

Plaintiff appealed to the Subordinate Judge, who allowed the appeal and gave plaintiff a decree for Rs. 200 as against first defendant.

NARASINGA
ROW
v.
MUTHAYA
PILLAI.

First defendant preferred this second appeal.

M. R. Ramakrishna Ayyar for appellant.

V. C. Sesa Chariar for respondent.

JUDGMENT.—We think the decree of the lower Appellate Court should be reversed.

The only person who can be sued in an action for malicious prosecution is the person who prosecutes. In this case, though the first defendant may have instituted criminal proceedings before the police, he certainly did not prosecute the plaintiff. He merely gave information to the police and the police, after investigation, appear to have thought fit to prosecute the plaintiff. The first defendant is not responsible for their act and no action lies against him for malicious prosecution (see *Trilochana Bakshi Patnaik v. Brojo Patro*(1)).

We must reverse the decree of the Subordinate Judge and restore that of the additional District Munsif with costs in this and the lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Bhashyam Ayyangar.

SUBBIEN (PLAINTIFF), APPELLANT,

v.

RAMASAMI CHETTY AND OTHERS (DEFENDANTS NOS. 1 TO 3),
RESPONDENTS.*

1902.
January 2,
September 9.

Rent Recovery Act—(Madras) Act VIII of 1865, s. 4—Pattah containing name of tenant's father and not mentioning tenant—Death of the father before tender of pattah—Tender of pattah without alteration—Validity—Practise—Point not taken in plaint or at settlement of issues—Right to raise it on appeal.

Pattah for land was tendered to A, but stood in the name of A's father. It appeared that A's father was really the tenant for the fasli in respect of which

(1) Second Appeal No. 805 of 1900 (unreported).

* Second Appeal No. 745 of 1899, presented against the decree of S. Russell, District Judge of Madure, in Appeal Suit No. 451 of 1898, presented against the decree of N. Sambasiva Ayyar, District Munsif of Sivaganga, in Original Suit No. 366 of 1897.

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CHETTI.

the pattah had been tendered, but had died after the pattah had been prepared and signed by the landholder:

Held, that the tender was legal.

Where a plaintiff in a suit to set aside a sale of land fails to take the objection, either in his plaint or at settlement of issues, that the notice of sale prescribed by section 39 of the Rent Recovery Act had not been served upon him, he should not be allowed to raise it on appeal.

SUIT to set aside a sale of land. Plaintiff contended that defendant had brought the land to sale without tendering plaintiff any pattah. The rent in respect of which the land had been sold was due for the fasli 1304. Defendants pleaded that the sale was valid, and that pattah had been tendered to plaintiff who had refused to accept it. The District Munsif held that a pattah had been tendered to plaintiff. This pattah was in the name of plaintiff's father, who had died after it had been prepared and signed by the landholder.

The District Munsif ordered the sale to be set aside, as prayed. He held that the pattah which had been tendered did not contain the names of the contracting parties, as the name of plaintiff's father was mentioned therein, and not that of plaintiff. He considered that the irregularity was not excused by the fact that at the time when the pattah was prepared plaintiff's father was alive, and that he had died before it had been tendered. Defendants appealed to the District Judge, who reversed that decree, and also held that plaintiff should not be allowed to raise the objection that notice of sale had not been served on him, as the point had not been taken in the plaint or at the settlement of issues.

Plaintiff preferred this second appeal.

V. C. Desikachariar for appellant.

K. N. Ayya for second to fourth respondents.

JUDGMENT.—We agree with the District Judge that the tender of the pattah to the plaintiff was legal notwithstanding that the pattah stood in the name of his deceased father, inasmuch as the father was really the tenant for the fasli 1304 for which the pattah was issued, and died only after the pattah was prepared and signed by the landlord.

We also agree with the Judge that the plaintiff's objection that the notice of sale prescribed by section 39 of the Rent Recovery Act was not served upon him, should not be allowed to be raised in the case, as the plaintiff took no such objection either in the plaint or at the settlement of issues. [The judgment then dealt with matters not material to this report.]