SUPREME COURT OF INDIA

Rukmini Amma

Vs
Rajeswary

C.A.No.1475-1476 of 2005

(B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla,JJ.,)

22.03.2013

JUDGMENT

Fakkir Mohamed Ibrahim Kalifulla, J.,

1. The defendants are the appellants. The challenge is to the judgment of the High Court of Kerala at Ernakulam dated 10.12.2002 passed in R.P. 746/2002 in C.M.A. 91/2002. The respondents No. 1 to 7 are the legal heirs of one Varadaraja Naicker. The said Varadaraja Naicker created a usufructury mortgage relating to plaint scheduled properties in favour of predecessor-in-interest of the appellants initially for a sum of Rs. 10,000/- on 17.11.1958. The suit properties were mortgaged for a further sum of Rs. 6000/- with the same mortgagee on 29.10.1959. Again on 08.02.1961 an additional mortgage was executed in respect of the suit scheduled properties for a further sum of Rs. 5000/-. While the mortgage was subsisting, for the recovery of arrears of income tax payable by the mortgagor Mr. Varadaraja Naicker, the suit scheduled properties were attached under the Revenue Recovery Act. After following the due process, the property was sold in public auction and the son of mortgagee by name P. Duraisingam made a highest bid in the auction, pursuant to which he made the payment and the sale deed Exhibit B5 dated 04.12.1964 came to be executed in his favour. Thus, P. Duraisingam became the owner of the suit property vide sale deed No. 179 dated 04.12.1964. The arrears of agricultural income tax was in a sum of Rs. 2722.99. The highest bid amount of P. Duraisingam was Rs. 2820/-. After a lapse of more than 30 years, after the mortgage, the successor-in-interest of the mortgagor, namely, respondent Nos. 1 to 7 filed the suit in the year 1993 in O.S. No. 289/93 on the file of the Sub-Court, Thodupuzha. The suit was for redemption of the mortgage and the suit scheduled properties by directing the defendants to put the plaintiffs in possession on receiving the mortgage amount. The other prayers were for direction to the defendants to surrender the mortgage deeds and execute necessary conveyances or other documents to dispel the cloud on defendants title to the suit property.

2. The suit was resisted at the instance of the appellants, inter alia, contending that the suit was barred by limitation, hit by Order II Rule 2, Code of Civil Procedure (in short ˜CPC) by virtue of an earlier suit filed by the mortgagor, that the mortgagor lost possession of B and C

scheduled properties as early as in the year 1964 pursuant to revenue recovery proceedings for appropriation of agricultural income tax liabilities of the mortgagor and hence there was no right in the plaintiffs to seek for redemption. It was further contended that since B and C scheduled properties were sold in public auction towards agricultural income tax arrears of the mortgagor by way of revenue recovery proceedings, the mortgagee suffered a loss of income which the plaintiffs were liable to compensate.

3. The Trial Court framed as many as seven issues for consideration, which included maintainability of the suit, question of limitation and impediment under Order II Rule 2 CPC. The vital issues were issue Nos. 4, 5 and 6 which read as under:

> " (4) Whether the defendants have effected any improvements in the mortgaged properties, if so what is the quantum?
>
> (5) Whether the plaintiffs have lost their rights or redemption of plaint B and C schedule properties by virtue of the revenue sale?
>
> (6) Whether the defendants are entitled to claim tax and levies allegedly paid by them? • "

4. In the suit Exhibits A1 and A1(a), certified copy of the mortgage deed No. 86/1961 and its translation, were filed while on behalf of the defendants as many as 52 documents were marked. One V. Sethuram was examined as P.W.1 and one R. Rajasekharan was examined as D.W.1. The Trial Court by relying upon Exhibit B5, the sale certificate, issued in favour of Duraisingam by the Sub-Collector, Devicolum dated 04.12.1964, as well as, Exhibit B6, issued notice to the mortgagee at the instance of the plaintiffs and Exhibit B8, copy of the reply notice issued on behalf of the mortgagee to the plaintiffs, held, in its judgment dated 26.11.1997, that the mortgagor(s) rights got extinguished by Exhibit B5 revenue sale. The Trial Court, however, held that the suit was not barred by limitation and was also not hit by Order 11 Rule 2 CPC. Ultimately, the Trial Court held that in view of its findings on issue No. 5, namely, that mortgagors right got extinguished by Exhibit B5, nothing survive on issue Nos. 4 and 6 which related to the question as to whether any improvements made by the mortgagee and their entitlement to claim tax and levies allegedly paid by them. The Trial Court, ultimately, concluded that the plaintiffs were not entitled to get the decree as prayed for.

5. The plaintiffs took it upon in appeal vide A.S. No. 25/98 before the District Judge, Thodupuzha. The First Appellate Court also dealt with the issues on limitation, Order II Rule 2 CPC and the vital issue, namely, whether the plaintiffs lost their right of redemption of the plaint B and C scheduled properties by virtue of the revenue sale. The First Appellate Court after noticing Exhibit B5, sale certificate, which disclosed the purchase of the suit scheduled property by the son of the mortgagee and after analyzing the oral evidence of P.W.1 wherein it was alleged that the revenue sale was a fraudulent one as pleaded in the plaint, held, in its judgment dated 21.12.2001, that as per the terms of Exhibits A1, B1 and B2, the liability to pay the revenue dues and other dues to the Government was on the mortgagee in the absence

of any other contract to the contrary. It was also held that by virtue of Section 76(c) of the Transfer of Property Act, it was the responsibility of the mortgagee to have paid the Government dues to the agricultural income tax and saved the property from public auction sale. The First Appellate Court, ultimately, concluded that the revenue sale was fraudulently brought out by the mortgagee to defeat the rights of the plaintiffs and consequently the rights of the plaintiffs to redeem B and C scheduled properties cannot be defeated. The First Appellate Court consequently allowed the appeal, set aside the judgment and decree of the Trial Court and decreed the suit. The suit was remanded back to the Trial Court for passing a preliminary decree for redemption in accordance with law with a further direction to the parties to appear before the Court on 21.01.2002.

6. As against the above order of remand by the First Appellate Court the appellants herein preferred C.M.A. No. 91/2002. The High Court by its judgment dated 07.08.2002 dismissed the same. Thereafter, the appellants preferred Review Petition No. 746/2002 in C.M.A. No. 91/2002 which came to be dismissed again by the High Court by its order dated 10.12.2002.

7. We heard Mr. K.V. Viswanathan, learned Senior Counsel for the Appellants and Mr. Santosh Paul, learned counsel for the Respondents.

8. The learned senior counsel mainly concentrated on the merits of the suit prayer for redemption and was not keen on the issues relating to limitation or the one raised under Order II Rule 2 CPC. Even, in the impugned judgments, both passed in the main appeal as well as in the review petition, we do not find any submission made on the issue of limitation, as well as, on Order II Rule 2 CPC. Therefore, the only question to be examined is as to whether the suit prayer for redemption as propounded by the Respondents and their predecessors is valid in law. Learned senior counsel in his submissions contended that the present suit came to be filed after 30 years of the mortgage which disclose that on behalf of the mortgagee a feeble attempt was made for redemption of the suit B and C scheduled properties when the property was already brought to sale as early as in the year 1964 for the satisfaction of agricultural income tax dues payable by the mortgagor which was his personal liability. The learned Senior Counsel in support of the above submission contended that the sale took place on 04.12.1964 which was never challenged by the respondents either immediately after the sale or till this date and, therefore, the consequences which flowed from such sale which occurred by way of revenue recovery proceedings extinguished the rights of the respondents vis-a-vis the suit scheduled property. In support of the said submission, learned senior counsel relied upon the decision of this Court in *S.S. Rajalinga Raja v. State of Madras*[1]. According to learned senior counsel Section 76(C) of the Transfer of Property Act and Section 90 of the Trust Act have no application to the case on hand. Learned senior counsel also relied upon Section 44 of the Revenue Recovery Act which specified that once the sale is effected by way of revenue recovery proceedings such sale would entitle the purchaser to own the property free from all encumbrances. The learned senior counsel, therefore, contended that the judgment of the Trial Court in having held that the revenue sale brought about under Exhibit B5 extinguished whatever right possessed by the mortgagor vis-a-vis the mortgaged property was well justified. The learned senior counsel, therefore, contended that the order of the First Appellate Court and the confirmation

of the same by the High Court in the main appeal as well as in the review petition are liable to be set aside.

9. As against the above submissions, Mr. Santosh Paul, learned counsel for the contesting respondents/mortgagor contended that admittedly as per the mortgage deeds, namely, the one dated 17.11.1958, 29.10.1959 and 08.02.1961 there was a clear stipulation to the effect that the mortgagee is bound to meet all State dues which would include payment of agricultural income tax payable by the mortgagor. The learned counsel, therefore, contended that by virtue of the contractual terms agreed between the mortgagor and mortgagee it was the responsibility of the mortgagee to have cleared the dues towards agricultural income tax and saved the property from any public auction by way of sale towards Government dues and, therefore, the plea of the appellants in attempting to take umbrage under the decision of this Court as well as Section 44 of the Revenue Recovery Act cannot be countenanced. The learned counsel further contended that even as per Exhibit B8, the appellants themselves admitted to have paid sales tax dues as well as on one occasion agricultural income tax to the tune of Rs. 502.25 for the period 1956-57 to 1959-60 and, therefore, the appellants cannot now be permitted to turn around and state that it was not the responsibility of the mortgagee to have cleared the State dues. The learned counsel further contended that the mortgagee having understood the terms of the mortgage agreement and acted upon the same, failed in his duty in not clearing the agricultural dues and thereby fraudulently brought the property for sale in public auction. The learned counsel pointed out that the purchase made in the public auction by the son of the mortgagee whose successor-in-interest are the appellants in this Court sufficiently demonstrated that the mortgagee fraudulently brought the property for sale by allowing his son to raise a bid for a sum which was more or less equal to the sum due by way of agricultural income tax. In such circumstances, according to learned counsel, since the sale under Exhibit B5 was maneuvered by the appellants themselves there was total lack of bone fide in their stand and, therefore, the redemption prayed for by the respondents, as granted by the First Appellate Court and confirmed by the High Court, does not call for interference. Learned counsel placed reliance upon *Mritunjoy Pani and another v. Narmada Bala Sasmal and another*[1], *Namdev Shripati Nale v. Bapu Ganapati Jagtap and another*[2] *and M.R. Satwaji Rao (Dead) by LRs. v. B. Shama Rao (Dead) by LRs. and others*[3]- in support of his submissions.

10. Having heard learned counsel for the respective parties and having bestowed our serious consideration to the judgments of the Trial Court, the First Appellate Court as well as the orders impugned in these appeals, we find that, as rightly contended by learned senior counsel for the appellants, the sole question that arise for consideration in these appeals is whether the sale of the suit scheduled property covered by Exhibit B5 through revenue recovery proceedings for recovery of agricultural income tax extinguished the rights of the mortgagor.

11. In order to appreciate the point raised in these appeals the relevant facts which are required to be noted are, the terms of the mortgage deeds, namely, Exhibit B1 dated 17.11.1958, Exhibit B2 dated 29.10.1959 and Exhibit A1 dated 08.02.1961. In all the three documents it is specifically stated œpay the Government kist • . Such condition was imposed

on the mortgagee which was also accepted by the mortgagee. The other relevant document would be Exhibit B8 reply to the legal notice issued on behalf of the mortgagee dated 23.01.1971 wherein it was tacitly admitted that when the property was in the possession of the mortgagor he was liable to pay sales tax and agricultural tax dues to the Government for that period and that in order to avoid sale of the property the mortgagor made such payments in a sum of Rs. 388.26 by way of sales tax for 1958-59, Rs. 560.25 as sales tax for 1957-58, Rs. 903.97 as tax dues for 1959-60-1961-62 apart from a sum of Rs. 502.25 towards agricultural income tax due for the period 1956-57-1959-60. It was also mentioned therein that in all a sum of Rs. 2254.73 was paid on that account by the mortgagee and that a suit was also filed in Devicolum Munsif Court for recovery of the said sum. It was, however, stated that the said suit was dismissed on the footing that the question of payment of those amounts would arise at the time of redemption. Exhibit B8 also disclose that the subsequent sale effected for the recovery of agricultural income tax though was known to the mortgagor, he failed to take any steps to avoid the sale and in the circumstances the mortgagee cannot be held responsible for the sale effected under Exhibit B5. The other relevant document is Exhibit B5, the sale certificate, dated 04.12.1964 issued by the Sub-Collector, Devicolum in favour of Duraisingam son of mortgagee himself for recovery of the agricultural income tax which the mortgagor failed to pay.

12. When we examine the pleadings of the parties, in the plaint averments, it was pleaded on behalf of the appellants that all the mortgage deeds specifically mandated the mortgagee to pay all taxes and other levies to the State, that in spite of the said obligation cast upon the mortgagee he deliberately committed default in paying the tax and brought the B and C scheduled properties for revenue sale and thereby failed to keep the mortgaged property intact. It was further pleaded that the property was brought to sale by the mortgagee fraudulently and deceptively behind the back of the mortgagor and the fact that in the revenue sale the property was purchased by the son of the mortgagee for a paltry sum of Rs. 2820/- supported the above stand of the Appellants.

13. The further contention was that the mortgagee being in the position of the trustee any title obtained by fraud or collusion by committing breach of trust cannot be permitted to set up any claim against the mortgagor or their successors. While filing the suits, the Respondents claimed to have deposited the mortgage amount of Rs. 25,000/- and pleaded for redemption. On behalf of the appellants while refuting the allegation of fraudulent or deceptive sale of the mortgage property, it was contended that the payment of agricultural income tax had no direct link to the property mortgaged by way of Government dues and, therefore, the sale effected under the Revenue Recovery Act and the purchase made by the son of the mortgagee cannot be held to be a fraudulent sale, much less a sale behind the back of the mortgagor. In other words, according to the appellants the sale and purchase was effected independently and it had nothing to do with the privity of the contract between the mortgagor and mortgagee under Exhibits B1, B2 and A1.

14. Keeping the above stand of the respective parties in mind, in order to appreciate the legal question raised before us, it will be appropriate to make a reference to the Full Bench Decision of this Court in Rajalinga Raja (supra). That was also a case where interpretation of

Section 3 of the Madras Plantations Agricultural Income Tax, 1955 came up for consideration. Though, the interpretation came to be made under a different circumstance which pertains to the expression ˜agricultural income, we feel that the interpretation placed by this Court on the said expression can be usefully referred to for deciding the issues involved in these appeals. At pages 952-953 the proposition has been set out as under:

> "Prima facie, s. 3 of the Act read with the definition of ˜agricultural income charges to tax the monetary return either as rent or revenue or agricultural produce from the plantation. The expression œincome • in its normal connotation does not mean mere production or receipt of a commodity which may be converted into money. Income arises when the commodity is disposed of by sale, consumption or use in the manufacture or other processes carried on by the assessee qua that commodity. There is no reason to think that the expression œincome • in the Act has any other connotation. A tax on income whether agricultural or non-agricultural is, unless the Act provides otherwise, a tax on monetary return - actual or notional. Section 4 of the Act supports that view, for in the total agricultural income is comprised all agricultural income derived from a plantation in the State. It is not necessary, however, for income to accrue that there must be a sale of a commodity: consumption or use of a commodity in the business of the assessee from which the assessee obtains benefit of the commodity may be deemed to give rise to income. Therefore, merely because the produce of his plantation was received in the earlier years, assuming that the appellants case is true, income derived from sale of that produce in the year of account is not exempt from tax under the Act, in that year. •
>
> (Emphasis added)"

The crucial set of expressions stated therein that œa tax on income whether agricultural or non-agricultural is, unless the Act provides otherwise, a tax on monetary return - actual or notional • are more relevant.

15. We can also make a useful reference to a Division Bench decision of the Madras High Court in *R. Vaidyanatha Mudaliar v. State of Madras*[4] which has followed the above decision of this Court. Paragraph 17 will throw some light on this issue which reads as under:

> "17. It is, therefore, clear that œagricultural income • arises not necessarily by any supervening trading or commercial activity or mechanical process, but by the factum of production, receipt and derivation of the produce from the land. •
>
> (Emphasis added)

The conclusion that agricultural income is derived from the produce of the land in our opinion can be the only outcome in respect of an income that a land owner can earn from the lands owned by him. Applying the said principle to the case on hand, we can conclude that the levy of income tax on the agricultural income would be based on whatever the mortgagor derived from the produce of the lands owned by him including the mortgaged lands and,

therefore, such liability towards agricultural income tax can by no stretch of imagination be held to be Government dues simpliciter in order to fasten the liability on the mortgagee.

16. In yet another decision of the Kerala High Court in *Plakkad Estate (P) Ltd. and Ors. v. Agricultural Income Tax Officer and Ors*[5]. a Single Judge after referring to the principle set out in Rajalinga Raja (supra), while dealing with a converse situation held as under in paragraphs 20 and 21:

> "20. The agricultural produce derived or received by a mortgagee in possession from the mortgaged lands, therefore, becomes chargeable to tax under the Act only in the event of the mortgagee, who admittedly obtains the same, sells, consumes or uses it. Over none of these acts the mortgagor has any control. He may not even know of the quantum of produce obtained by the mortgagee so that he cannot include it in his return with any amount of certainty. For the sin of being compelled to borrow money by furnishing possessory-landed-security, he is visited with the punishment of being taxed unlike others, on the agricultural income derived or received by another; an income, as regards the derivation or receipt of which he has no control and as regards the quantum whereof he is not in a position to ascertain.....
>
> 21. What Section 4(2) says is that agricultural income derived from the land in the possession of the mortgagee shall be deemed to be the agricultural income received by the mortgagor. This means that even where bare agricultural lands wherefrom no agricultural income is derived have been possessorily mortgaged and the mortgagee makes improvements thereon or raises other crops on such land and thereby earns agricultural income, he need not pay agricultural Income Tax in respect of such income, and the mortgagor who does not earn any such income from the lands is liable to pay such tax. Section 4(2) puts the creditor in an advantageous position by providing that his debtor shall pay the agricultural Income Tax which normally and but for that provision is payable by the former. There is no rationale to support this discriminatory treatment of the debtor. The conclusion is, therefore, inescapable that while the lands are in the possession of a mortgagee and thereby liable to pay the Government dues when it comes to the question of payment of agricultural income tax it cannot be held that such liability would come within the expression ˜Government dues in as much as such tax liability is not qua the land mortgaged but qua the owner of the land who was benefited by the produce of such lands which alone falls within the definition of ˜Agricultural Income. Let us visualize a situation where there was no yield from the land in question, though a land tax or other local levies may be payable for the mere possession of the land, there would be no scope for levy of any income tax. If the said situation is understood, it can be held that agricultural income tax levied and demanded against an assessee can never be held to be a liability qua the land but can only be held to be a liability qua the land owner or the one who was responsible for the cultivation of such lands and the income derived from the produce so cultivated."

17. Keeping the above principle in mind when we examine the points raised in these appeals, the question for consideration would be whether the sale of the property by way of public auction by invoking the provisions of the Revenue Recovery Act for the dues towards agricultural income tax payable by the mortgagor can be held to have attracted Section 76(c) of the Transfer of Property Act and thereby put the mortgagee to peril. It is true that the deed of mortgage covered by Exhibits B1, B2 and A1 specifically stipulated that it was the responsibility of the mortgagee to meet all Government dues. That part of the stipulation contained in the mortgage deed, covered by Exhibit B1, states: and also for the maintenances of the minors received a cash of Rs. 10,000/- from you today and you can enjoy the scheduled mentioned property up to the stipulated period and pay the Government Kist..... • In Exhibit B2 it is stated: In case if any encumbrance is renewal my other properties will be the guarantee you have to pay the Government kist as before. •

In Exhibit A1 it is stated

I have let the property as further mortgage the possession in your enjoyment and you can enjoy the same as before and you may pay the government kist. •

(Emphasis added)

18. What is to be found out is what was specifically agreed by the mortgagee to meet by way of Government dues. Can it be said to be whatever dues that may arise at the instance of the Government as against the mortgagor whether it related to property mortgaged or on any other account. To find an answer to the above relevant question, the set of expressions œyou can enjoy the scheduled mentioned property upto the stipulated period • and preceding the expression œpay the Government kist • would be more relevant. With that view when we read the above extracted part of the terms contained in the documents, namely, B1, B2 and A1 it is relevant to note that when the mortgagee was given rights to enjoy the scheduled mentioned property up to the stipulated period, it would be equally responsible for him to meet whatever Government dues that may arise with particular reference to the property mortgaged and when that property would be under his control and enjoyment. We are of the considered view that, that can be the only way to understand, explain and interpret, the said part of the terms contained in the mortgage deed.

19. Once, we are able to reach the above conclusion with particular reference to the terms contained in the mortgage deeds the other question that falls for our consideration would be whether the agricultural income tax payable by the mortgagor can be held to be part of Government dues relatable to the properties mortgaged which would have mandated the mortgagee to have cleared such dues by virtue of the above referred to agreed terms. In this respect, we find that the ratio laid down by this Court in Rajalinga Raja (supra) assumes significance. As held in the said decision a tax on income whether agricultural or non-agricultural is unless otherwise stipulated in the Act itself will be a tax on monitory return whether actual or notional. To be more explicit, it is relevant to state that agricultural income tax payable by the mortgagor cannot be held to be an assessment of tax made with reference to the extent of land mortgaged by him. What was assessed by way of agricultural income

tax was based on the total agricultural income derived by the land holder from and out of the entirety of the land held by him which may also include the lands mortgaged. It cannot, therefore, be held that merely because, what was sought to be recovered was Agricultural Income Tax, such liability should be held to be linked to the property mortgaged.

20. It can also be explained by stating that while the agricultural income tax would be relatable to the assessee as owner of the land and from the income derived from the commodity or produce of the land owned by him, that by itself cannot be a circumstance to hold that the such tax should be held to be part of Government dues attributable to simple holding of such lands either by way of land tax or such other similar statutory liabilities on the land mortgaged. A clear distinction, therefore, has to be drawn between a statutory tax liability pertaining to the land simpliciter vis-a-vis the land owner and the other liability by way of income tax to be borne by the same land owner as an assessee to income tax on the agricultural income earned by him. Therefore, when it came to the question of meeting the tax liability of the land owner such liability might have accrued based on the commodity generated from whatever extent of land held by the land owner which cannot be spelt out or linked in exactitude to any particular land, inasmuch as the assessment of such tax liability is on the total income generated by the assessee from the overall sale of commodity or produce generated from whatever land held and possessed by the assessee. The said agricultural income tax payable by the mortgagor, as against any statutory due relatable to the land in question which is subject matter of mortgage is, therefore, clearly distinguishable.

21. It is relevant to note that the agreed terms under the mortgage deeds, namely, B1, B2 and A1 to the effect it is the obligation of the mortgagee to pay the Government dues, can only be relatable to such of those statutory dues which would have arisen against the land mortgaged and not against the person of the mortgagor. Having regard to the above conclusions of ours we find force in the submission of the learned senior counsel for the appellants that the emergence of Exhibit B5 sale certificate dated 04.12.1964 based on the revenue recovery proceedings to meet the agricultural income tax liability of the mortgagor cannot be held to be a factor for which the entire responsibility can be thrown upon the mortgagee. If the mortgaged properties were, thus, brought to sale to meet the agricultural income tax liability of the mortgagor it was upon the mortgagor himself to have met that liability in order to ensure that the property was kept intact free from any encumbrance even at the hands of the mortgagee. Therefore, the purchase made by the son of the mortgagee cannot be held to be a fraudulent sale or a deceptive one in the absence of any specific allegation to that effect at the instance of the mortgagor. To our dismay in the plaint except alleging fraud on the mortgagee by stating that it was a collusive sale there was nothing brought out in evidence either oral or documentary to support the said stand.

22. In this context the stand of the appellants that no steps were ever taken on behalf of the respondents to challenge the revenue sale covered by Exhibit B5 assumes significance. It is not, as if the, respondents were not aware of the sale prior to filing of the suit in the year 1993. In Exhibit B8 while replying to the legal notice issued on behalf of the mortgagor, on behalf of the mortgagee on 23.01.1971 it was specifically pointed out that the property was sold in public auction to meet the agricultural income tax liability of the mortgagor, but yet,

the respondents neither took any steps to set aside the said sale in the manner known to law nor was any document placed before the Court to show that the said statement contained in Exhibit B8 was not true or was not known to the respondents earlier.

23. In the above said background the factum of the filing of the suit nearly after 30 years of the mortgage was very relevant. If really the respondents were serious about the consequences which flowed from the public auction sale or were really aggrieved of the sale effected under Exhibit B5, the respondents should have been prompt in taking any steps for redressal of their grievance in order to save the property mortgaged. Having failed to evince any such keen interest in protecting their property, it is too late in the day for the respondents to have approached the Court at their own sweet will (i.e.) after nearly 30 long years of the mortgage and file a simple suit for redemption without taking any steps to question a sale which was effected by way of public auction and that too by invoking the provisions of the Revenue Recovery Act which sale once effected would enure to the benefits of the purchaser free from all encumbrance as provided in Section 44 of the Travancore Revenue Recovery Act, 1951 which was the relevant statute applicable at that point of time. In the light of our above conclusions, we do not find any scope to apply any of the decisions relied upon by learned counsel for the respondents.

24. In the various decisions relied upon by the learned counsel for the respondents 1 to 7 reported in The *Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy*[6]*, Commissioner of Income-tax v. State of U.P.*[7]*, Tata Tea Limited v. State of West Bengal*[8]*, Karimatharuvi Tea Estates Ltd. v. State of Kerala & Ors*[9]*., Anglo American Co. v. C.A.I.T.*[10], the common principle stated was that agricultural income must necessarily be derived from the land. No one can dispute the said principle when it comes to the question of ascertaining the income earned by an assessee based on the agricultural operations by way of cultivation, etc., on the land possessed or owned by such assessee. But when it comes to the question of meeting the liability on such agricultural income by way of agricultural Income Tax, can it be said that such liability would simply fall within the expression ˜Government dues or the personal liability of the person who had the advantage of earning such agricultural income by selling away the produce derived from such land. The definite answer to the question can only be that such liability cannot be brought within the expression of ˜Government dues simpliciter but the exclusive liability of the person who derived such income. We, therefore, find that the decisions relied upon by the respondents No. 1 to 7 rather than supporting their stand fully supports our conclusion.

25. Since, the above conclusions of ours are drawn based on pure interpretation of statutory construction, it is relevant to hold that some payments made towards either sales tax or agricultural income tax by the mortgagee in the years 1957-58 to 1961-62 cannot be held to have estopped the appellants from raising a plea purely based on legal and statutory construction. In the light of our above conclusions, we are convinced that the First Appellate Court as well as the High Court miserably failed to appreciate the issue involved in the proper perspective.

26. As far as the contention made on behalf of the respondents-plaintiffs based on Section 76 (c) of the Transfer of Property Act in the light of our conclusion to the effect that under the contractual terms under Exhibits B1, B2 and A1, we hold that there was no obligation on the part of the mortgagee to clear the agricultural income tax liability of the mortgagor. Relevant part of Section 76(c) needs extraction which reads as under: he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature and all rent accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold; Even going by Section 76(c) of the Transfer of Property Act it can be easily visualized that what is noted as Government dues are charges of a public nature, rent accruing during the period of possession of the land in question including arrears, if any, default of which may result in bringing the property for sale. Certainly such liabilities noted and contemplated to be cleared by the mortgagee cannot and will not include the income tax liability of an assessee which is purely personal and not of a public nature. Therefore, Section 76(c) can have limited application to the specific Government dues of public nature as well as those which are referable to the land and not to the personal statutory dues of the owner of the land. For the very same reason and for the reasons which we have elaborately stated in the earlier paragraphs, Section 90 of the Indian Trust Act will also have no application.

27. We, therefore conclude that the sale effected under Exhibit B5 to meet the agricultural income tax liability of the mortgagor has extinguished the mortgagors right and consequently the suit was liable to be dismissed. We, therefore, while setting aside the judgments and orders impugned in these appeals as well as that of the First Appellate Court, restore the judgment of the Trial Court. Appeals stand allowed. No costs.

Judgment Referred.

[1]*(1962) 1 SCR 0290*
[2]*(1997) 5 SCC 0185*
3(2008) 5 SCC 0124
[4]*(1976) 104 ITR 444 (Mad)*
[5]*(1980) 125 ITR 564 (Ker),*
[6]*(1958) SCR 102*
[7]*(1965) 3 SCR 700*
[8]*(1988) 3 SCR 961*
[9]*(1963) 1 SCR 823*
[10] *(1968) 2 SCR 749*