1984 October 4

[STYLIANIDES, J.]

IN THE MATTER OF AN APPLICATION BY OR ON BEHALF OF KYRIACOS GEORGHIOU KAKOS, PLAINTIFF IN ACTION NO. 2120/83 OF THE DISTRICT COURT OF LIMASSOL,

and

AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI,

and

IN THE MATTER OF A JUDGMENT BY CONSENT ISSUED BY THE DISTRICT COURT OF LIMASSOL ON THE 11TH JANUARY, 1984 IN THE AFORESAID ACTION,

and

IN THE MATTER OF ARTICLE 155.4 OF THE CONSTITUTION.

(*Application No.* 66/84).

Jurisdiction—Dispute relating to immovable property—No relationship of landlord and tenant between the parties and no statutory tenancy—Property in question not an "Immovable" within a "controlled area" as such expressions are defined in section 2 of the Rent Control Law, 1983 (*Law* 23/83)*—Dispute within the jurisdiction of the District Court and not that of the Rent Control Court.*

Civil Procedure—Consent judgment—May be sanctioned and issued by the Court on an agreement of the parties and if not inconsistent with the statement of claim and the prayer—Claim based on trespass to property—Remedies therefor being, inter alia, recovery of possession Court could issue a consent judgment for recovery of possession—Though plaintiff has to specify in the statement of claim one form of relief which he claims on proof

of the necessary facts Court not confined to granting that particular form of relief but has jurisdiction to grant any relief it thinks appropriate to the facts as proved—Rule 2 of Order 20 of the Civil Procedure Rules.

Certiorari—Leave to apply for—No prima facie case made out.

The applicant has since 1974 been in occupation of a small space of land in Limassol with a hut standing thereon. Following a dispute between the applicant and the Nautical Club of Limassol ("the defendants") as to the right of possession of the above piece of land the applicant brought an action in the District Court of Limassol whereby he prayed for an injunction restraining the defendants from interfering with the said property. The defendants desisted the claim and contended that the property in question was the ownership of the Republic and it was let to them by means of a long lease. By means of a counterclaim the defendants prayed for two different alternative injunctions and any other relief or order that the Court might deem fit in the circumstances. When the case was set down for hearing a consent judgment was issued whereby it was ordered that.

"(1) The action be dismissed and is hereby dismissed;

(2) The plaintiff to vacate and deliver to the defendants free possession of the space on which a Nissen hut is standing, between the Nautical Club of Limassol and the Nautical Club of Famagusta, with stay of execution until 30th September, 1984, when the plaintiff is bound to deliver the space with the premises thereon to the defendants".

Thereafter the applicant applied for leave to issue an order of certiorari to bring up and quash the above consent judgment contending:

(a) That the District Court of Limassol acted without jurisdiction as another Court—the Rent Control Court established under Law 23/83—had jurisdiction.

(b) That in view of the prayer in the counterclaim the issue of the judgment sought to be brought up and quashed was manifestly illegal because a Court cannot give amenity which is not prayed for in the pleadings.

Held, (1) that there was no averment in the pleadings and no allegation was put before the Court that the subject-matter property was "immovable" within a "controlled area" as such expressions are defined in section 2 of Law 23/83; that, further, there was no allegation in the pleadings or by counsel in these proceedings that there existed between the parties a relationship of landlord and tenant or a statutory tenancy; that, on the contrary, it was admitted in the application itself that the cause of action was outside the ambit of the jurisdiction of the Rent Control Court and this is fortified by the fact that the applicant himself elected as the competent Court the District Court of Limassol; and that, therefore, it cannot be said that the District Court of Limassol acted without jurisdiction in this case and in fact it was not so argued.

(2) That the Court may sanction and issue judgment on an agreement of the parties in a civil action if that is not inconsistent with the statement of claim and the prayer; that the case for the defendants-counterclaimants, as pleaded, was one of trespass to immovable property; that trespass is a wrong to possession; that the remedies for trespass is either injunction restraining the trespasser from committing acts of trespass or recovery of possession; that it is not necessary to ask for general or other relief, for this "may always be given as a Court or a Judge may think just to the same extent as if it had been asked for"; that though Order 20, rule 2 of the Civil Procedure Rules requires the statement of claim to specify at least one form of relief which the plaintiff claims, on proof of the necessary facts the Court is not confined to granting that particular form of relief but has jurisdiction to grant any relief it thinks appropriate to the facts as proved; and, that therefore, the District Court could give the remedy of recovery of possession; accordingly no prima facie case has been made out sufficiently to justify the granting of leave to the applicant for an order of certiorari and the application must be dismissed.

Application dismissed.

Cases referred to:

R. v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1952] 1 All E.R. 122 at p. 133;

Ex parte Papadopoulos (1968) 1 C.L.R. 496;

Ex parte Maroulleri (1970) 1 C.L.R. 75;

In re Panaretou (1972) 1 C.L.R. 165;

Green v. *Rozen* [1955] 2 All E.R. 797;

Drane v. *Evangelou* [1978] 2 All E.R. 437;

Re Vandervell's Trusts (No. 2) [1974] 3 All E.R. 205 at pp. 213, 215.

Application.

Application for leave to apply for an order of certiorari in order to bring up and quash a consent judgment issued by the District Court of Limassol in Action No. 2120/83.

L.N. Clerides, for the applicant.

Cur. adv. vult.

STYLIANIDES J. read the following decision. By this application the applicant applies for leave to issue order for certiorari to bring up and quash a consent judgment issued by the District Court of Limassol on the 11th January, 1984, in Civil Action No. 2120/83.

Certiorari is one of the prerogative orders which the Constitution vested with exclusive jurisdiction the High Court to issue. With the enactment of Law No. 33/64 that jurisdiction was conferred on this Court.

Certiorari is an order which is addressed to an inferior Court or to a body or persons exercising judicial power.

By order of certiorari the Supreme Court controls all inferior tribunals, not in an appellate capacity, but in a supervisory capacity. This control extends not only to seeing that the inferior tribunals keep within their jurisdiction, but also to seeing that they observe the law. The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it, offends against the law. This Court does not substitute its own views for those of the tribunal, as a Court of appeal would do. Morris, L.J., said in *R.* v. *Northumberland Compensation Appeal Tribunal—Ex-parte Shaw*, [1952] 1 All E.R. 122, at p. 133:-

"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision or irregularity, or absence of, or excess of, jurisdiction where shown. The control is exercised by removing an order or decision, and then by quashing it".

If the decision under review is quashed, then the case is sent back to the inferior Court to hear the case again, if the ground of quashing is not lack of jurisdiction.

The grounds on which this application is based are:-

(a) Want of jurisdiction; and,

(b) Manifest illegality on the face of the record of the judgment issued by the District Court of Limassol.

The facts are, in short, as follows:-

The applicant is a refugee from Famagusta. He moved to Limassol in the summer of 1974. The defendants are the Nautical Club of Limassol and the members of its Committee. The applicant occupied since his establishment in Limassol a small space of land with a hut standing thereon.

Sometime in 1981 a dispute arose between the applicant and the defendants in the action. The defendants contended that the land and the hut thereon were immovable property over which they had exclusive right of possession and that the applicant had been an invitee and afterwards a trespasser. The applicant contended that the defendants were trespassers and they actually commited some acts of trespass on the hut. Following this dispute the applicant filed Action No. 2120/83 in the District Court of Limassol whereby he prayed for an injunction restraining the defendants from interfering with the subject property.

The defendants desisted the claim and contended that the property in question was the ownership of the Republic; that it was by long lease let to them; such lease was duly registered under the relevant Law with the District Lands Office; they were entitled to possession; the plaintiff was a trespasser who intended to continue his act of trespass. By counterclaim they

prayed for two different alternative injunctions and any other relief or order that the Court might deem fit in the circumstances.

When the case was set down for hearing a consent judgment was issued. The record thereof reads as follows:-

"This action coming on for hearing in the presence of Mr. Vassiliades and Mr. Papakyriacou, advocates for the plaintiff, and Mr. Agapiou with Mr. Touleki and Mr. Tsikkinis, advocates for the defendants, and after hearing what was said by and on behalf of the parties respectively, this Court doth hereby order that—

(1) The action be dismissed and is hereby dismissed;

(2) The plaintiff to vacate and deliver to the defendants free possession of the space on which a Nissen hut is standing, between the Nautical Club of Limassol and the Nautical Club of Famagusta, with stay of execution until 30th September, 1984, when the plaintiff is bound to deliver the space with the premises thereon to the defendants;

(3) Each party to pay its own costs".

The question which falls for determination at this stage is whether there is a prima facie case made out sufficiently to justify the granting of leave to the applicant to move this Court in due course to issue an order of certiorari. It is sufficient if, on the face of the applicant's statement and the affidavits in support, the Court is satisfied that such leave should be granted —(*Ex-Parte Costas Papadopoullos*, (1968) 1 C.L.R. 496; *Ex-Parte Loucia Kyriacou Christou Maroulleti*, (1970) 1 C.L.R. 75; *In Re Nina Panaretou*, (1972) 1 C.L.R. 165).

The first ground is that the District Court of Limassol acted without jurisdiction as another Court—the Rent Control Court —had jurisdiction.

The District Court of Limassol is the ordinary Court of the land established under the Constitution and the Courts of Justice Law, No. 14/60. The Rent Control Law, 1983 (Law No. 23/83) established a new Court—the Rent Control Court. The jurisdiction of the Rent Control Court is set out specifically in section 4(1) of the Law. It reads as follows:-

"4.--(1) Καθιδρύονται Δικαστήρια Ελέγχου Ενοικιάσεων ο αριθμός των οποίων δεν θα υπερβαίνη τα τρία επί σκοπώ επιλύσεως, μεθ' όλης της λογικής ταχύτητος, των εις αυτά αναφερομένων διαφορών των αναφυομένων επί οιουδήποτε θέματος εγειρομένου κατά την εφαρμογήν του παρόντος Νόμου συμπεριλαμβανομένου παντός παρεμπίπτοντος ή συμπληρωματικού θέματος".

("4.(1) Rent Control Courts are established, the number of which will not exceed three, for the purpose of solving, with all reasonable speed, the disputes referred to them on any matter arising out of the application of this Law including every interlocutory or supplementary matter").

It is confined to cases referred to it with regard to disputes arising out of the application of that Law. That may not be the best wording for vesting a Court with jurisdiction but that is irrelevant for the present case.

The jurisdiction of the District Courts, as set out in the Courts of Justice Law, can only be taken away by specific and express legislative provision.

In the present case there is no averment in the pleadings and no allegation was put forward before me that the subject-matter property in question is "immovable" within a "controlled area", as those expressions are defined in s.2 of the Rent Control Law. There is no allegation either in the pleadings or by counsel in these proceedings that there existed between the parties a relationship of landlord and tenant or a statutory tenancy. It is, on the contrary, admitted in the application itself that the cause of action was outside the ambit of the jurisdiction of the Rent Control Court. This is fortified by the fact that the applicant himself elected as the competent Court the District Court of Limassol. It cannot be said that the District Court of Limassol acted without jurisdiction in this case and in fact it was not so argued.

With regard to the second ground, i.e. manifest illegality and excess of jurisdiction, counsel for the applicant canvassed that the wording of the consent judgment against the applicant is identical or similar to the wording of s.11(1) of the Rent Control Law, i.e. it orders "recovery of possession", and,

therefore, the District Court of Limassol could not issue such order as it is within the exclusive jurisdiction of the Court set up under Law No. 23/83 to make an order of ejectment and/or recovery of possession.

No arguable issue arises out of this submission. The Law is plain: that the jurisdiction of the Rent Control Court is restricted to cases and matters arising from the application of the rent control legislation. The pleadings, exhibit No. 1 before me, plainly and unequivocally contain averments only for trespass to immovable property.

It was further argued that in view of the prayer in the counter-claim the issue of the judgment sought to be brought up and quashed is manifestly illegal because a Court cannot give a remedy which is not prayed for in the pleadings.

The remedy asked for was injunction and any other relief or order the Court might deem fit in the circumstances. The judgment given is an order "to vacate and deliver to the defendants free possession of the space on which a Nissen hut is standing . . ." by the trespasser plaintiff.

A case is determined either by trial and pronouncement of judgment by the Court or settled in any of the various ways that cases are compromised. A very lucid exposition of the various ways of compromise is set out in the English case of *Green* v. *Rozen*, [1955] 2 All E.R. 797.

In the present case the first mode of compromise was effected, i.e. agreement of the parties and consent judgment issued by the Court.

The Court may sanction and issue judgment on an agreement of the parties in a civil action if that is not inconsistent with the statement of claim and the prayer. That is legitimate. Trespass is a wrong to possession. The remedies for trespass is either injunction restraining the trespasser from committing acts of trespass or recovery of possession. This is usually coupled with a claim for damages and/or mesne profits.

It is not necessary to ask for general or other relief, for this "may always be given, as a Court or a judge may think just, to the same extent as if it had been asked for". Order 20,

r.2, of the Civil Procedure Rules, which corresponds to the old English 0.20, r.6—(see new Order 18, r.15(1))—requires the statement of claim to specify at least one form of relief which the plaintiff claims; however, on proof of the necessary facts the Court is not confined to granting that particular form of relief, but has jurisdiction to grant any relief it thinks appropriate to the facts as proved—(*Odgers' Principles of Pleading and Practice*, 22nd edition, p. 172).

The case for the defendants-counterclaimants, as pleaded, was one of trespass to immovable property. The material facts were stated in their pleadings.

In *Drane* v. *Evangelou*, [1978] 2 All E.R. 437, the remedy prayed for by the plaintiff was for exemplary damages for breach of a covenant for quiet enjoyment. The Judge stated the facts were sufficient to found a claim in trespass and awarded damages to the plaintiff. The defendant appealed, contending, inter alia, that the plaintiff was not entitled to exemplary damages because the particulars of claim had not pleaded a claim in trespass and had not expressly claimed exemplary damages. It was held that the Judge was entitled of his own motion to raise the issue of trespass even though it had not been pleaded, because the facts were sufficient to warrant a claim for trespass and as they were set out in the particulars of claim the defendant could not claim that he had been taken by surprise when the Judge raised the issue. (See, also, *Re Vandervell's Trusts (No. 2)*, [1974] 3 All E.R. 205, at pp. 213 and 215).

In view of the aforesaid I am not satisfied that the applicant made out a prima facie case for the grant to him of leave to issue an order for certiorari.

In the result leave is refused; no order as to costs.

Application refused. No order as to costs.