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Nov. 24

IOANNIS
EXINTAVELONIS
AND ANOTHER
v.
PANAYIOTA
VIOLARI

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

IOANNIS EXINTAVELONIS OF PRODROMOS,
TREASURER OF THE IRRIGATION DIVISION
COMMITTEE HARTZIS-MAZOURKA OF PRO-
DROMOS AS REPRESENTATIVE OF THE
OWNERS OF THE SAID IRRIGATION DIVI-
SION AND ANOTHER,

Appellants (Plaintiffs),

v.

PANAYIOTA VIOLARI OF PRODROMOS,

Respondent (Defendant).

(Civil Appeal No. 4348).

Irrigation Divisions—The Irrigation Divisions (Villages) Law, Cap. 342—Action by Irrigation Divisions claiming rights of irrigation.

Practice—Pleadings—Statement of Claim in an action by Irrigation Divisions asserting rights of irrigation and the like—Should disclose how the Irrigation Division concerned as distinct from the private individuals who are members of such Divisions have acquired their right over the water in dispute—Section 42 of Cap. 342 (supra).

The plaintiffs-appellants, who are Irrigation Division constituted under the Irrigation Divisions (Villages) Law, Cap. 342, brought an action against the defendant-respondent claiming rights of irrigation from a spring for the whole of its water and consequential reliefs. The plaintiffs - appellants pleaded in their statement of claim (paragraph 3) a right alleged to have been acquired by 30 years' user by the proprietors concerned, viz. the members of the two Irrigation Divisions of Prodromos and Paliomylos. They further stated: "By virtue of this continuous use for more than 30 years, plaintiffs have acquired a right of irrigation from this spring for the whole of its water and only the nominal ownership remains in the defendant". There was nothing in the statement of claim disclosing how the Irrigation Divisions concerned, as distinct from its members, had acquired their alleged right under the relevant provisions of Cap. 342, particularly section 42.

It was contended on behalf of the defendant that the statement of claim discloses no cause of action. The lower court,

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upholding that submission, made an order directing that the action shall stand dismissed unless the plaintiffs within 15 days applied for the appropriate amendment of the statement of claim. On appeal against that order by the plaintiffs, it was submitted on their behalf that what they alleged by paragraph 3 of the statement of claim (*supra*) is that they have acquired the right of irrigation not by virtue of 30 years' user by the proprietors but in accordance with the provisions of Cap. 342. It was argued, on the other hand, by counsel for the respondent (defendant) that the statement of claim does not show that the plaintiff Irrigation Divisions had acquired any right over the water in dispute.

Held:- (1) The plaintiffs-appellants had to plead two things:

(a) That the action was brought by the Treasurers of the Committees of the Irrigation Divisions as representing the proprietors, and

(b) to show how the provisions of the Irrigation Divisions (Villages) Law, Cap. 342, applied to the water in dispute.

(2) Once the plaintiffs-appellants pleaded ownership or *ab antiquo* right it was also essential that it should be shown in the pleadings how the Irrigation Divisions had acquired their rights under the provisions of Cap. 342, particularly s. 42.

Appeal dismissed. Action shall stand dismissed unless the plaintiffs-appellants do, within 15 days, file an application with the District Court for the amendment of the statement of claim.

Appeal.

Appeal against the judgment of the District Court of Limassol (Michaelides, P.D.C., and Malachtos, D.J.), dated the 17th July, 1961, (Action No. 923/61) whereby an action for (a) an order that a certain water belongs to plaintiffs, (b) an order restraining defendants etc. from interfering with the said water and (c) an order that the rights of irrigation be registered in the names of the plaintiffs, stood dismissed, unless the plaintiffs do within 15 days apply for amendment of the statement of claim, on the ground that the plaintiffs had no *locus standi* in the action.

A.S. Myrianthis for the appellants.

G. Cacoyannis for the respondent.

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The facts sufficiently appear in the judgment of the Court delivered by:

JOSEPHIDES, J.: This is an appeal against the order of the District Court of Limassol directing that the action shall stand dismissed unless the plaintiffs (appellants), within fifteen days from the day of the order, applied for the amendment of the statement of claim. The net point in this appeal is really a very short one, namely, as to whether the statement of claim disclosed a cause of action or not.

So far as material for the purposes of this appeal, the plaintiffs (appellants) had to plead two things: (a) that the action was brought by the Treasurers of the Committees of the Irrigation Divisions, as representing the proprietors thereof, and (b) to show how the provisions of the Irrigation Division (Villages) Law, Cap. 342, applied to the water in dispute. Once they pleaded ownership or *ab antiquo* right, it was also essential that it should be shown in the pleadings how the Irrigation Divisions had acquired their rights, *i.e.* whether the consent of the majority of the shareholders in such water had been obtained under the provisions of section 42 of the aforesaid Law.

In the first sentence of paragraph 3 of the statement of claim (which is drafted in Greek) 30 years' *ab antiquo* right was pleaded by the owners of the properties of the two Irrigation Divisions of Prodromos and Paliomylos. The second sentence of that paragraph went on to state: "By virtue of this continuous use for more than 30 years, plaintiffs have acquired a right of irrigation from this spring for the whole of its water and only the nominal ownership remains in the defendant".

Mr. Myrianthis on behalf of the plaintiffs has submitted that by that paragraph the plaintiffs contend that they have acquired a right not by virtue of 30 years' user by the owners of the properties but that they acquired the right in accordance with the provisions of the aforesaid law, irrespective of the 30 years' user; while Mr. Cacoyannis, for the defendant, has argued that the statement of claim does not show that the Irrigation Divisions have acquired any right over the water in dispute.

Having heard full argument on this point we are satisfied that the statement of claim does not disclose how the Irriga-

tion Divisions concerned, as distinct from the private individuals who are members of such Divisions, have acquired their right over the water in dispute, and, consequently the statement of claim does not disclose a cause of action.

The appeal is dismissed, and the action shall stand dismissed with costs, unless the plaintiffs do, within 15 days from to-day, file an application with the District Court of Limassol for the amendment of the statement of claim.

The appellants must pay the costs of this appeal to the respondent.

Order accordingly.

*Appeal dismissed.
Order as aforesaid.*

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