

(1891) 03 CAL CK 0001
In the Calcutta High Court

Golam Chunder Dey

APPELLANT

Vs

Nana Kumar Roy

RESPONDENT

Date of Decision : 24-03-1891

Acts Referred:

Citation : (1891) ILR (Cal) 422

Hon'ble Judges : W. Comer Petheram, J; Pigot, J; O'Kinealy, J; Macpherson, J; Ghose, J

Bench : Full Bench

Judgement

Petheram, Kt., C.J., Pigot, O'Kinealy, Macpherson and Ghose, JJ.—The answer to both questions put to us on this reference depends, in truth, upon one point alone, namely, whether the sale of revenue-paying land is ipso facto void by reason of a copy of the sale proclamation not having been fixed up in the Collector's office as required by Section 289 of the Code of Civil Procedure. That question, we think, must be answered in the negative. There is nothing in the CPC which renders that formality a necessary preliminary to the validity of the sale. We express no opinion in answering the questions now before us upon the question which has been decided by the Allahabad Court in *Jasada v. Mathura Das* ILR All. 511 and *Ganga Prasad v. Jag Lal Rai* ILR All. 333 namely, whether non-compliance with the requirements of Section 290 of the CPC does or does not invalidate a sale held, or purporting to be held, under Chapter XIX. That question is not before us, and we do not deal with it. In the present case we are of opinion that the omission to fix up a copy of the sale proclamation in the Collector's office, in neglect of the provisions of Section 289 of the Code, was an irregularity the remedy for which can only be by an application u/s 311.

2. Being of opinion that the sale in question is not invalidated by the omission referred to, we think that the first question must be answered in the negative, inasmuch as an appeal from an order dismissing an application u/s 311 of the Code cannot be the subject-matter of a second appeal. Both questions submitted to us by the referring Bench must therefore be answered in the negative.