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ANDROMACHI
IOANNOU
HJISAVVA &
4 OTHERS
v
ANDRIAS
PANAYIOTOU

[ZEKIA P., TRIANTAFYLIDIS & JOSEPHIDES JJ]

ANDROMACHI IOANNOU HJISAVVA AND 4 OTHERS,
Appellants-Plaintiffs,

ANDRIAS PANAYIOTOU,
Respondent-Defendant

(Civil Appeal No 4516)

Practice Appeal - Adjournment of appeal Application for adjournment of an appeal because of the absence of appellants— Presence of appellants would not be of any help to Court because points involved more or less legal -Application refused

Adjournment of appeal See under "Practice" above

Practice Appeal - Fresh evidence - Application to Court of Appeal for fresh evidence Requirements for granting leave not fulfilled Court not satisfied that proposed evidence could not have been adduced at the trial Court had reasonable diligence been exercised Fresh evidence, very likely would not have been admissible by trial Court if tendered Application refused.

Evidence Fresh evidence -See under "Practice" above

Application.

Application for leave to adduce fresh evidence on appeal and for the adjournment of the hearing of an appeal against the judgment of the District Court of Limassol (Stavimakis DJ) dated the 17th February, 1965 (Action No 2222/59) whereby plaintiffs' claim for a declaration, *inter alia*, that land, plot No 422, Sheet/Plan 58/7, is the exclusive property of plaintiffs by way of dowry from their father, long possession, inheritance and other lawful means, was dismissed

G. Tornatis, for the appellants

J. P. Potamitis, for the respondent

The judgment of the Court was delivered by -

ZEKIA, P. There are two applications before us today. The one, the application for adjournment, we are of the

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opinion that the presence of the appellants, the clients of Counsel, will not be of any help to Counsel because the points involved are more or less legal points. Therefore, the application for adjournment is dismissed

Coming to the application to adduce fresh evidence, the requirements for granting leave to adduce fresh evidence have not been fulfilled. In the first place the Court is not satisfied that the proposed evidence, for what it is worth, could not have been adduced at the trial had reasonable diligence been exercised, and, the nature of the fresh evidence, as has been explained to us, very likely would not have been admissible if it was tendered. We, therefore, dismiss this application as well, and we call on the Counsel for the appellant to address us on the appeal.

Mr. Tornaritis: After the dismissal of the application and since my client is not here, I would like to advise him not to proceed accordingly.

COURT: You would like to abandon the appeal? Why is she not here?

Mr. Tornaritis: The husband was knocked down by a car and the wife is sick. Her sister came and told me the day before that she was sick in bed.

COURT: If you wish to make it a point, a medical certificate should have been produced. If you wanted to keep to the point that she is ill and therefore cannot attend and her presence is indispensable for the prosecution of the appeal, then you have to produce medical evidence as usual.

Mr. Potamitis: My client informs me that she is not ill.

Mr. Tornaritis: They are illiterate people and the sister only came yesterday afternoon, there was no time, and last night they telephoned that she was ill.

COURT: That was the last time you saw them after the affidavit?

Mr. Tornaritis: Yes Your Honour. First her husband was knocked down by a car and now these last two or three days the wife became ill from flu, I understand.

COURT: The appellant in this case not proceeding with the appeal the case is dismissed with costs.

Appeal dismissed with costs.