

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

1929
June, 13.

BALBHADDAR PRASAD (DEFENDANT) *v.* BITTO (PLAINTIFF).*

*Act No. IV of 1882 (Transfer of Property Act), section 83—
Deposits in favour of two persons—Claim by one to be sole
mortgagee by survivorship—Court's failure to decide claim
—Revision.*

Where a deposit of mortgage money was made under section 83 of the Transfer of Property Act in favour of two persons as mortgagees, and one of them claimed to be entitled as sole mortgagee on the allegation that the other, who was his father, must be presumed to be dead as he had not been heard of for seven years, *held* that the court was competent to ascertain who was the mortgagee at the present time, i.e., whether the claimant was alone entitled to withdraw the money; and that in declining to do so the court had failed to exercise a jurisdiction vested in it by law.

Mr. Shambhu Nath Seth, for the applicant.

The opposite party was not represented.

SULAIMAN and NIAMAT-ULLAH, JJ. :—This is an application in revision from an order, dated the 14th of January, 1928, refusing to allow the applicant to withdraw the money deposited, under section 83 of the Transfer of Property Act, by the mortgagor. The money was deposited in favour of the present applicant and his father on the 16th of October, 1922. An application was made on the 9th of December, 1922, on behalf of the present applicant alone, which was consigned to the record room on the ground that both the mortgagees had not joined. Later on, a fresh application was made by the applicant, alleging that his father had not been heard of for more than seven years, and must be presumed to be dead. The learned judge has considered that he is not competent to make inquiries into the death of the applicant's

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.

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

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

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

1929
June, 19.

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.