

1986 December 22

[DEMETRIADES, J.]

IN THE MATTER OF AN APPLICATION BY OR ON
BEHALF OF NICOS PITRAKOS,

AND

IN THE MATTER OF AN ORDER MADE ON 9.6.86
BY THE DISTRICT COURT OF NICOSIA IN ACTION
No. 4065/86.

(Application No. 104/86).

Prerogative orders—Certiorari—Leave to apply for—As applicant made out a prima facie arguable case, the leave applied for would be granted.

Since the death of the applicant's wife, her mother raised objections to the applicant living in the house, where the couple lived during the marriage and which, by a contract of dowry, had been promised by the wife's mother as dowry for her daughter in consideration of the engagement and celebration of the marriage. 5

Eventually, the mother of the deceased wife, instituted an action against the applicant and upon an ex-parte application obtained an order restraining the applicant from entering and/or using and/or in any way trespassing in the said house. 10

As a result the applicant filed this application for leave to apply for an order of certiorari quashing the said order. 15

Held, granting the application, that in the light of the contents of the affidavit in support of the application and all other material before this Court, that is copy of the contract of dowry and the affidavit of the plaintiff in the action, on the contents of which the order was issued, this Court is satisfied that applicant has made out a prima facie arguable case. 20

Application granted. 25

Application.

Application for leave to apply for an order of certiorari to remove into the Supreme Court of Cyprus and quash the order of the District Court of Nicosia in Action No. 5 4065/86 made on the 9th June, 1986 whereby applicant was restrained from entering and/or using and/or in any way trespassing in the house, the subject matter of the action.

E. Lemonaris, for the applicant.

10 DEMETRIADES J. gave the following decision. This is an application by which the applicant applies for (a) leave of the Court to apply for and issue an order of certiorari to remove into the Supreme Court and be quashed the order made on the 9th June, 1986, by the District 15 Court of Nicosia in Action No. 4065/86 as well as all other consequential and antecedent proceedings and (b) the costs of this application.

The application is based on Article 155.4 of the Constitution, the Rules of the Supreme Court, Order 53 of 20 the Rules of the Supreme Court of England, the practice and procedure of the Supreme Court and the inherent powers of the Court.

The facts relied upon in support of the application are set out in the affidavit of the applicant, dated the 17th 25 December, 1986, and they are in brief the following:

In 1975 the applicant got engaged to his now deceased wife. In consideration of the engagement and the celebration of their marriage, the plaintiff in Action No. 4065/86 of the District Court of Nicosia, who is the mother of the 30 deceased wife of the applicant, by a contract of dowry, which she signed, agreed to give to her daughter as dowry the house in question and that as from the end of 1975, when the marriage of the applicant to his deceased wife was celebrated, he has been living in the house.

35 The wife died from cancer in February 1986 and since then the wife's mother raised objections to the applicant living in the house.

In June last the mother started proceedings against the applicant, by which she claims that he is unlawfully entering and/or staying and/or using the house and asks for an order of the Court prohibiting him from entering and/or using and/or in any way interfering with the house.

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On the 9th June, 1986, the plaintiff in that action, on an ex-parte application, obtained an order given by the District Court of Nicosia, by which the applicant was restrained from entering and/or using and/or in any way trespassing in the house, the subject-matter.

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It has been repeatedly said by this Court that in granting or refusing an application for leave to apply for such an order as applied for by the applicant, the Court has to exercise a discretion. The question which I have to decide at this stage of the proceedings is not as to whether the order applied for should be issued, but whether on the material before me there is a prima facie case made out sufficiently to justify the granting of leave to the applicant to move the Court, in due course, to issue the order of certiorari.

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In the light of the contents of the affidavit accompanying the application and all other material before me, that is copy of the contract of dowry and the affidavit of the plaintiff in Action No. 4065/86 of the District Court of Nicosia, on the contents of which the trial Judge issued the order of the 9th June, 1986, and, also, having heard arguments from counsel for the applicant, I am satisfied that a prima facie arguable case has been made out for granting the application and I make the following order:

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(a) Applicant is granted leave to apply for an order of certiorari within one month from today. Any opposition to be filed within one month from service of such application.

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(b) Any proceedings in execution of the order dated the 9th June, 1986, in Civil action 4065/86 and any proceedings against the applicant for contempt of Court for disobeying the judgment of the Court and the order embodied therein are hereby stayed for one month from to-

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day and if the applicant applies within that period for any order of certiorari, then such stay shall continue to be operative till further order of this Court, provided that any party affected by the stay of the execution of the order as
5 aforesaid, shall be at liberty to show cause at any time why such stay should not continue to be operative.

(c) Copy of this order to be sent to the Registrar of the District Court of Nicosia for communication to the Judge concerned.

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Order accordingly.