1988 October 21

(SAVVIDES, KOURRIS, BOYADJIS, JJ.)

ANDROULLA C. DEMETRIOU, WIFE MICHAEL LEFKATIS,

Appellant-Plaintiff,

v.

1. ANDREAS ARISTODEMOU,
2. STASOULLA PAVLOU KLEANTHOUS,

Respondents-Defendants.

(Civil Appeal No. 7135).

Findings of facts — Interference with, by Court of Appeal — Principles applicable.

Nuisance — Private nuisance — The Civil Wrongs Law, Cap. 148, s.46 — Habitual interference with reasonable use and enjoyment of immovable property — An essential ingredient of such tort.

The facts of this case appear sufficiently in the judgment of the Court.

Appeal dismissed with costs.

Cases referred to:

Michaelides v. R. C. Holdings Ltd. (1986) 1 C.L.R. 65;

Parmaxi v. Katsiola (1985) 1 C.L.R. 633;

Kyriacou v. Petri and Others (1985) 1 C.L.R. 275.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 26th February, 1986 (Action No. 6523/84) whereby her action for an injunction restraining the defendants from causing nuisance was dismissed.

M. Charalambides, for the appellant.

M. Cleopas, for the respondents.

SAVVIDES J gave the following judgment of the Court. This is an appeal against the judgment of the District Court of Nicosia dismissing appellant's action for an injunction restraining the defendants from causing nuisance by continuous noise, vibrations, explosions and other intolerable noise and also by the emission of dust, smoke, fumes from paint and burnt material dangerous to human health.

The facts of the case are briefly as follows:

The appellant is a Sister at the General Hospital in Nicosia and the owner and occupier of the 1st floor of a house at No. 24 Demokratias Avenue, at Ayios Dhometios where she resides with her family.

The respondents-defendants are the owners and occupiers of an adjoining building, the basement of which is used by respondent-defendant 1 as a workshop for straightening of damaged cars.

It had been the contention of the appellant all along that the operation of this factory creates intolerable noise and it discharges fumes from paints and burning material interfering with the health of the appellant and her family.

The trial Court, which heard a considerable number of witnesses on both sides at a hotly contested hearing, did not accept the evidence of the appellant and her mother as evidence on which it could rely. It made an elaborate analysis of the evidence of the witnesses who gave evidence in the case and made extensive comments about each one of them. The trial Court found that the only acceptable evidence was that of D.W.3, Sub-Inspector Kyriakos Michael whom he treated as an independent witness and who had visited the locus on several occasions after complaints lodged to the police by the appellant. The learned trial Judge had this to say in respect of this witness:

> «The evidence of Sub-Inspector Kyriakou is of material importance in the present case as this witness besides being an independent witness has made an inquiry after a complaint by the plaintiff and carried out investigations as to whether there was a noise. This witness though cross-examined at length did not state anything inconsistent with his findings but on the contrary he gave certain instances justifying his findings.
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> The Court believes and accepts the evidence of this witness on all points and finds that the noise created by the

straightening workshop of the defendant is not excessive but is the ordinary noise of a straightening workshop which is audible if one approaches closely the factory.

Witness Kyriakou did not mention whether the noise is audible when one is in the house of the plaintiff though he said that while being at the staircase of the house of the plaintiff he heard very low noise».

The learned trial Judge then proceeded and in an elaborate way dealt with the legal principles applicable in cases of private nuisance and came to the conclusion that the noise complained of is not such as to interfere with the comfort and convenience of the appellant and the reasonable use and enjoyment of her property. The learned trial Judge further dismissed appellant's complaint about headaches, dizziness, allergy and respiratory problems which according to her version were caused by the fumes and the emission of paint as according to the medical evidence produced her health problems could not be attributed to the operation by respondent 1 of his workshop.

The definition of private nuisance according to s.46 of the Civil Wrongs Law, Cap. 148, is as follows:

«46. A private nuisance consists of any person so conducting himself or his business or so using any immovable property of which he is the owner or occupier as habitually to interfere with the reasonable use and enjoyment, having regard to the situation and nature thereof, of the immovable property of any other person:

Provided that no plaintiff shall recover compensation in respect of any private nuisance unless he shall have suffered damage thereby:

Provided also that the provisions of this section shall not apply to any interference with daylight.»

What is an essential ingredient of this civil wrong is that there should be habitual interference with the reasonable use and enjoyment of immovable property of any other person. The burden was upon the appellant to satisfy the Court that there was such interference and according to the findings of the trial Court she failed to do so. The trial Court within the scope of its jurisdiction as a trial Court had the opportunity to hear the

witnesses and make its findings as to credibility and decided the case on such findings.

On the evidence before him the learned trial Judge found that the noise created by the operation of the workshop of respondent 1, though audible to some extent in the house of the appellant, was not such as to interfere with the reasonable possession and enjoyment by the appellant of her property. As to her complaint concerning smells coming out from smoke and evaporation of paint, this complaint emanated from the evidence of the appellant and her mother which was not accepted by the trial judge and was not supported by any of the other eleven witnesses called by the appellant.

It is well settled that this Court does not interfere with the findings of the trial Court on facts accepted by it unless such findings are inconsistent with the evidence or the conclusions of the trial Court based on such facts are wrong. (*Michaelides v. R. C. Holding Ltd.* (1986) 1 C.L.R. 65; *Parmaxi v. Katsiola* (1985) 1 C.L.R. 633; *Kyriacou v. Petri & Others* (1985) 1 C.L.R. 275).

Counsel for the appellant persisted in arguing that the evidence accepted by the trial Court was wrongly accepted without being in a position to advance any sound or legal argument why such evidence should not have been accepted.

Having perused the evidence before the trial Court both in examination-in-chief and cross-examination and the findings of the learned trial Judge we have reached the conclusion that this appeal is entirely unfounded and no sound reason has been advanced why the judgment of the trial Court should be disturbed.

In the result the appeal is dismissed with costs in favour of the respondent.

Appeal dismissed with costs.