1971
Mar. 31,
July 8
—
GRAIN MILLERS AND TRADERS LTD.,
v.
THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND TOWNSMEN OF LIMASSOL

[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, JJ.]

GRAIN MILLERS AND TRADERS LTD.,
Appellants-Defendants,

v.

THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND TOWNSMEN OF LIMASSOL,
Respondents-Plaintiffs.

(*Civil Appeal No.* 4710).

Municipal Corporations—Causes of action vested in a Municipal Corporation which ceased to exist on December 31, 1962—*They devolved on, or were transmitted to, or became vested in, the Municipal Corporation of the same town established under section* 3(1) *of the Municipal Corporations Law,* 1964 (*Law No.* 64 *of* 1964) *enacted on December* 1, 1964—*Cf. sections* 4 *and* 36 *of the said Law No.* 64 *of* 1964—*Cf. The Civil Procedure Rules, Order* 12, *rules* 1, 2, 3, 4 *and* 10.

Civil Procedure—Cause of action—Transmission—Devolution—See supra.

This is an appeal by the defendants from two orders of the District Court of Limassol made in two applications filed on February 13, 1967 and March 14, 1967, respectively, in an action brought against them in 1960 for weighing fees by the Municipal Corporation of Limassol established under the Municipal Corporations Law, 1930. On December 31, 1962, that Law, which, as amended by a number of later enactments, had become Cap. 240 of the 1959 edition of the Cyprus statutes, ceased to be in force, and from that date until the enactment, on December 1, 1964, of the Municipal Corporations Law 1964 (Law No. 64 of 1964), there was no statutory provision for the administration of the local affairs of Limassol or indeed of any of the other district capitals. By section 3(1) of the 1964 Law :

" The municipal corporations established under (Cap. 240) and existing on January 1, 1958, shall be deemed to be municipal corporations established under the provisions of this Law and shall function in accordance with this Law."

By section 4 of the same Law :

" Every municipal corporation established under this Law shall be a public corporation and shall possess all the features of such a corporation and shall bear the name (Municipal Corporation) (followed by the name of the municipal areas) ";

And by section 36 :

" The property and obligations of each of the municipal corporations existing on December 31, 1962, under (Cap. 240), no matter in whom vested or by whom assumed, shall, from the coming into operation of this Law, vest in, or be assumed by, the respective municipal corporation established by this Law."

That being the position the Municipal Corporation of Limassol filed on February 13, 1967 an application in their aforesaid 1960 action (in which they were suing under the then corporate name *viz.* " The Mayor, Deputy Mayor, Councillors and Townsmen of Limassol ") asking that the action be continued etc. etc. with the consequential amendment of the title. On the other hand, the defendants (appellants) filed on March 14, 1967 an application in the same action asking for an order striking out the action. In due course the District Court of Limassol dismissed the second application by the defendants and regarding the first concluded thus :

" As by the new Law the corporate name of the Municipality is now ' Municipal Corporation of Limassol ' we do hereby order that this corporate name of the plaintiff be substituted as from today for the old name and an entry be made accordingly in the Cause Book."

It is from these two orders that the defendants took the present appeal.

The Supreme Court dismissed the appeal with costs on March 31, 1971, and gave their reasons on July 8, 1967, as they are set out hereinafter.

Appeal.

Appeal by defendants against the ruling of the District Court of Limassol (Malachtos, P.D.C. and Loris, D.J.) dated the 27th April, 1968, (Action No. 260/60) dismissing

their application for striking out of the action and allowing plaintiffs' application for the substitution of their corporate name for their old name.

P. Cacoyiannis with *A. Triantafyllides*, for the appellants.

J. Potamitis, for the respondents.

Cur. adv. vult.

The reasons for judgment were delivered by :—

STAVRINIDES, J. : This is an appeal by the defendants from two orders of the Full District Court of Limassol made in applications in an action brought against them in 1960 for weighing fees by the Municipal Corporation of Limassol established under the Municipal Corporations Law, 1930. On December 31, 1962, that Law, which, as amended by a number of later enactments, had become Cap. 240 of the 1959 edition of the statutes, ceased to be in force, and from that date until the enactment, on December 1, 1964, of the Municipal Corporations Law, 64 of 1964, there was no statutory provision for the administration of the local affairs of Limassol, or indeed of any of the other district capitals. By section 3(1) of the 1964 Law :—

> " The municipal corporations established under (Cap. 240) and existing on January 1, 1958, shall be deemed to be municipal corporations established under the provisions of this Law and shall function in accordance with this Law ";

by section 4 of the same Law :—

> " Every municipal corporation established under this Law shall be a public corporation and shall possess all the features of such a corporation and shall bear the name (Municipal Corporation . . . . .) (followed by the name of the municipal areas) ";

and by section 36 :—

> " The property and obligations of each of the municipal corporations existing on December 31, 1962, under (Cap. 240), no matter in whom vested or by whom assumed, shall, from the coming into operation of this law, vest in, or be assumed by, the respective municipal corporation established by this Law."

One of the applications, filed on February 13, 1967, (hereafter " the first application "), was made by the Municipal Corporation of Limassol and asked for—

> " an order that the Municipal Corporation of Limassol be made a co-plaintiff in this action, that the title in this action be amended accordingly, that proceedings be continued between the continuing parties and the new party and that such other order may be made as the Court may think fit to make ";

the other one, filed on March 14, 1967 (hereafter " the second application "), was made by the defendants and asked for " an order striking out the action ". The first application was stated to be based on the Civil Procedure Rules, Order 12, " rr. 2 and/or 3 and/or 4 . . . . . " ; the second on " the inherent powers of the Courts . . . . . Order 22, rule 3 (alternatively on Order 12, rr. 1, 9, and 10), on the practice of the Courts and on the general law ". The applications being interwoven, they were heard together. The second one was dismissed ; regarding the first the Court concluded thus :

> " As by the new Law the corporate name of the Municipality is now ' Municipal Corporation of Limassol ' we do hereby order that this corporate name of the plaintiff be substituted as from today for the old name and an entry be made accordingly in the Cause Book."

Sir P. Cacoyiannis and Mr. A. Triantafyllides for the appellants put forward before us an elaborate argument which may be summarised in the following propositions :

1. " Devolution " in Order 12, rr. 1, 2 and 3, and " transmission " in r. 4 of the same Order, of the Civil Procedure Rules mean " direct devolution " and " direct transmission " respectively.
2. Accordingly in this case the applicant corporation must establish that the former Municipal Corporation of Limassol's alleged cause of action devolved on, or was transmitted to, them directly from that corporation.
3. There has been no such direct devolution or transmission here, because,
   (*a*) when, on December 31, 1962, Cap. 240 ceased to be in force, the Municipal Corporation of Limassol established thereunder ceased to exist ;

(*b*) thereupon its property (including rights to the recovery of outstanding weighing fees) became *bona vacantia* ;

(*c*) these devolved on the Republic ; and the devolution was brought about by virtue of the prerogative right of the Republic, " not by way of succession " ;

(*d*) the 1964 Law did vest the alleged cause of action in the applicant corporation, but did so not with effect from December 31, 1962, but from the date of commencement of the Law.

4. For the foregoing reasons rr. 1 and 10 of Order 12 have become applicable.

5. In any case the first application should have been dismissed because—

(*a*) the alleged cause of action having arisen in consequence of the alleged commission of criminal offences the right to institute a prosecution for which did not survive the demise, on December 31, 1962, of the original Municipal Corporation of Limassol, did not itself survive that demise ;

(*b*) when the application was made the alleged cause of action had already become statute-barred.

Rules 1, 2, 3 and 10, referred to in propositions 1 and 4, read :

" 1. A cause or matter shall not become abated by reason of the death or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite* ; and, whether the cause of action survives or not there shall be no abatement by reason of the death of either party between the termination of the hearing and judgment, but judgment may in such case be given notwithstanding the death.

2. In case of the death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the personal representative, trustee or other successor in interest (if any) of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on

such terms as the Court or Judge shall think just, and shall make such order for the disposal of the cause or matter as may be just.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

. .

10. Where any cause or matter shall have been standing for one year in the Cause Book marked as 'abated', or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book."

Clearly the earlier part of ground (*d*) of proposition 3 is right, the vesting having been made by the combined effect of sections 3 (1) and 36 of the 1964 Law. But is the latter part of that ground also right? In support of this counsel for the defendants relied on the words "under the provisions of this Law" in section 3 (1) and the words "from the coming into operation of this Law" in section 36. Presumably by relying on the words "under the provisions of this Law" in section 3 (1) counsel for the defendants intended to suggest that the municipal corporations that came into existence on the enactment of the 1964 Law are corporations between which and the defunct ones there is no direct succession. If that is what was intended, then the answer is that section 3 (1) read as a whole aims at establishing just such succession; for the corporations that it brought into being are, by its express terms, the very ones that ceased to exist as above stated. We now come to the argument based on the words "from the coming into operation of this Law" in section 36. The words in question read literally may mean that the vesting of "the property" and the assumption of the obligations was to be made with effect from the date of commencement of the Law. On the other hand so read they may be understood as referring to *the date when* the takeover was to be effected as distinct from *the date as from which* that was to be done. On a literal reading the former construction would be the more plausible one; but that would conflict with the clear meaning of section 3 (1) and the unmistakable object of the Law as regards the assets and obligations of the defunct corporations—that of preserving all claims and keeping alive all the liabilities of the old corporations and passing them on to the new ones. Accordingly the latter construction, which is fully consonant with the object referred to, must prevail. It follows that proposition 3 cannot be sustained.

So far we have considered the first application as if the defendants' argument, contained in proposition 1 and 2, about the requirement of direct succession was a sound one. But is it? There is nothing to support it on the face of the Rules, nor is there any decided case bearing it out. Further, while there would be no point in the requirement suggested, it would result in many a just claim being defeated for no good reason. If, for instance, A were to die during the pendency of an action by him for debt, and B, his sole heir, were himself to die after A but before a personal representative of him (A) could be appointed and made a party to that action, it would not be possible to get the action continued for the benefit of B's heir or heirs.

It follows that propositions 1 and 2 also cannot be sustained ; and therefore the next one also falls to the ground.

It remains to consider proposition 5. With regard to (*a*), section 186 of Cap. 240 reads :

> " Every municipal corporation may sue and recover by civil proceedings from any person in default any charge, fee, rate, duty or toll prescribed in this Law or in any bye-law made hereunder notwithstanding that the non-payment thereof is due to an act or omission of such person which is made an offence by this Law or any such bye-law and notwithstanding that the person in default has or has not been prosecuted in respect of such offence."

Since the right of action is not contingent on a prosecution there is no reason to suppose it to be dependent on the possibility of a prosecution. As to (*b*), there is no analogy between this case and cases where an application to make a person a party is refused on the ground of limitation of the cause of action. In each of those cases the application has been refused because the cause of action which was statute-barred was not already the subject of the proceedings, so that by the application being allowed the limitation was defeated. Here the cause of action on which the applicant in the first application seeks to rely is the very one on which the action was brought. So the principle of this case does not apply. For the rest, to refuse the application would be to defeat the object of section 36 of the 1964 Law as we understand it.

For the above reasons the appeal was, on March 31 last, dismissed with costs.

Appeal dismissed with costs.