

1968
Oct. 8

MAROULLA
ATHANASSI
MICHAELIDES
(WIFE OF ARISTO-
TELIS GREGORIA-
DES)
v.
PINELOPI HJI
MICHAEL
DIAKOU

[JOSEPHIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

MAROULLA ATHANASSI MICHAELIDES (WIFE OF
ARISTOTELIS GREGORIADES),

Appellant-Plaintiff,

v.

PINELOPI HJI MICHAEL DIAKOU,

Respondent-Defendant.

(Civil Appeal No. 4683).

Practice—Preliminary objection—Point of law to be formulated and set down for hearing before the date of trial—The Civil Procedure Rules, Order 27—Application under Order 27 should normally be made on the summons for directions.

Point of law—Setting down for hearing—Correct procedure—See above.

This case is reported only on the short point regarding the correct procedure to be followed in setting down for hearing particular points of law under Order 27 of the Civil Procedure Rules.

Josephides J., delivering the judgment of the Court and after dealing with the substance of this appeal, went on to say:

Before concluding our judgment, we would like to refer to the procedure followed in this case of setting down a point of law for hearing at the stage when it was set down for such hearing. In the past we had occasion to refer to the correct procedure to be followed. We did so on more than one occasion. We need only refer to the case of *The heirs of the late Theodora Panayi v. The Administrators of the Estate of the late Stylianos Mandriotis* (1963) 2 C.L.R. 167.

This is what we said in that case (at page 170):

“We would like to add that in cases where an objection is taken in the defence the interested party must apply to the Court to have a particular point of law under Order 27 formulated and set down for hearing before the date of trial, and he should not wait until the day

of trial when all the parties and their witnesses are before the Court, when considerable costs may be incurred. An application under Order 27 should normally be made in the summons for directions”.

We do hope that in future this practice will be followed both by counsel and the court who have to deal with such matters.

Cases referred to:

The heirs of the late Theodora Panayi v. The Administrators of the Estate of the late Stylianos Mandriotis (1963) 2 C.L.R. 167, at p. 170 adopted.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Larnaca (*Georghiou, P.D.C. & Orphanides, D.J.*) dated the 14th December, 1967, (Action No. 179/66) dismissing his claim on the ground that the statement of claim did not disclose a cause of action and that the claim was statute barred.

G. *Constantinides*, for the appellant.

A. *Anastassiades* with G. *Panayiotidou* (Miss), for the respondent.

The judgment of the Court was delivered by:

JOSEPHIDES, J.: This is an appeal from the order of the District Court of Larnaca dismissing the plaintiff's claim on the ground that the statement of claim did not disclose a cause of action and that the claim was statute barred.

The appellant-plaintiff is the only heir of one Athanassis Michaelides who died in 1931. Athanassis Michaelides was one of five children of Hji Michael Diakos who died in 1915. One of Diakos's children was the present respondent-defendant. By her statement of claim, the plaintiff alleges that some time, not later than the year 1915, while the late Hji Michael Diakos was still alive, her father Athanassis Michaelides paid off Diakos's debts and saved his immovable property from forced sale, Diakos undertaking in consideration thereof to transfer in the name of the plaintiff's father the aforesaid property. It is further alleged in the statement of claim that such a transfer by the grandfather Diakos did not take place owing to "formal reasons". The statement of claim goes on to aver that, apart from the defendant, all the

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other heirs of Diakos do not have any claim on the afore-said property which is described in the schedule to the writ of summons and in the application to the Land Registry of Larnaca under No. 493/65.

Finally, it is contended that the defendant, availing herself of the absence from Cyprus of the plaintiff, applied in 1965 for the registration of the properties described in application 493/65, and that such properties were actually registered in her name. The relief claimed in paragraph 9 (A) and (B) of the statement of claim is to the following effect. The plaintiff claims:

(A) a declaration of the Court that all the properties described in the attached schedule and the application to the Land Registry No.493/65, belong exclusively to the plaintiff by inheritance and purchase by her deceased father by public auction in full payment of the grandfather's debt, such properties being situate in Athienou village;

(B) an order of the Court directing the cancellation of any registration to the contrary and the transfer and registration of all such properties in the name of the plaintiff as the only and exclusive owner and beneficiary.

The defendant in para. 1 of the defence takes the point that the plaintiff's statement of claim discloses no cause of action and she then goes on to give a brief statement of facts as alleged by her; and, finally, in para. 9 of the defence it is pleaded that without prejudice to what is contended earlier in the defence, the plaintiff's claim is statute barred by virtue of the provisions of the Limitation of Actions Law, Cap. 15.

The trial Court dismissed the plaintiff's claim on two grounds, but we think that we need only consider one of these grounds. It was contended on behalf of the defendant that the plaintiff's claim is exclusively based on the contractual rights accruing by succession to the plaintiff and that these contractual rights arose out of a contract which was entered into not later than the year 1915. Considering that the writ of summons was filed in the present case in March 1966, more than 50 years elapsed from the date of the alleged agreement. On the basis of that agreement learned counsel for the respondent (defendant) submitted that the claim is statute barred and we have to consider that submission.

If we accept the submission that the cause of action arises

exclusively out of the agreement entered into in the year 1915, there is no doubt that the claim is statute barred. We have read carefully and considered the statement of claim as drafted by the learned counsel for the plaintiff. Nowhere in the statement of claim is it stated that the plaintiff claims her one-fifth share in the property of the grandfather to which right she succeeded through her father, and the case is pleaded on the basis of the alleged agreement as stated in paragraphs 3 and 4 to which we have referred earlier in this judgment. The case is not pleaded at all on the basis of inheritance or succession. Nowhere is it stated what properties were left, if the properties in the schedule were the only properties, what partition took place, what became of the share of the other four heirs?

Accepting as we do respondent's submission that the claim is exclusively based on contract and not on inheritance we can only reach the conclusion that the claim is statute barred and that it was rightly dismissed by the trial Court.

Before concluding our judgment, we would like to refer to the procedure followed in this case of setting down a point of law for hearing at the stage when it was set down for such hearing. In the past we had occasion to refer to the correct procedure to be followed. We did so on more than one occasion. We need only refer to the case of *The heirs of the late Theodora Panayi v The Administrators of the Estate of the late Stylianos Mandriotis* (1963) 2 C.L.R. 167. This is what we said in that case (at page 170)

"We would like to add that in cases where an objection is taken in the defence the interested party must apply to the Court to have a particular point of law under Order 27 formulated and set down for hearing before the date of trial, and he should not wait until the day of trial when all the parties and their witnesses are before the Court, when considerable costs may be incurred. An application under Order 27 should normally be made on the summons for directions"

We do hope that in future this practice will be followed both by counsel and the courts who have to deal with such matters.

In the result the appeal is dismissed with costs.

Appeal dismissed with costs

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