APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and C. C. Ghose J.

1932
Jan. 4.

SATISHCHANDRA BANERJI

v.

LALA MUNILAL.*

Damages—Wrongful attachment of goods—Suit for damages—Order for attachment before judgment, if must be set aside first—Order of attachment by one court, if will be reviewed by another court—Suit for malicious proceedings—Original proceedings, if must terminate favourably to the plaintiff.

A suit for damages for wrongful attachment of goods does not lie unless the attachment is first set aside.

Metropolitan Bank v. *Pooley* (1) relied on.

Arjun Biswas v. *Abdul Biswas* (2) referred to.

A court, in a suit for damages, will not decide whether the determination by some other court, upon a matter properly before it, was right or wrong.

In a case for malicious prosecution it need not always be the case that the proceedings have terminated favourably to the plaintiff. But it must be averred and proved that they have so terminated if the proceedings were capable of such a termination.

Parton v. *Hill* (3) relied on.

APPEAL by the plaintiff.

The facts of the case and relevant portions of arguments of appellant's counsel appear sufficiently from the judgment.

J. C. Hazra and *A. K. Hazra* for the appellant.

B. C. Ghose and *S. R. Das* for the respondents were not called upon.

RANKIN C. J. In this case, the plaintiff appeals from the judgment of my learned brother Mr. Justice Panckridge dismissing his suit. It seems that the

*Appeal from Original Decree, No. 43 of 1931, in Suit No. 2078 of 1930.

(1) (1885) 10 App. Cas. 210.
(2) (1921) 35 C. L. J. 480.
(3) (1864) 12 W. R. (Eng.) 753.

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defendants brought a suit against the present plaintiff, at Amritsar, claiming a sum of about Rs. 4,000 and, in December, 1928, they applied to the learned Subordinate Judge at Amritsar for an order under Order XXXVIII of the schedule to the Civil Procedure Code, namely, for an order for attachment before judgment. The learned Subordinate Judge made the order for attachment before judgment *ex parte*, as these orders invariably are, and, on the 11th January, 1929, the order having been transmitted to Calcutta for execution, the present plaintiff's Calcutta shop, with the articles therein, was attached. The present plaintiff, thereupon, paid the necessary amount of money into court and, on the 14th January, 1929, the attachment was in that way released. Thereupon, the present plaintiff continued defending the suit at Amritsar and denied that he was under any liability to the plaintiffs in that suit; not only that, but he applied at Amritsar that the learned Judge should vacate the order for attachment before judgment. The learned judge, however, did not make any such order. He would seem to have adjourned the hearing of that application until the trial of the suit and he gave judgment on the 8th of January, 1930, in the suit. He decreed the suit in full, so that the present plaintiff was ultimately held to have been liable all the time. Thereupon, it is conceded that, under the order of the Amritsar court, the money, which the present plaintiff had put into court to get rid of the attachment, was paid over to the plaintiffs in that suit in satisfaction of the decree which they had obtained. At the time of giving judgment, the learned Subordinate Judge said that, in view of the fact that the suit was being decreed in full, it was not necessary to go into the application for vacating the order for attachment before judgment. In this he may have been wrong, but not only did he not make any order vacating the order made for attachment before judgment, but that attachment having resulted in money having been paid into court, the proceeds of

the attachment were applied and utilized for the purpose of meeting the decree. The plaintiff without appealing from these orders, brings this suit on the 11th November, 1930, in this High Court and he makes numerous allegations in his plaint to the effect that the object of the whole suit in Amritsar was to injure the present plaintiff, which, as the suit succeeded, is absurd. He also says that the order for attachment before judgment was obtained by making untrue allegations that the plaintiff would make away with the stock-in-trade which he had in Calcutta and so forth, and he asks for damages to the tune of Rs. 25,000 of which Rs. 15,000 is said to be for "loss "of reputation" and Rs. 5,000 for "mental anxieties "and troubles" owing to the attachment having been made of his shop between the 11th and 14th January, 1929.

Now, this case having been commenced in this court, it appears that the defendant, Lala Munilal, asked that two issues might be settled and tried before the other issues in the case, namely: (1) whether the plaint disclosed any cause of action and (2) whether the suit was barred by limitation. I cannot find that any proper order was made directing such issues to be framed and tried before the further issues in the case. It appears, however, that the matter came on before Mr. Justice Panckridge on the 19th March, 1931, and he begins his judgment by saying "The "issue that I have been asked to decide in this case is "whether the plaintiff's suit is barred by limitation." He states the cases of the plaintiff and of the defendant upon the meaning of Article 29 and it rather looks as if both parties had gone before the learned Judge and were agreed that the one question which needed decision was the question of limitation. There has been apparently some controversy as to the exact meaning of the words employed by Article 29 of the schedule to the Limitation Act, and upon this controversy there is plenty of material in decided cases, and the parties seem to have addressed the learned Judge at length

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upon that somewhat troublesome question. The learned Judge in the end came to the conclusion that this plaint was framed for damages for wrongful seizure of moveable property under legal process and, in his view, whether the case that the plaintiff was trying to make was a case of wrongful and malicious prosecution or was a case of erroneous trespass on goods without authority, Article 29 equally applied. He thought that this position was established by certain observations in the case of *Madras Steam Navigation Co., Ld.* v. *Shalimar Works, Ld.* (1), as well as by what was laid down in *Pannaji Devichand* v. *Senaji Kapurchand* (2). His attention was called to another view taken in the case of *Arjun Biswas* v. *Abdul Biswas* (3). But, as he preferred the view that had been taken in the *Madras Steam Navigation Company's* case (1), he dismissed the suit entirely on the ground of limitation.

Now, it appears to me that, on the facts as I have narrated, it is quite impossible for the plaintiff to ask us to regard this case as a case in the nature of a claim for malicious prosecution. I will assume for the sake of argument that, independently of section 95 of the Code, upon proof that a person maliciously and without probable cause asked for an attachment before judgment and obtained it by making untrue statements to the court, a cause of action in the nature of malicious prosecution would arise. I do not affirm that; in view of *Quarts Hill Gold Mining Company* v. *Eyre* (4) it may well be doubted, but I will assume it for the present purpose. Now, if that cause of action is to be entertained, it does seem to me to be quite necessary that we should bear in mind the well-known principle that a court being asked to give damages is not to be put in the position of having to decide whether the determination of some other court, upon a matter properly before it, was right or wrong. In the present case, it would seem that an application to

(1) (1914) I. L. R. 42 Calc. 85.
(2) (1930) I. L. R. 53 Mad. 621.
(3) (1921) 35 C. L. J. 480.
(4) (1883) 11 Q. B. D. 674.

vacate that order for attachment before judgment was made; it was not prosecuted to a conclusion, no such order was obtained; on the contrary, under that order for attachment, certain moneys were recovered which moneys were allowed after the decree to go to the plaintiffs in the cause in satisfaction of their decree. In these circumstances, I am not of opinion that the rightness or wrongness of the order for attachment before judgment can be canvassed in the suit on the question of damages for malicious prosecution. The parties having had their rights determined upon the basis that the order for attachment was a right order, it had been carried out and, in my judgment, one cannot by bringing an action for damages get another court to go behind the position as constituted in the original proceedings. It is quite true that it need not always be the case that the proceedings have terminated favourably to the plaintiff. The particular proceeding may in some instance be a proceeding that could not so terminate. But it must be averred and proved that they have so terminated if the proceedings were capable of such a termination. In *Parton* v. *Hill* (1), it was argued that the attachment there complained of had been removed by money being paid into court and Mr. Justice Blackburn in that case said "payment of the money rather shows a "determination in favour of the defendant than of the "plaintiff." There can be no doubt that if, for example, a bankruptcy petition results in adjudication, the court will not entertain a claim for damages for malicious prosecution on the part of the person adjudicated so long as the adjudication order stands. [*Metropolitan Bank* v. *Pooley* (2).] In the case of *Arjun Biswas* v. *Abdul Biswas* (3), which came before Mr. Justice Chatterjea and Mr. Justice Pearson, this principle was re-affirmed and it was given as one of the reasons which led those learned Judges to doubt whether it was true that Article 29 could be applicable

(1) (1864) 12 W. R. (Eng.) 753, 755.
(2) (1885) 10 App. Cas. 210, 216. (3) (1921) 35 C. L. J. 480, 481.

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to a case where it was said that the order for attachment had been wrongly procured. It was observed by the learned Judges as follows: "It may be pointed out "that the limitation of one year under Article 29 is "to run from the date of the seizure; but so long as "the writ is not set aside, the seizure cannot be said "to be wrongful except in instances such as mentioned "above." The learned Judges by this last phrase were referring to a case where the court had no jurisdiction at all or the writ was executed against a wrong person or against property that was not included in the writ. They went on to say "Proceedings to have the writ set aside may take a "long time; and if Article 29 were applicable to the "case, limitation would run from the date of the "seizure although the writ might not be set aside "within the period of one year." That authority is good so far is it affirms the principle in a case exactly like the present that the plaintiff cannot come and complain of an improper attachment unless the attachment is first set aside. In my judgment, it is most important to adhere to this principle; otherwise in every case of attachment before judgment, in the guise of a suit for damages the decision of one court will have to be reviewed by another, even—as in the present case—situated in a different province altogether. For this reason, the present case is not one on the facts of which it is necessary for this Court to consider any question of a cause of action in the nature of malicious prosecution. It is perhaps a pity that this case was not dealt with in the ordinary way and set down for trial as a whole so that these matters might have been more fully appreciated and discussed; but it is quite clear to me that the plaintiffs' case is, so far as it is anything that is not within Article 29 of the Limitation Act, hopeless on his own showing and there is the authority of the House of Lords for saying that such a case is

manifestly groundless and frivolous. *Metropolitan Bank* v. *Pooley* (1). I do not find it necessary to determine whether the learned judge was right in the view which he took of Article 29. The appeal fails and will be dismissed with costs.

GHOSE J. I agree.

Appeal dismissed.

Attorney for appellant: *Manmathanath Datta.*

Attorney for respondents: *S. N. Bose.*

(1) (1885) 10 App. Cas. 210, 217.

S. M.