

LOIZOS D. GEORGHIADES & SON of Nicosia

Appellants (Plaintiffs)

v

RENOS KAMINARAS of Limassol

Respondent (Defendant).

(Civil Appeal No. 4261)

1958
Oct. 8,
Nov. 6, Dec. 31

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LOIZOS
D. GEORGHIADES & SON
v.
RENOS
KAMINARAS.

Defamation—Libel contained in a letter posted in a closed envelope in Cyprus and sent to a person in Germany—Publication in Germany—Section 18 of the Civil Wrongs Law, Cap. 9 (as amended by the Civil Wrongs (Amendment) Law, No. 38/53).

Jurisdiction—Jurisdiction of the Courts in Cyprus to entertain actions in respect of torts committed abroad—Defendant resident within the jurisdiction—Common Law—The Court of Justice Law, 1953, Sect. 25 (1) (a) and (b)—The Civil Wrongs Law Cap. 9, Section 3—Effect of the repeal of Sections 56 to 58 of Cap. 9—Section 18 of the Civil Wrongs (Amendment) Law, 1953 (supra).

Tort committed abroad—Conditions which should be satisfied in order that an action thereon may succeed in Cyprus.

Foreign Law—Absence of evidence as to foreign Law—Application of Cyprus Law.

Practice—Costs in Appeals.

The appellants brought an action in the District Court of Limassol claiming against the respondent damages for libel contained in a letter addressed by the latter to the formers' principals in Germany. The letter was posted in Cyprus in a closed envelope. The respondent was at all material times ordinarily residing in the District of Limassol. The letter was clearly defamatory of the appellants under the provisions of the Civil Wrongs Law, Cap. 9, Sections 18 etc. The District Court found that the publication was exclusively effected in Germany. It was pleaded that the defamatory matter was actionable under German Law, but no evidence was adduced to that effect. The District Court dismissed the action on the ground that the tort complained of having been committed outside Cyprus, the Courts here have no jurisdiction to entertain the action in view of Section 3 of the Civil Wrongs Law, Cap. 9. Section 3 reads as follows :

“The matters in this Law hereinafter enumerated shall be civil

wrongs, and subject to the provisions of this Law, any person who shall suffer any injury or damage by reason of any civil wrong committed in the Colony or within three miles of the coast thereof measured from low water mark shall be entitled to recover from the person committing or liable for such civil wrong the remedies hereinafter specified : Provided”.

The remedies referred to in Section 3 were indicated in Sections 56 to 58 of the same Law. But the last mentioned Sections were repealed, without being substituted, by Section 18 of the Civil Wrongs (Amendment) Law, No. 38 of 1953. The effect of the repeal is dealt with in the judgment of the Court (*post*). The District Court assessed damages in the sum of £100 in the event of their being upset on the legal point upon which the action was dismissed.

Held : (1) *Affirming on this point the decision appealed from* : The finding of the Court of trial that the publication of the defamatory matter was effected in Germany, was right. The cause of action in this case has not arisen either wholly or partly within Cyprus. In the absence of evidence that the letter complained of was dictated by the respondent to or transcribed by, somebody else before being posted in a closed envelope to the address in Germany, there can be no question of any publication thereof having been effected within Cyprus.

(2) *reversing on this point the decision of the trial Court* :

(A) Actions on torts, regardless of the place where the cause of action arises, being actions *in personam*, are triable by the Cyprus Courts so long as the defendant is resident within the jurisdiction. That is so both under Common Law as well as under the Cyprus Courts of Justice Law, 1953, Section 25 (1) (b) (*The whole Section is set out in the judgment of the Court*). It was so even before the introduction of Common Law in Cyprus.

(B) Sections 56 to 58 of the Civil Wrongs Law, Cap. 9, dealing with remedies indicated in Section 3 (*supra*) were repealed by Section 18 of the Civil Wrongs (Amendment) Law, 1953 (Law No. 38/53). Section 3 of Cap. 9 was bound up with the aforesaid Sections 56 to 58 which have been so repealed without being substituted. The object of Section 3 was to refer to circumstances under which persons affected would have the right to the remedies given in Sections 56 to 58 which are not now in existence. The effect of their repeal is to render Section 3 inoperative. It would be a bit odd to argue that a person who does not and cannot seek redress under Section 3 is still subject to the restrictive terms of that Section.

(C) We are, therefore, of opinion that the appellants are entitled both under Section 25 of the Courts of Justice Law, 1953, and at Common Law to claim remedy for defamation committed abroad.

(3) For an action in Cyprus, on tort committed in a foreign country, to succeed, two conditions should be satisfied : (a) The act complained

1958
Oct. 8,
Nov. 6, Dec. 31

LOIZOS
D. GEORGHIL-
ADES & SON
v.
RENOS
KAMINARAS.

of must constitute a tort under Cyprus Law and (b) It should not be justified according to the Law of the country where it was done.

(4) Foreign Law should be pleaded and proved as a fact by expert evidence or sometimes by other means. But in the absence of evidence, the Courts will apply Cyprus Law. In this case the appellants pleaded that the publication complained of was actionable under German Law, which was denied by the respondent. The appellants adduced no evidence in support of their proposition. In the circumstances the onus was on the defendant - respondent to prove that according to German Law the act complained of was justified, which he failed to discharge. The matter complained of being, under Cyprus Law, clearly defamatory and not otherwise justified or privileged, the appellants' claim for damages for defamation must succeed.

(5) Damages in the sum of £100 (as assessed by the District Court) awarded.

(6) There will be no order as to costs inasmuch as the appellants won this case on a ground which was added at the hearing of the appeal and the greater part of the proceedings was taken by arguments on which the appellants failed.

Appeal allowed. £100 damages awarded. No order as to costs.

Cases referred to :

Haralambos Afxentiou v. Nicolas G. Pilavakis, 9 C.L.R. 86;

Mitry Trad v. The Ottoman Bank, 15 C.L.R. 14;

Ghakarian v. The Ottoman Bank, 14 C.L.R. 40;

Vassiliou v. Vassiliou, 16 C.L.R. 69;

The Universal Advertising and Publishing Agency and others v. Panayiotis Vouros, 19 C.L.R. 87;

Rules 181 and 185 in Dicey's Conflict of Laws, 7th edition pp. 941 and 1107 respectively, referred to.

Appeal.

Appeal by the plaintiffs against the judgment of the District Court of Limassol (Zenon, P.D.C., A. Loizou, D.J.) dated the 27th May 1958, in Action No. 1736/57, dismissing the plaintiffs' claim for damages for libel contained in a letter addressed by the defendant to the formers' Principal in Germany.

Chr. Mitsides for the appellants.

Ant. Anastasiades for the respondent.

Cur. Adv. Vult.

The facts sufficiently appear in the judgment of the Court, which was delivered by :

1958
Oct. 8,
Nov. 6, Dec. 31

LOIZOS
D. GEORGHIADES & SON
v.
RENOS
KAMINARAS.

ZEKIA, J. : The appellants in this case claim damages for the alleged publication of a defamatory letter addressed by the respondent to the formers' principal in Germany. A number of points have been raised in the Court below and before this Court. The trial Court found that there was no publication within the Colony and the letter sent by the respondent to the principal of the appellants in Germany must have been read by the principal and there could only be publication in Germany and nowhere else. In view however of section 3 of the Civil Wrongs Law (Cap. 9), the trial Court held that as the tort was committed outside Cyprus, it was not actionable in the Courts of the Island and the claim of the appellants (plaintiffs) was accordingly dismissed. The Court, however, added: "If we are upset on this legal point we say that on the facts of this case we would have assessed the damages at £100 plus costs on that amount".

The grounds of appeal were originally three as follows:

1. The finding of the Honourable Court that the letter in question may have been posted outside the Island or not posted at all is erroneous and is contradicted by the letter itself; the letter in question was written and posted in Limassol as shown by the exhibits themselves which remain uncontradicted.
2. The finding of the Court that the publication was effected in Germany is wrong in law.
3. The finding of the Court that the tort of libel has not been committed in Cyprus is contrary to the provisions of the Cyprus Law and particularly of section 18 of the Civil Wrongs Law, Cap. 9, as amended by the Civil Wrongs (Amendment) Law, 1953 (*i.e.* Law 38/53).

At the hearing of the appeal an amendment to the grounds of appeal by adding a fourth ground in the following terms was allowed :

4. But even, if the tort or libel has been committed partly or wholly outside Cyprus—which is not admitted at

1958
Oct. 8,
Nov. 6, Dec. 31

LOIZOS
D. GEORGI-
ADES & SON
v.
RENOS
KAMINARAS.

all—again it is actionable in the Courts of this Island and the finding of the Court below to the contrary is erroneous in law and against the established principles of Law as the Respondent is resident and/or carries on business within the District of Limassol in Cyprus.

Mr. Mitsides on behalf of the appellants contended that there is publication in Cyprus within the definition of section 18 (1) and (2) of the Civil Wrongs Law and that posting of a letter within the Colony is causing the publication of such letter. The matter was actionable before the District Court of Limassol because it fell within the territorial jurisdiction of such Court as provided under section 25 sub-section (1) (a) and (b) of the Courts of Justice Law, 1953. In this case the cause of action had arisen, at least, partly within the limits of the said Court. Defendant also is a resident of Limassol, that is, a resident within the territorial jurisdiction of the trial Court. It was further argued that in view of section 33 of the Courts of Justice Law, 1953, if a defamatory matter under consideration is not actionable under the Civil Wrongs Law yet it is actionable by virtue of the application of the Common Law and reference was made to the *Universal Advertising and Publishing Agency and others v. Panayiotis Vouros* 19 C.L.R. 87. As to the state of German Law—in case the publication of the defamatory matter in Germany is actionable before the Courts of the Colony—he relied on the doctrine that those who alleged a difference between the English Law and a foreign Law have got to prove their allegation.

Mr. Anastassiades on the other side submitted:—

(a) There was no evidence for publication of the defamatory letter either within or without the Colony. There was no evidence that this letter was published in Limassol or, indeed, in the Island. The only evidence available was that this letter was received by the plaintiffs with a covering letter from their German principals but no evidence as to how it reached the principals.

(b) Section 18 of the Civil Wrongs Law, as amended, did not alter the position as far as the publication is concerned, and it is more or less identical with the English Law.

1958
Oct. 8.
Nov. 6, Dec. 31

LOIZOS
D. GEORGHIADES & SON
v.
RENOS
KAMINARAS.

(c) Section 3 of the Civil Wrongs Law specifically provides that no right to a remedy on the part of a plaintiff exists unless the tortious act complained of is committed within the Colony or within three miles of the coast. There is no room for Common Law because the provisions of Common Law dealing with torts committed in foreign countries are repugnant to section 3 of the Civil Wrongs Law. Libel is included in the civil wrongs enumerated within the statutory provisions of the Civil Wrongs Law and the previous decisions of the Supreme Court introducing Common Law in respect of civil wrongs not mentioned in our Law are not applicable.

(d) If the Court is entitled to entertain the action for the publication of the defamatory letter in Germany again it is submitted that there is no evidence as to the state of German Law relating to the matter in question. The learned Counsel further drew the attention of the Court as to the inconsistencies of the grounds of appeal, the one ground being against the ruling of the lower Court that there was publication in Germany and the other ground being in support of that ruling that the civil wrong was committed in Germany.

From the facts of the case it is clear that there was publication of the defamatory letter in Germany only and nowhere else. From the evidence it can reasonably be inferred that the letter was posted by the respondent in Limassol, or at any rate in Cyprus, to the principal of the appellants in Germany who on receiving the letter returned it with a covering letter to the agents, the appellants, in Cyprus. In the absence of evidence that the letter was dictated by the respondent to, or transcribed by, somebody else before being posted in a closed envelope to the address in Germany, there can be no question of any publication of the letter complained of within the Colony. The trial Court was right in their ruling to this effect.

There remains to be examined the publication of the said letter in Germany and the legal consequences, if any, of such publication. Two points call for consideration: (1) Do Cyprus Courts possess jurisdiction to hear and adjudicate upon torts committed abroad? (2) In case they possess

1958
Oct. 8,
Nov. 6, Dec. 31

LOIZOS
D. GEORGHIL-
ADES & SON
v.
RENOS
KAMINARAS.

such a jurisdiction, what is the effect on the case of appellants of the absence of the evidence as to the German Law concerning defamation?

The Court below took the view that by section 3 of the Civil Wrongs Law the jurisdiction of the Cyprus Courts was excluded for libels committed outside the Colony and they had no right to grant any remedy. It is not disputed that by Common Law torts committed abroad are amenable to the jurisdiction of English Courts but it is contended that Common Law cannot be resorted to in this case by virtue of section 33 (1) (c) of the Courts of Justice Law, 1953, because other provision has been made in this Colony.

In the first place Cyprus Courts have since long exercised extra-territorial jurisdiction in actions *in personam* or transitory actions in respect of which the causes of action had arisen in foreign countries. The only requirement being the residence or domicile of the defendant within territorial jurisdiction. This was so even before the Common Law was by special provision introduced into the Laws of this country. See for instance *Haralambos Afxentiou v. Nicolas G. Pilavakis*, 9 C.L.R. 86; *Mitry Trad v. The Ottoman Bank* 15 C.L.R. 14, *Chakarian v. Ottoman Bank* 14 C.L.R. 40. The territorial jurisdiction of the District Courts in civil matters now is given in section 25 of the Courts of Justice Law, 1953, which reads :

“(1) Every District Court shall, subject to the provisions of sections 20 and 34, have original jurisdiction to hear and determine all actions in accordance with the provisions of section 26 where—

(a) The cause of action has arisen either wholly or in part within the limits of the district in which the Court is established; or

(b) the defendant or any of the defendants, at the time of the institution of the action, resides or carries on business within the District in which the Court is established.

(2) Where the action relates to the partition or sale of any immovable property or any other matter relating to immovable property, such action shall be taken in the

District Court of the district within which such property is situate”.

1958
Oct. 8,
Nov. 6, Dec. 31

—
LOIZOS
D. GEORGHIADES & SON
v.
RENOS
KAMINARAS.

There is nothing in the said section to restrict the jurisdiction of the District Courts to actions, in cases where a defendant is resident within a particular district, only to causes of actions which had arisen within the Colony. Actions on torts being also in the nature of actions *in personam*, regardless of the place where the cause of action arises, so long as the defendant is resident within jurisdiction such action is triable by Cyprus Courts, unless of course by some provision in a law such jurisdiction is ousted or limited. This is so even without Common Law being resorted to. Now, therefore we should consider section 3 of the Civil Wrongs Law which we give hereunder :

“The matters in this Law hereinafter enumerated shall be civil wrongs, and subject to the provisions of this Law, any person who shall suffer any injury or damage by reason of any civil wrong committed in the Colony or within three miles of the coast thereof measured from low water mark shall be entitled to recover from the person committing or liable for such civil wrong the remedies hereinafter specified :”.

In plain language it enacts this: Any person suffering damage on account of a civil wrong, committed in the Colony, being one of those enumerated in the same Law, shall be entitled to the remedies specified in a later part of the Law. *Vassiliou v. Vassiliou*, 16 C.L.R. 69, *The Universal Advertising and Publishing Agency and others v. Panayiotis Vouros*, 19 C.L.R. 87, had enlarged the scope of this section and as a result not only the torts specified in the Civil Wrongs Law but those left out and recognised by Common Law unless clearly excluded by some legislation were actionable in the Courts of the Colony as well. As the learned Counsel of the respondent argued, the two decided cases have no bearing to the present case because here we are not concerned with a kind of tort not included in our Laws but with one for which extensive provisions exist. On the other hand the torts involved in both cases were committed within the Colony and nothing turned as to the right of remedies provided in section 3 which right is limited expressly to torts com-

1958
Oct. 8.
Nov. 6, Dec. 31

LOIZOS
D. GEORGHIADES & SON
v.
RENOS
KAMINARAS.

mitted within the Colony or within three miles of the coast. The provisions of Common Law which confer jurisdiction on the Courts to hear and determine torts committed abroad are repugnant to the provisions which form part of section 3 and therefore inapplicable.

Indeed the force of this argument cannot be denied. It is significant however to consider the effect of the repeal of sections 56 to 58 of the Civil Wrongs Law which sections dealt with remedies indicated in section 3 the one under consideration. Section 18 of the Law 38/1953 enacted:

“(1) Part IV of the principal Law (consisting of sections 56 to 58, both inclusive) is hereby repealed (the ensuing Parts V and VI being renumbered as Parts IV and V, respectively).

(2) This section shall come into operation and take effect as from the date on which the Courts of Justice Law, 1953, comes into operation”.

Section 3 of the Civil Wrongs Law is bound up with sections 56 to 58 of the same Law which have been repealed without being substituted. The object of section 3 was to refer to circumstances under which persons affected would have the right to the remedies given in section 56 to 58 which sections are not now in existence. The effect of the repeal by Law 38/53 is to render section 3 inoperative. It would seem a bit odd to argue that a person who does not and cannot seek redress under section 3 is subject to the restrictive terms of such section. We are of the opinion therefore that the appellants are entitled both under section 25 of the Courts of Justice Law and at Common Law to claim remedy for defamation committed abroad.

There remains the last point to be considered. Appellants did not call an expert witness to prove the German Law on libel. To succeed in an action on tort committed in a foreign country two conditions should be satisfied: (1) The act complained of must constitute a tort in accordance with the English Law (in this case Cyprus Law); and (2) should not be justifiable according to the Law of the country where it was done. See Rule 181 Dicey's Conflict of Laws 7th Edition, p. 941.

Rule 205 at p. 1107 reads :

“In any case to which, in accordance with this Digest, foreign Law applies, that Law must be pleaded and proved as a fact to the satisfaction of the Judge by expert evidence or sometimes by certain other means.

(2) In the absence of satisfactory evidence of foreign Law, the Court will apply English Law to such a case.”.

Appellants pleaded that the publication of the defamatory letter was actionable under German Law. This was denied by the respondent. There is no clear English authority on the point but the better opinion appears to be on the side of the plaintiff, that is, the onus is on the defendant to prove that according to the Law of a particular foreign country the act complained of is justified. (*See* pp. 965—967 of Dicey's Conflict of Laws where relevant authorities are examined). A letter which bears a defamatory character in this country can hardly be expected to be otherwise or justified under the Law of a European country. Furthermore according to the Law of the country to which the parties in this case belong the publication is clearly defamatory and not justified or privileged.

We are inclined to the view therefore that failure on the part of the plaintiff to call evidence was not fatal to his case and that the rule that in the absence of satisfactory evidence of foreign Law we could apply Cyprus Law prevails. The appeal therefore is allowed. Respondent is ordered to pay £100 the sum assessed by the trial Court. No costs allowed. The appellants won this case only on a ground which was added at the hearing of the appeal. The greater part of the proceedings was taken by arguments on points in which the appellants failed. It would not be fair therefore to allow costs in this case.

Appeal allowed. £100 damages awarded to the Appellants.

No order as to costs.

1958
Oct. 8,
Nov. 6, Dec. 31

—
LOIZOS
D. GEORGHIADES & SON
v.
RENOS
KAMINARAS.