

1983 September 15

[TRIANTAFYLIDIS, P., DEMETRIADES, SAVVIDIS, JJ.]

NICOS KOUTSONICOLAS,

Appellant-Plaintiff

v.

THEONITSA G. SIAOULI,

Respondent-Defendant

(Civil Appeal No. 5755)

*Findings of fact—Based on credibility of the witnesses—Appeal—
Court of appeal will not interfere with such findings unless they
are unreasonable—Appellant failing to discharge the onus of
persuading Court of Appeal that findings of the trial Judge were
wrong or that he misdirected himself in making his assessment*

5 This appeal turned solely on the findings of fact made by the
trial Court.

10 *Held*, that it is a cardinal principle that this Court will not
interfere with the findings of fact made by a trial Court and
based on the credibility of the witnesses, unless such findings
are unreasonable; that in the present case the trial Judge had
the opportunity to see and hear each witness who gave evidence
before him and assess his evidence and counsel for the appellant
failed to discharge the onus of persuading this Court that the
findings of the trial Judge were wrong or that he misdirected
himself in making his assessment; accordingly the appeal must
15 be dismissed.

Appeal dismissed.

Appeal.

20 Appeal by plaintiff against the judgment of the District
Court of Nicosia (Artemides, D.J.) dated 16th September,
1977 (Action No. 5208/71) whereby plaintiff's claims for an
injunction ordering the defendant a) to cut down an old self-

grown tree, b) to remove a grape vine and for a right of way and a right of irrigation over respondent's land were dismissed.

C. *Emilianides*, for the appellant.

N. *Ioannou* (Mrs.), for the respondent.

Cur. adv. vult. 5

TRIANTAFYLIDIS P.: The judgment of the Court will be delivered by Mr. Justice Demetriades.

DEMETRIADES J.: This is an appeal against the decision of a judge of the District Court of Nicosia, by means of which the action of the appellant as plaintiff, against the respondent, as defendant, was dismissed. 10

By his said action the appellant applied for—

- (a) An injunction ordering the defendant to remove a cesspool dug by her in his property;
- (b) an injunction ordering the defendant to cut an old self-grown tree, the roots of which—as it was alleged— intruded on his property and the branches of which threw such a shade on his property that rendered the soil underneath useless for any agricultural purpose; 15
- (c) an injunction ordering the defendant to remove a grapevine rooted on the defendant's property which obstructed with its "trunk" his right of way which, as he alleges, was acquired by him by prescription over the defendant's property. 20

The appellant, further, by his action, claimed a right of way and a right of irrigation over the respondent's land. 25

The respondent, at the commencement of the hearing of the action, admitted that the cesspool which stood on the appellant's land was opened by her and submitted to the injunction applied for by the appellant. 30

The learned trial Judge dismissed all other claims of the appellant on the grounds—

- (a) That he had failed to adduce that kind of evidence required to prove such claims; and

(b) that the fact that the plaintiff had raised and insisted on all other causes of action, except the cesspool one, which were nonsensical and vexatious, shed light on the plaintiff's general demeanour in Court and his conduct before the hearing of the action, which left much to be desired from a person who wished to present himself as an honest citizen who, in good faith, pursued his legal rights.

Counsel for the appellant argued before us and attempted to show positively, as he submitted, that the findings of the trial Judge based on the credibility of the witnesses were wrong and has referred us, in this respect, to a number of passages from the evidence given by the appellant, but he has not persuaded us that such findings, based on the evidence adduced or the assessment of the evidence of the appellant and his witnesses, were wrong.

The trial Judge, in addition to the reasons referred to above, had rejected the evidence of the appellant having found that he had lied with regard to the nuisance caused to his property by the old tree and the grape-vine. In fact he found that the appellant had completely and utterly failed to substantiate, by independent evidence, his allegations. He, also, did not accept the evidence of the witnesses who testified for the appellant, for the following reasons:

"However, he has called two witnesses to support this part of his claim and a few things must be said about them. Although they have tried cleverly to reject the allegation of the defendant that her parents were in bad terms with them and in constant argument when they tried to pass over their land, yet their evidence disclosed a preconceived pattern of agreement in being careful to present the case as one of a peaceful and uninterrupted enjoyment of an easement. This was made clear on two occasions. The first, and whilst the plaintiff was giving evidence, his tongue fell into a slip error and said that when he bought the properties the owners told him 'and be aware this is from where you pass through when going to your land and see that it is not changed'. Of course he tried later to correct his mistake by confusing this part of his testimony

which supports in fact the defendant's case. Second, and when Elenitsa Galiniotou was giving evidence, the previous witness Eleni Papadopoulou being in Court, was caught by me when noting to Galiniotou with her hand and head to say 'no' when she was asked at cross-examination whether her parents and those of the defendant were in bad terms and arguing when the land of the defendant was used by their parents to pass through to their fields". 5

It is a cardinal principle that this Court will not interfere with the findings of fact made by a trial Court and based on the credibility of the witnesses, unless such findings are unreasonable. In the present case the trial Judge had the opportunity to see and hear each witness who gave evidence before him and assess his evidence and counsel for the appellant failed to discharge the onus of persuading us that the findings of the trial Judge were wrong or that he misdirected himself in making his assessment. 10 15

In the result this appeal is dismissed with costs.

Appeal dismissed with costs. 20