

(1950) 10 PAT CK 0011
In the Patna High Court
Case No : Misc. Judicial Case No. 96 of 1948

Province of Bihar

APPELLANT

Vs

Prithvi Chand Lal Chowdhury

RESPONDENT

Date of Decision : 12-10-1950

Acts Referred:

Bihar Agricultural Income Tax Act, 1938 — Section 2, 6

Citation : AIR 1951 Patna 379 : (1951) 19 ITR 550

Hon'ble Judges : Shearer, J; Sarjoo Prasad, J

Bench : Division Bench

Advocate : Lalnarayan Sinha, for Government Advocate and R. Prasad, for the Appellant; Baldeo Sahai and S.K. Mazumdar, for the Respondent

Judgement

Sarjoo Prasad, J.—This is a reference made by the Bihar Board of Agricultural Income Tax u/s 25 (2), Bihar Agricultural Income Tax Act (VII [7] of 1938). There are the following two questions of law which have been referred to us :

"Whether the realisation of rent and cess from the patnidars of the mortgaged property made by the mortgagee under a power-of-attorney from the mortgagor is the income of the mortgagor or mortgagee within the meaning of Sections 6 (c) and 6 (k), Agricultural Income Tax Act, and whether the assessee is entitled to get deduction under those sections in respect of the same income ?

Whether under the circumstances of the case the assessee is entitled to get appropriate deductions u/s 6 (c) for collection charges and also u/s 6 (k) for payment of interest made on the mortgage?" The answer to the two questions formulated above will affect the assessment in respect of various years, namely, 1943-44, 1944-45 and 1945-46."

2. The relevant facts are that a portion of the assessee's property has been given in usufructuary mortgage to one Babu Raghubar Narayan Singh of Monghyr under a registered mortgage bond dated 10-8-1935 for a sum of rupees 4 lakhs. Under the terms of the bond the mortgagee was entitled to remain in possession

of the mortgaged property and to utilise the usufruct of the same, and until the payment of the mortgage debt the mortgagor or his successors were not entitled to dispossess him of the mortgaged property. The mortgagees were entitled to realise rents from the patnidars and had also the right to enforce payment thereof in case of default by institution of rent suits. Contemporaneous with the mortgage, the executant of the bond also executed a mukhtarnama in favour of the mortgagee. It appears that by virtue of the mortgage in question the mortgagee had been appropriating a sum of Rs. 34,270 out of the usufruct by way of interest for the loan advanced and also paying Government revenue and cesses amounting to RS. 1,11,797. The assessee claims that these two amounts were really a part of his agricultural income, and, therefore, he is entitled to deduction on account of those payments. The assessee contends that those appropriations are really in the discharge of his obligations in favour of Government, on the one hand, and the creditor, on the other; and, therefore, they should be included within his income and the deductions allowed as claimed by him. The Revenue authorities did not agree with this contention of the assessee. They held that, in accordance with the terms of the mortgage deed, the mortgagee was in possession of the patni mahal, and the assessee had no right to collect rents from the patnidars, and, as such, the income from the patni mahal was not the income of the assessee, and, consequently, he was not entitled to any deductions u/s 6 (c) or u/s 6 (k) of the Act.

3. In my opinion, the view of the Revenue authorities on the point is absolutely correct. The term "agricultural income" as defined in Section 2 of the Act means any rent or income derived from land which is used for agricultural purposes, etc. On the plain terms of the mortgage bond it is perfectly clear that since sewan, 1342 Fs., that is, long before the periods of assessment the mortgagee has been in possession of the mortgaged property, and the assessee is neither in possession, nor is he entitled to collect any rent, nor has he derived any agricultural income from the said property during the years of assessment. Therefore, in no sense can it be said that he had any agricultural income in respect of the mortgaged property. A mortgage is a transfer of interest in an immovable property, and where the mortgagee comes into possession of the property and is entitled to appropriate the usufruct thereof, he gets the income of the land in question. He gets the income of the land in question subject to the payment, as the terms may be, of the Government demands in respect of the property. The payment of the Government demands, according to the terms of the mortgage bond, is in no sense the agricultural income of the mortgagor assessee although it goes to satisfy some of the public demands for which the mortgagor may be found personally liable. Similar considerations apply to the payment of the interest out of the usufruct of the property. The mortgagee, in such a case, is not acting as the agent of the mortgagor. In the bond under consideration there is no rate of interest fixed and, on the terms of the bond there is nothing to show that any particular portion of the usufruct is to be specifically appropriated towards the interest of the loan. But even if there were

such a term, as I have already pointed out, that would not make any difference so long as whole usufruct of the property is appropriated and realised by the mortgagee under the terms of the document, and no part of the income of the property goes to the mortgagor. The possession would have been different if it had been a case of a simple mortgage where, of course, the income derived from the property goes to the hands of the mortgagor, or where for instance, the usufructuary mortgagee had given a lease back to the mortgagor on certain terms and conditions-ensuring the payment of a certain amount towards the satisfaction of the principal or interest in respect of the mortgage dues : vide. In the matter of M. Makund Sarup 50 ALL. 495 : A.I.R 1928 ALL. 811 F.B.) and Ibrahimsa Rowther v. Commissioner of Income Tax, Madras 51 Mad. 455: A.I.R 1928 Mad. 543 F.B.). As it has been rightly found that no part of the income derived from the mortgaged property under the terms of the bond did not go to the hands of the mortgagor, the claim of the mortgagor in respect of the deductions in question is quite unfounded. The-answer, therefore, to both the questions must be in the negative; in other words, the answer to the first question is that the realisation of rent and cess from the patnidars of the mortgaged property made by the mortgagee under a power-of-attorney from the mortgagor is the income of the mortgagee and not that of the mortgagor, and the assessee is not entitled to get any deductions under Sections 6 (c) and 6 (k) Bihar Agricultural Income Tax Act, in respect of the said income; and the answer to the second question is that in the circumstances of the case, the assessee is not entitled to get deductions u/s 6 (c) or u/s 6 (k) of the Act for collection and payment of interest in respect of the mortgage in question.

4. The reference is answered accordingly. The department is entitled to the sum of Rs. 100 by way of costs of this reference which has been already deposited by the assessee.

Shearer, J.

5. I agree.