

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

CHIDAMBARA (PLAINTIFF), APPELLANT,

and

THIRUMANI (DEFENDANT No. 2), RESPONDENT.*

1886.
Oct. 14,
Nov. 12.

Cause of action—Suit for damages caused by false statement of witness in a suit.

No action will lie against a witness for making a false statement in the course of a judicial proceeding.

APPEAL from the decree of T. Kanagasabai Mudaliar, Subordinate Judge at Tanjore, dismissing an appeal from the decree of H. Strinivása Ráu, District Múnsif of Kumbakonam, in suit 459 of 1883.

Plaintiff Chidambara Chetti sued Dandayuda Chetti for Rs. 1,292-6-0 damages. It was alleged in the plaint that, owing to a false statement made by defendant as witness in a suit brought by one Sâminátha Chetti against plaintiff, to the effect that a certain deed was lost, the Court passed a decree against plaintiff, and plaintiff was obliged to pay the amount now sued for. It was also alleged in the plaint that defendant fraudulently induced Sâminátha Chetti to bring the said suit.

Defendant died pending the suit, and his minor son, Tirumani Chetti, was made defendant.

An objection on his behalf, that the cause of action did not survive, was overruled, but the suit was dismissed on the ground that it would not lie.

On appeal the decree was confirmed on the ground that the damages were too remote.

Plaintiff appealed.

Rámachandra Ráu Saheb for appellant.

Rámá Ráu for respondent.

JUDGMENT.—The appellant and his brother, Sâminátha Chetti, entered into a partition on the 19th March 1879, and it was arranged that the former was to pay the latter a sum of Rs. 595. The appellant borrowed Rs. 405 more and executed an unregistered

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h hypothecation bond for Rs. 1,000 in favor of the latter. In May and June 1879 the appellant sold the hypothecated lands to the respondent, who undertook to pay Saminátha Chetti's debt out of the purchase money. It was provided by the partition-deed that Saminátha Chetti should redeem some 8 pangus of land mortgaged with possession to the respondent on the 15th February 1873 for Rs. 8,000; and, in accordance with this provision, Saminátha Chetti paid, on the 19th July 1879, Rs. 7,000 to the respondent; took credit for Rs. 1,000, due to him by the appellant, and redeemed the property. The appellant's case was that the respondent since colluded with Saminátha Chetti, who was his son-in-law, and instigated him to institute a suit against the appellant for the recovery of Rs. 590 with interest due thereon; that during the trial of the suit the respondent, who was cited by him as a witness to prove payment, falsely and fraudulently stated that the hypothecation bond for Rs. 1,000, which was returned to him by Saminátha Chetti on payment, was lost, and that by reason of its non-production the other evidence which he produced to prove payment was discredited, and that a decree was passed against him for the amount sued for with interest and costs in favor of Saminátha Chetti, and that on the 10th December 1882 he was obliged to pay in satisfaction of that decree Rs. 1,292-6-0, and that, as this loss entailed upon him was due to the false evidence which the appellant gave, viz., that the hypothecation bond was lost whilst it was really in his possession, he claimed a decree for compensation. Both the Courts below dismissed the suit with costs. The District Munsif considered that it was not shown that the respondent's evidence was false, and assuming that it was, he was only liable to be prosecuted for giving false evidence. The Subordinate Judge observed on appeal that, though the hypothecation deed was suppressed, other means of proving payment was available to the appellant, and for his failure to use them, the respondent was not responsible. He rested his decision on the ground that the damage sustained by the appellant was not the direct and proximate result of the wrongful act imputed to the respondent. It is urged in second appeal, (I) that the appellant had a good cause of action against the respondent, and (II) that the means at his disposal of proving payment was used by him, and that they failed because of the non-production by the respondent of the hypothecation bond which he had in his possession,

We do not think that this second appeal can be supported. No action will lie against a witness for making a false statement in the course of a judicial proceeding, and the proper remedy is a prosecution for giving false evidence. In *Barber v. Lesiter* (1) Erle, C.J., observed: "It has been decided that no action lies against a witness for uttering a false statement in the course of a judicial proceeding, even though it is alleged to have been done falsely and maliciously and damage results therefrom to the plaintiff, the proper course being a prosecution for perjury, which is probably what was meant by Lord Hale in *Vanderberg v. Blake* when he says that to allow the action whilst the judgment is in force would be to blow the judgment off by a side wind." In the case before us, the respondent stated in his evidence that he paid the debt due to Saminátha Chetti and he was not credited, not simply because his statement that he lost the hypothecation bond was regarded with suspicion, but also for other reasons which had nothing to do with the respondent. It was the action of the Court in not accepting the evidence as a whole as proof of payment that is the proximate cause of the damage sustained by the appellant. Against him no action can be maintained either for conspiracy or any other wrong, unless it is clearly shown that the damage to the appellant was the necessary and proximate result of the respondent's act. There were two causes to which the damage might be referred, viz., the suppression of the hypothecation bond by the respondent and the weight which the Court attached to the evidence which was produced by the appellant to show that it was fraudulently suppressed and that the plea of payment was true, and that of those causes the act of the Court was the proximate and direct cause. Further, it is found by the District Munsif that in stating that the hypothecation bond was lost, the respondent probably spoke the truth and the Subordinate Judge accepted the finding. On this ground also, this appeal must fail, and we dismiss it with costs.

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(1) 7 C.B.N.S., 187.