

jurisdiction to try this case, that it was properly transferred to the Court of Session at Benares, and that the Sessions Court at Benares has jurisdiction to try the case. The Government Advocate presented both an appeal against and an application for revision of the order of the Sessions Judge. In our opinion no appeal lay, inasmuch as there was no order of acquittal, but we have no doubt that we have jurisdiction under section 435 to set aside the order of the Sessions Judge directing that the accused should be set at liberty. One of the six accused has not been arrested. We think that the Sessions Judge should proceed to try the five accused who have been arrested. For the above reasons we set aside the order of the Sessions Judge of Benares, and direct him to proceed with the trial of the five persons who have been arrested. The appeal is formally dismissed.

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Appeal dismissed.—Application allowed.

APPELLATE CIVIL.

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November 3. |

Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Banerji.

RAGHUBIR SINGH AND OTHERS (PLAINTIFFS) v. RAM CHANDAR

(DEFENDANT).*

Act No. III of 1907 (Provincial Insolvency Act), section 16—Secured creditor—Land-holder and tenant—Suit for arrears of rent—Declaration of insolvency in force at date of suit.

A land-holder is not as regards an agricultural tenant a secured creditor within the meaning of section 16(5) of the Provincial Insolvency Act, 1907. Although he possibly may be in a position to distrain even whilst a declaration of insolvency is in force, he cannot without the leave of the court sue for arrears of rent.

THE facts of this case are as follows:—

The defendant respondent was declared an insolvent on the 21st of August 1909. The plaintiff appellant brought a suit against him on the 18th of December, 1909, for arrears of rent for the years 1315, 1316, and the *Kharif* of 1317 *Fasli*. The court of first instance dismissed the suit as regards the arrears which had fallen due after he had been adjudicated an insolvent,

* Second Appeal No. 1308 of 1910 from a decree of H. M. Smith, Additional Judge of Aligarh, dated the 30th of August 1910, reversing a decree of Muhammad Abdul Rasay Khan, Assistant Collector, first class, of Aligarh, dated the 30th June, 1910.

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i.e. for the *Kharij* of 1317 *Fasli*, and decreed the rest. The lower appellate court dismissed the suit *in toto*, holding that no separate suit could be brought against an adjudicated insolvent.

The plaintiff appealed.

Babu *Durga Charan Banerji*, for the appellant :—

Section 16 of Act III of 1907 does not bar suits for claims prior to the declaration of insolvency. Plaintiff had received no notice of the application for insolvency. In any case, plaintiff, being a landlord, could come in as a 'secured creditor' under section 16, clause (5), of the Act.

Section 2, clause (*f*), says that the term 'secured creditor' includes a landlord who has a charge on land for the rent of that land.

Dr. *Tej Bahadur Sapru*, for the respondent, was not called upon.

RICHARDS, C. J. and BANERJI, J.—In our opinion the decision of the court below was correct. It is admitted that the defendant was declared an insolvent and that declaration was in full force and effect at the time when this suit was instituted. Section 16 (2) expressly provides; that, save as in that section provided, no suit shall be brought against a person who is declared an insolvent without the leave of the court. It is not contended that any leave was obtained. It is next urged that this is a suit for rent brought by a landlord against a tenant and that the landlord ought to be considered a secured creditor having regard to the definition in section 2(*f*). In our opinion, so far as an ordinary suit for rent is concerned, the landlord is in exactly the same position as any other creditor. It may, no doubt, be that he would have a right to distrain for his rent notwithstanding the declaration of insolvency. The words of section 16, sub-section (5), are "nothing in this section shall affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed." It is quite clear that this clause only refers to dealings with the securities of a secured creditor. It does not apply to the case of a suit for rent.

The appeal fails and is dismissed with costs.

Appeal dismissed.