

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE ASSIZE COURTS AND DISTRICT COURTS.

[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]

(January 26, 1949)

AYSHE MOUSTAFA AND ANOTHER, *Appellants*,

v.

ATHENA THEOCHAROUS, *Respondent*.

(*Civil Appeal No. 3834.*)

Rent Restriction—Order for possession—Misrepresentation—Compensation—Increase of Rent (Restriction) Law, 1942, section 7, sub-section 2.

The respondent was the tenant of a house which was owned by the appellants in co-ownership. The first appellant represented to her tenant, the respondent, that she was going to be married and that she required the house for the occupation of herself and her husband. Relying on that information the tenant consented to evacuate the house and judgment for possession of the house was given, by consent, on the 10th July, 1946, and the house was evacuated on the 10th January, 1947. At the time when the first appellant represented to the respondent that she was going to be married there had apparently been no mention to the intending husband that the first appellant had a child by a former husband and that after her marriage she intended to take this child to live with her. When the intending husband discovered that, in February, 1947, he broke off the marriage, and the house was not required and was in March, 1947, leased to another person at a higher rent.

The tenant thereupon claimed compensation under section 7, sub-section 2, of the Increase of Rent (Restriction) Law, 1942, on the ground that the order for possession was obtained by misrepresentation. The trial Judge found that there had been an innocent misrepresentation on the part of the first appellant and awarded £25 damages. The Judge referred to the misrepresentation as one which fell within section 18 of the Contract Law, 1930.

Held, that the order for possession had been obtained by misrepresentation within the meaning of section 7, sub-section 2, of the Increase of Rent (Restriction) Law, 1942, and that the amount of the damages awarded to the tenant by the trial Court was justified.

Judgment of the District Court affirmed.

Appeal by the landlords from the judgment of one of the District Judges of Nicosia awarding £25 damages to a former tenant. (Action No. 299/47.)

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Fadil N. Korkut for the appellants.

A. Emilianides for the respondent.

The facts of the case appear sufficiently in the judgment of the Chief Justice.

JACKSON, C.J.: In this case the respondent was the tenant of a house which was owned by the appellants in co-ownership. In about February, 1946, the appellant No. 1 entered into negotiations for a marriage with a man named Omar and it appeared at that time that a marriage was likely to take place between them. Thereafter the appellant No. 1 represented to her tenant, the respondent, that she was going to be married and that she and her husband wanted to live in the house which the tenant occupied. Thereupon, and on that information, the tenant consented to evacuate the house, and application was made to the Court under the Recovery of Possession of Small Holdings Law of 1895 for the recovery of the house by the appellant.

Judgment for possession of the house in favour of the appellants was given by the Court, by consent, on the 10th July, 1946, and the house was actually evacuated on the 10th January, 1947. In March, 1947, it was re-leased to another person at a rent of £7 a month, the rent which the respondent had previously paid being 30s. a month. The marriage between the appellant No. 1 and the man Omar had not taken place and did not.

Thereupon the respondent brought an action against the appellants, under section 7 (2) of the Increase of Rent (Restriction) Law, 1942, on the ground that her consent to evacuate the house had been obtained by misrepresentation and consequently that the order of the Court for the evacuation of the house which was made by consent had also been obtained by misrepresentation.

The District Judge found that there had been an innocent misrepresentation on the part of the first appellant and accordingly, under the section of the Rent Restriction Law which has been quoted, gave judgment for a sum of £25 in damages with costs.

Unfortunately the learned Judge omitted to say exactly what was the misrepresentation which he had found that the appellant had made and which had procured the issue of the order of the Court for the evacuation of the house. He clearly should have said so, and if he had said so he would probably have saved the parties in this case the expense of this appeal. Since he did not say so it is not at all surprising that the appellants should have been left in some doubt as to the ground of the judgment against them. The Judge described the misrepresentation which he found to have been made as an innocent misrepresentation and referred to it as one which fell within section 18 of the

Contract Law of 1930. That is the only indication we have of the misrepresentation which he found to have been made. He described it as an innocent misrepresentation and he said also that he believed the evidence both of the appellant and of the man who at that time intended to marry her.

What in fact happened was that at that time, that is to say at the time when the first appellant misrepresented to the respondent that she was going to be married, and when the respondent consented to evacuate the house, there had apparently been no mention to the intending husband that the appellant No. 1 had a child of 12 by a former husband and that after her marriage she intended to take this child to live with her in the house which was the subject of this claim. When the intending husband discovered that that was so, and he says he discovered it in February, 1947, he broke off the promise of marriage, and has since married another woman.

It appears, therefore, that when the appellant assured the respondent that she was going to get married and wanted the house to live in with her husband, she was saying what she believed to be true but what it was premature for her to assert with so much positiveness. She ought obviously, before she could be sure that she was going to marry, have seen that her intended husband knew not only about the existence of this child of 12 by a former husband, but that it was her intention to take the child to live with her in the new house.

If we refer to head (a) of section 18 of the Contract Law of 1930 as a guide to what the Judge meant, we find there a definition of misrepresentation as :

“ The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.”

I can only conclude that the misrepresentation which the Judge found to have been made was the statement by the appellant No. 1 that she was going to get married and live in the house with her intended husband, a statement made in a much more positive form than the facts authorized her to make at the time. When these facts became known the marriage broke down and the house was not required and was in fact leased to somebody else.

It appears to me that that would be, on the evidence, a reasonable finding on the Judge's part, and would justify the award to the respondent of the damages that the Judge did in fact award in his judgment.

In my view, therefore, this appeal should be dismissed with costs.

GRIFFITH WILLIAMS, J. : I entirely agree with the judgment of the Chief Justice.

Appeal dismissed with costs.

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