

1962
Dec. 27

POLYVIOS
MAVROMMATIS
AND ANOTHER
v.
THE REPUBLIC
& ANOTHER

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

POLYVIOS MAVROMMATIS AND ANOTHER,

Appellants (Plaintiffs),

v.

1. THE REPUBLIC, THROUGH
THE ATTORNEY-GENERAL, AND/OR

2. THE GREEK COMMUNAL CHAMBER
THROUGH ITS PRESIDENT, VICE-PRE-
SIDENT AND MEMBERS,

Respondents (Defendants)

(Civil Appeal No. 4388).

Action—Action for a declaration—No jurisdiction or power of the Courts to make a declaration on a subject relief in respect of which is beyond the jurisdiction of the Courts.

Constitutional Law—Unconstitutionality of laws—Laws of the Greek Communal Chamber No. 9/60 and No. 4/61, alleged to be contrary to articles 87, 88 and 91 of the Constitution—Action for a declaration that a law is unconstitutional—The Courts have no jurisdiction to entertain such action—Therefore, there is no scope in such action for an application for reference to the Supreme Constitutional Court under article 144. 1 of the Constitution.

Constitutional Law—Ambiguity in the Constitution—Exclusive jurisdiction of the Supreme Constitutional Court—Article 149(b) of the Constitution—The Courts have power to consider whether or not there is an ambiguity in the Constitution.

By their action the appellants claimed in substance a declaration that the laws No. 9/60 and No. 4/61 of the Greek Communal Chamber are unconstitutional as being contrary to articles 87, 88 and 91 of the Constitution. At a certain stage after the institution of the action the plaintiffs applied to the trial Court under article 144. 1 of the Constitution that the question so raised be reserved for the opinion of the Supreme Constitutional Court. Article 144.1 provides: "A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question

is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court".

In the course of his address counsel for the plaintiffs made a second application that the "case be referred to the Supreme Constitutional Court under the provisions of article 149(b) for the interpretation of certain articles of the Constitution. Article 149 provides: "The Supreme Constitutional Court shall have exclusive jurisdiction—(a).....(b) to make in case of ambiguity, any interpretation of this Constitution, due regard being had to the letter and spirit of the Zurich Agreement dated the 11th February, 1959, and of the London Agreement dated the 19th February, 1959".

The trial Court dismissed both applications and the plaintiffs appealed against that judgment, which is set out in full immediately after the judgment of the High Court in this case.

Held: Agreeing with the finding of the trial Court and with its reasons for judgment, quite clearly the substance of the plaintiffs' claim in the prayer for relief is a declaration that the two laws referred to are unconstitutional. Neither the District Court nor this Court has jurisdiction to make a declaration on a subject with which it has no power to deal.

Appeal dismissed.

Cases referred to:

Barraclough v. Brown and another (1897) A.C. 615.

Appeal.

Appeal against the judgment of the District Court of Nicosia (L. Loizou and Chr. Ioannides D.J.J.) dated the 9.2.62 (Action No. 2676/61) dismissing plaintiffs' application asking it to refer to the Supreme Constitutional Court questions arising as a result of the enactment of certain laws by the Greek Communal Chamber, in an action for a declaration that the said laws are unconstitutional.

Fr. Saveriades for the appellants.

A. Gavrihides for respondent No. 1.

G. Chryssafinis with *A. Triantafyllides* for respondent No. 2.

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The judgment of the Court was delivered by .

WILSON, P. : It is unnecessary to call on Counsel for the respondents for the reasons which will appear from the judgment.

This is an appeal by the plaintiffs from the judgment of the District Court of Nicosia dismissing the plaintiffs' application, brought before the District Court of Nicosia on December 19, 1961, asking it to refer to the Supreme Constitutional Court questions arising as the result of the enactment of certain acts by the Greek Communal Chamber, namely Law 9 of 1960 and published in the official Gazette of the Government No. 33 of January, 1961, and Law No. 4/61, published in the official Gazette on the 19th May, 1961. They allege these acts contravene articles 87, 88 and 91 of the Constitution.

The plaintiffs also asked for a stay of proceedings in the District Court until the points raised are finally determined by the Supreme Constitutional Court.

On February 9, 1962, the District Court dismissed the plaintiffs' application on the ground that the matter in issue is within the exclusive jurisdiction of the Supreme Constitutional Court and beyond the jurisdiction of the District Court.

It is unnecessary to consider at length the various grounds stated in the notice of appeal because we agree with the finding of the trial court, and with its reasons for judgment, that quite clearly the substance of the plaintiffs' claim in their prayer for relief is a declaration that the two laws referred to are unconstitutional. Neither the District Court nor this Court has jurisdiction to make a declaration on a subject with which it has no power to deal.

The appeal will be dismissed with costs.

Appeal dismissed

Note. The judgment of the District Court of Nicosia, which was upheld by the High Court in this appeal, follows .

*The applicants are plaintiffs in Action No. 2676/61 and by this application they raise the question of the unconstitutionality of Laws 9 of 1960 and 4 of 1961, both of the Greek Communal Chamber and apply under article 144(1) of the

Constitution that the question so raised be reserved for the opinion of the Supreme Constitutional Court.

In the course of his address counsel appearing for the applicants has made a second application that "the case be referred to the Supreme Constitutional Court under the provisions of article 149(b) of the Constitution for interpretation, as he put it, whether these laws conflict with certain articles of the Constitution and for interpretation of the Constitution as regards these articles. We want to state straight away that we find no substance at all in this second application and must therefore dismiss it.

No doubt the Supreme Constitutional Court has exclusive jurisdiction to make any interpretation of the Constitution due regard being had to the letter and spirit of the Zurich and London Agreements but only in case of ambiguity and where the question is material for the determination of the proceedings in which the application is made.

We have not been able to understand what ambiguity the learned counsel had in mind ; he certainly has not referred us to the provisions of any article of the Constitution which he considers ambiguous and which he wishes the Supreme Constitutional Court to interpret.

We now come to the application under the provisions of article 144 of the Constitution. Paragraph (1) of the article reads as follows :

"A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court".

Quite clearly it is incumbent upon a Court once the question of unconstitutionality of any law or provision thereof, which is material for the interpretation of the matter at issue, is raised by any party to the proceedings to reserve such question for the decision of the Supreme Constitutional Court.

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The question therefore which falls for consideration in so far as this application is concerned is whether the question of unconstitutionality raised is material for the determination of the matter at issue in action No.2676/61.

By the endorsement of claim in the action the plaintiffs claim :

- "A). Δήλωσιν τοῦ Δικαστηρίου ἀναγνώρισεως τῶν Δικαιωμάτων τῶν ἐναγόντων τῶν περιεχομένων δυνάμει τοῦ Συντάγματος καὶ Δήλωσιν τοῦ Δικαστηρίου ὅτι ὁ Νόμος Περὶ Ἀποζημιώσεως τοῦ Προέδρου, Ἀντιπροέδρου καὶ Μελῶν τῆς Ἑλληνικῆς Κοινοτικῆς Συνελεύσεως ὑπ' ἀριθμὸν 9/60 ἐγένετο καὶ εἶναι καθ' ὑπέρβασιν τῶν ἐξουσιῶν τῆς Ἑλληνικῆς Κοινοτικῆς Συνελεύσεως καὶ/ἢ παράνομος καὶ/ἢ εἶναι ἀντίθετος πρὸς τὸ Σύνταγμα παραβιάζων οὕτω καὶ/ἢ καταπατῶν τὰ δικαιώματα τῶν ἐναγόντων
- B). Διάταγμα τοῦ Δικαστηρίου ὅπως ὁ Νόμος Περὶ Ἀποζημιώσεως τοῦ Προέδρου, Ἀντιπροέδρου, καὶ Μελῶν τῆς Ἑλληνικῆς Κοινοτικῆς Συνελεύσεως ὑπ' ἀριθμὸν 9/60 μὴ ἐφαρμοσθῆ, ὡς παραβιάζων καὶ/ἢ καταπατῶν τὰ Σύνταγματικὰ δικαιώματα τῶν ἐναγόντων καθ' ὅτι ἀντιβαίνει καὶ/ἢ καὶ εἶναι ἀσύμφωνος καὶ/ἢ ἀντίθετος πρὸς τὸ Σύνταγμα, τὸν ὑπέρτατον Νόμον"

The next two paragraphs are identical with paragraphs A and B but relate to Law 4 of 1961.

(Ὁ Περὶ Προϋπολογισμοῦ τῆς Ἑλληνικῆς Κοινοτικῆς Συνελεύσεως Νόμος 1961).

We now come to the statement of claim.

Paragraph 1 states that both plaintiffs are citizens of the Republic and members of the Greek Community and are liable to taxation under the laws of the Republic.

Paragraphs 3 and 4 deal with the promulgation and the various provisions of the two laws, and in paragraph 5 it is alleged that law 9 of 1960 and certain provisions of law 4 of 1961 were promulgated unlawfully and/or that they are in excess of the legislative powers of the Greek Communal Chamber under articles 87 and 88, and 87, 88 and 91 of the Constitution respectively.

In paragraph 6 of the statement of claim it is stated that the plaintiffs have a legal right as individuals and/or as members of the Greek Community that the two laws be not applied in view of the fact that their application will injure the legal rights of plaintiffs under the Constitution.

Finally they claim as per endorsement of the writ of summons.

It is in our view quite clear that the substance of the claim in the prayer is in fact a declaration that the two laws are unconstitutional.

By virtue of section 41 of the Courts of Justice Law, 1960, (Law 14 of 1960) every Court in the exercise of its civil jurisdiction has power to make binding declarations of right whether any consequential relief is or could be claimed or not. The provisions of s. 41 of our Courts of Justice Law are substantially the same as those of Order XXV r.5 of the Rules of the Supreme Court in England and there is authority to the effect that this discretionary power of the Court extends to cases where a plaintiff is seeking relief or in whom a right to relief is alleged to exist even though he cannot establish a legal cause of action.

It is however quite clear from the decision of the House of Lords in *Barracough v. Brown & another*, 1897, A.C. p.615 that there is no jurisdiction or power to make a declaration on a subject relief in respect of which is beyond the jurisdiction of the Court. In other words the Court has no jurisdiction to make a declaration on a subject which it has no power to deal with.

In our view the matter at issue in the action is within the exclusive jurisdiction of the Supreme Constitutional Court and beyond the jurisdiction of this Court ; if this Court had jurisdiction to make the declaration sought in the action there would be no scope for the provisions of article 144 of the Constitution

If then we have no jurisdiction to deal with the claim in the action, *i.e.* the matter at issue in the proceedings, the question raised cannot be considered material for its determination.

For the above reasons the application is dismissed with costs."