

(2010) 07 KL CK 0015
In the High Court Of Kerala
Case No : A.S. No. 570 of 1991

V.O. Vakkan and Sons and Another

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Cochin Revenue Recovery Act, 1083 — Section 63
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 140, 146
Evidence Act, 1872 — Section 11, 13, 35
Kerala Revenue Recovery Act, 1968 — Section 34, 34(2), 53, 72, 81
Transfer of Property Act, 1882 — Section 69, 69A

Citation : (2011) 1 CivCC 429 : (2010) 3 KLT 831

Hon'ble Judges : Thottathil B. Radhakrishnan, J; S.S. Satheesachandran, J

Bench : Division Bench

Advocate : S.V. Balakrishna Iyer and K. Jayakumar, for the Appellant; C.C. Thomas, S. Venkatasubramonia Iyer, Renjith Thampan, A.A.G., B. Ramanand, Government Pleader, P.R. Venketesh and Azad Babu, for the Respondent

Judgement

S.S. Satheesachandran, J.—These two appeals arise from the common judgment passed in two suits jointly tried by the Additional Sub Court, Cochin.

2. Both the suits were filed in forma pauperis challenging the revenue recovery proceedings by the State against the properties of the Plaintiffs, a firm and a partner, common in both cases, and seeking re-delivery of the properties sold in revenue sales, allegedly, towards amounts due, recoverable as arrears of public revenue due on land, to the Government. Suits, after trial, were dismissed. A.S. No. 570/91 arises from O.S. No. 196/79 instituted before the Sub Court, Cochin. The other appeal, A.S. No. 43/94 is from a suit transferred to the above court, and renumbered as O.S. No. 86 of 1981, which was earlier instituted as O.S. No. 252 of 1979 before the Sub Court, Alleppey. The suits were instituted before two different courts, Sub Court of Cochin and Alleppey, since revenue sales impeached in such suits were in respect of properties situate within the

jurisdiction of the respective court. Suit pending on the file of the Sub Court, Alleppey was transferred to the Sub Court, Cochin by orders of this Court to facilitate joint trial and disposal of the suits.

3. The first Plaintiff is a registered firm represented by its Managing Partner, and the 2nd Plaintiff a partner of the firm, who is also the son of its Managing Partner. The firm was carrying on the business of coir exporting and while so, as its operation was seriously affected resulting in lay off and retrenchment of its workers, the Government intervened, and pursuant to mediation talks for revival of the operation of the firm, and, more so to protect the interests of its workers, the Government agreed to stand as a guarantor to a Nationalised Bank to extend financial assistance to the firm to the tune of Rs. 20 lakhs. A sum of Rs. 6 lakhs was then outstanding as liability from the firm to a bank viz., National Grindlays Bank. The Government furnished a guarantee to Anr. bank - Syndicate Bank, to provide financial assistance of Rs. 20 lakhs to the firm in which apart from incorporating specific terms insulating the right of the Government to realise the sum from the firm and its assets and also of the partners of the firm both personally and from their properties in the event of default of discharge of the liability to the bank in instalments, for which a period of three years was provided, the bank was empowered to take such other security as required from the firm to extend the financial facility. Ext.A-4 is a copy of the guarantee deed executed by the Government to the bank. The bank guarantee was furnished, admittedly, after the firm as represented by its Managing Partner and also the 2nd Plaintiff executed a mortgage of its properties, eight items, as security for the payment of the loan amount of Rs. 20 lakhs. Ext.A-5 is a copy of that mortgage deed. Already an equitable mortgage over some properties of the firm and its partners was then subsisting in favour of the Grindlays Bank, which had extended earlier some financial facility to the firm and in respect of which then a liability of Rs. 6 lakhs was outstanding. Pursuant to furnishing of the guarantee by the Government, after taking Ext.A-5 mortgage from the firm, Syndicate Bank advanced financial facility of Rs. 20 lakhs to the firm, out of which Rs. 6 lakhs was paid to discharge the liability of Grindlays Bank. Security documents furnished with the above bank were collected, and other documents afresh were taken from the firm, to secure the facility provided. The firm failing to repay the amount to the bank, even after expiry of the period specified under the guarantee given by the Government, after giving notice to discharge the liability and that being not responded by payment, the Government initiated proceedings under the Revenue Recovery Act (for short "RR Act") against the firm, and, later, after revenue sale, honouring the commitment made in its guarantee cleared off the liabilities due from the firm to the bank.

4. Pursuant to the attachment effected over the properties in the revenue recovery proceedings and in continuation thereof, the properties of the firm and its partners including the eight items covered by Ext.A-5 mortgage deed, were brought to sale. The properties sold in public auction in recovery proceedings were purchased by the Government for nominal price since there were no

bidders to purchase properties even on the second auction held for sale. Some of the items, situate in Alleppey, pursuant to such revenue sale were later assigned to the 3rd Defendant in O.S. No. 86/81.

5. The two suits were instituted impeaching the revenue sales as vitiated by fraud and material irregularities in the proceedings taken and also in conducting of the sales. Seeking declaration of the revenue sale of the properties under the RR Act as void, the Plaintiffs in the respective suit sought for recovery of possession of the properties with mesne profits.

6. In O.S. No. 196/79 the State and the District Collector, are the Defendants and the properties in that suit are situate in Cochin. In the other suit, re-numbered as O.S. No. 86/81, previously, instituted as O.S. No. 252 of 79 before the Sub Court, Alleppey, the properties are situate in Alleppey, in which apart from the State and the District Collector, Alleppey, two more Defendants, the State Coir Corporation Limited and Formatrix Limited have been impleaded as 3rd and 4th Defendants. In the respective suit, the Defendants therein have filed written statement, with the State and the District Collector concerned filing joint written statements, raising identical contentions in which, among Ors. , the maintainability of the suit challenging the jurisdiction of the Civil Court to entertain the dispute canvassed for adjudication, was also raised. Defendants 3 and 4 in O.S. No. 86/81 filed separate written statements and, later, an additional written statement by the 3rd Defendant as well. Refuting the case of the Plaintiffs as to the fraud alleged in the revenue sale, these Defendants contended that after coming into possession, huge investments had been made in the properties, constructing buildings and installing imported machineries and that a factory is now operated for manufacturing coir products. Apart from challenging the suit claim as barred by limitation, the maintainability of the suit was also resisted contending that it is barred by the principles of res judicata as the Plaintiffs had unsuccessfully challenged and questioned the revenue sale over the properties covered by the suit in a writ petition earlier and such petition had been disposed on merits repelling all the challenges to the sale.

7. Having joint trial of the two suits in which P.Ws. 1 to 5 were examined on behalf of the Plaintiffs and D.Ws. 1 to 7 for the Defendants, with documentary evidence Exts. A-1 to A-40 and Exts.B-1 to B-17 for the respective side, and after meticulous consideration of the pleadings, and the materials and evidence, and hearing the counsel on both sides, the court below non-suited the Plaintiffs arriving at a conclusion that the challenges mooted against the revenue sales as vitiated by fraud and material irregularity are unworthy of any merit. Having regard to Section 81 of the RR Act and also noting that there was an allegation of "fraud" in the plaint in the respective suit, it was held that the challenge against the maintainability of the suit as barred u/s 72 of the above Act is not correct and both the suits are entertainable before the Civil Court. So far as the revenue sale conducted over the properties covered by O.S. No. 86/81, situate in Alleppey, the contention raised that the suit is barred by res judicata in view of

the decision rendered earlier in the original petition filed by the 2nd Plaintiff before this Court, was accepted and it was held that the above suit is barred by res judicata. Suits, both of them, were found to be barred by limitation, as the suits impeaching revenue sales had been filed beyond the prescribed period fixed u/s 81(2) of the RR Act.

8. Propriety, legality and correctness of the decision of the court below dismissing both the suits is challenged in the appeals, which too are prosecuted as indigent persons obtaining permission to do so. Both appeals were preferred by the 1st Plaintiff firm alone as represented by its managing partner. On the death of that managing partner pending appeals, the second Plaintiff, partner of the firm, who is the son of the Managing Partner, was substituted to represent the firm.

9. We have heard the learned senior Counsel for the Appellant Sri S.V. Balakrishna Iyer, the learned Government Pleader Sri K.B. Ramanand, for the common Respondents 1 and 2 in both appeals and also, Sri C.C. Thomas, Senior Advocate, who appeared for the 3rd Respondent and Sri P.R. Venkitesh, who appeared for the 4th Respondent in A.S. No. 43 of 1994, in extenso.

10. On the rival submissions made, we notice that before examining the challenges canvassed by the Plaintiffs impeaching the revenue sales, in respect of which declaration had been sought for in the respective suit that such sales are void, the maintainability of the suits before the civil court, with both the suits having been found barred by limitation, and one of them by res judicata as well, by the court below, has to be examined at first and then alone the claim of the Plaintiffs that the revenue sales are vitiated by fraud, the fulcrum of the case for the reliefs in the suits, need be gone into.

11. The learned Sub Judge has found that the suit, O.S. No. 86/81, which was earlier instituted before the Sub Court, Alleppey as O.S. No. 252/79, in which the challenge was against the revenue sale over the properties situate in Alleppey, is barred by res judicata as such revenue sale had been unsuccessfully challenged earlier in a writ petition by the 2nd Plaintiff. That writ petition was disposed on merits, negating the challenges as to the illegality and irregularities of the revenue sale, was given weightage to reach a conclusion that a subsequent challenge by the suit, setting up a case that the sale is vitiated by fraud is barred by res judicata. There is no dispute that the 2nd Plaintiff had filed a writ petition as O.P. No. 2592/76 challenging the revenue sale over the properties of the firm in Alleppey, the subject-matter of O.S. No. 86/81 and that writ petition was dismissed by this Court on 25-10-1976. In Ext.B-11 file produced by Defendants 1 and 2 in the above suit, the judgment rendered in the above writ petition forms part of, and the court below, after taking note of the findings made thereunder, negating the challenges over the revenue sale assailed in the writ petition, concluded that the Plaintiffs cannot re-agitate the issue again before the civil court by a fresh suit.

12. Before us, the learned senior Counsel appearing for the Plaintiffs adverting to

the circumstances that Defendants 1 and 2, the State and the District Collector, who had conducted the recovery proceedings and also the revenue sale, in their joint written statement, have not set up a plea of res judicata, that the plea thereof canvassed by the other Defendants (Defendants 3 and 4) is vague, without any particulars, that the writ petition was filed by the 2nd Plaintiff in his personal capacity and the present suit was by a firm impeaching the revenue sale over its properties, and that the suit challenging the sale is based on the fraud in the revenue recovery proceedings, and more so of the sale, which was discovered after the disposal of the writ petition, contended that the finding entered by the court below that the suit is barred by res judicata is palpably erroneous under law and facts. Learned Counsel further contended that res judicata being a mixed question of fact and law, without necessary foundation being made in the pleadings and materials produced in support of such a plea, on the basis of the observations made in a previous judgment alone, it is not proper and correct to form a conclusion that the suit instituted later is barred by res judicata especially when the allegations made in the suit spell out that the revenue sale is assailed on the ground of fraud subsequently detected, which was not the case when such sale was assailed in the writ petition.

13. We do not find any merit in the submissions made by the counsel that the suit assailing the revenue sale is not barred, despite the adverse decision rendered by this Court dismissing the writ petition of the 2nd Plaintiff at an earlier point of time impeaching such sale since the 2nd Plaintiff had filed the writ petition in his personal capacity and the present suit is by the firm. The enabling provision under Rule XXX of Code of Civil Procedure, permitting a firm to file a suit in its name does not in any way indicate that the suit is not by the partners of the firm, but by a different entity. A suit filed by a firm is in fact one filed by the partners of the firm. A challenge under Article 226 of the Constitution by way of a writ petition can be entertained only by a legal entity and so much so, the previous challenge in the petition by one of the partners--2nd Plaintiff, to assail the revenue sale of the properties of the firm, is nothing but a challenge for and on behalf of the firm and it is binding on the firm. True, the plea of res judicata is a mixed question of fact and law and to raise such a plea, the essential pleadings are to be spelt out by the Defendant in his written statement. Even then, away from the res judicata, the judgment given in a previous suit is a relevant piece of evidence under Sections 11, 13 and 35 of the Evidence Act, 1872 and has material bearing on the controversy arising for decision in the latter suit. The findings recorded in a judgment by a competent court in a previous suit, if they have relevance in a latter suit cannot be ignored for the reason that the essential foundation to substantiate a plea of res judicata is not made out in the pleadings and no other material of the previous case other than the judgment was produced in the latter case. The question to be then considered is whether the judgment has relevance in the latter suit. In appreciating the relevancy of the judgment in a previous case, in the subsequent suit or proceeding, as a vital piece of evidence, the court has to examine the

consequences that may flow ignoring such a material piece of documentary evidence on the controversy arising for decision, and the court if satisfied that the judgment in the previous case is a relevant and material piece of evidence of undoubted veracity, it cannot be ignored as it would result in serious error of law having a vitiation effect on the findings on a most vital issue in the case. See *Madhukar D. Shende Vs. Tarabai Aba Shedage*, and *Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah*, . We also take note that Defendants 3 and 4 in their written statements, separately filed, raising a plea of *res judicata* have specifically contended that the suit is barred in view of the decision rendered in the previous writ petition by the 2nd Plaintiff. The Plaintiffs have thereupon filed a replication raising identical pleas now canvassed that the decision on the writ petition filed by the 2nd Plaintiff was not binding on the firm. We have already stated the writ petition filed by the 2nd Plaintiff, a partner, is binding on the firm. An issue had also been raised in the suit whether the challenge against the revenue sale is barred by *res judicata* in view of the decision in the previous writ petition. No prejudice was caused to the Plaintiffs as the plea of *res judicata* had been raised in the trial of the suit, even if no other material was produced other than the judgment forming part of Ext. B-11 file. We have gone through the judgment rendered in O.P. No. 2592/76 filed by the 2nd Plaintiff challenging the revenue sale over the properties of the firm situate in Alleppey. This Court, taking note of the inordinate delay in challenging the revenue sale under the writ petition has held that no valid explanation was offered for such delay to question the legality of the auction sale. On merits also, it was found that the Petitioner has not been able to make out any irregularity much less any illegality in the conduct of the impugned auction sale. Challenges raised by the Petitioners that the impugned sale was held in violation of the provisions of the RR Act were repelled. While dismissing the petition and that too indisputably on merit, the only reservation made was that the decision of this Court would not preclude the Petitioner from moving any representation before the Government for redressal of the hardship that might have caused to him from the revenue sale. That reservation at the most was only an enabling one to move a mercy petition before Government, and not of conferment of any legal right to reagitate the challenges to revenue sale again by fresh proceedings or suit. The present suit, at a later point of time, after dismissal of the writ petition, as indicated above, is based on fraud in the conducting of the revenue sale and such fraud was discovered only after the disposal of the writ petition, the plea now advanced by the counsel for the firm to wriggle out of the entanglement of the bar of *res judicata*, from the adverse decision rendered in the writ petition negating the challenges to revenue sale, deserve only to be taken note of for its rejection. Even assuming that there was some fraud in the revenue recovery proceedings or in the conducting of the sale, then also recourse by review of the judgment rendered by this Court in the writ petition, but not a fresh challenge against the revenue sale instituting a suit before the civil court is permissible under law.

14. The bar of *res judicata* canvassed by Defendants 3 and 4 in the above suit,

whether or not spelt out with specific particulars thereof and also substantiated by the pleadings of the previous case is not of material value when the judgment rendered in the writ petition referred to above clearly demonstrate that the issue, challenge against the revenue sale canvassed in the suit had been raised earlier before this Court and on merits the challenge thereof had been negatived. Where an issue of fact has been raised by a competent court on a previous occasion and finding has been reached one way or other, such finding under the judgment would constitute estoppel by record precluding the reception of evidence, to disturb the finding of fact previously entered, in the latter proceeding. In fact, on the proved facts and circumstances presented, there is a clear bar of cause of action estoppel interdicting the Plaintiffs from re-agitating the challenge against the revenue sale in respect of the properties situate in Alleppey. In that view of the matter, we find that the bar of res judicata to the suit which was upheld by the court below, impeached on the ground of technicalities as to the non-furnishing of specific particulars and non-production of pleadings of the previous case, has no merit as the judgment rendered in the writ petition clearly spell out that the matter directly and substantially in issue in the suit and the writ petition is the same and a fresh adjudication of such issue again in the suit is interdicted by public policy, and not to be entertained. Fraud in the conduct of recovery proceedings and sale, detection of which later after disposal of the writ petition, canvassed as giving rise to the cause of action for the suit, but not so pleaded in the plaint, makes no difference over the bar of res judicata to the latter proceeding, and that is so even if such a case is pleaded, since the decision rendered in the writ petition can be annulled or varied only as provided by law, and not by a fresh suit seeking adjudication of the issue already decided and conclusively determined between the parties. Entertaining a fresh suit on the plea canvassed, detection of fraud, after having been worsted in the previous case over the same cause of action, would defeat the very purpose of res judicata, which is based on public policy that none should be vexed twice in the same cause and also that there should be finality to the litigation. Such a bar to the fresh suit is based on the salutary principle that once a res is judicata it shall not be adjudged again. The finding of the court below that O.S. No. 86 of 1981 is barred by res judicata is proper and correct, and it is so affirmed.

15. The court below has also found that both the suits are barred by limitation. We notice that more or less identical allegations are raised in both the suits to challenge the revenue sales over the properties of the firm in Alleppey and also Cochin, setting forth a common case, and similar cause of action that after the dismissal of a revision filed by the Board of Revenue, the Plaintiffs had moved further revision before the Government and such revision is still pending. Pendency of that revision was canvassed to contend that the suits have been filed within time. We also notice that reference is made and, in fact, a specific case has been set up by way of amendment to the plaint that in view of the revision before the Government, purported to have been filed u/s 83(2) of the RR Act, which is stated to be pending, there is no bar of limitation. Having regard to

the allegations raised in the plaint and more so, the cause of action stated, which has been further sought to be strengthened by the amendment referred to, we have asked the senior Counsel appearing for the Appellants whether the suit has been filed as enjoined u/s 81 of the RR Act or as under the general law applicable enabling a person to challenge a revenue sale if it were void. The answer given was that the suits are filed as coming under both cases, which we fail to comprehend as the suits u/s 81 of the Act and that under the general law operate under different sets of facts and circumstances. Though in the suits declaration is claimed that the revenue sales are void and inoperative as vitiated by fraud and mala fides, perusing the respective plaint, we find, material particulars of fraud, if any, are not spelt out, but only of raising allegations of irregularities and also illegalities in the revenue recovery proceedings and sale of the properties. We also notice that allegations on which the suit claim of declaration is sought for have been made out as if the suit had been instituted challenging the revenue sales by the firm as enjoined u/s 81 of the RR Act. Though the revenue sales are impeached as void, contending that the sales are vitiated by irregularities and illegalities and mala fides on the part of some officials of the government evidently, the suits filed by the firm-a defaulter under the RR Act-raise challenges over the execution, discharge and satisfaction of the revenue recovery proceedings and also the revenue sale in such proceedings. That being the case, it has become imperative to examine the entertainability of the suit with reference to the bar covered by Section 72 of the Act interdicting the civil court in entertaining such a suit except on the ground of fraud.

16. In view of the equivocal stand canvassed before us that the suit could be considered as one u/s 81 of the RR Act and also under the general law for impeaching a revenue sale, which is imputed as void and without jurisdiction, it has become essential to examine whether both could go together and if not, on the pleadings set out in the case disclosing the cause of action for the reliefs sought for from the court which one of them is applicable. We have already adverted to the cause of action shown in the respective suit by the firm which unmistakably demonstrate that contending that a petition filed by the firm challenging the revenue sale after the dismissal of the revision by the Board of Revenue is still pending consideration before the Government and not disposed of, both the suits had been instituted as if it were done u/s 81 of the Act. Since cause of action of suit is not depended upon what is stated with respect to the dates mentioned in the plaint as to when the cause had arisen for the suit, but, on the bundle of facts presented in the plaint on which the suit claim is based, and as the revenue sales had been impeached on various grounds contending such sales are void, we find that the question of limitation involved in the suits has to be analysed on a broader perspective with reference to the pleadings, the provisions of the RR Act and the general law applicable, and not solely on the basis of the cause of action mentioned by the Plaintiffs in the plaint.

17. The case of the firm is that the revenue sales in respect of its properties in Alleppey and Cochin challenged in the respective suit, is vitiated by fraud and

such fraud was detected only long after such sales. The grounds raised to impute fraud in the revenue sales have been stated in common in paragraph 8 of the respective plaint as (i) to (vii), of which the last one (vii) had been brought in by way of amendment. In substance, the grounds imputed are thus:

(i) Though the guarantee deed executed in favour of the bank empowered the Government to proceed against the firm under the RR Act on a mere intimation from the bank of default in discharging the loan by the firm, without the actual liability under the loan determined in a suit instituted by the bank against the firm, the proceedings taken under the Act are fraudulent and that had been done with dishonest intention to make unlawful gain.

(ii) The guarantee covered a period of only three years, but it was renewed and extended by the Government twice without notice to the firm and that also amounted to fraud.

(iii) The mortgage deed executed by the firm in favour of the bank enabled the Government to recover the amount due by resort to Sections 69 and 69A of the Transfer of Property Act. When that particular mode of recovery was specified, proceedings taken under the RR Act was illegal and unjust and as such it is fraudulent.

(iv) Ext.A-5 mortgage deed postulated ascertainment and quantification of the sum due to the mortgagee Government, for proceeding against the firm and such quantification and ascertainment could be done only after the claim was settled with the bank; but, before such settlement, the Government had initiated revenue recovery proceedings and the dues to the bank was settled much later to the sale and that too, after having a negotiated settlement with the bank. Revenue sale of the properties of the firm and purchase in such sale for a nominal amount at 10 paise by the Government and clearing off the dues of the bank long after such sales and purchase, after a negotiated settlement, had resulted in unlawful gain to the Government and unlawful loss to the firm, and the settlement effected by the Government with the bank is violative of Sections 140 and 146 of the Indian Contract Act.

(v) The amounts were not specified in the notice of sale and the figure shown in such notice was highly exaggerated and as such the sales were void.

(vi) The entire proceedings under the RR Act was a result of personal vendetta and mala fides on the part of certain persons holding key position in the Government towards the firm and its Managing partner. There was also duplication as simultaneous proceedings were taken under the RR Act for sale of the properties of the firm in Cochin and Alleppey for the sum dues under Ext.A-5 mortgage.

(vii) The liability of the Government to the bank in Ext. A-4 guarantee deed was limited to Rs. 20 lakhs, but the Government proceeded under the RR Act for realisation of the amounts much above the limit so fixed. So much so, the

properties of the firm had been sold in revenue sale under the RR Act for amounts not actually due to the Government.

18. We notice that some of the grounds canvassed to impeach the sale relate to the authority and jurisdiction of the Government to initiate revenue recovery proceedings under the RR Act for realisation of the amount due from the firm to the bank, on the basis of Ext. A-5, the mortgage deed, and Ext. A-4, the guarantee furnished by the Government. A few of the grounds impeach the steps taken by the Government in revenue recovery proceedings as fraudulent. The question of limitation for the suit impeaching the revenue sale under the RR Act has to be examined with reference to the facts involved, the provisions of the RR Act, and the general law applicable.

19. Recovery proceedings to realise the dues to the Government by resort to statutory provisions, providing for coercive steps by way of distraint, warrant, attachment and sale of the properties of the defaulter is essentially intended to have a speedier method for collection of the public debt to the extent it is covered by the statutory prescriptions and also in the manner legislated by law. Previously, the Central Act, the Revenue Recovery Act, 1890 [Act 1/1890] governed the field for the recovery of any arrear of land revenue or sum recoverable as a land revenue. In course of time, in the Presidency, and Princely States of India, separate statutes came into force for recovery of arrears on public revenue due on land and those Acts continued to be in force till repealed and replaced by Recovery Acts passed by the Legislature. The Madras Revenue Recovery Act (Madras Act No. 2/1864) in the Presidency of Madras, Revenue Recovery Act, [Act 1/1068] as applicable to the Princely State of Travancore, the Cochin Revenue Recovery Act (Act 4/1083) as applicable to the Princely State of Cochin, and later on the union of the above two Princely States, the Travancore Cochin Revenue Recovery Act 7/1951, held the field with respect to the areas to which such Acts were applicable for the realisation of arrears of public revenue due on land. The recovery proceedings initiated under those Acts leading to revenue sale of the properties of the defaulter had given rise to a vexed question whether such proceedings and sale were assailable before a Civil Court as under the general law enabling a party to seek declaration impeaching the proceedings as illegal and void. That question required examination with reference to the alternate remedies, if any, provided and also interdictions barring the entertainability of suits challenging the recovery proceedings and sale, subject to exceptions, if any, stated. Pondering over that question, the Travancore Cochin High Court in Govardhan Das v. Chief Secretary ILR 1956 T.C. 593 with reference to Section 63 of the RR Act [XV of 1083 Cochin], which was more or less similar to Section 81 of the RR Act, as at the time of institution of the present suits (before the amendment under Act 31 of 2007), held that "right to sue" provided by the Section, and the period of limitation prescribed to such a suit, does not apply to acts which are ultra vires of the RR Act. When the complainant alleged that the action taken under the RR Act was illegal and without jurisdiction, it was a case of acting "de hors that Act" and then the above section of the Act had no

application was the conclusion formed. The right to sue to set aside a wrongful sale of one's property is an undisputed civil right which cannot be said to have been created for the first time by the provisions contained in any statute. It is now well-settled that if the revenue recovery proceedings are taken without jurisdiction and the revenue sale, if any, conducted pursuant to such proceedings is void and not binding on a person aggrieved, whether he be a defaulter or not under the RR Act, a suit at his instance to challenge such proceedings or sale is not barred by any of the provisions under the Act. On the other hand, if the challenge to the proceedings and sale is voidable to the person concerned, then his right to sue is governed by the enabling provision under the Act and not by way of a suit under the general law. In the case of a suit challenging the recovery proceedings and sale as void, under the former case, the period of limitation to sue will be governed by the general provisions of the Limitation Act, and in the latter case, where the proceedings and sale challenged is voidable to the person concerned, the law of limitation governing such suit will be that period provided under the provision engrafted in the statute reserving the right to sue to challenge the proceedings and sale, subject to the exceptions stipulated. The present two suits have been filed by a firm, admittedly a defaulter, as defined under the RR Act. The Plaintiffs have no case that the firm is not a defaulter from which the amount due to the Government cannot be realised by way of arrears of public revenue due on land by resort to the revenue recovery proceedings. True, the Plaintiffs have challenged the recovery proceedings under the RR Act contending that resort to Clause (7) of Ext.A-5 mortgage deed is permissible only after quantification of the amount due and also discharge of the liability towards the bank under the guarantee by the Government. Such challenges, the merit of which will be adverted to later, will, in no way, assist or enable the firm to question the empowerment of the Government under the terms of Ext.A-5 mortgage deed to realise the amount due, in the event of violation of the terms thereunder as to the payment of the amount received from the bank, under the RR Act.

20. With the aforesaid, the question has to be considered whether the suits filed by the Plaintiffs fall u/s 81 of the RR Act or under the general law applicable. Section 81 of the RR Act before the amendment under Act 31 of 2007, at the time of institution of suits, reads thus.

81. Saving of right to sue.--(1) Nothing in this Act shall be held to prevent parties, deeming themselves aggrieved by any decision or order passed or proceeding taken or purporting to be passed or taken under this Act for arrears due or alleged to be due from such parties, from suing the Government in the civil court.

(2) Civil Courts shall not take cognizance of any suit instituted as provided for in this Act, unless such suit has been instituted within ninety days from the time at which the cause of action arose:

Provided that the whole time occupied by the Board of Revenue in revising the

orders passed or proceedings taken by the Collector or the authorised officer or by the Government in revising the orders passed or proceedings taken by the Board of Revenue shall be excluded in computing the said period of ninety days.

21. A suit, to challenge a revenue recovery proceedings and also the sale, the cause of action of which fall u/s 81 of the Act has to be filed within the outer limit fixed by Sub-section (2) of that Section. The case pleaded by the Plaintiffs in the present case in both the suits, is that a revision filed by them before the Government after dismissal of their revision by the Board of Revenue is still pending consideration as on the date of the institution of the suits and so much so, the suits are saved and within the period of limitation under Sub-section (2) of Section 81 of the Act. No scrap of evidence was produced by the Plaintiffs to show that the revisions, if any, filed before the Board of Revenue had been presented within the time prescribed by law and further, as to the date of disposal of those revisions and also of further challenges by way of revision to the Government. Mere assertion by the Plaintiffs that revision has been filed before the Government impeaching the revenue sale and such a revision is pending especially where it is refuted and controverted by the Defendants would not enable them in any manner in showing that suits have been filed within the period prescribed by the statutory provision. Realising the insurmountable barrier placed before the Plaintiffs to sustain their case that the suits are within the period of limitation as under Sub-section (2) of Section 81 of the Act pleaded by them in their respective plaint, specifically adverting to it in the cause of action to sue for the reliefs claimed, a declaration that the sale under the revenue recovery are void and for re-delivery of the properties, the learned Counsel for the Plaintiffs has tried to salvage the suits as having been filed within the period of limitation advancing an ingenious argument that the Plaintiffs still can maintain their suits as having been filed under the general law applicable. Plaintiffs, as already indicated, were defaulters under the RR Act from whom, amount was due to the Government as recoverable as arrears of public revenue due on land by resort to the provisions under the revenue recovery proceedings. The scheme of the RR Act contained inbuilt safeguards enabling a defaulter to avoid destraint steps against his person and also his properties. Even after revenue sale is conducted, the irregularity leading to such sale can be pointed out by taking proceedings under the appropriate provision under the Act within the time-limit fixed for setting aside such sale.

22. Not only that the Plaintiffs in these suits have specifically raised allegations and also set up cause of action unmistakably asserting that the suits had been filed as enjoined u/s 81 of the RR Act it has also to be noticed that the Plaintiffs are admittedly defaulters from whom the amount due could be realised by the Government as arrears of public revenue due on land in terms of Ext. A-5 mortgage deed on their default in discharging the loan availed from the bank within the period agreed upon which had been extended by the bank on Ext. A-4 guarantee of the Government. A revenue sale can be impeached by a defaulter when the recovery proceedings under the Act, and also later the sale, are void,

by itself, would not enable the Plaintiffs to contend that the suits filed by them in which they have impeached the revenue sale as void and inoperative should be treated as suits filed under the general law and not u/s 81 of the RR Act. True, the Plaintiffs have raised some allegations to contend that the entire revenue recovery proceedings initiated for realisation of the amount due to the Government, on their breach to honour the commitment made to discharge the loan to the bank are tainted with illegality and are void. In view of the interdiction u/s 72 of the Act, which prohibits a Civil Court from adjudicating any question as to the execution, discharge and satisfaction of a written demand issued under the Act, as between an authorised officer and the defaulter, it is not the allegation raised or the imputation made as to fraud, which alone is the exemption provided for institution of a suit by a defaulter relieving him from the bar under that Section, that is material for determining the entertainability of the suit. The factual scenario involved in the case on the pleadings and also evidence let in has to be examined to find out whether the suit by the defaulter impeaching the recovery proceedings and revenue sale as void and inoperative is entertainable under the general law and not barred by the interdictions u/s 72 of the Act, with reference to the right to sue conferred u/s 81, subject to the outer time-limit fixed for exhausting the remedies to challenge the recovery proceedings and also sale, if any, conducted under the Act. Merely imputing some allegations against the Government or the public officials, at whose instance steps for recovery proceedings are proceeded with or enforced, for realisation of arrears of public revenue due on land to Government, and with a further case that their acts are fraudulent and tainted with illegality, or by impeaching the recovery proceedings as having been carried out without jurisdiction or authority, that alone is not at all sufficient to enable the defaulter to sue the Government seeking a declaration that the recovery proceedings and revenue sale are void under the general law and thus get over the bar covered by the statute prohibiting the civil court from adjudicating any dispute otherwise as provided u/s 81 of the Act.

23. Essentially, the maintainability of the suits filed by the Plaintiffs has to be determined with reference to the challenges raised impeaching the recovery proceedings and also the sale as void and that has to be done with reference to the pleadings and materials tendered to establish such a case. The learned Counsel for the Plaintiffs has given much emphasis to the words "amount due" under Clause (8) of Ext. A-5 to contend that proceedings under the RR Act could have been initiated by the Government only after ascertainment of the actual amount due to the bank from the Plaintiffs and that too only on ascertainment of the sum due and its payment to the bank by the Government. Adverting to Sections 140 and 146 of the Contract Act, it was urged before us that the Government the guarantor to the bank could proceed against the Plaintiffs only after discharging the liability to the bank by payment and as in the present case the proceedings were initiated much earlier and the payment to the bank was made only long after the sale such proceedings and sale are tainted with illegality

as they are against the above mandatory provisions of the statute, Contract Act, and so much so, the proceedings and sale are void. At any rate, the recovery proceedings could be initiated only after ascertainment of the amount due and in the present case, unilaterally the Government proceeded with the recovery proceedings fixing the sum arbitrarily and thus violating the terms covered by Clause (8) of Ext. A-5 mortgage deed is the argument canvassed to impeach the proceedings and sale as void. We do not find any merit in any of the submissions made as above by the counsel. Ext. A-5 is the mortgage deed executed by the Plaintiffs on the basis of which the Government gave Ext. A-4 guarantee to the bank to advance a sum of Rs. 20 lakhs. Clauses (7) and (8) of Ext. A-5 deed empower the Government to proceed against the Plaintiffs in the event of breach of payment of the amount to the bank advanced within the time-limit of three years fixed and agreed upon. Clauses (7) and (8) of Ext. A-5 read thus:

(7) In case the Mortgagors commit default in repayment of the whole or part of the loan amount due from the Mortgagors to the Bank or commit breach of all or any of the provisions herein contained, the Mortgagee shall have power to recover from the Mortgagors and their properties all amount which the Mortgagee may have to pay to the Bank in pursuance of the said guarantee and the Mortgagee shall have all the powers vested in a Mortgagee under Sections 69 and 69A of the Transfer of Property Act in the matter of sale without the intervention of court, appointment of receiver etc.

(8) Without prejudice to the rights of the Mortgagee under the preceding clause, all sums found due to the Mortgagee under or by virtue of this deed shall be recoverable from the Mortgagors and their properties movable and immovable under the provisions of the Revenue Recovery Act for the time being in force as though such sums are arrears of land revenue and in such other manner as the Mortgagee may deem fit.

24. Whereas Clause (7) provides for recourse to Civil Court by instituting a suit to bring to sale the mortgaged properties in the event of default in payment by the mortgagor Clause (8) confers authority on the Government to proceed under the RR Act, for realisation of the amount due from the mortgagors and their properties, both movable and immovable, treating the sums due as arrears of land revenue.

25. Challenge raised that the recovery proceedings under the RR Act could be initiated against the defaulter as enjoined under Clause (8) of Ext. A-5 mortgage deed only after discharge of the ascertained sum to the bank and the Government as a guarantor is governed by the statutory prescriptions covered by Sections 140 and 146 of the Contract Act, deserve to be taken note of only for its rejection. The relationship between the Government and the firm, is not that of a surety and a principal debtor over a transaction with Anr. , creditor, bank, but that of a mortgagee and mortgagor as under Ext. A-5 deed. It is not the personal liability of a surety falling under the provisions of the Contract Act that is created, but, a jural relationship of a mortgagee-mortgagor, under Ext. A-5 deed.

A mortgage is the conveyance of an interest in a property. It is also to be noted that in the transaction between the bank and the firm, other than furnishing Ext. A-4, the Government have vouchsafed repayment of the loan amount, if default is committed by the firm. On the guarantee so furnished by the Government, the bank had advanced loan to the firm under a separate transaction collecting documents and collateral security thereof. True, the loan was extended on the guarantee given by the Government under Ext. A-4, but it is independent from the loan transaction entered by the bank with the firm in which the Government was not a party at all. The liability due from the firm to the bank under the loan transaction entered into, though guaranteed by the Government under Ext. A-4, which enabled the bank to advance the loan, no way entered into, though guaranteed by the Government under Ext. A-4, which enabled the bank to advance the loan, no way constitute a principal debtor-surety relationship between the firm and the Government with the bank as a creditor. The relationship between the Government and the firm strictly falls under Ext. A-5 mortgage deed on which the Government had furnished Ext. A-4 guarantee to the bank to advance financial assistance to the firm by way of an independent loan transaction, subject to the terms of the guarantees furnished. So much so, Sections 140 and 146 of the Contract Act have no application to the facts of the case. Then, as regards the ascertainment of the amount due to proceed against the firm for the amount due under Ext. A-5, which is banked upon to contend that before such amount fixed recovery proceedings under the RR Act are illegal, it need only be stated that the quantification of the amount due under the mortgage is something to be determined in adjudication, if there is dispute, and it will, in no way, affect the mortgagee's rights to realise the amount in terms of Ext. A-5 deed. Further more, it is also to be noticed, the Government has proceeded under the RR Act for ascertained sum of money on due intimation from the bank and that too, after giving notice to the firm as to the amount due. At no stage of the recovery proceedings, though the RR Act provided for an opportunity to the defaulter to challenge the correctness of the amount due or any other objections sustainable under law to avoid such recovery, no objection had been raised by the defaulter firm, not even the questioning of the amount due for which proceedings were taken. Recovery proceeded for an ascertained sum which was duly intimated to the defaulter and it was never objected to at any stage culminating in the sale of the properties.

26. Challenge against the revenue sales by the Plaintiffs, it has to be noted, is not based on any case that Ext. A-5 mortgage deed executed in favour of the Government to furnish Ext. A-4 guarantee by the Government, which enabled the Plaintiff firm to avail financial facility of Rs. 20 lakhs, suffered from any infirmity or illegality, but only that Clause (8) under Ext. A-5 required ascertainment of the amount due before taking proceedings under the RR Act in the event of default by the Plaintiffs, and that procedure followed by the Government in the recovery proceedings under the RR Act are tainted with illegality. The Government is empowered to proceed under the RR Act even by the terms of

Ext. A-5 mortgage deed is not under challenge. Whether there was any irregularity or illegality in the recovery proceedings, after demand was issued under the RR Act, on expiry of the period specified for discharge of the liability due from Plaintiffs to discharge the liability under the loan, steps for recovery of the sum due to the bank from the firm were proceeded with by the Government exercising its right to do so as insulated under Ext. A-5 deed. Since the relationship between the parties, the firm and the Government, being one of mortgagor and mortgagee in the event of any dispute as to the sum due, it was open to the mortgagor to seek determination of such amount raising objection to the demand issued under the RR Act. In the recovery proceedings, properties covered over and above the items of immovable properties under Ext. A-5 deed were also proceeded against as enjoined under Clause (8) of that deed, enabling the Government to realise the sum due from all the properties of the defaulter - Plaintiffs, will, in no way impeach the rights of the Plaintiffs--the mortgagor to seek determination of the amount due to the mortgagee, if at all it had any such case as the recovery is based on Ext. A-5 mortgage deed, whether it be by way of a suit or proceeding under the RR Act. The Government-mortgagee has proceeded against other properties of the Plaintiffs over and above those specified as security in Ext. A-5 deed by resort to recovery proceedings under the RR Act does not change the relationship as mortgagee-mortgagor to that of a principal debtor and surety with joint and several liability to a bank which had advanced the loan. The relationship between the parties is not governed by personal obligations under a contract, but under a conveyance, transferring interest in immovable property under a mortgage deed. A mortgage is the transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan existing or future debt or the performance of an engagement which may give rise to a pecuniary liability. The fact that such a deed provides for securing the payment of money by proceeding against the other properties over and above those covered by the deed does not postulate that there is any change in the relationship of the parties in any manner. In short, the steps taken, proceedings under the RR Act, for recovery of the loan, has not placed any impediment to the right of the Plaintiffs as mortgagors under Ext A-5 deed if at all they had any challenge against the amount claimed under the demand notice issued u/s 34 of the Act to have ascertainment of the sum due insisting for an enquiry and a finding on that dispute. Even otherwise, when a demand notice is issued under the RR Act the defaulter has the right to raise his objections challenging the amount demanded, but, of course, the resolving of that question cannot be by way of a fullfledged trial. Whatever that be, it is interesting to note, at no stage of the recovery proceedings, the Plaintiffs have raised any objection till the sales were completed, leave alone any challenge to the amount claimed under the demand notice issued to them. When such be the position, the ground now raised to impeach the recovery proceedings contending that such proceedings have been taken without ascertaining the amount due, as stated in Clause (8) of Ext. A-5 without raising any challenge at any point of time till the completion of the

proceedings by sale hardly merits any value and is unworthy of any consideration.

27. The Government has not discharged the liability under Ext. A-4 guarantee with the bank on default by the Plaintiffs and therefore, the revenue recovery proceedings initiated against the Plaintiffs are vitiated need be taken note of only for its rejection. The relationship of the Government with the Plaintiffs and that of the Government with the bank are distinct and different, as governed by Ext. A-5 mortgage deed and Ext. A-4 guarantee deed respectively, though the transaction covered thereof related to the advancement of the loan by the bank to the Plaintiffs for revival of their business operations. Immediately on default, to honour the commitment in discharging the loan by the Plaintiffs it was open to the bank to enforce the guarantee against the Government or proceed against the Plaintiffs separately no way placed any impediment to the Government in enforcing its rights enshrined under Ext. A-5 mortgage deed against the Plaintiffs. Whether the Government has discharged the liability due to the bank from the Plaintiffs cannot be put up as a shield to resist the recovery proceedings by the Plaintiffs in view of the terms of Ext. A-5 mortgage deed and also for the reason that it had enjoyed the benefits of loan facility of Rs. 20 lakhs from the bank on the basis of Ext. A-4 guarantee given by the Government to the bank under the above mortgage deed.

28. The other grounds pleaded in the respective plaint, as contained in paragraph 8, which have been adverted to earlier to contend that the revenue sales and steps taken for such sale are vitiated by fraud and illegal to seek declaration as such from the civil court, necessarily and inevitably have to be appreciated with reference to the interdiction covered by Section 72 of the Act barring the defaulter from challenging the proceedings and the revenue sale relating to the execution, discharge and satisfaction thereof, except on the ground of fraud, the right to sue conferred, even on a defaulter, u/s 81 of the Act, subject to the outer limit fixed thereof; and, such other relevant provisions under the RR Act enabling and, in fact, empowering the defaulter to impeach recovery proceedings at different stages and, also, after sale of the property under the Act, to consider the entertainability of the suits, and also as to whether suit claims for declaration are barred by limitation. It has been pointed out that the relationship between the Government and the Plaintiff firm is that of a mortgagee and mortgagor as governed by Ext. A-5 deed and so much so, institution of a suit by the bank as against the defaulter firm for recovery of the amount, or payment of the sum due under the loan by the Government to the bank in terms of Ext. A-4 guarantee before or after the institution of the suit, is totally irrelevant and immaterial in considering the competency and authority of the Government to proceed against the firm under the RR Act when default to the bank was committed by the firm and the term provided for discharge of the loan (3 years) had expired. The guarantee was renewed by the Government after the period of 3 years twice, without notice to the firm, which is set up as Anr. ground to impeach the proceedings under the RR Act and the sale, to say the least, is bereft of any value where the materials produced in the case would indicate the authority of

the Government to do so and also in view of the request repeatedly made by the firm in pursuance of notices given for extension of time to discharge the loan to the bank. Ext. A-5 mortgage deed enabled the Government to sue for recovery of the amount by resort to Sections 69 and 69A of the Transfer of Property Act in the event of default by the firm to discharge the loan to the bank and that mode of recovery alone should have been resorted to, but not under the RR Act, Anr. ground set up to impeach the recovery proceedings and revenue sale deserve to be taken note of for its rejection as the authority of the Government to proceed under the RR Act is insulated under Clause (8) of Ext A-5 mortgage deed. So far as the challenge raised, that proceedings could be initiated only after ascertainment of the amount, no further dilation is required as it had been dealt with earlier concluding that the liability being under a mortgage deed and the relationship is that of mortgagee and the mortgagor, ascertainment of the sum due is a matter to be adjudicated in the proceedings, if any, challenge to the demand under the Revenue Recovery is set up by the defaulter. The revenue sales of the properties of the firm were knocked down by the Government for a nominal price of 10 paise and after such sales by having a negotiated settlement with the bank, the Government got an unlawful gain and the firm suffered unlawful loss was yet Anr. ground projected on the premise that such settlement effected by the Government is violative of Sections 140 and 146 of the Contract Act. We have already stated that the provisions covered by Sections 140 and 146 Contract Act have no application as the jural relationship between the Government and the bank is that of a mortgagee-mortgagor as under Ext. A-5 mortgage deed and it is not a case of personal liability of a surety in relation to the principal debtor vis-a-vis the creditor under a Contract. When there were no bidders at the sale, fixed more than once, after due publication, purchase of the property at the nominal price of 10 paise fixed by the Government is no ground to impeach such sale as the Government has the authority to do so. Pursuant to sale the Government had settled the transaction with the bank in terms of Ext. A- 4 guarantee by negotiation or otherwise is not at all a ground available to the defaulter firm to impeach recovery proceedings or the sale. Even after the sale within the period provided depositing the amount due the Government inclusive of the expenses connected with the sale the defaulter could have moved for setting aside the sale. The authority of the Government to proceed against the properties of the defaulter being founded on his default to repay the loan to the bank and not in terms of Ext. A-4 as under Ext. A-5 deed and not under the terms of Ext. A-4 guarantee deed between the Government and the bank. Whether the amount due to the bank was paid before or after the commencement of the recovery proceedings and sale has no significance at all. Of course, if the amount had been paid earlier before the sale, it was open to the defaulter to contend the liability of the Government was restricted only to that amount with incidental expenses thereof for commencing the proceedings under the RR Act. But once the sale is over, and the default of the firm continued till such sale, no challenge over such sale can be canvassed for the reason that after the sale a negotiated settlement was arrived at with the bank for settlement of

its dues. Not only under Ext. A-4 guarantee deed, but by virtue of the revenue sale in terms of Ext. A-5 mortgage deed after the sale, the Government had stepped in as the principal debtor liable to discharge the loan in the place of the defaulter firm to discharge the amount due to the bank. That being so, there was no question of any unlawful gain by the Government and unlawful loss to the defaulter firm when a negotiated settlement were arrived with the bank after sale of the property of the defaulter firm. There is no merit in the ground canvassed that the actual amounts were not mentioned in the notices issued under the RR Act and the figures shown were highly exaggerated. If at all that was so, then the Act provided remedial measures to challenge the sum stated in the notice raising objections thereof. No only that, no objection was raised by the defaulter to the amounts stated in the notice there was no challenge to the proceedings or the sale under the RR Act. In fact, a challenge to the proceedings and sale had been raised long after the sale and discharge of the loan to the bank by the Government. The liability of the Government was limited to Rs. 20 lakhs under Ext. A-4 guarantee deed but the recovery proceedings were initiated for a much higher sum under the RR Act is yet Anr. ground canvassed to impeach the recovery proceedings and sale. That ground also is shown to be unworthy of any merit in view of the terms of Ext. A-5 mortgage deed which clearly spell out that in the event of default of the firm to discharge the loan, the amounts due to the bank under the loan can be recovered by the Government by resort to the recovery proceedings. So none of the grounds set up by the firm is capable of sustaining the challenge that the proceedings and revenue sale under the Act are vitiated by fraud, leave alone any illegality. Mere assertion that the proceedings are vitiated by fraud and illegality is not sufficient to get over the bar u/s 72 of the RR Act to enable the defaulter to sue the Government so as to proceedings and revenue sale. In this context, it is appropriate to take note of the decision rendered by the Apex Court in *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, which reads thus:

In cases of fraud, undue influence and coercion, the parties pleading it must set forth full and the case only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Ct. ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence & coercion.

29. Not only that, essential material particulars to make out a case that the recovery proceedings and sales are vitiated by fraud are absent in the respective plaint, the case canvassed that fraud in such proceedings and sale are detected much later, the edifice on which the suit claim for declaration that the revenue sales are without jurisdiction and void, is found to be unworthy of any merit when the proved facts established in the case are analysed with reference to the provisions covered by the RR Act. Whatever grounds projected to impeach fraud against the recovery proceedings and the sales, it could have been canvassed and raised at the appropriate stages when the proceedings continued for

realisation of the dues from the defaulter firm or even after the sale within the time provided by the statute. There is no case for the firm that there was no attachment of the immovable properties towards the amount due, nor of the issue of a demand notice prior to such attachment of land. Challenge raised is that the amount for which attachment effected was not duly ascertained and it was in excess of what is due. In such a case, the remedy was to file an objection before the authorised officer and invite a decision on the department as to the amount due as enjoined under Sub-section (2) of Section 34 of the Act. That was not done. Even after the sale, no attempt was made to set aside the sale on any ground whatsoever on the ground of material irregularity, mistake or fraud in publishing and conducting of such sale. As indicated earlier, the sale over the properties in Alleppey was challenged long after the sale by way of a writ petition and that was repelled. It is the case of the firm that a revision was filed before the Board of Revenue and on its dismissal, a further revision was filed before the Government. No material was placed that any such revision was filed within the time provided by law for entertaining a revision by the Board of Revenue. Even when a sale is challenged on the ground of material irregularity or mistake in the conducting or publishing of the sale as covered u/s 53 of the RR Act, the defaulter has to establish that by such irregularity or mistake, he has sustained substantial injury. Before us, a strenuous attempt was made by the learned Counsel with reference to the oral and documentary evidence tendered in the case that there were irregularities and also high-handed action by some Government officials in the steps taken in continuation of the recovery proceedings and such matters came to the notice of the defaulter long after the confirmation of the sales. The case pleaded to impeach the sale as vitiated, without jurisdiction and fraud, necessarily has to be examined with the specific grounds set up in the respective plaint and the lacuna thereunder cannot be supplemented or filled up by circumstances by reference to omissions or mistakes, if any, on the part of the officials that could be culled out from the files relating to the revenue sales summoned and produced in the case. After having been worsted in the writ petition by which the challenges against the revenue sale over the properties of the firm in Alleppey were negatived, much later, the Plaintiffs-defaulter firm had filed the two suits, one among them impeaching the revenue sale over the properties in Alleppey again, which had become conclusive and final, setting up specific grounds as covered under paragraph 8 of the respective plaint. None of the grounds canvassed, it has been found, has any merit or value to impeach the revenue sales as without jurisdiction or void. The attempt of the Plaintiff to impeach the revenue sales on other grounds, with reference to the files summoned and produced relating to the recovery proceedings as vitiated by fraud, was rightly and correctly repelled by the learned Sub Judge. We also take note that the suits were essentially filed u/s 81 of the RR Act, but beyond the time prescribed by law, and the case projected later states that the suits should be treated as having been filed under the general law, and therefore, within time, is nothing but a futile attempt to get over the bar of limitation. The finding entered by the courts below that both suits

are barred by limitation, though on different grounds as well, deserve only to be confirmed and we do so.

30. In the light of the discussion made as above and the conclusion formed that one of the suits is barred by res judicata, and both suits are barred by limitation the other grounds canvassed to challenge the recovery proceedings and revenue sales do not arise for consideration. The appeals are devoid of any merit, and both of them are dismissed, directing both sides to suffer their costs.

31. The Appellants who have been permitted to prosecute the appeals as indigent persons are liable to pay the court fees on both appeals, and it is ordered accordingly.

A copy of the decree and judgment shall be forwarded to the District Collector concerned, to enable the recovery of the amount of court fees from the Appellants.