APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Burn.

RAJA OF RAMNAD, APPELLANT (DEFENDANT),

1919, July, 30.

v.

VENKATARAMA AIYAR AND ANOTHER, RESPONDENTS (PLAINTIFFS).*

Estates Land (Madras) Act (I of 1908), ss. 155 and 192 (c)—Set-off of money allowances against claim for rent.

Except in the case provided for by section 155 a tenant has no right under the Madras Estates Land Act to set off amounts due to him from the landholder against a demand for rent.

SECOND APPEAL against the decree of T. SRINIVASA AYYANGAR, Subordinate Judge of Rāmnād at Madura, in Appeal No. 17 of 1918, filed against the decree of T. K. SUBBA AYYAR, District Munsif of Sattur, in Original Suit No. 334 of 1914.

This was a suit for a declaration by the plaintiffs (tenants of the defendant) that there were no arrears of rent due from them for fasli 1321 (i.e., 1911), that the distraint and sale of their holding, as if there were arrears, was irregular, illegal and invalid and for an injunction restraining the defendant from ejecting them from the holding. The defendant pleaded, *inter alia*, the existence of the arrears and the validity and regularity of the distraint and sale. The plaintiffs met this by alleging that it was customary for several years past to deduct from the rent due certain cash allowances of rupees ten, due to the plaintiffs from the defendants, and that they rightly remitted to the defendant only the balance. The defendants denied the right to the cash allowance and pleaded that, even if it was due, the plaintiffs had no right under the Madras Estates Land Act to set it off against the rent. Both the lower Courts found that the allowance was due, that it was customary to set it off against the rent and that the distraint and sale were consequently null and void.

* Second Appeal No. 2025 of 1918.

RAJA OF RAMNAD v. VENKATA-RAMA AIYAR.

The defendant preferred this appeal.

S. Soundararaja Ayyangar, and *C. Sitaramayya* for *R. Krishnama Achariyar* for appellant.

S. Subrahmanya Ayyar for *K. Jagannatha Ayyar* for second respondent.

The JUDGMENT of the Court was delivered by

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—We are constrained to differ from the Subordinate Judge on the question of set-off; admittedly arrears were due on the holding: admittedly also a certain sum of money was due from the landlord to the tenant for manibham. The tenant deducted the manibham from the rent and paid the balance. The landlord appropriated the payment towards the rent and distrained for the arrears. The property was sold. This suit is to set aside the sale on the ground, among various others, that the sale was illegal.

The Subordinate Judge has held that the tenants were by custom entitled to set-off the manibham due to them against the rent and that therefore there were no arrears; we are unable to agree with him. There are two sections in the Estates Land Act which relate to set-off: section 155 and section 192 (*e*). In the first section a right of set-off outside Court is given when there is eviction. That has no application to the present case. In the second section, the legislature distinctly negatives the right of the tenant to plead any set-off as a defence to a claim for rent. It is contended for the respondent that, as the set off was made outside the Court, this prohibition does not affect the tenants. But it must be remembered that prima facie each of the two claims referred to by us are mutual and independent. Unless one party chooses to recognize the claim of the other and agrees to arrive at an amicable settlement, it cannot be said that the action of one of them in deducting what is due to him from what is due from him is binding on the other. Nor can it be said that, by the action of the tenants, the right of the landlord to the arrears of rent was put an end to. We must therefore hold that there were arrears when the distraint proceedings commenced. The further question is whether the attachment and sale were regular. This question has not been considered by the lower Court, as it was unnecessary to decide it and the other questions, in the view it took. We must reverse the decree of the Subordinate Judge and remand the

appeal for disposal on the other points raised in the issues. Costs will abide the result.

N.R.

RAJA OF RAMNAD v. VENKATA-RAMA AIYAR.

SESHAGIRI AIYAR, J.

APPELLATE CIVIL.

Before Sir Abdur Rahim, Kt., Officiating Chief Justice, and Mr. Justice Moore.

BRIJI KESSOOR LAUL AND ANOTHER (APPELLANTS), PETITIONERS,

v.

OFFICIAL ASSIGNEE, MADRAS (RESPONDENT), RESPONDENT.*

1919, July, 31.

Presidency Towns Insolvency Act (III of 1909), ss. 21, 28 to 30—Private arrangement of insolvent with creditors for full discharge on part payment, whether 'payment in full' or 'composition' under the Act.

A private arrangement of the insolvents to pay four annas in the rupee in full satisfaction of their claims even though made with all their creditors is neither a 'payment in full' nor a 'composition' within the meaning of the Act so as to entitle the insolvents to an annulment of an order of adjudication.

An order of adjudication under the Presidency Towns Insolvency Act, made on an application of the insolvents who were unable to pay their debts, can be annulled by a 'payment in full' to the creditors as provided for by section 21 of the Act or as the result of a composition with the creditors in the manner provided for by sections 28 to 30 of the Act.

APPEAL against the Order of COUTTS TROTTER, J., in Original Insolvency Petition No. 235 of 1917.

The two appellants in this case (father and son), who were unable to pay their debts, applied to the High Court of Madras to be adjudicated insolvents in December 1917 and they were so adjudicated. Their unsecured debts amounted to Rs. 1,720 and a debt of Rs. 2,800 was secured by a house in Muttra, Northern India. In the middle of 1918 they arranged with all their unsecured creditors, except one, to pay four annas in the rupee and the creditors agreed to release them from all their

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* Original Side Appeal No. 2 of 1919.