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father, and has thought that without the consent of the mortgagor he cannot order the money to be paid to only one of the mortgagees. In our opinion, the court below has failed to exercise jurisdiction which was vested in it. The amount was deposited to the credit of the two mortgagees; but the court was competent to consider who the mortgagee was at the time when the application was made, that is to say, whether the present applicant was alone entitled to withdraw the money. This may be so, because he is now the sole surviving member of the family, or it may be that he is the *karta* of the Hindu family or otherwise authorized to withdraw the money.

We accordingly set aside the order and send this case back for disposal according to law.

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*Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Niamat-ul'ah.*

GARGI DIN (DEFENDANT) *v.* DEBI CHARAN (PLAINTIFF).*

1929 *June*, 13.

*Civil Procedure Code, section* 10—*Stay of suit*—"*Matter in issue*"—*Recurring liability*—*Suits for rent for successive years.*

Section 10 of the Civil Procedure Code is not applicable to suits for recovery of rent for successive years; the pendency of an earlier suit for arrears of rent between the parties does not, therefore, bar the court from proceeding with a later suit for rent of subsequent years.

The mere fact that one issue is common in the two suits would not necessitate the stay of the subsequent suit. Although the words "matter in issue" cannot be held necessarily to mean the subject-matter in dispute, they must clearly mean the entire matter in controversy and not one of several issues in the case.

Messrs. *Peary Lal Banerji* and *Shabd Saran*, for the applicant.

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*Civil Revision No. 134 of 1928.

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Jabdi Din v. Debi Charan.

Mr. *Narain Prasad Asthana*, for the opposite party.

SULAIMAN and NIAMAT-ULLAH, JJ. :—This is an application in revision from an order of the District Judge, Cawnpore, remanding a revenue appeal.

The respondent, Debi Charan, first instituted a suit for arrears of rent based on a registered *qabuliyat*, executed by the applicant. The suit was resisted on the ground that the *qabuliyat* was fictitious, that in respect of a sale deed executed by the present applicant he still remained the proprietor of the land and that there was no relation between the parties of a landholder and a tenant. The revenue court ordered that the present applicant, who was a defendant to that suit, should, under section 199 of the Tenancy Act, establish his title in a civil court. Accordingly, he filed a suit for declaration, which was dismissed by the civil court, and an appeal from that decree is still pending in this High Court and is numbered as First Appeal No. 569 of 1926. In the mean time the revenue court decreed the claim for arrears of rent, on the basis of the judgement of the subordinate civil court, *ex parte*, but later on the *ex parte* proceedings were set aside and the suit restored, and is still pending. As limitation was expiring, the present respondent filed another suit for arrears of rent for subsequent years. The defendant *inter alia* took the plea that the second suit should be stayed, and also raised the question of proprietary title. The revenue court decreed this claim, holding that the question of proprietary title had already been decided

On appeal to the District Judge, he remanded this case with directions that the lower court should proceed in accordance with section 271, sub-clause (2) of the new Agra Tenancy Act.

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On behalf of the applicant it is contended that section 10 of the Code of Civil Procedure applied to this case and the lower court was bound to stay the proceedings. We do not think that this contention can prevail. Under section 12 of the old Code, which corresponds to the present section 10, it was clearly held by this Court that, unless the subject-matter in the two suits is identical and the reliefs are also the same, that section would be inapplicable: *Balkishan* v. *Kishan Lal* (1). The words, "for the same relief", have been omitted from the new section, and there are a few other slight alterations: but it is noteworthy that, while section 11 provides that no court shall try any suit *or issue*, etc., section 10 merely says that no court shall proceed with the trial of any suit, etc. It follows that the mere fact that one issue is common in the two suits would not necessitate the stay of the subsequent suit. Although the words "matter in issue" cannot be held necessarily to mean the subject-matter in dispute, it seems clear that they must mean the entire matter in controversy and not one of several issues in the case. Had the intention of the legislature been to widen the scope of section 10 so as to make it co-extensive with section 11, the language employed would have been identical.

That section 10 is limited in its scope has been held by several High Courts, although no case of this Court has been brought to our notice. We may in this connection mention *Bepin Behari* v. *Jogendra Chandra* (2), *Maharaja Kesho Prasad Singh* v. *Shiva Saran Lall* (3) and *Narikkote Kunnamangalath* v. *Pothera Kalloor* (4).

We, therefore, think that the learned Subordinate Judge was right in his conclusion that section 10 did not apply to the present case. In these circumstances, he

(1) (1888) I. L. R., 11 All., 148.
(2) (1916) 24 C. L. J., 514.
(3) (1919) 4 Pat. L. J., 557.
(4) (1924) 48 M. L. J., 251.

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has rightly directed the trial court to proceed in accordance with section 271, sub-clause (2).

Although it is by no means obligatory on the subordinate court to stay the suit, it is entirely a matter of discretion whether or not to adjourn the hearing for a reasonable time and await the decision of the final court of appeal in order to prevent the same evidence being recorded over again.

The application is dismissed with costs.

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*Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Niamat-ullah.*

1929
*June*, 14.

JAGDEO SINGH AND OTHERS (DEFENDANTS) *v.* KESHO PRASAD SINGH (PLAINTIFF).*

*Act (Local) No. III of 1926 (Agra Tenancy Act), section 253—Revision by High Court—"Subordinate revenue court" does not include District Judge—High Court can not revise orders of District Judge—Civil Procedure Code, section 115 not applicable.*

The High Court has no power of revision, in matters under the Agra Tenancy Act, except under section 253 of that Act; the provisions of section 115 of the Civil Procedure Code are not applicable.

The expression "subordinate revenue court" in section 253 means only a first revenue court of original jurisdiction and does not include the court of a District Judge hearing an appeal from the former court. Therefore, the High Court has not got any power of revision over orders passed by the District Judge, however *ultra vires* or illegal they may be; but if the order passed by the trial court be open to objection it may be revised.

Mr. *Ambika Prasad Pandey*, for the applicants.

Mr. *Haribans Sahai*, for the opposite party.

SULAIMAN and NIAMAT-ULLAH, JJ. :—This is an application in revision from an order passed by the District Judge on the 11th of February, 1928, remanding

*Civil Revision No. 144 of 1928.