

1965
March 26
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EFTHYMIOS
HADJI
MICHAEL
v.
KATERINA
YIANNI
KOUROUSHI

[VASSILIADES, TRIANTAFYLIDIS, MUNIR, JJ.]

EFTHYMIOS HADJI MICHAEL,
Appellant-Defendant,
v.
KATERINA YIANNI KOUROUSHI,
Respondent-Plaintiff.

(Civil Appeal No. 4495)

Practice—Appeal—Findings of fact by trial Court—Failure of Appellant to show positively to Appellate Court that findings of fact by trial Court could not have been made on the evidence before such Court—Plainly open to trial Judge to find as he did—Previous decision distinguished.

This appeal is taken mainly on the ground that the finding of the trial Judge that respondent's crop was damaged by the weed-killer which the defendant admittedly used on his neighbouring property, was wrong and should be set aside.

Held, (1) we unanimously take the view that it was plainly open to the trial Judge to find as he did. And, as I have already said, upon these findings the judgment must be sustained.

(2) The appeal must fail and be dismissed with costs.

Appeal dismissed with costs.

Cases referred to :

Dafnis Thomaidis & Co., Ltd., v. Lefkaritis Bros. reported in this vol. at p. 20 *ante*;

Andreas Christodoulou Phoulis v. Polycarpus Aristidou and Others (Civil Appeal No. 4429 decided on the 20th June, 1963, unreported).

Appeal.

Appeal against the judgment of the District Court of Larnaca (Vassiliades, D.J.) dated the 10th June, 1964, (Action No. 436/62) whereby the defendant was adjudged to pay the amount of £27 to the plaintiff by way of damages caused to plaintiff's crop by weed-killer used by defendant on his neighbouring property.

G. Piki, for the appellant.

A. Hadji Ioannou, for the respondent.

The judgment of the Court was delivered by :

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VASSILIADES, J. : We find it unnecessary to call on the respondent in this case. On the findings of fact made by the trial Judge and set out in his judgment, the appeal cannot succeed. On the facts as found, the respondent-plaintiff is entitled to judgment. To succeed in this appeal, the appellant has to show positively to this Court, that the findings of fact upon which the judgment was based, could not have been made on the evidence before the Court. (*Dafnis Thomaidēs & Co., Ltd., v. Lefkaritis Bros.* (reported in this vol. at p. 20 *ante*).

Learned counsel for the appellant tried to show that the finding of the trial Judge that respondent's crop was damaged by the weed-killer which the defendant admittedly used on his neighbouring property, was wrong and should be set aside. Counsel had a very difficult case to argue, on the record before us. We unanimously take the view that it was plainly open to the trial Judge to find as he did. And, as I have already said, upon these findings the judgment must be sustained.

Learned counsel referred us to a similar case decided on appeal, in June 1963 ; the case of *Andreas Christodoulou Phoulis v. Polycarpos Aristidou and others*, (Civil Appeal No. 4429)* where a claim for damage to a neighbouring crop by herbicide, failed. But in that case the plaintiff failed in the District Court, because there was no evidence to connect the damage to plaintiff's crop with the herbicide used by the defendant. Here the position is precisely the reverse. There was such evidence in this case, which the trial Court accepted and found for the plaintiff accordingly. The result, therefore, naturally, followed in the present case the finding, same as it did in the other case. The appeal in this case, same as in that case, must fail and be dismissed with costs. Order accordingly.

Appeal dismissed with costs.

* Decided on the 20th June, 1963, unreported.