

officer commutes his pension for a capital sum paid down, the rules which apply to pension money and make any assignment of it void, do not apply to this sum."

In our view the District Munsif was clearly right and we dismiss the petition with costs.

A.S.V.

MUNICIPAL  
COUNCIL,  
SALEM  
v.  
GURURAJAH  
RAO.

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## APPELLATE CIVIL.

*Before Mr. Justice Curgenvin.*

MANIKKAM PILLAI (PLAINTIFF), PETITIONER,

v.

N. M. NAGASAMI AYYAR, AND ANOTHER (DEPENDANTS),  
RESPONDENTS.\*

1934,  
September 7.

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*Court Fees Act (VII of 1870) and Madras Act (V of 1922), art. 17-B of Sch. II—Tank-bed land—Court-fee payable in respect of.*

A tank-bed being land which has no market-value because it is unsaleable except as accessory to other property, and for ascertaining whose value in the event of sale no means exist, falls under article 17-B of Schedule II of the Court Fees Act (VII of 1870) for purposes of court-fee to be paid, and not under section 7, clause (v) (c).

*Rajagopala Naidu v. Ramasubramania Ayyar*, (1923) I.L.R. 46 Mad. 782, referred to.

PETITION under sections 115 of Act V of 1908 and 107 of the Government of India Act, praying the High Court to revise the order of the Court of the District Munsif of Melur, dated the 29th day of July 1933 and made in Original Suit No. 180 of 1932.

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\* Civil Revision Petition No. 1159 of 1933.

MANIRKAM  
PILLAI  
v.  
NAGASAMI  
AYYAR.

*R. Gopalaswami Ayyangar* for petitioner.

*K. Venguswami Ayyar* for respondents.

*Cur. adv. vult.*

### JUDGMENT.

The petitioner is a landholder and he sues the defendants, who occupy a holding under him, to eject them from part of a tank-bed upon which he alleged that they had encroached. A preliminary issue has been framed as to the correct court-fee to be paid, and this revision petition has been presented against an order requiring payment of an *ad valorem* fee under section 7, clause (v) (c), of the Court Fees Act which provides that, where land pays no revenue, the value is to be taken as fifteen times the net profits, or if no net profits have arisen therefrom, as the value of similar land in the neighbourhood. It is contended that the appropriate provision is article 17-B of Schedule II of the Act which relates to plaints in suits :

“ Where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act.”

The contention is supported by two separate arguments. The reliefs asked for were the eviction of the defendants, an injunction restraining them from interfering with possession, and a mandatory injunction directing them to remove the mud which, to make the land cultivable, they had thrown upon it. It is suggested in the first place that the substantial relief asked for lies in the injunctions requiring the defendants to restore the tank-bed to the *status quo ante* and to cease from interfering with it, and not in the prayer for possession which is merely ancillary

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But recovery of possession, it can scarcely be gainsaid, is an essential element of any suit filed to turn out an encroacher, and I do not think that in such a case the plaint can be deemed to fall outside the scope of section 7 merely because other reliefs are also claimed.

The other argument is that article 17-B of the second Schedule applies and not section 7 (v) because the land is incapable of valuation. The learned District Munsif has called upon the plaintiff to state what net profits arose upon the land during the year preceding suit, and has added that if no net profits so arose, court-fee must be paid with reference to the value of similar land in the neighbourhood. Now it is clear, I think, that since the plaintiff claims the land as tank-bed it is as tank-bed that it must if possible be valued, and not as the cultivated land into which, as he alleges, it has been temporarily and wrongfully converted. But no net profits arise from an isolated area of tank-bed as such. Nor, I think, can it be assessed to a value by comparison with other similar lands, i.e., tank-beds, in the neighbourhood.

All tank-bed lands are of value only in the degree to which they subserve the requirements of other, and cultivable, lands by contributing to their irrigation. Regarded as separate entities it is not, I think, possible to place a money value upon them, because they are not so saleable. The principle for determining the market-value of property under the Court Fees Act has been laid down in *Rajagopala Naidu v. Ramasubramania Ayyar*(1) in the case of a temple where it was held that as

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(1) (1923) I.L.R. 46 Mad. 782.

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there can be no market for a temple as such, so there can be no market value for it. A temple has no market-value as it is inalienable, and a tank-bed has no market-value because it is unsaleable except as accessory to other property. No means exist for ascertaining what, in the event of such a sale, its value would be. Accordingly it is impossible to apply the provisions of section 7 (v), because the value of the subject-matter is indeterminate. The only course is to assess the court-fee under article 17-B. I allow the petition with costs, set aside the District Munsif's order, and direct him so to assess it.

K. W. R.

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## APPELLATE CIVIL.

*Before Mr. Justice Ramesam and Mr. Justice Curgenvven.*

1934,  
March 21.

ALAKKI VENKATARAMAYYA (PLAINTIFF), APPELLANT,

vs.

MAHARAJA OF PITTAPURAM AND EIGHT OTHERS  
(DEFENDANTS), RESPONDENTS.\*

*Madras Estates Land Act (I of 1908), ss. 145, 146 and 55—Transfer of holding—Several transfers—Case of—Benefit of ss. 145 and 146—Last transferee's right to—Intermediate transferee not registered as a ryot—Effect of—Application by all transferors and transferees—Necessity—Transferee whose transfer has been recognised by landholder—Suit by, under sec. 55 of Act—Maintainability of—Remedy under sec. 145 (2) of Act not availed of by him—Effect of—Determination of proper rate of rent in such suit—Permissibility.*

Where there has been more than one transfer of a holding or a portion thereof, the last transferee can get the benefit of

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\* Second Appeal No. 893 of 1931.