
(1919) 07 MAD CK 0011
In the Madras High Court

Raja Rajeswara Sethupathi alias Muthu Ramalinga Sethupathi APPELLANT
Avergal, Raja of Ramnad

Vs

Venkatrama Aiyar and Another RESPONDENT

Date of Decision : 30-07-1919

Acts Referred:

Madras Estates Land Act, 1908 — Section 155

Citation : (1920) ILR (Mad) 69 : (1919) 10 LW 303 : (1919) 37 MLJ 270

Judgement

1. 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.

2. 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 was 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

respondents 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.