

KATERINA N.A. GEORGHIOU AND ANOTHER,
Appellants-Plaintiffs,

v.

CHRYSTALLA MICHAEL PISTOLIA,
Respondent-Defendant.

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KATERINA N.A.
GEORGHIOU
AND ANOTHER
v.
CHRYSTALLA
MICHAEL
PISTOLIA

(Civil Appeal No. 4827).

Practice—Pleadings—Amendment—Statement of claim—Application for leave to amend after evidence given by the plaintiffs—Matter within the discretion of the trial Court—But in the instant case such discretion was exercised on wrong principle—Proposed amendments not seeking to introduce a different claim or cause of action—On the other hand there was no allegation that plaintiffs were not acting in good faith—Leave granted on appeal.

Pleadings—Amendment—See hereabove.

Amendment—Statement of claim—Discretion of the trial Court—Exercised on wrong principle—See hereabove.

Civil Procedure—Pleadings—Amendment—See hereabove.

The facts sufficiently appear in the judgment of the Court allowing partly the appeal by the plaintiffs against a ruling of the trial Court refusing leave to amend their statement of claim.

Appeal.

Appeal by plaintiffs against the order of the District Court of Larnaca (A. Demetriou D.J.) dated the 28th June, 1969, (Action No. 175/68) dismissing their application for the amendment of their statement of claim.

L. Clerides, for the appellants.

C. Varda (Mrs.) for the respondent.

The judgment of the Court was delivered by:

JOSEPHIDES, J.: This is an appeal by the plaintiffs against the order of the District Court of Larnaca refusing amendment

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of their statement of claim. Having heard counsel of both sides and their submissions to Court, we need not give a long judgment in this case.

Briefly, the claim was for a right of passage and it was so pleaded in the statement of claim originally filed. After the two plaintiffs gave their evidence, counsel applied to have the statement of claim amended in such a way as to extend the right of passage to include not only persons on foot but also loaded animals. Counsel also sought to introduce a claim of easement to light and air. He further asked for the deletion of paragraph 7 of his statement of claim. That application for amendment was refused by the trial Judge, mainly on the ground that it was made too late in the day and that the plaintiffs had ample time to have included all these matters in their original statement of claim.

Learned counsel for the appellants (plaintiffs) today very rightly abandoned that part of his application, (that is, the proposed paragraph 8(d) in which he sought to introduce the claim of right to light and air. Undoubtedly that was an entirely different claim and the learned Judge was right in refusing it.

Furthermore, learned counsel for the appellants (plaintiffs) has abandoned that part of his application concerning the deletion of paragraph 7 of his statement of claim.

On the other hand counsel for the respondent (defendant) is not objecting today to the amendment of paragraphs 3 and 4 of the statement of claim and the addition of the new paragraphs 8(b) and (c) of the statement of claim, which refer to the right of passage. We think that counsel for respondent very properly has taken that stand, because we are of the view that although it is a matter for the discretion of the learned Judge, nevertheless, he applied a wrong principle in exercising his discretion. By their proposed amendments the plaintiffs (appellants) were not asking to introduce a different claim and there was no allegation that the plaintiffs were acting mala fide. The plaintiffs had blundered and the injury to the defendant could be compensated for by costs. We are, therefore, of the view that the learned Judge ought, in the exercise of his discretion, to have granted this amendment which referred to the right of passage claimed by the plaintiffs.

In the result the appeal is allowed in part and the following order is made:

- (1) The order of the trial Judge as regards the deletion of paragraph 7 of the statement of claim and the insertion of the proposed paragraph 8(d) of the statement of claim is affirmed;
- (2) The order of the trial Judge with regard to the other parts of the plaintiffs' (appellants') application for amendment dated the 18th June, 1969, is set aside, and the plaintiffs are allowed to file an amended statement of claim within 15 days from today. The amendment allowed is in respect of paragraphs 3 and 4, and the proposed new paragraphs 8(b) and (c) of the statement of claim;
- (3) The defendant (respondent) to file her defence within 15 days after the delivery of the amended statement of claim; and
- (4) The plaintiffs (appellants) shall pay the costs of the amendment in the District Court and all costs thrown away as a result; but there will be no order as to costs in the appeal.

Appeal partly allowed. Order in terms as above.

*Appeal partly allowed;
order in terms as above.*

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