

of 1883, praying that the execution of the decree in that suit be stayed pending disposal of a suit instituted by him against the decree-holder.

The District Judge in his order said: "Under the circumstances I resolve to refuse to stay execution absolutely under section 243, but, at the request of counter-petitioner's pleader, a month's time will be given him to apply to the High Court . . . . If no orders staying execution are received from the High Court within a month and if no further time be granted execution will proceed."

The judgment-debtor preferred this appeal.

Mr. *Adam* and *R. Subramania Ayyar* for appellant.

*Ramachandra Rau Sahab* for respondent.

JUDGMENT.—A preliminary objection is taken on the ground that the order appealed against was passed under section 243 of the Civil Procedure Code, and that no appeal lies against such an order. We do not think that this contention can be upheld. Following the reasoning and the rulings in the cases of *Ghazidin v. Fakir Bakhsh*(1), *Kassa Mal v. Gopi*(2), *Steel & Co. v. Ichchamoyi Chowdhraïn*(3), we hold that an appeal lies. We therefore disallow the preliminary objection.

As to the merits, the District Judge states that he does not consider that the appellant will have difficulty in recovering any sum that may now be paid over to the respondent in execution of the decree. The decree was passed as long ago as 1883. We dismiss this appeal with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Boddam.*

RANGAYYA APPA RAU (PLAINTIFF), APPELLANT,

*v.*

KAMESWARA RAU AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Registration Act—Act III of 1877, s. 17—Deed of relinquishment by tenant to land-holder.*

An instrument by which a tenant in a zamindari, in consideration of the zamindar waiving his right to arrears of rent accrued due, relinquishes the land

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KRISHNA-  
BHUPATI  
DEVU  
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KANDULA  
SIVA-  
RAMAYYA.

1896.  
October 29.  
November 6.

(1) I.L.R., 7 All., 73. (2) I.L.R., 10 All., 889. (3) I.L.R., 13 Calc., 111,

\* Second Appeal No. 925 of 1895.

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to him, is not admissible in evidence, unless it is registered in accordance with law, although it may have been drawn up and delivered to the servants of the zamindar before he had signified his consent to waive his right to the arrears.

SECOND APPEAL against the decree of E. A. Elwin, Acting District Judge of Kistna, in Appeal Suit No. 1567 of 1893, affirming the decree of M. Venkataratnam, Acting District Munsif of Gudivada, in Original Suit No. 160 of 1892.

Plaintiff was a zamindar and he sued for a declaration of his title to, and for possession of, certain land forming part of the zamindari, of which defendant No. 1 had been in possession as tenant. It appeared that the tenant, having fallen into difficulties, executed a document on the 20th June 1888 addressed to the plaintiff in the following terms :—“To the zamindar, &c., relinquishment report put in by Govindarazulu Kameswara Rau, cultivator of Gurazada. Being unable to cultivate the 16 acres 84 cents of dry land and 7 acres and 87 cents of wet land, 24 acres and 72 cents in all, which I have been cultivating in the village of Gurazada, and, finding it inconvenient to pay the arrears on it, I have relinquished the right to the Sirkar (*i.e.*, the zamindar). I agree to the removal of that land from the village accounts in my name for fasli 1298 and to your disposing of the same at your pleasure without my having anything to do with the arrears of Rs. 600 and odd due thereon. This relinquishment report is put in with consent.” Subsequently defendant No. 1 executed in favour of defendant No. 2 a mortgage of the land in question upon which a decree was obtained by the mortgagee in Original Suit No. 176 of 1889, and in execution of the decree the land was brought to sale and part of it was purchased by the decree-holder.

The plaintiff's case was that the instrument of mortgage did not represent a real transaction and that the proceedings in the previous suit were collusive. The instrument of 1888 was unregistered. On that ground the District Munsif declined to receive it in evidence and dismissed the suit. His decision was upheld on appeal by the District Judge.

The plaintiff preferred this second appeal.

*Sundara Ayyar* and *Ramasubba Ayyar* for appellants.

*Pattabhirama Ayyar* for respondents.

JUDGMENT.—If the document in question was nothing more than a mere relinquishment presented by a tenant, the first defendant, to his landlord, the plaintiff, under section 12 of Act VIII of 1865, which authorises the former to relinquish his holding at the

end of any revenue year by a writing signed in the presence of witnesses irrespective of the wishes of the landlord in the matter, there can be no doubt that the document did not require to be registered under section 17 of the Indian Registration Act. But that the document was one given for a consideration which moved from the plaintiff to the first defendant, viz., the waiver by the former of his right to the arrears of rent amounting to Rs. 600 due at the time of the relinquishment is clear from the terms of the instrument itself. It is true that the passage in the plaint, upon which stress was laid on behalf of the plaintiff, suggests that the paper in question had been delivered to the servants of the plaintiff before he signified his consent to forego his claim to the 600 rupees. But neither the fact that the plaintiff accepted the first defendant's offer only after the paper, which was to operate as evidence of the relinquishment, had been put into the hands of his servants, nor the circumstance that the acceptance was not in writing is at all material. The moment the offer was accepted the paper which had been parted with by the first defendant conditionally, as it were, became fully operative between the parties to the arrangement and extinguished the interests which the first defendant had as a tenant. Therefore the conclusion of the Lower Courts that the relinquishment was not a mere abandonment under section 12 of the Rent Recovery Act by the first defendant of his right to occupy the land, but a contract between him and the plaintiff, which fell within section 17 of the Registration Act, and which was, therefore, inadmissible for want of registration, appears to us to be correct.

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The second appeal fails and is dismissed with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.*

KRISHNASAMI AYYANGAR (PLAINTIFF), APPELLANT,

v.

RANGA AYYANGAR (DEFENDANT), RESPONDENT.\*

1896.  
December 4.

*Civil Procedure Code—Act XIV of 1882, s. 158—Adjustment of decrees out of Court—Agreement not certified to Court—Action for damages.*

A decree for partition of family property was passed in favour of two plaintiffs. One of the plaintiffs having died before execution, a question arose between the

\* Appeal No. 220 of 1895.