1965
Jan. 21

DAFNIS THOMAIDES & CO., LTD.,
v.
LEFKARITIS BROTHERS

[VASSILIADES, TRIANTAFYLLIDES, MUNIR, JJ.]

DAFNIS THOMAIDES & CO., LTD.,
Appellants-Plaintiffs,

v.

LEFKARITIS BROTHERS,
Respondents-Defendants,

(*Civil Appeal No.* 4481)

Civil Procedure—Appeal—Findings of fact by trial Courts—Circumstances under which the Court of Appeal will disturb such findings, a matter well settled in Cyprus by now—Contention that findings of the trial Court are "against the weight of evidence"—Failure of appellant to show that such findings were "plainly wrong"; that it was not reasonably open to the trial Court to make them.

The present appeal rests entirely on the contention that the findings of the trial Court are "against the weight of evidence".

Held, (1) it is now well settled in Cyprus that before the findings of the trial Court can be disturbed, an appellant must satisfy the court of appeal that the reasoning behind such findings, is unsatisfactory, or that they are not warranted by the evidence, considered as a whole. This is so, both in civil and in criminal appeals. And it is for the party challenging a finding, to satisfy this Court that the finding is wrong. (*Simadhiakos* v. *The Police*, 1961, C.L.R. 64; *Nicos Antoni* v. *Afroditi Vassiliadou*, 1961, C.L.R. 103; *Economides* v. *Zodhiatis*, 1961, C.L.R. 306; etc.).

(2) *On the merits:* Appellants-plaintiffs having failed to show positively to this Court, that the findings complained of, were "plainly wrong"; that it was not reasonably open to the trial Court to make them, the appellants must fail.

(3) *As regards costs:* We do not propose interfering with any orders made in the District Court and the appeal is dismissed without any order for costs therein.

Appeal dismissed.

Cases referred to:

Simadhiakos v. *The Police*, 1961 C.L.R. 64;

Nicos Antoni v. *Afroditi Vassiliadou*, 1961, C.L.R. 103;

Economides v. *Zodhiatis*, 1961, C.L.R. 306;

Saunders v. *Saunders*, (1965) 2 W.L.R. 32, at P. 43H and 44 AB.

Appeal.

Appeal against the judgment of the District Court of Limassol (Zenon Acting P.D.C. and Malachtos, D.J.) dated the 9th December, 1963, (Action No. 756/61) whereby plaintiffs' claim for £2,500 damages due to the breach by defendants of an oral agreement was dismissed and judgment was entered in favour of the defendants against the plaintiffs for £204.630 on their counterclaim.

St. G. McBride, for the appellants.

A. Myrianthis, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, J. : We find it unnecessary to call upon the respondents. Having heard exhaustively learned counsel for the appellants, we are unanimously of the opinion that the appeal must fail. It rests entirely on the contention that the findings of the trial Court are " against the weight of evidence ", a thing which the appellants have failed to show in this Court.

It is now well settled in Cyprus that before the findings of the trial Court can be disturbed, an appellant must satisfy the Court of appeal that the reasoning behind such findings, is unsatisfactory, or that they are not warranted by the evidence, considered as a whole. This is so, both in civil and in criminal appeals. And it is for the party challenging a finding, to satisfy this Court that the finding is wrong. (*Simadhiakos* v. *The Police*, 1961, C.L.R. 64 ; *Nicos Antoni* v. *Afroditi Vassiliadou*, 1961, C.L.R. 103 ; *Economides* v. *Zodhiatis*, 1961, C.L.R. 306 ; etc.).

In England, the position regarding Justices' findings is much the same. In a very recent appeal before the President of the Probate, etc., Division of the High Court, Sir Jocelyn Simon, and Mr. Justice Scarman, the latter dealing with findings in a cruelty-case, challenged on appeal, put the position as follows :

> " It is plain from the authorities that have been quoted to the Court, that the proper attitude of an appellate Court to findings of fact in this class of case, is that the appellate Court must not interfere unless in the view of the appellate Court, the tribunal below was plainly wrong. If, of course, even though the matter be one solely of fact, the appellate Court should come to the conclusion that the tribunal below was plainly

wrong, then it is its duty to interfere. I, therefore approach the evidence as summarised in the note of evidence, asking myself the question does it convince me that the justices were plainly wrong? That is not a conclusion to which I can come, although, I confess, it does not convince me that, had I heard and seen these witnesses, I would have come to the same conclusion as they did. Adopting therefore the proper attitude, as I understand it, of an appellate Court to their findings, I think it the duty of this Court in the circumstances, not to interfere. That is enough to dispose of the appeal". (*Saunders* v. *Saunders* (1965) 2 W.L.R. 32, at P. 43H and 44 AB).

The same position arises in the present appeal where the position of the respondents is even stronger. Here it was, we think, plainly open to the trial Court to make, upon the evidence before them, the findings of fact upon which they decided the case. Without attempting to improve upon what has already been said in this connection, in a line of cases before this Court, findings of fact made by a trial Court upon the evidence of witnesses whom they had the advantage of seeing and hearing in the witness-box, should not be interfered with, on appeal, unless it can be positively shown by the party challenging a finding, that it was not reasonably open to the trial Court to make it, upon the evidence on record.

In the present case the material facts upon which the matter turns are : (*a*) the oral contract pleaded ; and (*b*) the circumstances under which it was broken. The trial Court heard the parties who negotiated, and eventually concluded the contract ; and, moreover, heard one witness called on each side ; and received in evidence a number of exhibits duly produced. With that material before them, it was the task of the trial Court to weigh and assess the evidence ; and to make their findings on the issues of fact raised by the plaintiffs. They did so, accepting the evidence adduced for the defendants, in preference to that called for the plaintiffs, whenever such evidence was in conflict ; and gave their reasons for doing so. Upon those findings, they decided both claim and counterclaim ; and dismissing plaintiff's action with costs, the trial Court gave judgment for the defendants for £204.630 mils, one of the items in the counterclaim.

From the whole of this judgment the plaintiffs appealed, mainly on the ground—common to all the points taken in their notice—that the findings of the trial Court are

"against the weight of evidence". Having now failed to show positively to this Court, that the findings complained of, were "plainly wrong"; that it was not reasonably open to the trial Court to make them, the appellants must fail.

As regards costs, we do not propose interfering with any orders made in the District Court. But we take the view that the respondents cannot be disconnected from the main cause of this litigation; from allowing a business transaction of this size and nature, to rest entirely on an oral agreement without taking the care to cover it by any sort of record as to its terms, or as to the arrangements made for its performance. We, therefore, think that they should not get costs in the appeal.

In the result, the appeal is dismissed without any order for costs therein.

Appeal dismissed. No order for costs.