

*Before Mr. Justice Lindsay and Mr. Justice Stuart.*  
 GOBARDHAN SINGH AND OTHERS (PLAINTIFFS) v. RAM BADAN SINGH  
 (DEFENDANT).\*

*Suit for damages for malicious prosecution—Burden of proof—Production of judgment of criminal court not by itself sufficient to prove falsity of the accusation.*

In an action for malicious prosecution it is not sufficient, in order to prove the falsity of the accusation, for the plaintiff to put in the judgment of the criminal court which terminated in his acquittal. *Abrath v. The North-Eastern Railway Company* (1) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Dr. M. L. Agarwala, for the appellants.

Babu Harendra Krishna Mukerji and Dr. Kailas Nath Katju, for the respondent.

LINDSAY and STUART, JJ. :—This appeal is against a decree of the learned District Judge of Benares upholding a decree of the Additional Subordinate Judge dismissing a suit for damages for malicious prosecution. The defendant respondent made a report at a police station to the effect that certain persons had committed a riot and had assaulted him, being directed to do so by the plaintiffs appellants. The Additional Subordinate Judge found that the witnesses for the plaintiffs, who deposed that no such riot as that described in the report had been committed, were not worthy of credit. He found that the witnesses for the defendant who deposed that such riot had taken place were worthy of credit and he dismissed the suit for damages for malicious prosecution on the clear finding that the complaint made by the defendant was in fact true. He took a completely different view to the view taken by the criminal court which had found that the complaint was not substantiated.

The learned District Judge would have been better advised to have confined himself to the point to which the Additional Subordinate Judge had directed his attention. The view that he took must, however, be supported. It is as follows :—

He decided that inasmuch as the evidence produced by the appellants was unworthy of belief their suit could not succeed.

\* Second Appeal No. 198 of 1920, from a decree of O. F. Jenkins, District Judge of Benares, dated the 11th of November, 1919, confirming a decree of P. K. Ray, Additional Subordinate Judge of Benares, dated the 7th of April, 1919.

1922

GO BARDHAN  
SINGH  
v.  
RAM BADAN  
SINGH.

They set out to prove a specific case that nothing of any kind had happened as alleged in the plaint. They undoubtedly are found by the learned District Judge to have failed to prove that case.

In appeal it has been argued that all that the appellants had to do for the purpose of proving the falsity of the accusation was to put in the judgment of the criminal court which terminated in their acquittal. We do not, however, accept this view. In the words of BOWEN, L. J., in *Abrath v. The North-Eastern Railway Company* (1), "In an action for malicious prosecution the plaintiff has to prove first that he was innocent and that his innocence was pronounced by the tribunal before which the accusation was made."

In any circumstances, we cannot disturb the finding of the learned District Judge. We accept his view that in the circumstances of this particular case the plaintiffs had failed to surmount their first obstacle inasmuch as the evidence which they produced in support of their case was unworthy of belief and did not establish their innocence. We would, therefore, dismiss this appeal with costs.

*Appeal dismissed.*

1922

March, 17.

*Before Mr. Justice Lindsay and Mr. Justice Stuart.*

HAR PRASAD TIWARI (PLAINTIFF) v. SHEO GOBIND TIWARI  
(DEFENDANT).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 20—Act No. IX of 1872 (Indian Contract Act), section 24—Occupancy holding—Mortgage—Suit on personal covenant to pay.*

The mortgage of an occupancy holding being void in its entirety, it is not open to the mortgagees to sue for a money decree on the basis of a personal covenant to pay contained in such a mortgage. *Kanhai v. Tilak* (2), *Murli-dhar v. Pem Raj* (3) and *Bhawani Prasad v. Ghulam Muhammad* (4), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

\* Second Appeal No. 828 of 1920, from a decree of Abdul Hasan, Subordinate Judge of Jaunpur, dated the 2nd of March, 1920, confirming a decree of Nand Lal Singh, Munsif of Jaunpur, dated the 7th of December, 1918.

(1) (1883) L. R., 11 Q. B. R., 440 (455). (3) (1899) I. L. R., 22 All., 205.

(2) (1912) 16 Indian Cases, 42.

(4) (1895) I. L. R., 18 All., 121.