

1988 September 28

(DEMETRIADES, PIKIS, BOYADJIS, JJ.)

ANDREAS PAPAGEORHIU,

*Appellant-Defendant,*

v.

CHLOE KARAYIANNIS,

*Respondent-Plaintiff,*

*(Civil Appeal No. 7596).*

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*Rent Control — The Rent Control Law 23/83, section 4(1) — Jurisdiction of Rent Control Court — Ambit of — «Incidental or supplementary matter» — The phrase refers to the main theme of the law — Analysis of such main theme — No question of concurrent jurisdiction with District Court arises — Any matter outside ambit of s.4(1) falls within the jurisdiction of District Court — Claim against a tenant by the landlady for trespass on yard of building of which the shop in the occupation of the tenant is part and for private nuisance emanating from the alleged act of trespass — Claim not based on any alleged breach of any term of the tenancy — Eviction not among the remedies applied for — Notwithstanding a defence that the yard is included in the tenancy, the action is within the jurisdiction of the District Court.*

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*Words and phrases: «Including any incidental or supplementary matter» in section 4(1) of the Rent Control Law 1983 (Law 23/83).*

The appellant is a statutory tenant of a shop at Ayios Dhometios. The shop is part of a two storey building. The tenancy agreement provided that the appellant shall not cause nuisance to his neighbours.

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The claim of the respondent-plaintiff (landlady) in the action is for trespass to land and private nuisance. The remedies claimed are: (a) Injunction prohibiting the appellant defendant from trespassing on the yard of the building of which the shop forms a part, (b) Injunction ordering the appellant-defendant to vacate the said yard, and (c) Injunction ordering the appellant-defendant to abate the nuisance created by the acts described under (a) and (b) above.

In his defence the defendant denies trespassing or causing any nuisance and alleges that the areas of the yard where he stores his goods are included in the demised premises though they are not specifically mentioned in the agreement, Exh 1

The appellant-defendant objected to the jurisdiction of the District Court to try the action. The objection was dismissed. Hence this appeal 5

The outcome of this case depends on the interpretation of section 4(1) of the Rent Control Law, 1983 (Law 23/83) and in particular the phrase «including every incidental or supplementary matter», 10  
(«συμπεριλαμβανομένου παντός παρεμπόπτοντος ή συμπληρωματικού θέματος»).

Held, dismissing the appeal (1) There is no question of the District Court and the Rent Control Court having concurrent jurisdiction on the same dispute. If the dispute refers to any matter which either - (a) 15  
arises during the application of the Rent Control Law of 1983 or (b) concerns any incidental or supplementary matter, the Rent Control Court has exclusive jurisdiction to determine such dispute under section 4(1) of the Law

(2) The difficulty, which sometimes arises, concerns cases falling 20  
under category (b) above. It is not always clear whether a matter upon which a dispute has arisen is «incidental or supplementary» within the ambit of section 4(1). The words clearly refer to and should not be read independently of the main themes of the Law

(3) The question whether a matter is incidental or supplementary 25  
to the main theme of the law or not will depend on the nature of the claim in conjunction with the relief sought. If the claim is fashioned in a manner that would necessitate for its determination consideration and enforcement of the provisions of the Rent Control Law or examination of the terms of the statutory tenancy as such, jurisdiction 30  
rests solely with the Rent Control Court. In applying this test one should bear in mind section 27 of the Law

(4) In this case the essence of the action is trespass to land and nuisance associated with the use of the land trespassed upon which adjoins the demised controlled premises. The landlady is not relying 35  
on any alleged breach of the terms of the statutory tenancy, i.e. the term as to nuisance and is not praying for an order to evict the tenant on account of such breach or on any other account

(5) The mere fact that the tenant alleges that the relevant part of the plaintiff's yard was included in the original tenancy though not 40  
specifically mentioned in the agreement, Exh 1, does not change the

complexion of the action; nor does it make it a matter relevant to the application of Law 23/83. The claim can still be examined and determined solely by reference to and by application of the general principles of the law pertaining to the aforesaid civil wrongs of trespass and nuisance.

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*Appeal dismissed with costs.*

*Cases referred to:*

*Petsa v. Pavlides* (1980) 1 C.L.R. 158;

*Efthymiadou v. Zoudros and others* (1986) 1 C.L.R. 341;

10. *Re Fahy's Will Trusts McKnight and another v. Fahy and others* [1962] 1 All E.R. 73

**Appeal.**

Appeal by defendant against the ruling of the District Court of Nicosia (Korfotis, D.J.) dated the 14th March, 1988 (Action No. 1708/86) whereby his objection to the jurisdiction of the District Court to try his claim for trespass to land and private nuisance was dismissed.

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*A. Dikigoropoulos*, for the appellant.

*C. Hadjoannou*, for the respondent.

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*Cur. adv. vult.*

DEMETRIADES J.: The judgment will be delivered by Boyadjis, J.

BOYADJIS J.: This is an appeal against the ruling of the District Court of Nicosia given on March 14, 1988 in action No. 1708/86 whereby the objection of the appellant-defendant in the action below - to the jurisdiction of the District Court to try the claim against him raised in the writ of summons issued in the aforesaid civil action, was dismissed.

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It is common ground that the appellant-defendant is a statutory tenant of the shop, the property of the respondent-plaintiff, which is situated at Gregoris Afxentiou street, No. 58B, Ayios Dhometios, and which forms part of a two-storey building. The tenancy owes its origin to the tenancy agreement Exh. 1, signed between the parties on 30/9/1980. It was, inter alia, agreed thereby that the shop was to be used by the tenant as a popular market (λαϊκή αγορά) in such a manner as not to cause nuisance to his neighbours. The tenancy was from its formation regulated by the provisions of the Rent Control Law (Law 36/75). From April 22, 1983 onwards when Law 36/75 was repealed and substituted

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by the Rent Control Law of 1983 (Law 23/83) the tenancy is being regulated by the provisions of the latter enactment.

The claim of the appellant-plaintiff against the respondent-defendant is for trespass to land and private nuisance and the remedies sought are - (A) an injunction prohibiting the defendant from trespassing into the yard of the building of the plaintiff of which the leased shop forms part, (B) a mandatory injunction ordering the defendant to vacate the aforesaid yard of the plaintiff by removing his goods which he unlawfully stores therein and by demolishing all temporary buildings which he built thereon, and (C) a mandatory injunction ordering the defendant to abate the nuisance created by the illegal acts described in (A) and (B) above.

In his Defence, the defendant denies trespassing or causing any nuisance and alleges that the areas of the yard where he stores his goods are included in the demised premises though they are not specifically mentioned in the agreement, Exh. 1; that he constructed certain temporary buildings in the adjoining building site of the plaintiff with the permission of the plaintiff's late husband; and that by her acquiescence for many years the plaintiff has waived any right which she might have to complain against the aforesaid acts of the defendant.

Learned counsel for the appellant maintained that the District Court has no jurisdiction to entertain the present dispute which is within the exclusive jurisdiction of the Court established under section 4(1) of the Rent Control Law (Law 23/83) in as much as it concerns matters which are incidental and/or supplementary to the matters arising from the application of the aforesaid Law.

Learned counsel for the respondent has, on the other hand, argued that the dispute as disclosed in the general indorsement of the writ of summons and in the Statement of Claim does not arise and is not in any way connected with or incidental or supplementary to any matter arising from the application of the Rent Control Law.

The determination of the question involves:

(a) the interpretation of the provisions of section 4(1) of Law 23/83, and

(b) the examination of the nature of the plaintiff's claim in the form in which she chose to fashion it in her pleadings.

Section 4(1) of Law 23/83 reads as follows:

5 «4.-(1)Καθιδρύονται Δικαστήρια Ελέγχου Ενοικιάσεων ο αριθμός των οποίων δεν θα υπερβαίνει τα τρία επί σκοπώ επιλύσεως, μεθ' όλης της λογικής ταχύτητας, των εις αυτά αναφερομένων διαφορών των αναφυσόμενων επί οιοσδήποτε θέματος εγειρομένου κατά την εφαρμογήν του παρόντος Νόμου συμπεριλαμβανομένου παντός παρεμπόπτοντος ή συμπληρωματικού θέματος».

10 («4-(1) Rent Control Courts are being established whose number shall not exceed three for the purpose of determining with all reasonable speed, the disputes referred to them, which concern any matter raised during the application of the present Law including every incidental or supplementary matter»).

15 Section 4(1) of Law 23/83 as far as the jurisdiction of the Rent Control Courts is connected is similar though not identical to section 4(1) of Law 36/75\* which it superceded. The 1975 version of section 4(1) was the subject of judicial interpretation in *Gregoris K. Patsas v. Pavlos Pavlides* (1980) 1 C.L.R. 158, where the question  
20 whether the Rent Control Court established thereby had jurisdiction to determine disputes touching eviction as well as recovery of arrears of rent, was answered in the affirmative, the latter claim being treated as a matter incidental to the former. Mr. Justice Savvides  
25 said in this respect the following at pp. 173, 174 of the report:

30 «The issue as to whether there is jurisdiction to determine disputes touching eviction and recovery of arrears of rent is one which can be determined without any difficulty by reference to the provisions of the Rent Control Law. Section 4 of such Law makes unambiguous provision that any matter

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\* «4.(1) Το Ανώτατον Δικαστήριο, τηρουμένων των διατάξεων του Συντάγματος, διορίζει εν σχέσει προς εκάστην επαρχίαν, μέλος ή μέλη του Επαρχιακού Δικαστηρίου της τοιαύτης Επαρχίας επί σκοπώ ακρόασεως και εκδόσεως αποφάσεως επί οιασδήποτε διαφοράς αναφυσόμενης κατά την εφαρμογήν του παρόντος Νόμου και παντός παρεμπόπτοντος ή συμπληρωματικού προς τοιαύτην διαφοράν θέματος.»

\* («4 -(1) The Supreme Court shall, subject to the provisions of the Constitution, appoint with respect to each district, a member or members of the District Court of such district for the purpose of hearing and determining any dispute arising during the application of the Law and any matter incidental or supplementary thereof.»)

incidental to the recovery of possession can be dealt with by the same Court in the same proceedings. The object of the legislator in inserting this provision was to avoid duplicity of proceedings on the same issues one under the Rent Control Law for eviction on the ground of arrears of rent under section 16(1)(a), and another one under the Civil Procedure Rules for the recovery of such arrears of rent. A summary procedure is contemplated by the Rent Control Law to secure a speedy and less expensive procedure and therefore the Court dealing with the determination of a dispute concerning recovery of possession is authorized to deal in the same proceedings with any matters incidental thereto such as the recovery of arrears of rent.»

The last case in which section 4(1) of Law 36 of 1975 was considered by this Court was that of *Poly E. Efthymiadou v. Georghios Zoudros and others* (1986) 1 C.L.R. 341, where appellant's action filed on 4.1.83 in the District Court of Nicosia against the respondent, claiming (a) recovery of arrears of rent and charges due in connection with the occupation of premises subject to the provisions of the Rent Control Law (Law 36 of 1975), which were vacated by the respondent in May or June 1982 and (b) compensation for damage caused to such premises, was dismissed for lack of jurisdiction, the Court's ruling being that the matters aforesaid fell within the exclusive jurisdiction of the Court established by section 4(1) of Law 36/75. Dismissing this ground of appeal, Mr. Justice Pikiş said at pp. 344, 345 of the report:

«On a literal construction of the provisions of s.4(1) - Law 36/75, the Rent Control Court, established under this provision of the law, was vested with jurisdiction to adjudicate upon any dispute arising from (αναφυσόμενης) the enforcement of the law including matters incidental to the main theme of the law, such as recovery of rent and loss from damage caused to rent controlled premises. To the same conclusion we arrive on a purposive interpretation of the law, too. On a consideration of the law as a whole, and the object it aimed to achieve, mainly to cope with the scarcity of accommodation in the aftermath of the Turkish invasion, it is fairly clear to us the legislature intended to refer every matter relevant to the terms of occupation of controlled premises and liability arising thereunder to the Court set up under the

- provisions of s.4(1). That rent was directly regulated by the law is manifest from the provisions of s.7(1) assigning the determination of rent payable for controlled premises to the Court established under s.4(1). The law superceded contractual provisions with regard to rent relegating their importance to mere relevance to what may constitute 'reasonable rent' for the occupation of controlled premises, as the Supreme Court decided in *Elli G. Meitz and Others v. Andreas Pelengaris* (1977) 1 C.L.R. 226».
- 10 The question whether in exercise of its general jurisdiction in civil disputes vested in it by virtue of section 22 of the Courts of Justice Law of 1960 as later amended, the District Court of Nicosia has jurisdiction to try the present claim of the respondent-plaintiff or whether it has been deprived of such jurisdiction in favour of the
- 15 Rent Control Court by virtue of section 4(1) of the Rent Control Law of 1983 (Law 23/83) may only be determined by reference to the provisions of the latter enactment. There is no question of the District Court and the Rent Control Court having concurrent jurisdiction on the same dispute. If the dispute refers to any matter
- 20 which either - (a) arises during the application of the Rent Control Law of 1983, or (b) concerns any incidental or supplementary matter, the Rent Control Court has exclusive jurisdiction to determine such dispute under section 4(1) of the Law. In all other cases the jurisdiction rests with the District Court.
- 25 No difficulty arises in cases which fall under category (a) above. The main theme of the Rent Control Law is:
- (i) the restriction of the power of the Court to make eviction orders to the cases exhaustively enumerated in section 11(1) of the Law,
  - 30 (ii) the regulation under section 8 of the Law of the rent payable in respect of premises to which the Law applies,
  - (iii) the granting of compensation to the tenant in certain cases under the provisions of sections 12, 13 and 15 of the Law and,
  - (iv) the granting of a new tenancy to the tenant under the
- 35 provisions of section 14 of the Law.
- If any dispute arises concerning any of the last-mentioned matters, it is a dispute concerning a matter raised during the application of the Law, clearly falling within the jurisdiction of the Rent Control Court under section 4(1).

The difficulty which sometimes arises concerns cases falling under category (b) above. It is not always clear whether a matter upon which a dispute has arisen is «incidental or supplementary» within the ambit of section 4(1). The words «συμπεριλαμβανομένου παντός παρεμπίπτοντος ή συμπληρωματικού θέματος» («including every incidental or supplementary matter») in the context of section 4(1) clearly refer to and should not be read independently of the main matters referred to hereinbefore upon which a dispute may arise during the application of the Law. 5 10

In support of his argument that the present dispute concerns matters which are «incidental or supplementary» within the meaning of section 4(1) of Law 23/83, learned counsel for the appellant referred the Court to the English decision in *Re Fahy's Will Trusts McKnight and another v. Fahy and others* [1962] 1 All E.R. 73, a case which concerned review of taxation of costs which were taxed in accordance with an order for taxation which included the expression «costs of and incidental to the negotiations» and the question which had arisen was whether the order covered costs incurred before the negotiations had begun. It was held that the expression aforesaid meant costs of and consequent on the negotiations and did not cover costs incurred before the negotiations began. 15 20

The question whether the dispute in any given case concerns a matter which is incidental or supplementary to the main theme of the law or not will depend on the nature of the claim in conjunction with the relief sought. If the claim is fashioned in a manner that would necessitate for its determination consideration and enforcement of the provisions of the Rent Control Law or examination of the terms of the statutory tenancy as such, jurisdiction rests solely with the Rent Control Court. In applying this test one should bear in mind section 27 of the Law whereby it is provided that a tenant who continues in possession of any dwelling house or shop under the provisions of the law is bound by all the terms and conditions of the original tenancy agreement to the extent that they are not inconsistent with the provisions of the Law. 25 30 35

In its ruling the trial Judge expressed the view that the present claim of the plaintiff is not covered by the provisions and the scope of section 4(1) of Law 36/75 because it is not based on any breach of the tenancy agreement, Exh. 1; the cause of action, the learned 40



Judge added, is for trespass and nuisance. Reference in the Judge's ruling to Law 36/75 instead of Law 23/83 is obviously the result of a mistake. Even if, however, the trial judge based its ruling upon a consideration of the provisions of section 4(1) of Law 36/75 instead of the corresponding provisions of section 4(1) of Law 23/83, the similarity in the wording and the identity in the object of the two sections, to which we have earlier referred, has led us to the conclusion that the Judge would inevitably reach the same result by interpreting section 4(1) of Law 23/83.

From a careful examination of the present claim of the plaintiff it is obvious that the essence of the action is trespass to land and nuisance associated with the use of the land trespassed upon which adjoins the demised controlled premises. Though, under the terms of the tenancy agreement, Exh. 1, which survived the conversion of the tenancy into a statutory one by virtue of section 27 of Law 23/83, which terms the tenant must continue to observe, the use of the demised premises in a manner causing nuisance to the neighbours, gives the landlady the right to terminate the tenancy and recover vacant possession of the premises, the landlady is not relying on any alleged breach of the terms of the statutory tenancy and is not praying for an order to evict the tenant on account of such breach or on any other account. The determination of the plaintiff's claim in the manner she chose to fashion it in the present action does not involve directly or indirectly the application of the Rent Control Law (Law 23/83) nor does it require consideration of any of the terms or conditions of the statutory tenancy as such. The mere fact that in his Defence the tenant alleges, inter alia, that the part of the plaintiff's yard where he is alleged to have committed the trespass and the nuisance was included in the original tenancy though not specifically mentioned in the agreement, Exh. 1, does not change the complexion of the action; nor does it make it a matter relevant to the application of Law 23/83. The claim can still be examined and determined solely by reference to and by application of the general principles of the law pertaining to the aforesaid civil wrongs of trespass and nuisance.

It follows from the above that the words «including every incidental or supplementary matter» in the context of section 4(1) of Law 23/83 do not cover the present claim of the respondent-

plaintiff, so as to bring it within the exclusive jurisdiction of the Rent Control Court established thereby.

In the result the appeal is dismissed with costs.

*Appeal dismissed with costs.*