

1986 February 10

[A. LOIZOU, SAVVIDES, PIKIS, JJ.]

ANDREAS G. THOMA,

Appellant-Defendant,

▼.

ANASTASSIA GEORGHIOU CHAMBOU,

Respondent-Plaintiff,

(Civil Appeal No. 6875).

Civil Procedure—Scale of Actions—Action for recovery of possession of a shop and for damages and/or rent and/or mesne profit—Value of subject-property or dispute affect the Jurisdiction of the Court, the Court fees payable and the assessment or taxation of costs—Application by defendant praying inter alia for a declaration that the scale fixed on the writ of summons be increased from £1,000 - £3,000 to over £10,000—Finding that the amount of damages claimed already exceeded £10,000—Therefore, as the value of the dispute was sufficiently disclosed in the pleadings, the further prosecution of the application was unnecessary—Question whether the defendant could file such an application as aforesaid left open. 5 10

The Civil Procedure Rules—Order 48, rules 1, 2, 3, Order 27, rule 1 and Order 2 rule 10. 15

The Courts of Justice Law 14/60, s. 22.

The appellant, defendant in an action for the recovery of possession of a shop at Ayia Napa and for damages and/or rent and/or mesne profits at £50.- per day as from 31.5.84 until delivery of vacant possession, filed an application seeking the following remedies, namely a declaration that the scale of the action be increased from £1,000 - £3,000 to over £10,000, an order for the amendment of the writ of summons accordingly, an order staying 20

proceedings until such amendment, any other relief and costs.

5 In the affidavit in support of the said application it was deposed that the value of the subject shop exceeded £30,000. Counsel for the respondent-plaintiff conceded that on the basis of the value of the shop the action ought to have been classified in the scale over £10,000 but maintained that the matter could not be rectified by an application of the defendant.

10 The trial Judge rightly observed that the amount in dispute or the value of subject-matter is an element relevant to specifying the jurisdiction of the Court and the classification of the action for the purpose of determining the Court fees which have to be paid. He then went on to
15 say that in this case and independently of the value of the subject-matter a mere arithmetical calculation of the claim for damages showed that the amount in dispute already exceeded the amount of £10,000 and indicated that there was nothing further to be done by the Court and that
20 the Registry ought to examine the matter whether the prescribed fees had been paid or not. He then dismissed the application.

Hence the present appeal.

25 *Held*, dismissing the appeal: (1) For the purpose of defining the jurisdiction of the Court under s. 22 of Law 14/60 and the Court fees payable under the relevant rules as well as for the purpose of the assessment or taxation of costs the value of the subject-matter of the action was sufficiently disclosed upon the pleadings and, therefore, the
30 further prosecution of the application and more so the granting of any of the reliefs applied for, were unnecessary.

(2) In the light of the findings of the trial Judge it was a matter of fixing the case before the Court having jurisdiction. And even if that was not correctly done and the
35 case was fixed before the wrong Court there was nothing to prevent the defendants from raising the lack of jurisdiction of such Court.

Appeal dismissed.

Cases referred to:

Birader v. Osman, 24 C.L.R. 183.

Appeal.

Appeal by defendant against the judgment of the District Court of Famagusta (Constantinides, S.D.J.) dated the 22nd January, 1985 (Action No. 643/84) whereby her application for the amendment of the writ of summons to the effect that the scale of the action be increased from between £1,000 - £3,000 to over £10,000 was dismissed. 5

E. Erotokritou, for the appellant. 10

A. Poetis, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. The appellant in these proceedings, being the defendant in an action in the District Court of Larnaca claiming, (a) the recovery of possession of a shop situate in Ayia Napa, and (b) damages and/or rent and/or mesne profits in the sum of £50.- daily as from 31st May, 1984, until delivery of vacant possession, filed an interlocutory application and sought the following remedies: 15

"A. Declaration of the Court that the scale of the action be increased from between £1,000 - £3,000 to over £10,000. 20

B. Order of the Court that the writ of summons be amended as above.

C. Order of the Court staying the proceedings until the writ of summons be amended as above. 25

D. Any other relief, declaration or order as the Court may deem fit.

E. Costs."

In the affidavit filed in support of the application it was deposed that the scale of the action was wrong as the value of the subject property exceeded the amount of £30,000 and that on account of it the action ought to be tried by the Full District Court of Larnaca, which has jurisdiction 30

to try actions the subject matter of which exceeds £10,000.

The application was based on the Civil Procedure Rules, Order 48, rules 1, 2, and 3, Order 27, rule 1, Order 2, rule 10 and section 22 of the Courts of Justice Law 1960, (Law No. 14 of 1960).

On the writ of summons there were recorded on the right upper part thereof the figures "£1,000 - £3,000" and at the end of the endorsement it was stated "Subject matter £1,000 - £3,000". No mention, however, was made in the endorsement on the writ of the value of the property sought to be recovered, as provided by Order 2, rule 10, of the Civil Procedure Rules.

The respondents/plaintiffs conceded at the hearing of the application that on the basis of the value of the property in question the action ought to have been classified in the scale over £10,000 but maintained that the matter could not be rectified by an application of the defendant.

The learned trial Judge pointed out and rightly so in our view, that the amount in dispute or the value of the subject matter is an element relevant to specifying the jurisdiction of the Court as well as an element indicating the scale in which the action had to be classified for the purpose of Court Fees which have to be paid under the relevant Rules. He then went on to say that independently of what could be said regarding the value of the subject property and the ascertainment of the amount or value actually in dispute between the parties on the basis of that criterion, the plaintiff was claiming also "damages and/or rent and/or mesne profits in the sum of £50 daily from 31st May, 1981, until such delivery", and that a mere arithmetical calculation showed that the amount in dispute already exceeded, and at that before hearing the application, the amount of £10,000, and indicated that there was nothing further to be done by the Court and that the Registry ought to examine the matter whether the prescribed fees had been paid or not. He then dismissed the application without any order as to costs.

One would expect that by this conclusion reached by the learned trial Judge, the matter would have been left

at that; instead the present appeal was filed and the grounds of law relied upon are the following:

- “A. that the judgment of the learned trial Judge was not correctly reasoned,
- B. that the learned trial Judge did not interpret the Law correctly, 5
- C. that the learned trial Judge acted under a misconception of Law and,
- D. that the judgment of the trial Judge was not based on legal principles.” 10

These grounds of appeal are very vague indeed, but counsel for the appellant in arguing the case before us maintained that the learned trial Judge ought not to have dismissed the application, but determine the amount in dispute or the value of the subject matter of the action under the provisions of section 22(4) of the Courts of Justice Law 1960, which reads as follows: 15

“(4) Subject to any Rules of Court, for the purposes of this section the amount in dispute or the value of the subject matter of an action shall be the amount or value actually in dispute between the parties thereto as disclosed upon the pleadings, or admitted by the parties at any stage of the proceedings, or determined by the Court on application, notwithstanding that the amount claimed or the alleged value of the subject matter in the action exceeds that amount or value.” 20 25

We were further referred by him to the case of *Hussein Mehmet Birader v. Zekiye Ali Osman*, 24 C.L.R. 183. where it was held that under the provisions of the relevant section of the Courts of Justice Law 1953, then in force, the basis of the jurisdiction is the actual value in dispute as disclosed upon the pleadings but that does not prevent the Court from going into the pleadings and ascertain for itself the amount in dispute or the value of the subject matter of the action and the following observations were made by Zekia J., at p. 186: 30 35

“It is clear however that the Court has to confine

5 itself to the pleadings. It may be that the pleadings
are vague, indefinite and inconclusive in this respect,
and a Judge might require the parties, before the
hearing and preferably when dealing with summons for
directions with a view to ascertaining what is the value
of the claim actually disclosed in the pleadings to
supplement the statement of claim and counterclaim;
but we do not think that it is desirable for a Court
after the hearing started to go into the matter of juris-
10 diction without application on either side, unless the
course on the face of the pleadings such a question
presents itself. On the other hand we realise that the
practice to exaggerate claims and counterclaims has
to be discouraged. It must be remembered that the
15 Court or the Registrar as the taxing master can ef-
fectively deal with such extravagant claims or counter-
claims by applying rigorously the Rules of Court re-
garding costs, specially Rules 7 and 17 of Order 59
of the Civil Procedure Rules.”

20 We do not consider it necessary to deal with the issues
raised any further as it is obvious that for purposes of de-
fining the jurisdiction of the Court under section 22 of
the Courts of Justice Law 1960, and the Court fees pay-
ble under the relevant rules, as well as for the purpose of
25 the assessment or taxation of costs of the proceedings the
value of the subject matter was, as found by the learned
trial Judge sufficiently disclosed upon the pleadings and
indeed admitted by counsel for the plaintiff at the com-
mencement of the hearing of the application. These ren-
30 dered unnecessary the further prosecution of the application
and more so the granting of any of the reliefs prayed for
thereby if at all available to the applicant, a matter which
we leave open.

35 In the light of the finding of the learned trial Judge it
was a matter of fixing the case for hearing before the Court
having jurisdiction, there being no doubt as to the amount
or value actually in dispute between the parties as ascer-
tained. But even if that was not correctly done there was
nothing to prevent the defendants from raising the question
40 of possible lack of jurisdiction if the case was fixed before

the wrong Court and also there was nothing to stop the Judge from entertaining such objection to refer the case as it was done in the *Birader* (supra) to the Court having jurisdiction in the matter.

For all the above reasons the appeal is dismissed with 5
no order as to costs as none have been claimed.

Appeal dismissed.
No order as to costs.