

**(1926) 08 MAD CK 0039**  
**In the Madras High Court**

|                                             |            |
|---------------------------------------------|------------|
| Banathoor Nellipatta Krishnan Namboodripad  | APPELLANT  |
| Vs                                          |            |
| Chathothparkum Komath Ambu Kurup and Others | RESPONDENT |

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**Date of Decision :** 18-08-1926

**Acts Referred:**

**Citation :** AIR 1927 Mad 59 : (1926) 24 LW 657 : (1926) 51 MLJ 633

**Hon'ble Judges :** Curgenven, J

**Bench :** Division Bench

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### Judgement

Curgenven, J.—The plaintiff prefers this Second Appeal against the decree granted to him redeeming the kanom in so far as it has

disallowed him interest upon the amount of Government revenue which he paid on default of payment by the 1st defendant, the mortgagee. Under

the terms of the marupat the mortgagee was to pay the annual pattom towards the interest on his othi amount and towards the assessment. Even if

this express provision had not been contained in the mortgage deed, Section 76(c) of the Transfer of Property Act lays down that a mortgagee in

possession is bound to pay the Government revenue. The plaintiff's claim to reimbursement accordingly is provided for by Section 69 of the Indian

ConL tract Act and the question is whether such reimbursement may legally include a claim to interest upon the money expended. The learned

Subordinate Judge has rejected this claim because it cannot be treated as a debt recoverable by the plaintiff from the defendant and because the

plaintiff made no demand. I presume he has in mind the provisions of the Interest Act, but it has been held in Abdul Saffur Rowther v. Hamida Bivi

Ammal 36 M L J 456 that those provisions are not exhaustive.

On the other hand the Privy Council held very early that, on principles of equity,

justice and good conscience which are specially referred to in the Civil Courts Act, the Courts in India are at liberty to award interest in cases not coming within the purview of the Interest Act. The Indian Courts have followed this rule for a long time.

2. I think it hardly needs pointing out that the 1st defendant in this case has had the benefit of the plaintiff's money and that it would not be in accordance with equity that he should benefit by his own laches, which he would do if the claim for interest were disallowed. My attention has also been drawn to the fact that the Courts in England allow a mortgagee interest in certain cases upon money which he has laid out, for instance, for the benefit of the estate or in support of his security or in redemption of land tax (Fisher's Law of Mortgage, 6th Edition, para. 1812). The converse case of a similar claim by a mortgagor may, I think, be taken to follow.

3. I consider that interest may be awarded as damages for the amount due in this respect and that the case is one in which it should be granted.

The appeal is allowed with costs and the decree of the Lower Appellate Court will be modified by the inclusion of the amount due as interest at six per cent per annum on the sums paid by the plaintiff in respect of land revenue. The District Munsif will assess this sum and enter it accordingly.

4. The Appeal Memorandum includes also an objection to the award of full costs to the mortgagee, but it is not pressed.

5. Time for redemption is extended by three months from the date on which the District Munsif frames the decree as above directed.