

APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao and
Mr. Justice Venkataramana Rao.*

1937,
January 25.

IN RE N. DURAISWAMI IYER, RECEIVER,
PUNGANUR ZAMINDARI (DEFENDANT), APPELLANT.*

Court Fees Act (VII of 1870), Sch. II; art. 17-B—Applicability—Madras Estates Land Act (I of 1908)—Sec. 112—Ryot's suit contesting landholder's right to sell holding—Value of subject matter of—Appeal by landholder against decree decreeing ryot's suit—Court-fee payable on.

The value of the subject-matter of a suit filed by a ryot under section 112 of the Madras Estates Land Act contesting the landholder's right to sell his holding for arrears of rent due is the annual rent which is claimed by the landholder to be in arrear and the recovery of which is resisted by the ryot.

Where in such a suit the ryot succeeded in the Courts below and the landholder filed a second appeal in the High Court,

held that the proper court-fee payable on the appeal was the amount payable *ad valorem* on the annual rent claimed.

Aiyaswami Aiyar v. District Board, Tanjore, (1929) I.L.R. 52 Mad. 972, disapproved.

Bunwari Lal v. Daya Sunker Misser, (1909) 13 C.W.N. 815, referred to.

APPEALS against the decrees of the District Court of Chittoor in Appeal Suits Nos. 98 and 133, 134, 132, 111, 99 and 135 to 140 of 1934 preferred respectively against the decrees of the Court of the Sub-Collector of Madanapalle in Summary Suits Nos. 7, 5, 6, 4, 3 and 8 to 14 of 1933 respectively.

B. Somayya and N. C. Vijiaraghavachari for appellant.

* Second Appeals Nos. 50 to 61 of 1937 (Serial Register Nos. 12284, etc., of 1935).

Government Pleader (K. S. Krishnaswami Ayyangar) for Government.

DURAI SWAMI
IYER,
In re.

Cur. adv. vult.

The ORDER of the Court was delivered by VENKATASUBBA RAO J.—The question raised in this batch of second appeals is, what is the right principle to be applied in regard to valuation of suits filed under section 112 of the Madras Estates Land Act? Chapter VI of that Act deals *inter alia* with the sale of the ryots' holdings for arrears of rents due. Section 111 provides that when an arrear is not paid within the revenue year in which it accrued due, it shall be lawful for the landholder to sell the holding or any part thereof in the prescribed manner. Section 112 then enacts that it shall be incumbent on the landholder intending to avail himself of this power, to serve a written notice on the defaulter, first stating the amount due and secondly informing him that in default of his paying the amount or of his filing a suit contesting the landholder's right to sell within the time specified, the holding or a part thereof, as the case may be, will be sold. The present appeals arise out of suits filed by the tenants concerned under the last-mentioned section. In both the Courts below, the tenants were successful and the second appeals here have been filed by the landholder. The question is, what is the proper court-fee payable on these appeals? The landholder contends in the words of the office note, that "the value of the subject-matter is not more than the annual rent the recovery of which is resisted" and on that basis he has paid an *ad valorem* court-fee in each appeal. As, however, a different view prevailed

VENKATA-
SUBBA RAO J.

DURAI SWAMI
IYER,
In re.
—
VENKATA-
SUBBA RAO J.

in *Aiyaswami Aiyar v. District Board, Tanjore*(1), the question was referred to one of us, VENKATA-
RAMANA RAO J., who, in view of the importance of the point raised, has directed the matter to be placed before a Bench. It is thus that these cases have come to be heard by us.

The only case in which this question directly arose is *Aiyaswami Aiyar v. District Board, Tanjore*(1) decided by ANANTAKRISHNA AYYAR J. The learned Judge there held that, in the case of a suit under section 112,

“it is not possible to estimate at a money value the subject-matter in dispute”,

and that therefore article 17-B of the Second Schedule applies. In arriving at this decision, he relied, by way of analogy, upon certain (three) classes of cases, where in the circumstances existing in them, it was held that the subject-matter was incapable of valuation. The reasoning of the learned Judge seems, with great respect, far from convincing; on the contrary, there is another case, *Maharaja of Pittapuram v. Chelikani Venkatarayanam Garu*(2), decided by ANANTAKRISHNA AYYAR J. himself, which, on account of its resemblance to the present case, may be said to have a greater bearing on the point raised. The question raised was, what was the proper court-fee payable in respect of suits filed under section 95 of the Madras Estates Land Act? That section, like section 112 (the provision with which we are dealing), also occurs in Chapter VI of the Act and refers to a suit by the ryot to contest the distraint effected by the landholder. It provides that a notice shall be

(1) (1929) I.L.R. 52 Mad. 972.

(2) (1929) 57 M.L.J. 260.

served on the defaulter, requiring him either to pay the amount demanded or to institute a suit contesting the distraint within the specified period. It will be seen that these two sections 95 and 112 occur not only in the same chapter, but have been enacted to serve the same purpose and prescribe similar, if not identical, procedure. The learned Judge has held that, where suits are filed under section 95, it is possible to estimate the subject-matter in dispute; if that conclusion is right (and in our opinion it is), it is reasonably clear that the same view should prevail in respect of suits under section 112.

The notice mentioned in section 112 is required to state, in the first place, the amount due for arrears which amount, it is obvious, represents both the extent of the tenant's alleged liability and the measure of his interest in the intended suit. The learned Judge observes that, in a suit to be filed by the tenant, he may direct his attack not against the quantum of the rent claimed, but against the sufficiency of the service of notice and therefore concludes that the amount of rent cannot be the criterion. With great deference, there is some fallacy which seems to underlie this reasoning. From the tenant's point of view, what he contests is the landholder's right to sell for the arrear claimed, and if he succeeds, his opponent's right to proceed with the intended sale comes, for the time being, to an end—on what particular ground the tenant makes good his contention being, for this purpose, a matter of no consequence. As observed in *Bunwari Lal v. Daya Sunker Misser* (1), the word used in article

DURAI SWAMI
IYER,
In re.
—
VENKATA-
SUBBA RAO J.

DURAI SWAMI
IYER,
In re.
—
VENKATA-
SUBBA RAO J.

17-B is "estimate" which involves the "idea of approximation", that is to say, all that is contemplated is that the subject-matter is capable of being approximately, and by no means accurately, valued. ANANTAKRISHNA AYYAR J. observes, as a further argument in support of his conclusion, that in the case of a taxing statute a construction most beneficial to the subject should be adopted. This canon has obviously no application. In the case decided by the learned Judge, *Aiyaswami Aiyar v. District Board, Tanjore*(1), the landholder was interested in arguing, having regard to the amount of the fee payable on the *ad valorem* basis, that article 17-B applied; in the present cases, he is interested in putting forward the very opposite of that contention, as the court-fee which he would be liable to pay, were that article applicable, would be greater than the amount payable *ad valorem* on the annual rent claimed.

In the result, we decide that the contention of the landholder's Counsel must prevail. The learned Government Pleader, we may observe, has supported that contention, stating frankly that his desire is to obtain a considered ruling.

We think that as between the Government and the Government Pleader Rs. 75 for the whole batch would be the proper fee.

A.S.V.

(1) (1929) I.L.R. 52 Mad. 972.
