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reason which it suggested for this. It observes that "apparently the land revenue assessment is comparatively high and neither party was very anxious to pay it." The principle underlying the decision in *Raja Partab Bahadur Singh v. Gajadhar Bahsh* (1) and in the case of *Khuda Bahsh v. Alim-un-nissa* (2) seems to us to be applicable to this case. The mortgagee's claim for interest is barred by his acquiescence. On this ground the appeal in our opinion fails. The only other contention raised was that the lower appellate court, in an order of the 9th November 1906, by which an issue was referred for determination to the court of first instance, stated that the mortgagee was entitled to interest for the period of his dispossession. It is contended that having expressed this view the learned Judge was not justified afterwards in dismissing the mortgagee's claim for interest. We cannot accede to this contention, but assuming that the lower appellate court was not justified in the course it adopted, the respondents are entitled now to support the decree of that court on the ground that the mortgagee having acquiesced in the mortgagor's remaining in possession of portion of the mortgaged property, cannot succeed in his claim for interest.

For these reasons we dismiss the appeal with costs.

*Appeal dismissed.*

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February 27.

## MISCELLANEOUS CIVIL.

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

RAM DEHANI SAHU (APPLICANT) AND LALIT SINGH AND OTHERS  
(OPPOSITE PARTIES). \*

*Act No. IV of 1882—(Transfer of Property Act), sections 92, 93—Application for enlargement of time—Application to be made to the court of first instance, not to an appellate court.*

An application under section 93, Transfer of Property Act, 1882, for extension of the time for payment of mortgage money in a decree passed under section 92 of that Act by an appellate court must be made to the court of first instance

\* Civil Miscellaneous No. 300 of 1908.

( ) (1902) I. R., 21 I. A., 148 ; S. C., (2) (1904) I. L. R., 27 All., 813.  
I. L. R., 24 All., 521.

*Sheo Narain v. Chunni Lal* (1) followed ; *Babu Prasad v. Khiali Ram* (2) dissented from.

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THIS was an application for extension of the time fixed for payment of mortgage money under an appellate decree of the High Court.

Munshi *Haribans Sahai*, for the respondent, raised a preliminary objection to the hearing of the application on the ground that the High Court had no jurisdiction to entertain the application. The court of first instance was the proper court to which the application should have been made. He relied on *Sheo Narain v. Chunni Lal* (1).

Munshi *Girdhari Lal Agarwala*, for the applicant, cited the case of *Babu Prasad v. Khiali Ram* (2), in support of the contention that in a case in which there had been an appeal, an application for enlargement of time could be entertained by an appellate court as well as a court of first instance.

STANLEY, C. J. and BANERJI, J.—This is an application by Ramdhani Sahu, the appellant, for an extension of the time fixed by this court for payment of a mortgage debt under a decree of the 23rd of July 1908. By that decree the appellant was directed to pay a prior mortgage on or before the 5th of November 1908. Owing to delay in obtaining a copy of the judgment, the date which was so fixed was allowed to pass over without payment. The present application is now made to this Court to extend the time for payment.

A preliminary objection is raised to the application to the effect that the proper court to which this application should be made is the court of first instance. We think that this preliminary objection is well-founded. The question as to the proper court to which such an application should be presented was considered by a Bench of this Court, of which one of us was a member, in the case of *Sheo Narain v. Chunni Lal* (1). In the judgment in that case the authorities are reviewed and the language of section 92 of the Transfer of Property Act considered, with the result that the Court came to the conclusion that a preliminary objection similar to the one now put forward was bound to prevail ; that when a decree for redemption under

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section 92 of the Transfer of Property Act, 1882, has been made by an appellate court, an application under the last paragraph of section 93 must be made not to that court but to the court of first instance. It is pointed out to us that this ruling was not followed by our brother RICHARDS in the case of *Babu Prasad v. Khiali Ram* (1). Our learned brother in that case held that although the court of first instance was the proper court for dealing with applications of the kind yet the appellate court had jurisdiction also to allow an enlargement of time in cases in which there had been appeals. We are unable to agree in the view expressed by our learned brother. We are of opinion that the earlier ruling is correct. We therefore allow the preliminary objection but we do not express any opinion as to the merits of the application. It is stated that the money payable to the prior mortgagee has actually been paid and a receipt therefore obtained. Under these circumstances there will possibly be little difficulty in obtaining an extension of time from the proper court.

We dismissed the application, but under the circumstances, without costs.

*Application rejected.*

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March 8.

## APPELLATE CIVIL

*Before Mr. Justice Sir George Knox and Mr. Justice Griffin.*

NARAIN DASS (DEFENDANT) v. BHUP NARAIN AND ANOTHER (PLAINTIFFS).\*

*Act (local) No. III of 1901 (Land Revenue Act), section 233 (k)—Suit for partition of Dera and site—Civil and Revenue Courts—Jurisdiction.*

In a suit for partition of a *Dera* standing on agricultural land situate in a *mahal* in which the plaintiffs had a share, *held* that though the suit was in name one for partition of a building, it was really a suit for partition also of the land on which the building stood, and that it was barred by section 233 (k), Land Revenue Act.

THE facts of this case are as follows :—

In 1867 the village Sarkara was divided into two *mahals*, *mahal Surkh* and *mahal Multani*. The plaintiffs and the defendants,

\*First Appeal No. 101 of 1909 from an order of Girraj Kishore Dutt, Subordinate Judge of Bareilly, dated the 16th of July 1908.