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where these profits are by the terms of the bond received for only a portion of the interest on the mortgage debt, the general rule of *damdapat* will govern such mortgage accounts. The inconvenience, to which Mr. Beaman in his judgment refers at some length, is thus obviated, and all equities are provided for.

I would, therefore, vary the decree, and hold that only Rs. 500 plus Rs. 39 for nazarána charges are due to the appellant. As he has received this sum, only Rs. 39 remain due. Each party to bear his own costs in this appeal.

*Decree varied.*

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Candy.*

VINAYAK NARAYAN, APPLICANT,—DATTATRAYA KRISHNA  
DATAR, APPLICANT.\*

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September 11.

*Civil Procedure Code (Act XIV of 1882), Sec. 316—Execution—Sale—Sale absolute—Purchaser—Certificate of sale granted to the representative of deceased purchaser.*

When a sale in execution has become absolute, the Court can, under section 316 of the Civil Procedure Code (Act XIV of 1882) grant the certificate prescribed therein to the representatives of a deceased purchaser.

REFERENCE by Ráo Sáheb Govind Vasudev Kanitkar, Subordinate Judge of Alibág, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference was made in the following terms:—

“There are two applications (one in darkhást No. 818 of 1898, and another in darkhást No. 827 of 1897) for sale certificates, made apparently under section 316 of the Civil Procedure Code. The sales in both the cases have been formally confirmed and become absolute under section 314 of the Code.

“The applicants are the heirs (son in one case and grandson in the other) of the purchasers who died after the sale, and the question for decision is whether the heirs or legal representatives have a right to apply for and obtain a sale certificate under section 316, or, in other words, whether under the said section a Court is

\* Civil Reference, No. 8 of 1899.

under an obligation to grant a sale certificate to any one who asks for it?"

On the said question the opinion of the Subordinate Judge was in the negative. He observed :—

"My opinion is that the words of the said section do not include the heirs or legal representatives of the purchasers, nor does it appear that the Legislature had in view any applicant other than the purchaser himself. The section says that Court shall grant a certificate, but it does not say to whom. The marginal heading of that section is 'certificate to purchaser of immoveable property.' If the Legislature had intended the grant of a certificate, not only to the purchaser but also to his heirs, legal representatives or assignees or any other persons who may choose to ask for it, it would have said so expressly. It has been held that an application for certificate is not required to be in writing (I. L. R., 13 Bom., 670)."

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"The ruling of the High Court in the case of *Assur Purushottam v. Ruttonbai* (I. L. R., 16 Bom., 152) appears to support the view that the heirs or representatives of a deceased person are required to be expressly mentioned when the Legislature intends to include them."

*Balkrishna N. Bhajekar (amicus curie)* in support of the reference :—Section 316 of the Civil Procedure Code does not apply to the representatives of a deceased purchaser at an auction-sale. The section does not expressly exclude them, but they cannot come under the term "purchaser." The marginal note to the section also uses the word "purchaser." Now by the latter part of the section also it would appear that the purchaser alone is meant. Section 318 also only mentions the purchaser. If the Legislature had intended that the legal representatives of a deceased auction-purchaser should be entitled to get a certificate, a provision to that effect would have been made in the Code.

*Ganpatrao S. Mulgaonkar (amicus curie)*, for the applicants :—The term "purchaser" includes the purchaser's legal representatives—*Bala Kadar v. Gulam Mohidin*<sup>(1)</sup>; *Ajudhia Prasad v. Nandlal*<sup>(2)</sup>. Title passes by confirmation of the sale, and the certificate is merely evidence of the sale. It has nothing to do with the title, and it is not necessary to produce it to show title—*Khushal Panachand v. Bhimabai*<sup>(3)</sup>; *Tara Prasad v. Nandkishore*<sup>(4)</sup>. A certificate bears the date of the confirmation of sale.

(1) (1883) 7 Bom., 424.

(3) (1883) 12 Bom., 589.

(2) (1893) 15 A.L., 318.

(4) (1883) 9 Cal., 842.

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Hence the right to a certificate vests in the purchaser after confirmation, and passes to his legal representatives after him.

JENKINS, C. J.:—The question submitted for our opinion is whether when a sale in execution has become absolute, the Court can, under section 316 of the Civil Procedure Code, grant the certificate prescribed therein to the representatives of a deceased purchaser.

The section indicates the required contents of the certificate whose precise form is given in the 4th Schedule to the Act. It was urged in argument that the provision dictating that the title to the property shall vest in the purchaser from the date of the certificate and not before, is inconsistent with a grant of the certificate after the purchaser's death. This, however, overlooks the earlier provision by which the certificate shall bear the date of the confirmation. Here apparently at the confirmation the purchaser was alive, so that there would be no incongruity in declaring that from that date the title to the property should vest in him, for he it is in whom it would have vested.

Apart from this the section itself creates no difficulty; it is, so far as we can see, callous as to whether the purchaser is alive or dead; it wants him neither as applicant nor recipient. But we have been invited to read and be guided by the marginal note, for no other purpose that we can see than to create the difficulty which otherwise would not exist. The Subordinate Judge apparently has yielded to this invitation, but we would decline to follow him, not merely because it seems to us unprofitable in interpreting this Code to raise a needless difficulty, but also because the law as expounded forbids us to rely on the suggestive exposition of a marginal note.

Reading, then, the section in its strictest sense, we find in it nothing to forbid or to prevent the grant of a certificate under the circumstances of this case, and we would answer accordingly the question propounded in the reference.

*Order accordingly.*