

1982 June 21

[HADJIANASTASSIOU, LORIS, PIKIS, JJ.]

ZENON HADJIPAPATRYFONOS,

Appellant-Plaintiff,

v.

ELENI PARTAKI AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 6149).

5 *Civil Procedure—Evidence—Trial in civil cases—Burden of proof*
is on the plaintiff—Trial Judge labouring under the misappre-
hension that such burden can only be discharged by reference
to oral testimony of plaintiff's witnesses—Whereas true position
is that evidence must be evaluated in its entirety including such
documentary evidence which has been adduced before the Court—
Retrial ordered on this ground and on the ground that trial Judge
totally ignored the implications of the contention that respondent-
defendant 1 was a displaced debtor within the meaning of the
10 *Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79).*

15 The appellant in this appeal challenged the findings of the
trial Judge as being unjustified having regard to the evidence
adduced as a whole because he failed to pay sufficient heed to
an application, supported by an affidavit, of respondent-
defendant 1, wherein she impliedly admitted the debt, subject-
matter of these proceedings, and, also invoked the provisions
of the Debtors Relief (Temporary Provisions) Law, 1979 (Law
24/79) as being a displaced debtor.

20 *Held*, that although this Court agrees with the trial Judge
that the burden of proving in a civil case is on the appellant-
plaintiff, nevertheless he laboured under the misapprehension
that such burden can only be discharged by reference to oral
testimony of plaintiff's witnesses, whereas the true position
indeed is that evidence must be evaluated in its entirety including
25 such documentary evidence which has been adduced before
the Court in determining whether such burden has been dis-

charged; and that, inevitably, a retrial has to be ordered so that the evidence may be appraised in the proper perspective.

Held, further, that another reason for the retrial is that the Judge totally ignored the implications of the contention that the respondent-defendant 1 is a displaced debtor and if that were accepted, the claim of the appellant would be unsustainable in view of the provisions of Law 24/79.

Appeal allowed.
Retrial ordered.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (A. Ioannides, D.J.) dated the 14th June, 1980, (Action No. 1453/78) whereby his claim for C£175.—for the sale of animals to the defendants was dismissed.

A. Eftychiou, for the appellant,

Respondent 1 appears in person.

HADJIANASTASSIOU J. gave the following judgment of the Court. In the present appeal the findings of the Court are challenged as being unjustified having regard to the evidence adduced as a whole. The complaint is that the learned trial Judge failed to pay sufficient heed to exhibit 1, which is an application supported by an affidavit of the respondent-defendant 1 before the trial Court, wherein she impliedly admits the debt subject matter of the present proceedings, and also invokes the provisions of Law 24/79 as being a displaced person on the other.

Although we agree with the trial Judge that the burden of proving in a civil case is on the appellant-plaintiff before us, nevertheless, he laboured under the misapprehension that such burden can only be discharged by reference to oral testimony of plaintiff's witnesses; whereas the true position indeed is that evidence must be evaluated in its entirety including such documentary evidence which has been adduced before the Court in determining whether such burden has been discharged. Inevitably, a retrial has to be ordered so that the evidence may be appraised in the proper perspective. Another reason, in our view, for the retrial is that the Judge totally ignored the implications of the contention that the respondent-defendant

1 is a displaced debtor and if that were accepted, the claim of
the appellant would be unsustainable in view of the provisions
of Law 24/79.

5 For the reasons we have given retrial is ordered before another
Judge and in the particular circumstances we are not making
an order as to costs in the present appeal, but costs before the
trial Court to be costs in cause.

Order accordingly.

*Appeal allowed. Retrial ordered.
Order for costs as above.*

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