

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Bhashyam Ayyangar.

1902.
July 22.

NARASINGA ROW (FIRST DEFENDANT), APPELLANT,

v.

MUTHAYA PILLAI (PLAINTIFF), RESPONDENT.*

Malicious Prosecution—Information given to police—Prosecution by police after investigation—Acquittal of accused—Suit for malicious prosecution against informant of police—Maintainability.

A gave certain information to the police regarding B. The police, after holding an investigation, instituted a prosecution against B. who was tried and acquitted. B now sued A for damages for malicious prosecution :

Held, that the suit was not maintainable, as A had not instituted the prosecution.

SUIT for malicious prosecution. Plaintiff had acted as Village Munsif in the village of Ponnakudi in 1898, when first defendant, a ryot owning lands in that village, gave information to the Station-house officer of Ponnakudi that plaintiff had illegally broken open the outer door of his house with intent to attach his properties for arrears of kist. The Station-house officer then held an investigation and subsequently charged the plaintiff before the Second-class Magistrate of Palamecottah. The Magistrate tried the case and dismissed it. Plaintiff now sued for damages. Defendants Nos. 2 to 6 were said to have conspired with first defendant in getting up the false charge and were impleaded for that reason. The first issue was :—“ Whether the first defendant made the criminal complaint to the police against the plaintiff maliciously and without reasonable and probable grounds.” The District Munsif found as a fact that first defendant had not himself made the charge before the Magistrate, but had laid it before the police, who, after investigation, made the charge. He also found that there was not sufficient evidence that plaintiff was innocent and did not commit the act complained of, and that it was not shown that there was absence of reasonable and probable cause. He dismissed the suit.

* Second Appeal No. 806 of 1901, presented against the decree of S. Doraisamy Ayyangar, Subordinate Judge of Tinnevely, in Appeal Suit No. 11 of 1900, presented against the decree of T. A. Ramakrishna Ayyar, District Munsif of Tinnevely, in Original Suit No. 83 of 1899.

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.