

Appellate Jurisdiction.(a)*Special Appeal No. 611 of 1874.*BHEEMA CHARLU.....*Special Appellant (Defendant.)*DONTI MURTI.....*Special Respondent (Plaintiff.)*

Where a wrong person is arrested and imprisoned under a decree to which he was no party, the person setting the Court in motion is not liable for such arrest and imprisonment if he did not obtain the process fraudulently or improperly.

1875.
March 19.
S. A. No. 611
of 1874.

THIS was an Appeal against the decision of Mr. L. Forbes, the Acting District Judge of Bellary, in Appeal Suit No. 19 of 1873.

Plaintiff brought this suit in the Court of the Principal Sadr Amin of Bellary to recover Rs. 1,300 as damages for his illegal arrest by the defendant, and for his detention in custody in the Civil Debtor's Jail at Bellary, for a period of four months.

The defendant, as the assignee of a bond executed to one Venkatadasappa by Authi Murthi, Ramiah and Narrainappah, brought a suit, Original Suit No. 220 of 1860, thereupon in the Purgby Munsif's Court, and obtained a decree. In execution of that decree the plaintiff was arrested.

The defendant alleged that the said Original Suit No. 220 of 1860 in the Court of the District Munsif of Purgby was brought against the present plaintiff and his paternal uncles upon a bond executed by them; that the plaintiff bears two names, Murthi, and Donthi Murthi, and was the first defendant in the said Original Suit No. 220 of 1860, and one of the judgment debtors, that the plaintiff was the son of Sinjivappah for whose debt the bond sued upon was given, and that his real name is Authi Murthi, by which name he was arrested and imprisoned; and that when the plaintiff was arrested and brought before the District Mnsif's Court of Purgby, he raised no objection on the point of identity. The defendant denied that the plaintiff had sustained any injury and that the arrest was malicious or unlawful or without reasonable cause.

(a) Present :—Sir W. Morgan, C.J., and Holloway, J.

The Principal Sadr Amin dismissed the plaintiff's suit with costs on the ground that he was one of the judgment debtors in Original Suit No. 220 of 1860 on the file of the Purghy District Munsif's Court and that, therefore, his arrest was perfectly legal. On appeal the Acting District Judge of Bellary reversed the decree of the Principal Sadr Amin on the ground that the plaintiff was not one of the judgment debtors in the said suit, and raised that objection when brought before the Purghy Munsif's Court. He gave him a decree for Rupees 350 with costs.

1875.
March 19.
S. A. No. 611
of 1874.

From this decree the defendant appealed to the High Court on the following grounds:—

- I. Malice not having been alleged on the part of the defendant, the plaintiff's suit must fail, and there is no cause of action.
- II. The plaintiff did not prove that he sustained any damages; he is therefore not entitled to any.
- III. The amount of damages awarded to the plaintiff is excessive.
- IV. Plaintiff having been arrested under a warrant of the Court, he cannot recover any damages as against the defendant.

Mr. Miller for the appellant, the defendant, contended that the mere setting the Court in motion did not make the person obtaining the process liable for the arrest of the wrong person where, as here, no fraud had been proved.

Mr. Gould for the respondent, the plaintiff, submitted that there was distinct evidence that the proceedings in execution were taken by the defendant against the plaintiff whom he knew was not the judgment debtor, and that he was consequently liable for the result of his fraud upon the Court.

SIR W. MORGAN, C. J.:—There is no reason why the decree should have been against the appellant. He set the law in motion, no doubt, and the result was that a person was taken in execution who turned out to be the wrong

1875.
March 19.
S. A. No. 611
of 1874.

person. Unless he who sets the officers of the Court in motion does so fraudulently or improperly, of which there is not the slightest evidence in this case he is not liable for such arrest. I would reverse the decree of the Civil Judge on the ground that the appellant is not liable for simply putting the Court in motion.

HOLLOWAY, J.:—I entirely agree. There are several ways whereby a person may become liable for arresting the wrong man. If he take an active part in such arrest, then he is a trespasser, whatever his motive may have been. He is also liable when he sets the process of the Court in motion, but there he is only responsible if he obtain such process fraudulently or improperly. There is no evidence here that such was the case. It does not appear that the appellant induced the Court to commit, but even if he had done so, that fact alone would not render him responsible. The decree of the Civil Judge must, therefore, be reversed, with costs.

*Appeal allowed, and Lower Court's decree
reversed with costs.*

Appellate Jurisdiction.(a)

Civil Miscellaneous Special Appeal No. 358 of 1874.

THE COLLECTOR OF SOUTH ARCOT. (*Petitioner*) Appellant.
THATHA CHARRY.....(*Counter-Petr.*) Respondent.

Five years after the dismissal of a pauper suit, from the decree in which no appeal had been preferred, Government sought recovery of the stamp duty by attachment and sale of the pauper plaintiff's property; *Held* that, the claim was not barred.

1875.
April 9.
C. M. S. A. No.
358 of 1874.

THIS was a Special Appeal against the order of Mr. O. B. Irvine, the District Judge of South Arcot, dated the 25th September 1874, passed on Civil Miscellaneous Petition No. 151 of 1874, reversing the order of the Court of the District Munsif of Villupuram, dated 18th April 1874.

Suit No. 443 of 1866 on the file of the Villupuram District Munsif's Court, brought by the plaintiff Thatha Charry

(a) Present :—Sir W. Morgan, C.J., and Kindersley, J.