

HUTCHIN-
SON, C.J.
&
TYSER, J.
1902
April 11

[HUTCHINSON, C.J. AND TYSER, J.]

ELENI GEORGHIOU,

Plaintiff,

v.

KAKOULLOU GEORGHIOU,

Defendant.

JOINT DEBTORS—CO-SURETIES—RIGHT TO CONTRIBUTION.

Until a joint debtor has paid more than his proportion of the debt and until a co-surety has paid more than his proportion, either of the whole debt, or of that part which remains unpaid by the principal, there is no right to claim contribution.

This was an appeal of the Defendant, by leave, from a judgment of the District Court of Nicosia given on an appeal from the Village Judge of Pera.

The facts proved were as follows:

The Plaintiff and Defendant were sisters. Their father died leaving three adult children (Plaintiff, Defendant and Maria), and a son, Marco, who was a minor.

The father at the time of his death was indebted to one Toghli to the amount of 500 piastres.

The Plaintiff, Defendant and Maria gave Toghli a bond by which they bound themselves jointly and severally to pay Toghli the 500 piastres.

Marco, the brother, did not sign the bond.

When the bond became due, Toghli received from the Defendant 125 piastres, from the infant Marco 100 piastres and from the Plaintiff 52 piastres.

Subsequently Toghli sued the Plaintiff and Maria and recovered judgment against them for 214½ piastres found by the Court to be the balance of the bond and 48 piastres costs.

Plaintiff and Maria did not pay the amount of the judgment debt and a further sum amounting to over £3 was expended in costs of execution.

The Plaintiff sought contribution towards the payment of (1) the amount found due as balance of the bond, (2) the costs of the action, and (3) the costs of execution.

The Village Judge gave judgment for the Plaintiff for 123¾ piastres and costs.

The District Court varied that judgment and ordered the Defendant to pay 8½ piastres as contribution, £1 4s. 6cp. contribution to costs, and the costs before the Village Judge.

Theophani appeared for the Appellant.

G. Chacalli for the Respondent.

The Court after setting out the facts gave judgment as follows:—

Judgment : The question we have to decide is whether the Plaintiff has proved that she is entitled to recover contribution from the Defendant.

It seems clear that the Defendant, either as joint contractor with the Plaintiff, or as surety, (see Demosthenes Taliadoros v. Heirs of Nicola, Cyprus Law Reports Vol. V., p. 63), is liable to make contribution if the Plaintiff has proved that she has paid sums towards which she is entitled to demand contribution.

But the Plaintiff must prove two things:

1. That the payment in respect of which she seeks contribution has been made in respect of a matter in regard to which the Defendant is bound to contribute;
2. That she has paid an amount in excess of the amount which she herself was liable to pay.

In our opinion the Defendant is not liable to make any contribution towards the costs which the Plaintiff has been compelled to pay.

They are not any part of the sum for which the Defendant was jointly liable with the Plaintiff, or for the payment of which she was in any way surety to the Plaintiff.

If it had been proved that the summons was the first demand made on the Plaintiff, it is possible that the Defendant might be liable to contribute to the costs of the summons. But this was not proved. As to the costs of the judgment and execution they are due solely to the neglect of the Plaintiff and Maria to pay the bond when called upon to do so.

As to the amount recovered as balance of the bond, we are of opinion that the Plaintiff cannot recover contribution because she has not shewn that she has paid any amount in excess of her own share of the debt.

On the evidence before us it is possible that the greater part of the amount was recovered from Maria, and that Maria may have a right to contribution against the Defendant.

The Plaintiff must prove her case, and she has failed to prove that she has paid any amount in respect of which she is entitled to contribution. That is to say, she has not shewn that she has paid more than her proportion of the debt due to Toghli.

The appeal must be allowed. Action dismissed. Plaintiff to pay costs here and in the Courts below.

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