KYRIACOS ALEXANDROU MYLONAS AND 2 OTHERS,
Appellants-Defendants,

v.

MARGARITA KAILI,
Respondent-Plaintiff.

(Civil Appeal No. 4611).

Civil Procedure—Appeal—Findings of fact—Credibility of witnesses before the trial Court—The onus is on the appellant to persuade the Court of Appeal that the trial Court was wrong in believing the witness—Principles applicable now well settled—Reasonably open to the trial Court to make the findings it did.

Practice—Parties—Causes of action—Joinder—Costs—Discretion—Joinder of several defendants in respect of several causes of action—Claim for remuneration for services rendered against three defendants—Claim for breach of promise to marry against the one—Whether such claims may be joined in one action against the three said defendants—Discretion of the Court of trial not exercised wrongly in depriving the successful plaintiff of her costs in the present action for remuneration for services rendered against the said three defendants—On the ground that she could have joined defendants 2 and 3 in a previous action instituted against defendant 1 for damages for breach of promise to marry her—The Civil Procedure Rules, Order 9, rules 4 and 5—Cfr. The English Order 16, rule 4.

Joinder—Joinder of several defendants in respect of several causes of action—See above under Practice.

Costs—See above under Practice.

Credibility of witnesses—See above under Civil Procedure.

Witness—Credibility of—See above under Civil Procedure.

Findings of fact-Based on credibility of witnesses—Appeal—Principles upon which the Court of appeal will interfere—See above under Civil Procedure.

This was an action against the three defendants-appellants for reasonable remuneration for services rendered.

This appeal turns on the credibility of the witnesses before the trial Court. There is, also, a cross-appeal by the respondent-plaintiff against that part of the judgment in the first instance whereby the trial Judge deprived her, although successful, of her costs on the following ground, as stated in his judgment : "In view of the fact that plaintiff had previously and in particular on 3.2.66 filed Action No. 163/66 against defendant No. 1 for damages for breach of contract to marry, I am of the opinion that she could also join therein defendants 2 and 3 as well for her claim in this action. For this reason I allow no costs in this action". (Order 9, rules 4 and 5 are set out in the judgment which follows). In dismissing both the appeal and the cross-appeal the Court :

Held, (1) the principles on which this Court decides appeals on the credibility of witnesses before the trial Courts are well settled and we need not enter into them in detail. It must be shown that the trial Court was wrong and the onus is on the appellant to persuade this Court. Matters of credibility are within the province of the trial Court and if, on the evidence before him, it was reasonably open to him to make the finding it did, then this Court will not interfere. Needless to say that this being a civil case it is decided on the balance of probabilities.

(2) As to the cross-appeal, we think that Order 9, rule 5 provides the answer in this case, because under rule 5 it is not necessary that every defendant shall be interested in every cause of action included in the proceeding; and the Court is given a discretion to decide whether the case should go on or that there should be a separate trial in order to prevent embarassement to any one of the defendants (*Note:* Rules 4 and 5 are set out in the judgment *post*).

(3) (a) The question which will have to be decided now is whether the Judge did exercise his discretion wrongly having regard to the facts and the Rules.

(b) Although we may have made a different order for costs if we were the trial Judges, we are not satisfied that the trial Judge exercised his discretion wrongly in the present case.

Appeal and cross-appeal dismissed. No order as to costs.

Cases referred to :

Payne v. *British Time Recorder Co. Ltd.* [1921] 2 K.B.1, C.A.; 90 L.J. K.B. 445.

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Famagusta (Santamas Ag. D.J.) dated the 16th January, 1967 (Action No. 321/66) whereby the defendants were adjudged to pay to the plaintiff the sum of £250.– for services rendered.

X. Clerides with *Z. A. Mylonas*, for the appellants.

J. Kaniklides, for the respondent.

The Judgment of the Court was delivered by :

JOSEPHIDES, J. : The appeal in this case turns on the credibility of the witnesses before the trial Court. The principles on which this Court decides appeals on the credibility of witnesses are well settled and we need not enter into them in detail. It must be shown that the trial Judge was wrong and the onus is on the appellant to persuade this Court. Matters of credibility are within the province of the trial Judge and if, on the evidence before him, it was reasonably open to him to make the finding which he did, then this Court will not interfere with the judgment of the trial Court. Needless to say that this being a civil case it is decided on the balance of probabilities.

The plaintiff's claim was for services rendered to the defendants-appellants over a period of about two years. After her engagement to the first defendant-appellant on the 17th March, 1962, she, according to her version, gave up her employment with another master and, at the request of the defendants-appellants, went to work for them and she did so for about two years. She worked as a farm labourer in the defendants' garden helping also in looking after their flock, oxen, and cattle. It was her version that she worked every day, including sometimes Sundays. At the time that she worked for them the remuneration paid to women labourers in the village was in the range of 650 to 750 mils per day.

The defendants denied the plaintiff's version, particularly that they ever asked the plaintiff to work for them or that they promised payment. They alleged that the plaintiff used to visit their garden occasionally for the purpose of seeing her fiancé and they conceded that on a few occasions she helped them in their garden work.

This was the evidence before the trial Judge who had to weigh the two versions and come to a conclusion. As he says

in his judgment, "weighing the evidence before me, I came to the conclusion that plaintiff, being a girl in need of money to make her dowry, could not abandon her job with Kokkinis–the previous employer–where she worked for such a long time, for nothing. I believe the evidence of the plaintiff that she was told to go and work for the defendants at their garden and that she was promised payment for such services. I believe the plaintiff that she worked for the defendants for a period of 500 days. I do not believe the defendants that plaintiff did not work at their garden at all, or at least that she worked for only a few days."

As regards remuneration the Judge fixed it at 500 mils per day, and in the result he gave judgment for the plaintiff for £250 without costs. We shall deal with the question of the order for costs at a later stage in this judgment, when we come to consider the cross-appeal.

Learned counsel for the appellant today put forward a number of reasons why the trial Judge should not have accepted the plaintiff's version and that he should have accepted the defendants' version, dismissing the plaintiff's claim. He submitted that having regard to the relationship of the plaintiff and the first defendant, the fact that they were an engaged couple, it would be unreasonable for the Judge to find that she had agreed to be paid for the services which she was rendering to her fiancè and his parents. He further submitted that there was no positive evidence, and no record or any other note was produced to the Court, to show the exact number of days worked by the plaintiff. Finally, he submitted that it was unreasonable on the part of the trial Judge to find that the plaintiff had worked for 500 days over a period of two years, considering that the agricultural work in which she was engaged was only seasonal.

We have no doubt that these submissions, together with other submissions, were put forcibly by counsel before the trial Judge and that all these were considered by him in deciding which version to accept. This being a matter of credibility he decided to accept the plaintiff's version, and today we have not been persuaded that on the evidence before the Court it was not open to him to make the findings which he did make in the case. For these reasons the appeal is dismissed.

Now as to the cross-appeal : The learned trial Judge decided not to award any costs to the plaintiff on the following ground,

as stated in his judgment : "in view of the fact that plaintiff had previously and in particular on 3.2.66 filed Action No. 163/66 against defendant No. 1 for damages for breach of contract to marry, I am of the opinion that she could also join therein defendants 2 & 3 as well for her claim in this action. For this reason I allow no costs in this action." In the cross-appeal the plaintiff gave notice, and in fact counsel argued before us today, that the said judgment "should be varied as to the part respecting costs only and in lieu thereof defendants to be ordered to pay plaintiff's costs." His main ground was that the trial Judge wrongly exercised his judicial discretion in depriving the plaintiff of her costs for the reasons given by him in the judgment.

Learned counsel for the plaintiff-respondent, submitted that the two actions, that is the breach-of-promise action and the present action for remuneration for services rendered could not have been legally joined. In support of his submission he referred to Order 9, rule 4, of our Civil Procedure Rules, which corresponds to the former English Order 16, rule 4. He also cited the case of *Payne* v. *British Time Recorder Co. Ltd.*, [1921] 2 K.B.1, C.A., 90 L.J. K.B. 445, and he argued that in order that the two actions can be joined there must be a common question of law and fact.

Our Order 9, rule 4, reads as follows :

> "All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment."

Under the corresponding English Order 16, rule 4, it was decided in the *Payne case*, quoted above, that a plaintiff is entitled to join several defendants in respect of several causes of action, subject to the discretion of the court to strike out one or more of the defendants. Normally the court will allow the joinder of plaintiffs or defendants, subject to its discretion as to how the action should be tried, where claims by or against different parties involve or may involve a common question of law or fact bearing sufficient importance in proportion to the rest of the action to render it desirable that the whole of the matters should be disposed of at the same time.

We think, however, that rule 5 of our Order 9, provides the answer in this case. It reads as follows :

> "5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest."

It will be observed that rule 5 provides that it shall not be necessary that every defendant shall be interested as to every cause of action included in the proceeding; and the Court is given a discretion to decide whether the case should go on or that there should be a separate trial in order to prevent embarrassment to any one of the defendants. From our exprerience, we are aware that in Cyprus there have been cases, in the past where a claim for a breach of promise has been joined on to a claim for remuneration for services rendered. That, of course, does not decide the matter conclusively but it shows that that practice has been followed in the past and that rule 5 does not preclude it from being done.

Presumably the learned trial Judge, relying on that practice, came to the conclusion that the two causes of action should have been joined together and for that reason he exercised his discretion as to costs against the plaintiff. It should be noted that he did not adjudge the successful plaintiff to pay costs, but he deprived her of her costs. The question which will have to be decided now is, did the Judge exercise his discretion wrongly having regard to the facts and the Rules.

Although we may have made a different order for costs if we were the trial Judges, we are not satisfied that the trial Judge exercised his judicial discretion wrongly in the present case. For this reason the cross-appeal is dismissed.

In the result both the appeal and the cross-appeal are dismissed and we make no order as to costs.

Appeal and cross-appeal dismissed. No order as to costs.