1972
Nov. 30

AFROULLA KYRIACOU PAPAKLEOVOULOU v. EVRIPIDES ELIA AND ANOTHER

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

AFROULLA KYRIACOU PAPAKLEOVOULOU,
*Appellant-Plaintiff,*

*v.*

EVRIPIDES ELIA AND ANOTHER,
*Respondents-Defendants.*

(*Civil Appeal No.* 4891).

*Dowry agreement coupled with agreement to marry—Breach of promise to marry—Liability of parents too—On the true construction of the contract as a whole its true meaning and effect is that the parents of the party in breach assumed legal responsibility for the performance by him of his promise to marry.*

*Breach of promise to marry—Damages—Plaintiff's unwillingness to marry defendant in any case because of matters that have come to her knowledge after the breach—Taken into account in assessing damages regarding injury to feelings—Damages awarded reduced.*

*Contract—Construction of—Name given to it not conclusive—Principles applicable.*

*Costs—Non-award of costs by trial Court because the case was won only against one out of three defendants—Basis on which trial Court's discretion was exercised changing through plaintiff (appellant) succeeding in her appeal against another such defendant—Order for costs on the new basis provided by the result of the appeal.*

This is an appeal from the judgment in a breach of promise to marry case, given by the District Court of Paphos by which the appellant (plaintiff in the action) was awarded £400 damages against respondent No. 1 (defendant No. 1 in the action) for the breach by him of his promise to marry her, the claim of the appellant against defendants No. 2 and No. 3 in the action, the parents of respondent No. 1, was dismissed on the ground that on the basis of the relevant "dowry agreement" there was no liability on their part to compensate the appellant for the said breach. The respondent No. 1 cross-appealed claiming reduction of the damages awarded (£400).

Clause 4 of the "contract of dowry" provides that the respective parents of the betrothed accepted "τοὺς ὅρους τοῦ παρόντος προικοσυμφώνου καὶ τὰς ἐκ τούτου ὑποχρεώσεις, ἀλληλεγγύως μετὰ τῶν μνηστευομένων" ("the terms of this dowry agreement and the obligations arising therefrom, jointly with the betrothed"). On the other hand, the plaintiff (appellant) stated in her evidence before the trial Court that after the breach she came to hear that the defendant No. 1 (respondent No. 1) was of bad character, had a girl friend etc., and that after she learned these things, she would no longer be prepared to marry him.

Allowing the appeal and the cross-appeal, the Court :—

*Held, I : As to the appeal :*

(1) (*a*) It is true that the agreement sued on is headed "Προικοσύμφωνον Ἔγγραφον" ("dowry agreement"). But this is not conclusive. We are of the view that in the present case the contract was described as a "dowry agreement" because of one of its main objects, namely that of making provision for the dowry.

(*b*) But, construing the contract as a whole we agree with counsel for the appellant that the true meaning of clause 4 of the contract (*supra*) is that the parents of respondent No. 1 assumed legal responsibility for the performance by him of his promise to marry, and therefore, respondent No. 2 (the father of respondent No. 1 ; *Note :* The mother died in the meantime and the claim against her was not pursued) is liable too to compensate the appellant for its breach ; and her appeal has to be allowed in this respect (Cf. Halsbury's Laws of England, 3rd ed. Vol. 11, p. 383, paragraph 631).

(2) Each case depends on its own merits ; and we do not agree that clause 4 (*supra*) was inserted for the sole purpose of enabling the betrothed, as promisees, to enforce the dowry contract, as it was found to be the position in the case *Polycarpou* v. *Zenonos*, 18 C.L.R. 133.

*Held, II : As to the cross-appeal :*

(1) There is no doubt that the breach of his promise by respondent No. 1 has resulted in the context of village life, in some diminution of appellant's prospects of marriage ; and had it not been for her evidence, we might not have been inclined to interfere with the award of £400 damages.

(2) (*a*) But she stated in her evidence that after the breach she came to hear that the respondent No. 1 was of bad character, had a girl-friend with whom he had sexual relations ; and that after she had learnt these things she would no longer be prepared to marry him, stating " I did not lose anything by losing him ; it is rather a gain for me ".

(*b*) Of course, as this development took place after the breach, it is not good reason for depriving her altogether of damages, but it is something which we have to take into account in assessing the injury to her feelings resulting from the breach.

(3) And we reduce the damages awarded (£400) to £250.

*Held, III : As to costs :*

(1) (*a*) The trial Court did not award costs to the appellant. That was based on the ground that while appellant won her case against defendant No. 1 (now respondent No. 1) she lost as against his parents (defendants No. 2 and No. 3) (respondent No. 2 and his wife).

(*b*) Once the basis on which the appellant was denied costs is gone—due to her appeal regarding the liability on respondet No. 2 having been allowed—we see no reason why she should not be awarded costs in the Court below on the scale applicable to the reduced damages of £250.

(2) This is not a case in which we are interfering with the discretion of a trial Court regarding costs (see *Georghallides* v. *Constantinides*, 1961 C.L.R. 95, but a case where the basis on which such discretion was exercised has gone and we have to make an order on the new basis provided by the result of the appeal. We, therefore, order that the respondents shall bear the costs of the appellant, on the scale applicable to the reduced scale of damages, namely that of £250.

*Appeal and cross-appeal allowed. Order for costs as above.*

Cases referred to :

*Maltezou* v. *Louca*, 16 C.L.R. 88 ;

*Polycarpou* v. *Zenonos*, 18 C.L.R. 133 ;

*Georghallides* v. *Constantinides*, 1961 C.L.R. 95.

**Appeal and cross-appeal.**

Appeal and cross-appeal against the judgment of the District Court of Paphos (Pitsillides, D.J.) dated the 7th April, 1970, (Action No. 1195/68) whereby defendant No. 1 was ordered to pay to the plaintiff the sum of £400 as damages for breach of promise to marry her and plaintiff's claim against defendants Nos. 2 and 3 was dismissed.

*L. Papaphilippou*, for the appellant.

*Chr. Demetriades*, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : This is an appeal from the judgment in a breach of promise to marry case, given by the District Court of Paphos, by which, though the appellant (the plaintiff in the action) was awarded £400 damages against respondent No. 1 (defendant No. 1 in the action) for the breach by him of his promise to marry her, the claim of the appellant against defendants Nos. 2 and 3 in the action, the parents of respondent No. 1, was dismissed, on the ground that on the basis of the relevant dowry agreement there was no liability on their part to compensate the appellant for the said breach.

Defendant No. 3, who was the mother of respondent No. 1 died after the filing of this appeal and the appeal was not continued against her estate ; so, apart from a complaint of the appellant that the trial Court has not ordered respondent No. 1 to pay her costs, what we are concerned with in this appeal is the question of the liability of the father of respondent No. 1 (respondent No.2 before us and defendant No. 2 before the Court below) under the aforementioned dowry agreement, and the issue of the amount of damages awarded to appellant in respect of which a cross-appeal has been filed.

It has been argued by learned counsel for appellant that, on the basis of the said agreement, respondent No. 2 was liable to compensate the appellant for the breach by his son of the promise to marry the appellant ; and this argument was founded on, particularly, clause 4 of the dowry agreement which states that the respective parents of the betrothed accepted " τοὺς ὅρους τοῦ παρόντος προικοσυμφώνου καὶ τὰς ἐκ τούτου ὑποχρεώσεις, ἀλληλεγγύως μετὰ τῶν μνηστευομένων " (" the terms of this dowry agreement and the obligations arising therefrom, jointly with the betrothed ").

Learned counsel for respondents argued that by clause 4 of the agreement the parents of respondent No. 1 undertook an obligation only as regards the giving of a dowry to their son and did not in any way involve themselves in the promise of respondent No. 1 to marry the appellant.

It is true that the agreement is headed "Προικοσύμφωνον Έγγραφον" ("Dowry Agreement"); and, as stated in Halsbury's Laws of England, 3rd, ed., vol. 11, p. 383, paragraph 631 :—

> "Though the nature of a contract does not depend upon the name given to it (whether for example it is 'insurance' or 'guarantee'), but upon the substance thereof, nevertheless, where a particular contract is described by the parties thereto as a 'policy of insurance', this fact will, in construing it, be treated by the Court as affording some indication of an intention to enter into a 'guarantee'".

We are of the view that in the present case the contract was described by the parties as a "dowry agreement" because of one of its main objects, namely that of making provision for the dowry ; but, construing the contract as a whole, we agree with counsel for the appellant that the true meaning of clause 4 is that the parents of respondent No. 1 assumed legal responsibility for the performance by him of his promise to marry and, therefore, respondent No. 2 is liable, too, to compensate the appellant for its breach ; and her appeal has to be allowed in this respect.

Each case depends on its own merits ; and the present case is not on all fours with that of *Maltezou* v. *Louka*, 16 C.L.R. 88, in which the obligation of a father to be responsible for the performance by his son of a promise to marry was undertaken in much more explicit terms ; but it is useful to note that in his judgment in that case Griffith Williams J. adopted the view (at p. 94) that "if a man chooses to answer for the voluntary act of a third person, and does not in terms limit his obligation to using his best endeavours, or the like, there is no reason in law or justice why he should not be held to warrant his ability to procure the act".

We do not agree that in the present case clause 4 was inserted for the sole purpose of enabling the betrothed, as promisees, to enforce the dowry contract, as it was found to be the position in *Polycarpou* v. *Zenonos*, 18 C.L.R. 133 ; we took the course of inspecting the file of that case in

which there is to be found the dowry contract and we have ascertained that it is materially different from the agreement involved in the present case.

We have to deal, next, with the cross-appeal by the respondents regarding the amount of £400 awarded as damages to the appellant :

It has been submitted that, in the circumstances of the case and in the light of present day concepts, this amount of £400 is a totally erroneous estimate and so high that it should be interfered with by us.

The cause of action for breach of promise still lingers on in Cyprus, having been introduced on the basis of the English legal system, though in England it has been eventually abolished by the Law Reform (Miscellaneous Provisions) Act, 1970. So long as a breach of promise to marry gives somebody a cause of action, we have to award compensation in respect of that breach. There is no doubt that the breach of his promise by respondent No. 1 has resulted, especially in the context of village life, in some diminution of the prospects of marriage of the appellant ; and, had it not been for her own evidence, we might not have been inclined to interfere with the amount of damages. But, she stated in evidence that after the breach she came to hear that respondent No. 1 was of bad character, had a girl-friend with whom he had sexual relations, that he was in the habit of flirting with other women, and that after she learnt all these things she would no longer be prepared to marry him ; she stated " I did not lose anything by losing him. It is rather a gain for me ". Of course, as this development took place after the breach, it is not a good reason for depriving her altogether of damages, but it is something which we have to take into account in assessing the injury to her feelings resulting from the breach.

In the light of the foregoing we are of the opinion that the proper amount of damages in this case is £250 and we reduce the damages awarded accordingly.

We now come to the question of the non-award of costs to the appellant : That was based on the ground that while appellant won her case against respondent No. 1 she lost as against defendants Nos. 2 and 3 (respondent No. 2 and his wife). Once the basis on which the appellant was denied costs is gone—due to her appeal regarding the liability of respondent No. 2 having been allowed—we

see no reason why she should not be awarded costs in the Court below on the scale applicable to the reduced damages of £250. This is not a case in which we are interfering with the discretion of a trial Court regarding costs (see *Georghallides* v. *Constantinides*, 1961 C.L.R. 95) but a case where the basis on which such discretion was exercised has gone and we have to make an order on the new basis provided by the result of the appeal. We, therefore, order that the respondents shall bear the costs of the appellant on the scale applicable to the reduced amount of damages, namely that of £250.

In the circumstances, we decided not to make any order as to the costs of the appeal and the cross-appeal.

The appeal and the cross-appeal are allowed to the extent stated in this judgment.

*Appeal and cross-appeal allowed ; order for costs as above.*