

1970.
Mar. 3

[VASSILIADES, P., JOSEPHIDES, LOIZOU, JJ.]

MAROULLA A.
GREGORIADOU
v.
EVANGELOS
TH.
KYRIAKIDES

MAROULLA A. GREGORIADOU,
Appellant-Defendant,
v.
EVANGELOS TH. KYRIAKIDES,
Respondent-Plaintiff.

(Civil Appeal No. 4836).

Appeal—Findings of fact made by trial Courts, based on the credibility of witnesses—Approach of the Court of Appeal to such findings—Principles applicable restated.

Witnesses—Credibility of—Approach of the Court of Appeal—See supra.

Practice—Costs—Pleadings—Drafting slip in the statement of claim—Costs on minimum scale applicable awarded to successful plaintiff.

Costs—See supra.

This is an appeal by the defendant from a judgment of the District Court of Nicosia adjudging her to pay the plaintiff the sum of £350 with interest being money lent to her. Her defence was throughout a flat denial ; both in her statement of defence and in her evidence, she denied that she ever received the said sum of £350 or any sum at all from the plaintiff as a loan or otherwise. The whole appeal turns on the credibility of the witnesses heard before the trial Court.

After reviewing the facts the Court dismissed the appeal and :

Held, (1). The approach of this Court in such matters (i.e. findings of fact based on the credibility of witnesses) is well settled ; matters of credibility are within the province of trial Courts. The Court of Appeal will not interfere unless persuaded by the appellant that the reasoning behind such findings is wrong or that the trial Judges went wrong. (See, *inter alia*, *Charalambous v. Demetriou*, 1961 C.L.R. 14 ; *Imam v. Papacostas* (1968) 1 C.L.R. 207 at p. 208 ; *Hadji Petri v. Hadji Georghou and Another* (1969) 1 C.L.R. 326 at pp. 330–31).

1970
Mar. 3

—
MAROULLA A.
GREGORIADOU
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EVANGELOS
TH.
KYRIAKIDES

(2) *After reviewing the evidence on record :*

The trial Judge with that evidence before him and, having watched the witnesses in the witness-box giving their evidence, came to the conclusion that the plaintiff and his witnesses were giving the true version and relying on that he gave judgment for the plaintiff.

(3) Considering the principles on which this Court acts on appeals turning on credibility of witnesses (*supra*) we have not been persuaded by counsel for the appellant that the trial Judge went wrong in any way.

(4) As regards costs, considering the drafting slip in the statement of claim (see post in the judgment), we are of the view that the appellant should pay the costs of the appeal on the minimum scale applicable.

Appeal dismissed. Order for costs as above.

Cases referred to :

Charalambous v. Demetriou, 1961 C.L.R. 14 ;

Imam v. Papacostas (1968) 1 C.L.R. 207 at p. 208 ;

Hadji Petri v. Hadji Georghou and Another (1969) 1 C.L.R. 326 at pp. 330-31.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Ioannou, Ag. D.J.) dated the 30th June, 1969 (Action No. 3638/68) whereby she was adjudged to pay to the plaintiff the sum of £350 being money lent to her.

G. Constantinides, for the appellant.

A. Paikkos, for the respondent.

VASSILIADES, P.: The judgment of the Court will be delivered by :—

JOSEPHIDES, J.: In the present case the plaintiff claims the sum of £350 alleged to have been lent by him to the defendant on the 29th September, 1966. The children of the parties were married some eighteen days earlier, on the 18th September, 1966.

1970

Mar. 3

MAROULLA A.
GREGORIADOU

v.

EVANGELOS

TH.

KYRIAKIDES

The plaintiff's claim as pleaded in Part 2 of the statement of claim was as follows :— " The plaintiff in the presence of witnesses lent the sum of £350 on the 29th September, 1966, to the defendant on the assumption that the said sum would be paid off not later than two months from the date thereof together with interest at the rate of 6% per annum ". The defence was a flat denial. The defendant both in her statement of defence and in her evidence, denied that she ever received the sum of £350, or any sum at all, from the plaintiff. The trial Judge, after hearing the plaintiff and four witnesses called on his behalf, and the defendant and two witnesses called on defendant's behalf, preferred the version of the plaintiff and gave judgment as claimed.

The whole appeal turns on the credibility of the witnesses heard before the trial Court.

The approach of this Court in such matters is well settled, to the effect that matters of credibility are within the province of the trial Judge. Some of the cases which lay down this principle are : *Charalambous v. Demetriou*, 1961 C.L.R. 14 ; *Imam v. Papacostas* (1968) 1 C.L.R. 207 at p. 208 ; and *Hadji Petri v. Hadji Georghou and Another* (1969) 1 C.L.R. 326 at pp. 330-331. Needless to say that that does not mean that if the reasoning behind the trial Judge's findings is wrong this Court will not interfere with such finding.

We must say that we have read both the evidence on record and the very careful judgment of the trial Judge in the present case, and that we have been impressed with the strong reasoning behind the conclusions reached by the learned Judge. It is true that there is some difference between the case as pleaded with regard to the time of payment and the rate of interest, but that has been explained by learned counsel who drafted the statement of claim and who said that his client was not specific either as to time limit or as to rate of interest, and that he (counsel) thought fit to include that in his pleading. This is a matter which will be considered later when we come to decide the question of costs.

Reverting to the question of the findings of the learned trial Judge the versions as put forward are the following : It was the plaintiff's version that on the 29th of September, 1966, the defendant being his " συμπεθερά " (the mother-in-law of his daughter) went to his office and said that she wanted to buy some silverware and that she was in need of £350. At first, she asked him to join her in this venture

but he said that he was not interested and, eventually, the plaintiff offered to give her by way of loan the sum of £350. In fact he issued a cheque payable to himself which he sent through his clerk, Andreas Charalambous, to the bank. The said clerk cashed the cheque, came back and he paid the proceeds amounting to £350 to the defendant. This version of the plaintiff was corroborated by the clerk Charalambous and by another witness, Pandelis Constantinou. The fourth person present there was one of the plaintiff's partners, Panayiotis Constantinou, who said in his evidence that soon after the defendant came into the office, and after he was introduced to her and the parties began speaking in a low tone, he left.

The defendant's version was that she did go to the plaintiff's office on two occasions but that she never received any money from him ; and, on one occasion, she remembers that it was after passing by the Government Printing Office for the purpose of obtaining a copy of the official *Gazette* containing a law regarding her husband's pension rights. The witness called on her behalf, (Ioannis Mentzis) to corroborate her on material points, in fact did not do so. On the contrary, his evidence was in direct conflict with that of the defendant. The material contradictions are pointed out in the careful judgment of the trial Judge and we need not go into detail.

The Judge with that evidence before him and, having watched the witnesses in the witness-box giving their evidence, came to the conclusion that the plaintiff and his witnesses were giving the true version and, relying on that, he gave judgment for the plaintiff.

Considering the principles on which this Court acts in appeals turning on credibility of witnesses, we have not been persuaded by counsel for the appellant that the trial Judge went wrong in any way. For these reasons the appeal must be dismissed.

As regards costs, considering the drafting slip in the statement of claim, we are of the view that, although the appellant should pay the costs of the appeal, they should be assessed on the minimum of the scale applicable.

*Appeal dismissed. Order
for costs as above.*

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