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We hold that, under section 26 (3) of the Estates Land Act, the rates fixed by Subbaraya Pillai are not binding on the Receiver who represents the proprietor of the village.

We accordingly dismiss the second appeal with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Anantakrishna Ayyar.

1929, July 16.

VAITHILINGA AIYASAMI AIYAR (PLAINTIFF), APPELLANT,

v.

THE DISTRICT BOARD OF TANJORE (DEFENDANT), RESPONDENT.*

Court Fees Act (VII of 1870), sch. II, cl. 17 (b)—Suit by tenant in a Revenue Court under sec. 112 of the Madras Estates Land Act (I of 1908)—Appeal to District Court—Second Appeal by tenant—Court-fee payable on the memorandum of, whether ad valorem *or fixed fee under sch. II, cl. 17 (b)—Government Notification No. 1245, dated 15th April 1926.*

A suit instituted in a Revenue Court by a tenant under section 112 of the Madras Estates Land Act is not a case where it is possible to estimate at a money value the subject-matter in dispute; consequently it falls under article 17 (*b*) of the Second Schedule of the Court Fees Act; and a memorandum of second appeal against a decree passed on appeal from the decision of the Revenue Court in such a suit should bear a court-fee stamp of Rupees fifteen, under the Government Notification No. 1245, dated 15th April 1926.

SECOND APPEAL, sought to be preferred against the decree of the District Court of West Tanjore in A.S. No. 102 of

*Stamp Register No. 586 of 1929.

1928, preferred against the decree of the Sub-Collector of Kumbakonam in Summary Suit No. 52 of 1926.

The material facts appear from the Judgment.

K. Bashyam Ayyangar for appellant.

Government Pleader (*P. Venkataramana Rao*) for the Crown.

JUDGMENT.

The question that has been referred to me is, what is the amount of court-fee payable in respect of a memorandum of Second Appeal preferred by a ryot in a suit filed by him under section 112 of the Estates Land Act. Under that section, whenever a landholder expresses his intention to avail himself of the powers given to him under the Estates Land Act to sell the holding, he is bound to give, through the Collector, a written notice to the ryot. That section also provides that, if he (the ryot) does not pay the amount or file a suit, within 30 days, before the Collector, contesting the right of sale, the said holding or any part thereof specified in the notice will be sold. In this particular case, the ryot contested the landholder's right to sell his holding under section 112. One of the reasons given by the ryot was that there was no proper notice. There were other objections also raised by the ryot. The suit was dismissed by both the lower Courts. The ryot, when he preferred the Second Appeal to this Court, affixed a Court-fee stamp of the value of Rs. 10 to the Second Appeal Memorandum. The office took objection to the amount of Court-fee that was payable, and as the Taxing Officer felt some doubt as to the exact amount of Court-fee payable in respect of the Memorandum of Second Appeal, the matter was referred to the learned Chief Justice, and under the orders of the Chief Justice, the matter has been placed before me for

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adjudication as regards the exact amount of Court-fee payable.

The learned advocate who appeared for the appellant, Mr. K. Bashyam Ayyangar, contended that the present case is covered by clause 17 (*b*), Schedule II of the Court Fees Act, VII of 1870, as amended by the Madras Act V of 1922—"plaint or memorandum of appeal where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for . . . " Under the notification issued by the Government, No. 1245, dated the 15th of April 1926, the Government were pleased "to reduce to Rs. 15 the fees chargeable under Schedule II on a Memorandum of Second Appeal in a suit of the class mentioned in article 17-B and instituted in a Revenue Court." If this Article were to apply, then the proper Court-fee payable in respect of the Memorandum of Second Appeal before me would be Rs. 15. On the other hand, the learned Government Pleader contends that it could not be said that it is not possible to estimate at a money value the subject-matter in dispute in the present case, quoting *Bunwari Lal* v. *Daya Sunker Misser*(1), and he pointed out that, though, under section 5 of the Estates Land Act, in respect of rent due to the landholder, a charge on the holding is created by the Act, that charge is enforceable either by way of suit filed before the Revenue Court or by the landholder taking summary proceedings to realize the rent. If the landholder should elect to proceed, as he has done in the present case, by way of sale of the holding, then, under section 112, the ryot is given the right to file a suit before the Collector contesting the right of sale of the holding. The question then narrows

(1) (1909) 13 C.W.N., 815.

itself to this: what exactly is the meaning to be attached to the expression "Where it is not possible to estimate at a money value the subject-matter in dispute" in clause 17 (*b*). In one sense, no doubt, it is possible to estimate, in however unsatisfactory a manner, the subject-matter in the present case, because, as pointed out by the learned Government Pleader, the question may have to be decided in this case as to what is the amount of rent payable by the ryot to the landholder in respect of which the landholder has taken proceedings by way of sale. But at the same time it is impossible to shut one's eyes to the fact that no question regarding the amount due might arise in some of the suits filed under this provision of law. For example, when the ryot disputes the landholder's right on the ground that no legal notice had been served upon him under section 112, the question that will have to be decided is whether such notice was served on the ryot or not. In such a case, the liability of the ryot to pay rent, whatever it is, remains, and it is not disputed that the landholder could, by means of a suit before the Revenue Court, recover the same by obtaining a decree and proceeding to execute the same, or he could start fresh proceedings after giving due notice under section 112, if he is otherwise in order. Learned Judges have had to consider the exact scope of the clause "it is not possible to estimate at a money value the subject-matter" occurring in the old article 17 (6), corresponding to the present article 17 (*b*), and difference of opinion necessarily arose having regard to the nature of the expression used in that clause. With reference to a plaint filed under section 77 of the Indian Registration Act, BENSON and BASHYAM AYYANGAR, JJ., held in *Pydal Nambiar* v. *Kannan Nambiar*(1), that the

(1) (1901) 12 M.L.J., 87.

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subject-matter was manifestly capable of valuation, and the learned Judges directed that *ad valorem* Court-fee should be levied. In the case reported in the very next page of the same volume, *Savarimuthu Pillai* v. *Alagiam Pillai* (1), DAVIES and MOORE, JJ., held that it was impossible to give any valuation in the ordinary sense, in respect of such suits; and they held that the case came under the old article 17 (6), corresponding to the present article 17 (*b*). It is not surprising, in this state of circumstances, that the matter came before a Full Bench of this High Court, and in *Ramu Aiyar* v. *Sankara Aiyar*(2), the Full Bench following the decision of GARTH, C.J., in *Jantoo* v. *Radha Canto Doss*(3), held that, in view of the wording of the Act, the proper view would be to say that it is not possible to estimate at a money value the subject-matter in such suits.

Another class of cases, which, in my view, would also throw some light on the meaning of the expression I have now to consider, arose in connexion with suits for partition by co-tenants alleging possession in the plaintiffs and other co-tenants, and making the other co-tenants, defendants. The question arose whether the subject-matter of such plaints could be estimated in money value and what was the proper Court-fee to be paid in respect of the same. After some difference of opinion, it was held in *Gill* v. *Varadaraghavayya*(4) by WALLIS, C.J., and SADASIVA AYYAR, J., that, in the ordinary acceptation of the expression, such claims were not capable of money valuation within the meaning of article 17. Finally, the Court had to consider the meaning of this expression with reference to an appeal preferred from a decision passed by a Forest Settlement Officer, from whose decision under section 10 of

(1) (1902) 12 M.L.J., 88.
(2) (1907) I.L.R., 31 Mad., 89.
(3) (1882) I.L.R., 8 Calc., 515.
(4) (1919) I.L.R., 43 Mad., 396.

the Forest Act an appeal lay to the District Judge. The question arose as to the exact Court-fee payable in respect of the memorandum of appeal presented in such circumstances to the District Judge. The High Court held that the Forest Officer could not be said to be a Civil Court or a Revenue Court within the first clause of article 17, and that the proper article to be applied is the old article 17 (6), which corresponds to the present article 17 (*b*). In the case before me, the plaintiffs-ryots raised (among others) the question that the notice under section 152 was not valid, since it was not signed by the defendant—the landholder—but by two others, who, it was alleged, had no right to issue such notice; objection was also raised that the notice was not properly served. These pleas, though overruled by the lower Courts, have been taken in the memorandum of second appeal also. Having regard to the decisions of this Court, where the Court had to consider the meaning that has to be attached to the expression in question, I think that I should, following the reasons adopted by this Court in the three classes of cases mentioned by me, decide that it is not possible to estimate at a money value the subject-matter in dispute in the present case. In a taxing statute, unless the matter is made reasonably clear, the parties are entitled to bring their cases under the less onerous provision of the Act, if there be no other objections to their so doing. *Sekharan* v. *Eacharan*(1), *Pathuma Umma* v. *Aliyammakkanath Moideen*(2). But in the present case I am not satisfied that the intention of the Act was to bring such a case as the one before me, within the *ad valorem* Court-fee provision. No question could arise with reference to plaints filed under section

(1) (1909) 20 M.L.J., 121. (2) (1927) 110 I.C., 752.

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112, because (though in the present case I understand that a court-fee of Re. 1 has been paid on the plaint) under clause 35 of the Notification issued by the Government, the Government have been pleased to remit the fees chargeable in respect of plaints in suits instituted before the Collector under section 112, among others, of the Estates Land Act. The question could arise only with reference to the court-fee payable in respect of appeals and second appeals; for the reasons I have given above, I have come to the conclusion that the present case before me is not a case where it is possible to estimate at a money value the subject-matter in dispute, and that being so, the present case is covered by article 17 (*b*) of Schedule II to the Act.

According to the recent notification referred to by me, namely, Notification No. 1245, dated the 15th of April 1926, the amount of court-fee payable on Second Appeals preferred from decisions of Revenue Courts is Rs. 15. The appellant has paid a fee of Rs. 10 and he has accordingly to pay the difference of Rs. 5. I give three weeks' time for such payment.

K.R.