

**(1942) 04 MAD CK 0003**  
**In the Madras High Court**

Natesa Mudaliar

APPELLANT

Vs

M.T. Rajamanicka Chettiar

RESPONDENT

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**Date of Decision :** 01-04-1942

**Acts Referred:**

**Citation :** AIR 1942 Mad 729 : (1942) 55 LW 607 : (1942) 2 MLJ 424

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

**Bench :** Division Bench

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**Judgement**

Wadsworth, J.—The main contention in this appeal relates to a payment of Rs. 450 made by the 7th defendant pending the suit. In the

decree which is dated 3rd October, 1936, this sum of Rs. 450 is appropriated to the amount of interest due on the mortgage. No objection

appears to have been taken to this appropriation and when the appeal was filed before the lower Court, it was not contended that this

appropriation was wrong. The lower appellate Court's decree is, dated 29th August, 1940. It is now contended that it is open to the defendants to

urge that this sum, of Rs. 450 should be appropriated towards principal. I cannot accept this contention. The reopening of a decree u/s 19 of Act

IV of 1938 is for the purpose of applying the provisions of the Act to that decree. There is no provision in the Act which permits the re-

appropriation of payments made before 1st October, 1937, except only the proviso to Section 19 which deals with payments made under the

decree. Although in the present case the appropriation seems to have been made by the Court which necessarily had to make an appropriation in

order to work out the amount due under the decree, the appropriation is just as binding on the parties who did not object to it as if it had been

made by one of the parties before the decree was drafted. At any rate there is no provision in the Act which permits the reopening of this

appropriation which is not in respect of a payment made under the decree.

2. On a minor point the appeal must however succeed. The lower appellate Court has allowed interest on costs at 6 per cent. The decree for costs

has to be treated as a debt to be scaled down u/s 9 of the Act and the interest thereon will run at 5 per cent. from the date of the decree to 22nd

March, 1938, and thereafter at the decree rate of 6 per cent. Subject to this slight modification the second appeal is dismissed with costs.

3. Leave to appeal is refused.