOR).
Act No. IV of 1882 (Transfer of Property Act), section 99—Civil Procedure Code, section 316—Mortgage—Simple money decree accepted by mortgagee—Sale of mortgaged property in execution of such decree.

Even though the mortgagee disclaims all interest in his mortgage and asks for and obtains a simple money decree he is precluded by section 99 of the Transfer of Property Act, 1882, from bringing the mortgaged property to sale in execution of the simple money decree. *Madho Prasad Singh v. Baijnath* (2) followed. But if such a sale does in fact take place and is confirmed and a certificate is granted to the auction purchaser the sale cannot afterwards be impeached upon the ground that it was in violation of section 99 of the Transfer of Property Act. *Madan Makund Lal v. Jamna Kaulapuri* (3), *Raj Kishore De Sarkar v. Dina Nath Chandra* (4), *Thaleri Pathumma v. Thanāora Mammad* (5), *Durga Charan Mandal v. Kali Prasanna Sarkar* (6) and *Umed v. Jas Ram* (7) referred to. *Sonu Singh v. Bihari Singh* (8) dissented from.

THE facts of this case are as follows :—

One Umrao Singh on the 13th of November 1895 mortgaged certain property to one Kishan Lal. The mortgagee brought a suit against the mortgagor. In that suit he abandoned his rights under the mortgage and obtained a simple money decree on the 25th of March 1901. This decree he assigned to another Kishan Lal, who applied on the 22nd of November 1902 for attachment

* First Appeal No. 22 of 1907, from an order of K. M. Ghosh, Additional District Judge of Aligarh, dated the 17th of January 1907.

(1) (1895) I. L. R., 18 All., 101.

(2) Weekly Notes, 1905, p. 152.

(3) Weekly Notes, 1907, p. 48.

(4) (1908) 12 C. W. N., 1x.

(5) (1899) 10 M. L. J., 110.

(6) (1899) I. L. R., 26 Calc., 727.

(7) (1907) I. L. R., 29 All., 612.

(8) (1905) I. L. R., 33 Calc., 288.

and sale of the property which had been mortgaged to his assignor. The property was attached and a proclamation of sale issued under section 287 of the Code of Civil Procedure. On the 18th of April 1903 the judgment-debtor asked for postponement of the sale in order that he might raise the amount of the decree. This application was refused. On the 20th of July 1903 the property was sold and purchased by the assignee of the decree. On the 19th of August 1903 the respondent judgment-debtor applied under section 311 of the Code of Civil Procedure to have the sale set aside. On the 12th of September 1903 this application was rejected, and on the 22nd of that month the sale was confirmed. It appears from the record that a sale certificate was granted to the assignee of the decree, who is now in possession. On the 6th of June 1906, nearly three years after the sale, the judgment-debtor applied to the Court to set aside the sale on the ground of its having been held in contravention of the provisions of section 99 of the Transfer of Property Act. The Court of first instance (Munsif of Kasganj), disallowed this application on the ground that it was too late. On appeal by the judgment-debtor the lower appellate Court (Additional District Judge of Aligarh) reversed the decision of the Munsif and remanded the case to the Court of first instance under section 562 of the Code of Civil Procedure for decision on the merits. Against this order the decree-holder appealed to the High Court.

Dr. *Sabish Chandra Banerji* (for whom *Babu Sarat Chandru Chaudhri*), and *Gulzari Lal*, for the appellant.

Dr. *Tej Bahadur Sapru*, for the respondent.

AIKMAN and KARAMAT HUSEIN, JJ.—This is an appeal from an order of remand made by the learned Additional Judge of Aligarh in execution proceedings. The respondent *Umrao Singh* on the 13th of November 1895 mortgaged certain property to one *Kishan Lal*. The mortgagee brought a suit against the respondent. In that suit he abandoned his rights under the mortgage and obtained a simple money decree on the 25th of March 1901. This decree he assigned to the present appellant, who applied on the 22nd of November 1902 for attachment and sale of the property which had been mortgaged to his assignor. The property was attached and a proclamation of sale issued under section

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287 of the Code of Civil Procedure. On the 18th of April 1903 the judgment-debtor asked for postponement of the sale in order that he might raise the amount of the decree. This application was refused. On the 20th of July 1903 the property was sold and purchased by the present appellant. On the 19th of August 1903 the respondent judgment-debtor applied under section 311 of the Code of Civil Procedure to have the sale set aside. On the 12th of September 1903 this application was rejected, and on the 22nd of that month the sale was confirmed. It appears from the record that a sale certificate was granted to the appellant, who is now in possession. On the 6th of June 1906, nearly three years after the sale, the judgment-debtor applied to the Court to set aside the sale on the ground of its having been held in contravention of the provisions of section 99 of the Transfer of Property Act. The Court of first instance disallowed this application on the ground that it was too late. On appeal by the judgment-debtor the lower appellate Court reversed the decision of the Munsif and remanded the case to the Court of first instance under section 562 of the Code of Civil Procedure for decision on the merits. We may remark here that we see no reason whatever why the Court below should have sent back the case, as by its decision the only question between the parties had been determined. The appeal here has been very ably argued by the learned gentlemen who appear for the parties. They have cited a large number of authorities. It has been held by this Court in *Madho Prasad Singh v. Baijnath* (1) that, even though the mortgagee disclaims all interest in his mortgage and asks for and obtains a simple money decree, he is precluded by section 99 of the Transfer of Property Act from bringing that property to sale in execution of the simple money decree. Having regard to that ruling it must be held therefore that the Court was not justified in ordering the sale of the property. But the fact remains that it did order the property to be sold; that the sale took place and was confirmed, and that a certificate was granted to the auction purchaser, which, by the operation of section 316 of the Code of Civil Procedure, so far as the parties to the suit and the persons claiming through or under them, vests in the purchaser the title to the property sold. What

(1) Weekly Notes, 1905, p. 182.

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we have to decide is whether the order for sale having been passed to the knowledge of the judgment-debtor and having been allowed by him to become final, he can now at this late stage have the sale set aside and the purchaser divested of his title on the ground that the Court ought not to have ordered the property to be sold. In our opinion the decision of the Court of first instance on this question is right. In the case *Madan Makund Lal v. Jamna Kaulapuri* (1) the learned Judges remark in regard to a somewhat similar case :—“ The plaintiff relied on the provisions of section 99 of the Transfer of Property Act. No doubt the sale was held in violation of the provisions of that section, but it was the duty of the judgment-debtors, whom the plaintiff now represents, to object to the sale or to the confirmation of the sale before the sale was confirmed. After the sale had been confirmed, as between the judgment-debtors and the auction-purchasers, the title of the latter has become complete and it is no longer open to the plaintiff, who stands in the shoes of the judgment-debtors, to question the title of the defendant on the ground that the sale at which they purchased was not authorized by law.” It is true that that was a case of a suit, while this was an application under section 244 of the Code of Civil Procedure, but we do not think that this circumstance affects the principle laid down in the passage just cited. The decision in *Raj Kishore De Sarkar v. Dina Nath Chandra* (2) is also in favour of the appellant. In the case *Thalari Pathumma v. Thandora Mammad* (3) it was held by Shephard and Benson, JJ., that, when an order for sale of a mortgaged property in execution of a money decree of the mortgagee was obtained after notice to the mortgagor and the property was sold in pursuance of such order, the mortgagor cannot go behind the order and seek to set aside the sale on the ground that it ought not to have been passed by reason of section 99 of the Transfer of Property Act. In the case of *Durga Charan Mandal v. Kabi Prasanna Sarkar* (4) a judgment-debtor whose occupancy holding had been sold in execution of a decree for rent objected to the application made by the auction purchaser after the confirmation of sale for delivery of possession

(1) Weekly Notes 1907, p. 48.

(2) (1899) 10 M. L. J., 110.

(3) (1908) 12 C. W. N., 1x.

(4) (1899) I. L. R., 26 Cal., 727.

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on the ground that the sale was illegal. The learned Judges who decided that case, Ghose and Banerji, JJ., observe at page 732 of the judgment:—"An order for sale was made and in furtherance of that order the property was sold, whatever may be the effect of that sale. If the judgment-debtors were parties to that order, or were aware of it, and did not appeal against it, they are now precluded from questioning the propriety of that order and consequently of the sale that has taken place under that order." The decision by one of us in *Umed v. Jas Ram* (1) is also in favour of the appellant. In the case of *Sonu Singh v. Bihari Singh* (2) the learned Judges say:—"As regards the mortgagor raising no objection before the sale, it must be observed that no duty was imposed upon him to do so, it being the decree-holder alone who was responsible for the particulars to be entered in the sale proclamation." It appears that in that case the application to set aside the sale was made before confirmation, though this circumstance is not referred to in the judgment. The observation just cited is opposed to the authorities to which we have referred above, and with all deference to the learned Judges we are unable to accept the view expressed by them. We entirely disagree with the view expressed by the learned Additional Judge in this case that the respondent could not object until the sale had actually taken place. The learned Additional Judge is also wrong in saying that no specification of the property was given in the proclamation for sale. That document sufficiently defines the property which the decree-holder wished to sell, and if there was any irregularity in publishing the sale, that was a matter to be dealt with under section 311 of the Code of Civil Procedure. Following the authorities cited in the earlier part of this judgment, we are of opinion that this appeal must succeed. We set aside the order of the Court below and restore that of the Court of first instance. The appellant will have his costs here and in the lower appellate Court.

Appeal decreed.

(1) (1907) I. L. R., 29 All., 621.

(2) (1906) I. L. R., 33 Cal., 283.