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COSTAS  
HJI ANTONI  
v.  
GEORGHIOS  
THEOCHARIS

[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

COSTAS HJI ANTONI,

*Appellant-Plaintiff,*

v.

GEORGHIOS THEOCHARIS,

*Respondent-Defendant.*

(Civil Appeal No. 4769).

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*Appeal—Findings of fact made by trial Courts and credibility of witnesses—Appeals turning thereon—Principles upon which the Court of Appeal will act—Well settled—Principles restated.*

*Contract—Oral agreement for commission—Denied by defendant—Only evidence in support that of plaintiff—Disbelieved by trial Judge—Onus on the appellant to satisfy the Court of Appeal that trial Judge was either wrong in his findings or in the reasons given therefor.*

*Witnesses—Credibility—Court of Appeal—Approach of Court of Appeal—Principles applicable.*

*Findings of fact made by trial Courts—Appeals turning on such findings—Approach of the Court of Appeal.*

*Estate agent—Commission—Contract—See hereabove under Contract.*

In this case the appellant's—plaintiff's claim was based on an alleged oral agreement with the respondent-defendant to the effect that the latter had agreed to pay him £100.— by way of commission if he found a purchaser for the defendant's field and that he did so. This was flatly denied by the defendant and the case came on for hearing before the District Judge in Larnaca who after hearing the plaintiff and one witness on his behalf, and the defendant himself, dismissed the plaintiff's claim and gave his reasons for doing so. The case turns mainly on the credibility of the plaintiff and the defendant. It was argued on behalf of the appellant-plaintiff that the trial Judge misdirected himself in several respects as to the value of the evidence adduced before him and that the conclusions reached by him were not warranted by the reasons which he gave. Dismissing the appeal the Court:—

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*Held*, (1). The only evidence as regards the alleged agreement was that of the plaintiff himself. The burden of proof was on the plaintiff to persuade the trial Judge that such an agreement had been concluded between the parties.

(2) Undoubtedly, matters of credibility are within the province of the trial Judge, and this has been laid down in many cases in this Court. We need only refer to a few which summarize the position: *Charalambous v. Demetriou* 1961 C.L.R. 14; *Imam v. Papacostas* (1968) 1 C.L.R. 207; *Hadji Petri v. Hadji-Georghou* (reported in this Part at p. 326 *ante*); *Pyrgas v. Stavridou* (reported in this Part at p. 332 *ante*). That does not mean, however, that this Court will never interfere with such finding. This Court, sitting as a Court of Appeal, will do so if it is satisfied that the reasoning behind the trial Judge's finding is wrong or that he was wrong in his conclusions; and the burden of proving that the trial Judge was wrong is on the appellant.

(3) Having heard counsel on this point and having gone through the record, we are not satisfied that the learned trial Judge was either wrong in his findings or in the reasons which he gave for such findings, even assuming that the defendant, in certain parts of his evidence, did not appear to be as reliable as one would expect him to be. The onus of satisfying us was on the appellant-plaintiff and he has failed to discharge the burden cast on him.

*Appeal dismissed with costs.*

Cases referred to:

*Charalambous v. Demetriou*, 1961 C.L.R. 14;

*Imam v. Papacostas* (1968) 1 C.L.R. 207;

*Hadji Petri v. Hadji Georghou* (reported in this Part at p. 326 *ante*);

*Pyrgas v. Stavridou* (reported in this Part at p. 332 *ante*).

### Appeal.

Appeal against the judgment of the District Court of Laranca (Orphanides D.J.) dated the 28th September, 1968, (Action No. 599/66) whereby plaintiff's claim for £100.— by way of commission was dismissed.

*G. Nicolaidis*, for the appellant.

*G. Constantinides*, for the respondent.

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VASSILIADES, P.: We find it unnecessary to call on the other side; Mr. Justice Josephides will deliver the Court's judgment.

JOSEPHIDES, J.: In this case the appellant's-plaintiff's claim was based on an alleged agreement with the respondent-defendant to the effect that the defendant had agreed to pay him £100.—by way of commission if he found a purchaser for the defendant's field and that he did so. This was flatly denied by the defendant and the case came on for hearing before the District Judge in Larnaca who, after hearing the plaintiff and one witness on behalf of the plaintiff, and the defendant on behalf of himself, dismissed the plaintiff's claim and gave his reasons for doing so.

The plaintiff now appeals against that judgment, mainly on the ground that the conclusions of the learned trial Judge were not warranted by the reasons which he gave and that he mis-directed himself in several respects as to the value of the evidence adduced before him.

The only evidence as regards the alleged agreement between the parties was that of the plaintiff himself. It was to the effect that that was an oral agreement between the plaintiff and the defendant, in the absence of any witness, and that there was no written memorandum of such an agreement. The burden of proof was on the plaintiff to persuade the trial Judge that such an agreement had been concluded between the parties.

The learned trial Judge, in weighing the evidence of the plaintiff as against that of the defendant and after taking into consideration also the evidence of Kypros Economides the prospective purchaser, preferred the version of the defendant to that of the plaintiff.

Undoubtedly, matters of credibility are within the province of the trial Judge, and this has been laid down in many cases by this Court. We need only refer to a few which summarize the position: *Charalambous v. Demetriou*, 1961 C.L.R. 14; *Imam v. Papacostas* (1968) 1 C.L.R. 207; *HadjiPetri v. Hadji-Georghou* (reported in this Part at p. 326 *ante*); and to a recent one, that of *Pyrgas v. Stavridou* (reported in this Part at p. 332 *ante*). That does not mean, however, that, if the reasoning behind the learned Judge's finding is wrong, this Court will not interfere with such finding.

In addressing us today learned counsel for the appellant

pointed out several parts of the evidence of the defendant which, he submitted, did not appear to be reliable and should not have been accepted by the trial Judge. We have no doubt that learned counsel did put the same argument with equal force before the trial Judge but he failed to persuade the Judge to accept the plaintiff's version that the alleged agreement had been concluded between the parties.

This Court, sitting as a Court of Appeal, has to be satisfied that the learned Judge was wrong in his conclusions or in the reasons which he gave for such conclusions and the burden of proving that the trial Judge was wrong is on the appellant.

Having heard learned counsel on this point and having gone through the record, we are not satisfied that the learned trial Judge was either wrong in his findings or in the reasons which he gave for such findings, even assuming that the defendant, in certain parts of his evidence, did not appear to be as reliable as one would expect him to be. The onus of satisfying us lay on the plaintiff and he has failed to discharge the burden cast on him.

For these reasons, we are of the view that the appeal should be dismissed.

VASSILIADES, P.: I agree with the judgment just delivered. I should like to add, however, that even if the appellant were successful in his submission regarding the assessment of the evidence of the defendant by the trial Judge, the position still remains that the appellant-plaintiff failed to discharge the onus cast upon him to prove the agreement upon which his claim rests.

For the appellant to succeed, he must take the second fence of satisfying this Court that the agreement for the payment of the commission claimed, was established; and this would be an extremely difficult thing to do in view of the trial Judge's assessment of plaintiff's credibility. It is not enough for him to show the shortcomings in the evidence of the defendant; and submit that the findings resting upon it are unsatisfactory. He must be able to persuade us that we must find the alleged agreement, on the discredited evidence of the plaintiff. There is nothing else upon which to make such a finding. We are unanimously of the opinion that even if the appellant could go over the first fence, he would inevitably fail in the second.

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HADJIANASTASSIOU, J.: I also agree that the judgment of the learned trial Judge should be affirmed, because today, after hearing the argument of counsel for the appellant, I have not been persuaded that the reasoning behind such findings is unsatisfactory or that they are not warranted by the evidence when considered as a whole.

I would, therefore, dismiss the appeal.

VASSILIADES, P.: In the result, the appeal is dismissed with costs.

*Appeal dismissed with costs.*