1974
Oct. 10
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MAROULLA COSTA PETRIDOU
v.
STASSA EXARCHOU

[L. LOIZOU, HADJIANASTASSIOU, MALACHTOS, JJ.]

MAROULLA COSTA PETRIDOU,

Appellant - Applicant,

v.

STASSA EXARCHOU,

Respondent.

(Civil Appeal No. 5193).

Succession—Inheritance—Pedigree—Application for a declaration—Evidence in support flimsy and apparently untrue as opposed to that of respondent—Rightly rejected by trial Court—Issue of credibility of witnesses within the province of trial Court—No reason shown why the Court of Appeal should interfere.

Evidence in civil trials—Further evidence after close of the case—Discretion of the trial Court to allow or not such further evidence.

Pedigree—Evidence.

Credibility of witnesses—Within the province of trial Courts—No reasons shown for the Court of Appeal to intervene.

The facts sufficiently appear in the judgment of the Court, dismissing this appeal by the applicant in an application for a declaration that the respondent was a legal heir of the deceased C.P. and that she (the applicant, now appellant) was the sole heir.

Appeal.

Appeal by applicant against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 27th March, 1973, (Probate Appl. No. 1/71) dismissing her application for a declaration that the respondent was not a legal heir of the deceased Costas Petrides and that she (the appellant) was the sole heir.

A. Eftychiou, for the appellant-applicant.

N. Pelides with *E. Tooulara (Miss)*, for the respondent.

The judgment of the Court was delivered by :-

L. Loizou, J. : This is an appeal against the judgment of the District Court of Nicosia refusing an application on the part of the appellant for a declaration that the respondent was not a legal heir of the deceased Costas Petrides and that she (the appellant) was the sole heir.

The relevant facts in so far as they are necessary for the purposes of this appeal are briefly these :

The Petrides family came from Odemission, near Smyrna and they came to Cyprus as refugees at the time of the Asia-Minor catastrophe in 1922. The father, Stelios Petrides, was killed before he could reach the port. His wife Afendra and the rest of the family managed to board a ship together with many other refugees and they were brought to Cyprus. Costas was the third son of the family. His two elder brothers were Manolis and Yiannis. The allegation of the appellant is that there was no other child whilst the respondent on her part alleges that she was the fourth and youngest child of the family; and this was the issue which the Court had to decide.

The appellant was the wife of Costas Petrides who died on the 18th December, 1970. They got engaged some time in 1949 and they were married in 1951. The other two brothers had died earlier.

On the 2nd January, 1971, she filed an application in Court for the administration of the estate of her deceased husband in which she stated that the only heirs of the deceased were herself and his sister, the present respondent. It would appear that the Court granted letters of administration to both heirs.

On the 22nd December, 1971 she filed a second application through her present counsel and another counsel, who did not appear in Court today, for a declaration that the respondent was not a legal heir of the deceased and that she, herself, was the only heir. At paragraph 7 of her petition in support of that application she states that the respondent was in fact the mistress of the deceased and not his sister. The application was opposed by the other side.

At this stage it is, we think, pertinent to note that

when the brother Manolis died about three and a half years earlier the respondent was, on that occasion again, treated as one of his heirs.

After several adjournments the hearing of the application commenced on the 20th December, 1972. Two witnesses were heard on that day. The appellant gave evidence herself and called another witness, one Erini Pakouta. Counsel appearing for the applicant—appellant in this Court—then applied to the Court for an adjournment to enable him to call another witness, an important witness as he said, and the learned trial Judge, rather reluctantly as it appears from the record, granted the adjournment and fixed the case over a month later *i.e.* on the 4th November, 1972 for continuation of the hearing.

At this hearing another two witnesses were heard in support of appellant's case and counsel appearing for her closed his case. The further hearing of the application was then adjourned to the 11th November when the same counsel again applied to the Court for leave to call yet another witness. He never stated to the Court who this other witness was, what he had to say or why he was not called earlier. The other side objected and eventually the learned trial Judge refused the application.

The appellant stated in her evidence that her late husband had two brothers and she did not know if he had any sister; and that it was after the death of her husband when she applied for letters of administration that she saw a mukhtar's certificate to the effect that the respondent was the sister of her husband. Although she had no personal knowledge, she said, her information was that the respondent was not a sister of her husband. All that the witness Erini Pakouta had to say was that she had met the mother of the deceased Costas Petrides in a house of a neighbour of hers but had no family relations with the Petrides family. She also said that she knew the deceased and had seen his two brothers from a distance. She made no mention at all of the respondent. The other witness called by the appellant, one Froso Zambakidou said that she knew the appellant and her husband and in fact for three or four years she

used to live in the auxiliary rooms of the house where they were residing. The respondent, she said, used to visit the house of the appellant and her husband often and that she once told her that she was not a sister of Costas Petrides but that the Petrides family had brought her up because they had no daughter. The last witness called by the appellant Betty Constantinou Athanassiou stated that she knew the deceased Costas Petrides and she also knew the respondent for some 20 - 30 years but never spoke to her until about four years ago and on that occasion the respondent told her that she was not the sister of the deceased but that she had been brought up by his family.

The respondent gave evidence herself and called two witnesses in support of her case. The first of these witnesses was Dr. Costas Demetriou whose mother and grand-mother were also refugees from Smyrna and the two families were closely connected and the other Panayiota Philippidou. Both testified that the respondent was a sister of the deceased. The latter witness is a first cousin of the respondent and a god child of Afendra, the mother of the deceased; she was also born at Odemission and her family and the Petrides family were next-door neighbours. They left Smyrna together and came to Cyprus on board the ship "Aristides". In Cyprus also they were neighbours and closely connected. The respondent in the course of her evidence produced her passport which was issued on the 2nd December, 1946 and in which her maiden name is given as Stassa Steliou Petridou and the place and time of her birth as Odemission in 1919.

Upon this evidence the learned trial Judge found for the respondent and dismissed the application with costs against the applicant. The applicant now appeals against the trial Court's judgment.

The first three grounds of appeal relate in effect to the credibility of witnesses and the findings of fact. Ground 4 is that the Court did not pay due attention in so far as the issue of the burden of proof was concerned and ground 5 relates to the question of costs; the complaint being that the trial Judge ordered the costs to be paid by the applicant and not out of the

estate. Five days ago the appellant filed a new application to amend the grounds of appeal and add a sixth ground to the effect that the trial Judge wrongly disallowed counsel for the appellant to call further evidence when this application was made on the last day of the hearing and after the close of the case for the applicant. Counsel appearing for the respondent very fairly consented that this additional ground be argued today.

We do not propose to dwell on this case for long. It is sufficient to say that we find no merit at all on any of the grounds argued. It seems to us that the evidence adduced in support of the application was flimsy and so apparently untrue as opposed to that of the respondent and her witnesses that to our mind it would be very surprising indeed if the learned trial Judge had come to any other conclusion. Of course, it was within the province of the trial Judge to decide on the credibility of the witnesses and it was in his discretion to allow the further evidence after the close of the case and to decide what order to make as to costs: and we see no reason at all to say that he went wrong on either of these issues.

In the result this appeal will be dismissed and, the same as the trial Judge did, we think it right to order that the costs of the appeal should be paid by the appellant and not out of the estate. Such costs to be assessed by the Registrar.

Appeal dismissed; order for costs as above.