

1972  
Oct. 20

[TRIANTAFYLIDIS, P., HADJIANASTASSIOU, MALACHTOS, JJ.]

MARIA  
HJI SOLOMOU  
(No. 2)  
v.  
GEORGHIOS  
MANOLIS,  
AS ADMINIS-  
TRATOR OF  
THE ESTATE  
OF SAVVAS  
CHRISTODOULOU

MARIA HJI SOLOMOU (No. 2),  
*Appellant-Plaintiff,*

v.

GEORGHIOS MANOLIS, AS ADMINISTRATOR OF THE  
ESTATE OF SAVVAS CHRISTODOULOU,  
*Respondent-Defendant.*

(Civil Appeal No. 4926).

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*Evidence—Corroborative evidence—Claim upon estate of a deceased person—Corroboration required—Section 7 of the Evidence Law, Cap. 9—Evidence of claimant's husband—Even though it can be treated as corroboration of her testimony, still the outcome of the proceedings was not affected thereby because the trial Court disbelieved both—Moreover, the trial Court could not, for the same reason, act on the uncorroborated evidence of the claimant—Nor was evidence adduced so as to make the claim antecedently probable, or throw the burden of disproving it on the representative of the deceased, in the sense of the aforesaid section 7.*

*Administration of estates—Claim upon the estate of a deceased person—Corroborative evidence required with certain exceptions—Section 7 of the Evidence Law, Cap. 9.*

*Corroborative evidence in civil cases—See supra.*

*Findings of fact based on credibility of witnesses—Appeals turning on such matters—Principles upon which the Court of Appeal will interfere—Restated.*

The facts sufficiently appear in the judgment of the Court dismissing this appeal taken by the plaintiff against the judgment of the trial Court whereby it dismissed her claim upon the estate of the deceased S.C.

Cases referred to :

*Imam v. Papacostas* (1968) 1 C.L.R. 207 ;

*Iacovides v. Schiza and Others* (1967) 1 C.L.R. 323.

## Appeal.

Appeal by plaintiff against the judgment of the District Court of Paphos (Pitsillides, D.J.) dated the 7th July, 1970, (Action No. 993/68) dismissing plaintiff's claim for £200 as her share of the price of a vineyard, at Panayia village, which was sold by her late uncle.

*L. Papaphilippou*, for the appellant.

*P. Sivitanides*, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLIDIS, P. : The appellant filed an action claiming £200 as her share of the price of a vineyard at the locality "Holetrika", in the area of Panayia village, which was sold by her late uncle—her mother's brother—Savvas Christodoulou (of whose estate the respondent is the administrator) to a certain Christodoulos Kolios.

The contention of the appellant at the trial was that approximately half of the said property had devolved upon her by way of dowry from her mother and that it was sold by her uncle to another person with her consent, on condition that he would pay to her half of the proceeds of the sale ; she stated that she had allowed her uncle to secure registration of the whole vineyard in his name, so that he could transfer it to the purchaser ; and that after it was transferred her uncle failed to pay to her half of the sale price.

The trial Court did not accept the appellant's evidence which was the mainstay of her claim and described such evidence as "improbable, unnatural and unbelievable". In its judgment the Court proceeded to point out—rightly in our view—that it was, *inter alia*, very odd that the appellant, if she had a right in relation to the vineyard, had allowed her uncle to secure registration of the vineyard in his name without asking for some written proof that she was entitled to a part thereof or to a part of the price at which it was to be sold.

As has been repeatedly held by this Court on appeal (see, for example, *Imam v. Papacostas* (1968) 1 C.L.R. 207) the appellate tribunal has to be satisfied that the findings of fact made by a trial Court are erroneous ; and the burden cast upon an appellant in this respect is a very heavy one, indeed, when such findings depend upon the credibility of witnesses.

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In the present case we have not been persuaded by learned counsel for the appellant that the Court below erred in not accepting the evidence of the appellant.

As the appellant's claim in the action was a claim against the estate of a deceased person, section 7 of the Evidence Law, Cap. 9, is applicable in relation thereto; it reads as follows :—

“ A claim upon the estate of a deceased person, whether founded upon an allegation of debt or of gift, shall not be maintained upon the uncorroborated testimony of the claimant, unless circumstances appear or are proved which make the claim antecedently probable, or throw the burden of disproving it on the representatives of the deceased ”.

Counsel for the appellant has submitted that the evidence of the appellant's husband was wrongly not treated, by the trial Court, as capable of amounting to corroboration of the appellant's evidence for the purposes of section 7. We agree that in law— under section 7— the evidence of the husband of the appellant could be treated as corroboration of her evidence, but we fail to see how this could affect the outcome of the present proceedings, since not only her evidence, but, also, her husband's evidence, was not believed by the Court below.

It was argued, further, on appellant's behalf, that the trial Court failed to examine whether in the circumstances of this case it could have acted, under section 7, on the uncorroborated testimony of the appellant: As already stated more than once, the appellant's evidence was disbelieved by the trial Court; so, it could not in any event have acted on the basis of such evidence. In any case, we are not prepared to hold that any other evidence adduced at the trial, including the evidence intended to establish entitlement to part of the vineyard in question by the appellant, was of such a nature that because of it it could be said, in the sense of section 7, either that the claim of the appellant had been made antecedently probable (as in *Iacovides v. Schiza and Others* (1967) 1 C.L.R. 323) or that the burden of disproving the appellant's claim was thrown on the administrator of the estate of her deceased uncle (who is the respondent in this appeal).

For all the foregoing reasons this appeal has to be dismissed, with costs.

*Appeal dismissed with costs.*