

ALEXANDROS PILAKOURI,

Appellant-Defendant,

v.

GEORGHIOS SAVVA SAMOUTI,

Respondent-Plaintiff.

ALEXANDROS
PILAKOURI
v.
GEORGHIOS
SAVVA
SAMOUTI

(Civil Appeal No. 4477)

Prescription—The Limitation of Actions Law, Cap. 15, section 3 (1) (f)—Action for the recovery of the value of a tree sold and delivered to the appellant—Claim became statute-barred owing to the lapse of more than two years.

Limitation of Actions—Limitation of Actions Law, Cap. 15, section 3 (1) (f)—“Goods sold and delivered”.

The main issue in the present appeal turns on the application of section 3 (1) (f) of the Limitation of Actions Law, Cap. 15, to the facts of this case.

The admitted facts in the action are as follows :

On the 23rd March, 1959, respondent sold, under a contract of sale, to appellant a walnut tree which was to be severed by the appellant ; a price of £18 was to be paid by the 30th March, 1959.

On or about the 25th March, 1959, the purchaser, the appellant, severed the walnut tree and took delivery of it but he failed to pay its value up to this date.

The action was brought on the 30th October, 1962, by the respondent, to recover the value of the tree sold.

The above facts are admitted. Appellant has not disputed the non-payment but has claimed that the claim was statute-barred.

Held, (1) we have considered the matter but we do not entertain any doubt that, in this particular case, there was in the first instance, an agreement to sell and on the 25th March, 1959, there was a sale and delivery and that such sale and delivery have taken place at the same time, even if this was to be considered essential.

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(2) The payment was due on the 30th March, 1959. Since then up to the date of the action more than two years elapsed and we are of the opinion that the claim of the respondent-plaintiff became statute-barred.

(3) The appeal is allowed and the judgment of the Court below is set aside.

(4) No order as to costs for this appeal or for the trial in the Court below.

*Appeal allowed. Judgment
of the Court below set aside.*

Appeal.

Appeal against the judgment of the District Court of Nicosia, sitting at Lefka (Loris, D.J.) dated the 19th November, 1963, (Action No. 488/62) whereby the defendant was adjudged to pay the amount of £18 under a contract of sale.

A. Pantelides, for the appellant.

A. Hadji Ioannou, for the respondent.

The judgment of the Court was delivered by :

ZEKIA, P. : On the 23rd March, 1959, respondent sold, under a contract of sale, to appellant a walnut tree which was to be severed by the appellant ; a price of £18 was to be paid by the 30th March, 1959.

On or about the 25th March, 1959, the purchaser, the appellant, severed the walnut tree and took delivery of it but he failed to pay its value up to this date.

The action was brought on the 30th October, 1962, by the respondent, to recover the value of the tree sold.

The above facts are admitted. Appellant has not disputed the non-payment but has claimed that the claim was statute-barred.

The whole issue turns on the application of section 3 (1) (f) of the Limitation of Actions Law, Cap. 15, to the facts of this case.

It has been argued by the learned counsel for the respondent that this section applies only where goods are

sold and delivered at the same time and if sale and delivery do not take place at the same time this section is not applicable.

We have considered the matter but we do not entertain any doubt that, in this particular case, there was, in the first instance, an agreement to sell and on the 25th March, 1959, there was a sale and delivery and that such sale and delivery have taken place at the same time, even if this was to be considered essential.

The payment was due on the 30th March, 1959. Since then up to the date of the action more than two years elapsed and we are of the opinion that the claim of the respondent-plaintiff became statute-barred.

The appeal is allowed and the judgment of the Court below is set aside.

No order as to costs for this appeal or for the trial in the Court below.

*Appeal allowed. Judgment of
the Court below set aside.
Order as to costs as afore-
said.*

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