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not aware of the existence of the prior mortgage. But this to our mind is an irrelevant consideration. On the date on which they made the payment of the sum of Rs.10.025-10-0, namely on 23rd September, 1929, they were fully aware of the existence of the prior mortgage. In fact, they had been impleaded as defendants in the suit of the prior mortgagees. They made the payment with their eyes open and with a full knowledge of the facts. They knew that Jogendra Singh had filed an appeal in the High Court and that it was pending. We consider that the question whether the puisne mortgagees were or were not aware of the existence of the prior mortgage on 26th May, 1911, is not material for the purposes of this case.

For the reasons given above we hold that the suit was rightly dismissed and that the appeal is without force. Accordingly we dismiss it with costs.

Before Justice Sir Edward Bennet and Mr. Justice Verma

MUNNA LAL (PLAINTIFF) v. CHETAN PRAKASH AND  
OTHERS (DEFENDANTS)\*

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*Transfer of Property Act (IV of 1882), section 84, proviso—  
—Retrospective effect—Transfer of Property (Amendment)  
Act (XX of 1929), section 63—Effect of—Deposit withdrawn  
by mortgagor at suggestion of mortgagee—Interest, cessation  
of.*

The proviso to section 84 of the Transfer of Property Act, which was added by section 45 of the amending Act XX of 1929, was not intended to have retrospective effect.

Section 63 of the amending Act XX of 1929 does not provide that the sections of the Act, other than those mentioned in section 63, are to have retrospective effect.

Under section 84 of the Transfer of Property Act, as it stood before its amendment by Act XX of 1929, the cessation of interest on the mortgage money deposited under section 83 would not be affected by the fact that when the mortgagee did not accept and withdraw the money it was subsequently withdrawn by the mortgagor.

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\*First Appeal No. 375 of 1937, from a decree of Bind Basni Prasad, Additional Civil Judge of Bulandshahr, dated the 24th of February, 1937.

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Where the mortgagor deposited the mortgage money under section 83 of the Transfer of Property Act on 5th September, 1921, but owing to disputes among rival claimants the proceedings under section 83 proved infructuous, and the party who ultimately proved to be the true owner had himself applied that the money might be given back to the mortgagor pending the settlement of the dispute, and then the money was withdrawn by the mortgagor, it was held that interest after the 5th September, 1921, could not be claimed by the true owner.

Messrs. S. K. Dar and H. L. Kapoor, for the appellant.

Sir Tej Bahadur Sapru and Dr. N. U. A. Siddiqi and Messrs. Shiva Prasad Sinha, K. C. Mital, Jagnandan Lal and R. N. Mukerji, for the respondents.

BENNET and VERMA, JJ.:—This is a first appeal by the plaintiff Munna Lal whose suit has been dismissed by the learned Civil Judge. The mortgage in suit was dated 4th June, 1918, executed by Mst. Kripa Devi-widow of Raghunath Prasad, in favour of Shambhu Nath mortgagee. The amount was Rs.40,650 at eleven annas per mensem with six monthly rests. The main defence was that there had been a tender under section 83 of the Transfer of Property Act by Shib Charan Das, defendant 6, on 5th September, 1921, of Rs.50,237-8-6 for payment, but that that sum had not been withdrawn by the mortgagee. Subsequently there was payment of the amount which was withdrawn by the present plaintiff. The present plaintiff claims however that interest did not cease to run by the tender of 5th September, 1921, under section 83 of the Transfer of Property Act as the money was subsequently withdrawn by Shib Charan Das, defendant 6, and the claim is for various periods of interest after that tender. The claim has been disallowed in full by the court below. The claim before it was for Rs.34,000. In appeal the amount has been reduced to Rs.17,000.

The details are that there was a mortgage dated 31st August, 1921, by Mst. Kirpa Devi for Rs.64,250 in

favour of defendant 6, Shib Charan Das, leaving with him Rs.50,203 to be paid for the full satisfaction of the mortgage in the present suit. After the registration of that document, on 5th September, 1921, the defendant 6 made a deposit in the court of the Subordinate Judge of Meerut adding a small sum of Rs.34-8-6 for the interest on the intervening five days, the total deposit being Rs.50,237-8-6. The original mortgagee Shambhu Nath died on 12th May, 1919, and was succeeded by his widow Bishun Devi. The deposit was made in the name of this lady, who was alive on the date of deposit, but it so happened that before she received notice and could withdraw the money she died. The exact date of her death is not given but these facts are admitted. It may be noted that No. 13 in the array of the opposite parties in the application under section 83 of the Transfer of Property Act was the present plaintiff Munna Lal. The other persons in that application, Nos. 2 to 12, were trustees of a trust created of the property left by Shambhu Nath and the opposite party No. 1 was Mst. Bishun Devi. Therefore on her death the question was whether the plaintiff Munna Lal was entitled to withdraw the money or the trustees. There is an application by Munna Lal in the proceeding under section 83 of the Transfer of Property Act claiming that he was entitled. On the other hand the trustees claimed that they were entitled. Some question arose as to whether the money would be placed in deposit in the Allahabad Bank at Meerut and there was no agreement on this point and eventually by an order dated 4th February, 1922, the Subordinate Judge stated that as the parties did not agree on the point the application should be filed. This means that the application under section 83 of the Transfer of Property Act should be filed. A few days later, on 8th February, 1922, defendant 6 withdrew the money as the proceedings under section 83 had terminated. On 29th November, 1922, Munna Lal brought a suit No. 272 of

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1922 against the trustees in the court of the Senior Subordinate Judge of Ludhiana in the Punjab. In this suit there was an application made by defendant 6, Shib Charan Das, on 6th June, 1925, for the deposit of Rs.50,000, which deposit was allowed with the consent of parties on 16th June, 1925, and the amount was deposited in the Bank. The plaintiff obtained a decree in his favour in this suit and eventually the plaintiff withdrew the money under an order dated 13th December, 1926. The plaintiff has made in the present suit claims for interest for various periods between the dates 5th September, 1921, of the original deposit and the date of his withdrawal under the order of 13th December, 1926.

The court below has dismissed the suit on two grounds, one that the plaintiff was not entitled to obtain any interest after the deposit on 5th September, 1921, by defendant 6, and secondly that the present suit is time barred.

The Transfer of Property Act before the Amendment Act of 1929 was the Act in force at the time of these transactions. In section 84 of this Act there was no provision in regard to the withdrawal of a deposit by a person who had made the deposit. Such a provision no doubt is contained in the amended Act and is as follows: "Provided that where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal."

Learned counsel for appellant argues that the spirit of this proviso should be applied to the unamended section 84 in the Act. We do not think that we can apply the spirit of an amendment or the letter of an amendment in this manner. Learned counsel points out that the amendment to section 84 was contained in section 45 of the Amendment Act, Act XX of 1929, and that section 45 is not one of the sections mentioned in section 63.

That is so, but all that section 63 provides is that nothing in certain sections shall be deemed in any way to affect certain things that have previously happened. The section does not provide that the other sections, not mentioned in that section, are to have any retrospective effect. An amendment will not in general have any retrospective effect unless it is specifically provided that the amendment is to have a retrospective effect. There is nothing in the amendment of section 84 of the Transfer of Property Act which enacts that that amendment is in any way to be retrospective. To make such a proviso retrospective would involve certain difficulties and it would have to be definitely stated how far it was to be retrospective and with what effect. Clearly, as there is no provision on these points, the intention was that it should not be retrospective. We do not think therefore that the amendment can affect the case before us.

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The case law on the point under the unamended Act is as follows:

In *Hukam Singh v. Babu Lal* (1) it was decided that where the full amount due under a mortgage had been paid into court under section 83 of the Transfer of Property Act and the mortgagee who had received notice had refused to accept the deposit and the mortgagor subsequently withdrew the deposit then interest would not run and the withdrawal did not affect this provision that interest would not run. In arriving at this decision the Court followed the ruling of *Velayuda Naicker v. Hyder Hussan Khan* (2) and did not follow the ruling of *Krishnasami Chettiar v. Ramasami Chettiar* (3). This appears to be the only ruling of this High Court on the subject. The Madras rulings which had differed were the subject of a decision by a Full Bench of the Madras High Court in *Ramabhadra Thevar v. Arunachalam Pillai* (4). It was there laid down that where a proper

(1) (1921) I.L.R. 44 All. 198.

(2) (1909) I.L.R. 33 Mad. 100.

(3) (1910) I.L.R. 35 Mad. 44.

(4) (1926) I.L.R. 49 Mad. 609.

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deposit had been made and the mortgagee after notice of the deposit refused to accept it and the mortgagor thereafter withdrew the deposit there was still a presumption that the mortgagor continued ready and willing to pay and this presumption cast the onus of proof on the mortgagee to prove the contrary. Therefore in such a case the interest would not run after the deposit, and the withdrawal would not affect this provision. The case law therefore under the unamended Act was, so far as this Court and the Madras Court are concerned, against the appellant.

We find that no case has been made out for the claim of the appellant to interest. As we do not accept the case for the appellant on this point learned counsel did not argue the case in regard to limitation.

We therefore dismiss this first appeal. In regard to costs we follow the procedure of the court below as there are two sets of defendants respondents and we allow separate costs of each set of defendants respondents.

VERMA, J.:—I agree that the appeal is without force and should be dismissed. The only point urged before us is that interest did not cease to run after the deposit under section 83 of the Transfer of Property Act because Shib Charan Das subsequently withdrew the money after the proceedings under section 83 had terminated. It is argued that Shib Charan Das ought to have left the money in court even after the termination of the proceedings, and that as he did not do so, he is liable to pay interest. It seems to me that this argument is not open to the plaintiff Munna Lal. The material facts bearing on this point are these. As will appear from the judgment delivered by my learned brother, the mortgage in suit was executed by one Mst. Kripa Devi in favour of one Shambhu Nath on 4th June, 1918. Shambhu Nath died shortly afterwards, and his widow Mst. Bishun Devi succeeded to his estate for life by right of inheritance as a Hindu widow. She executed a deed of trust in respect of the property that she had inherited from her

deceased husband and appointed trustees. In the meantime the mortgagor, Mst. Kripa Devi, had on 31st August, 1921, executed another deed of mortgage in favour of the present defendant No. 6 Shib Charan Das, for Rs.64,250, and out of the mortgage money had left the sum of Rs.50,203 in the hands of Shib Charan Das for payment to the prior mortgagee, Mst. Bishun Devi. On 5th September, 1921, Shib Charan Das made an application under section 83 of the Transfer of Property Act and deposited Rs.50,237-8-6, the excess representing the interest for the intervening five days. He impleaded as opposite parties to this application Mst. Bishun Devi and the trustees and prayed that the money may be paid over to the party who may be entitled to it and the mortgage "may be caused to be redeemed". Mst. Bishun Devi died within a few days of the presentation of this application and the plaintiff appellant Munna Lal then appeared on the scene. He was impleaded as an opposite party to the application under section 83. He made an application stating that he was the reversionary heir to the estate of Shambhu Nath and that he had applied to the District Judge in respect of that estate under Act XIX of 1841, and praying that the money deposited by Shib Charan Das be given to him or may be kept in deposit in the court till the determination of his rights. The trustees, on the other hand, filed an application asserting that they were entitled to the money and they also filed the mortgage deed along with their application. Certain discussions as to whether the money should or should not be deposited in a bank followed. On 13th January, 1922, Munna Lal made an application in which he stated that he had been directed by the court of the District Judge to bring a regular suit to establish his title to the estate of Shambhu Nath deceased and that he proposed to do so shortly. He prayed that "either the parties may under order dated the 7th January, 1922, be directed to obtain succession certificate, or the money may be returned to Shib Charan Das

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*from whom it can be realised again, otherwise the opposite party, the trustees, who are not entitled to get the same under any law, would squander it away.” He also prayed that he be granted more than one month’s time to enable him to bring a regular suit for declaration of his title and made the further suggestion that till the disposal of the case “the said amount might remain in deposit in the court or it might be deposited in some bank to the credit of the court”. On the 4th of February, 1922, the court ordered Shib Charan Das’s application to be “filed”. The proceedings thus came to an end. A few days later Shib Charan Das withdrew the amount and subsequently tendered it again in the court in which Munna Lal filed his suit for declaration of title. As has already been mentioned by my learned brother, this suit was subsequently decreed in favour of Munna Lal and it was under the orders of that court that Munna Lal withdrew the money which had been deposited by Shib Charan Das in that court. In my judgment Munna Lal having himself expressed in his application dated 13th January, 1922, his willingness to the money being given back to Shib Charan Das and to its remaining in deposit with him until the settlement of the dispute among those who claimed title to the estate of Shambhu Nath, the argument now advanced by learned counsel cannot be accepted. I entirely agree with the court below in holding that Shib Charan Das did all that could possibly be done to tender the mortgage money to whomsoever might be entitled to it. That there was dispute among those who claimed title to it was no fault of his. He took proceedings under section 83 of the Transfer of Property Act almost immediately after the execution of the mortgage deed in his favour by Mst. Kripa Devi. Those proceedings proved infructuous as Mst. Bishun Devi died and there arose a dispute between the trustees appointed by her and Munna Lal. When those proceedings came to an end, he withdrew the money which he had deposited in*



that court, but he tendered it again in the court at Ludhiana where Munna Lal had filed his suit against the trustees. I am of opinion that in the circumstances mentioned above, interest ceased from 5th September, 1921.

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## REVISIONAL CIVIL

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Before Mr. Justice Mulla

KULSUM-UN-NISSA (APPLICANT) v. RAGHUBAR DAYAL  
(OPPOSITE PARTY)\*

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*Civil Procedure Code, order XXI, rule 98—Resistance to execution of decree—"Judgment-debtor"—Whether includes a person against whom the decree operates as res judicata.*

The word "judgment-debtor" does not include a person against whom the decree may operate as *res judicata* by virtue of explanation VI to section 11 of the Civil Procedure Code but who was not a person against whom the decree was passed. Order XXI, rule 98, of the Code does not therefore apply to resistance by such a person to the execution of the decree, as being resistance by a judgment-debtor.

Mr. *Mushtaq Ahmad*, for the applicant.

Mr. *S. N. Gupta*, for the opposite party.

MULLA, J.:—This is an application in revision by one Bibi Kulsum-un-nissa under section 115 of the Civil Procedure Code against an order passed by the learned Munsif of Khurja in the following circumstances. The applicant who is a zamindar obtained a decree for possession of two plots of land after demolition of certain constructions existing thereon. In the suit in which that decree was obtained the applicant impleaded three persons as defendants, one of whom was Dambar Lal an uncle of the opposite party Raghubar Dayal. The defendants resisted the suit on various grounds and also raised a plea of non-joinder of necessary parties. It was specifically pointed out on behalf of all the defendants

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\*Civil Revision No. 161 of 1938.