

RAGIBE REMZI ALIAS RAGIBE SOYHAN, AS
ADMINISTRATRIX WITH THE WILL ANNEXED OF THE
ESTATE OF THE DECEASED REMZI MEHMET
RUSTI (No. 1),

Appellant-Defendant,

v.

AYTEN SENCER ALIAS AYTEN REMZI,

Respondent-Plaintiff.

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RAGIBE
REMZI
ALIAS
RAGIBE
SOYHAN (No. 1)
v.
AYTEN SENCER
ALIAS
AYTEN REMZI

(Civil Appeal No. 4931).

*Notice of appeal—Amendment—Application for leave to amend—
So as to raise for the first time on appeal the issue of the juris-
diction of a Court, other than the trial Court, which many
years ago made an order involved in the present proceedings
but which is not and could not be appealed from by means of
the present appeal—Question of amendment a matter within
the discretion of the Court—Application dismissed as this is
not a proper case in which to allow amendment of the notice of
appeal as applied for.*

Civil Procedure—Appeal—Notice of—Amendment—See supra.

Notice of appeal—Amendment—See supra.

*Amendment of notice of appeal—Discretion of the Court etc. etc.—
See supra.*

*Jurisdiction—Issue of jurisdiction of the Court may be taken for
the first time on appeal—If all the relevant facts are before the
Appellate Court.*

During the hearing of this appeal counsel for the appellant applied for leave to amend the notice of appeal by adding an elaborately framed new ground of appeal which would enable him to argue before the Court of Appeal an issue which was not raised before the trial Court, viz. whether or not a legitimation order made on the 29th of March, 1955, and which was relevant to the present proceedings, was validly made from the point of view of the jurisdiction of the Court which made it.

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Refusing the amendment applied for, the Court :—

Held, (1) (a). For over sixteen years this legitimization order has remained undisturbed ; no step was taken by anybody to set it aside.

(b) On the other hand, no satisfactory reason why the matter now sought to be raised before us was not raised before the trial Court has been given.

(2) It is true that a point as to jurisdiction may be taken for the first time on appeal if all the relevant facts are before the appellate tribunal (see, *inter alia*, *Mayor, Aldermen and Citizens of Norwich v. Norwich Electric Tramways Company Ltd.* [1906] 2 K.B. 119, at p. 129, and *Westminster Bank Ltd. v. Edwards* [1942] A.C. 529).

This however is not a case in which it is being sought to contend on appeal—without this question having been raised before the trial Court—that the Court below did not possess jurisdiction in relation to the matters in issue in the proceedings, but a case in which it is being sought to raise for the first time on appeal the issue of the jurisdiction of another Court which many years ago has made an order which is involved in the present proceedings but is not, and could not, be appealed from by means of the present appeal.

(3) In dealing with an application of this nature we have full discretion to make such an order as is necessary to produce a just result. But exercising our discretion in the light of all the foregoing we feel that this is not a case in which to allow counsel for the appellant to amend the notice of appeal.

Application dismissed with costs.

Cases referred to :

Mayor, Aldermen and Citizens of Norwich v. Norwich Electric Tramways Company Ltd. [1906] 2 K.B. 119, at p. 129 ;
Westminster Bank Ltd. v. Edwards [1942] A.C. 529 ;
In re Stockton Iron Furnace Company [1879] 10 Ch. D. 335 ;
Perry v. St. Helens Land and Construction Co. Ltd. [1939] 3 All E.R. 113, at p. 119.

Application.

Application for leave to amend the grounds of appeal in a notice of appeal against the judgment of the District Court of Limassol (Malachtos, P.D.C. and Loris, D.J.)

given on the 1st September, 1970, (Action No. 928/69) whereby it was declared that the plaintiff is the legal heir entitled to one half hereditary share in the estate of her deceased father.

M. M. Houry, for the appellant.

A. Dana with *F. Veziroglu* and *S. Hilmi (Miss)*, for the respondent.

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The ruling of the Court was delivered by :—

TRIANAFYLLIDES, P. : During the hearing of this appeal counsel for the appellant applied for leave to amend the notice of appeal by adding an elaborately framed new ground of appeal which would enable him to argue before us an issue which was not raised before the trial Court, *viz.*, whether or not a legitimation order, which is relevant to the present proceedings, was validly made from the point of view of the jurisdiction of the Court which made it.

That order was made on the 29th March, 1955, by the District Court of Limassol. The petitioner was the now deceased Remzi Mehmet Rusti, whose administratrix is the present appellant ; thus it is an order obtained by the predecessor in title of the appellant, who was, at the time, a respondent, in her personal capacity, in the legitimation proceedings. By virtue of the order it was declared that the respondent in this appeal was the child of the said deceased.

For over sixteen years this legitimation order has remained undisturbed ; no step was taken by anybody to set it aside.

No satisfactory reason why the matter now sought to be raised before us was not raised before the trial Court appears in the affidavit in support of the application for amendment of the notice of appeal or has otherwise been given.

It is true that a point as to jurisdiction may be taken for the first time on appeal if all the relevant facts are before the appellate tribunal (see, *inter alia*, *Mayor, Aldermen, and Citizens of Norwich v. Norwich Electric Tramways Company, Limited* [1906] 2 K.B. 119, at p. 129, and *Westminster Bank, Limited v. Edwards* [1942] A.C. 529). This, however, is not a case in which it is being sought to contend on appeal—without this question having been raised before the trial Court—that the Court below did not possess jurisdiction in relation to the matters in issue in the proceedings,

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but a case in which it is being sought to raise for the first time on appeal the issue of the jurisdiction of another Court which made many years ago an order which is involved in the proceedings but is not, and could not, be appealed from by means of the present appeal.

In dealing with an application of this nature we have full discretion to make such an order as is necessary to produce a just result (see, *inter alia*, *In re Stockton Iron Furnace Company* [1879] 10 Ch. D. 335, and *Perry v. St. Helens Land & Construction Co., Ltd.* [1939] 3 All E.R. 113, at p. 119).

Exercising our discretion in the light of all the foregoing we feel that this is not a proper case in which to allow counsel for the appellant to amend the notice of appeal as applied for. This application is, therefore, dismissed with costs against the appellant.

Application dismissed with costs.