

1963

June 25

THE ESTATE
OF THE
DECEASED
LEONIDAS
THEODORIDES
v.
GEORGHIOS
LYKOURGOU

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

THE ESTATE OF THE DECEASED
LEONIDAS THEODORIDES,

Appellant-Defendant,

GEORGHIOS LYKOURGOU

Respondent-Plaintiff.

(Civil Appeal No. 4425).

*Civil Procedure—Execution by sale of immovable property—
“ House accommodation ” —Exemption from the sale of house
accommodation absolutely necessary for the judgment debtor
and his family—First proviso to section 23 of the Civil Proce-
dure Law, Cap. 8—The requirements of that proviso may be
satisfied in instances where after the house is sold in execution
and the judgment satisfied, there would still be left a sum with
which the judgment debtor could buy another house sufficient
for his accommodation and that of his family.*

*Civil Procedure—Execution by sale of immovable property—House
accommodation—Administrators of the estate of a deceased per-
son—Whether such administrators may be “ judgment debtors ”
to whom the provisions for exemption of the aforesaid proviso
to section 23 of Cap. 8 (supra) apply—Question resolved in the
negative by the District Court in its judgment under appeal—
But left open by the High Court.*

*Administrators—Whether they are entitled to the protection of
the first proviso to section 23 of Cap. 8 (supra).*

Section 23 of the Civil Procedure Law, Cap. 6, reads as
follows :—

“ The immovable property of a judgment-debtor which
may be sold in execution shall include only the property
standing registered in his name in the books of the District
Lands Office :

Provided that where the property consists in whole or in
part of a house or houses there shall be left to or provided
for the debtor such house accommodation as shall in the
opinion of the Court be absolutely necessary for him and
his family.

The appellants, the administrators of the estate of the deceased L.T., agreed to sell the house of the deceased to the respondent at the price of £4,500. The administrators, however, broke the agreement by refusing to transfer the house to the respondent unless the latter would pay £5,000 instead of the £4,500 as originally agreed. The respondent then brought an action in the District Court of Nicosia against the administrators for breach of that contract claiming damages therefor. Eventually the District Court gave judgment by consent of the parties for the plaintiff (respondent) for the sum of £120 plus £40 costs. The administrators having failed to satisfy the said judgment debt, the plaintiff (respondent) applied in due course to the District Court for an order directing the sale of the aforesaid house in execution of the judgment. The application, which was based on sections 22, 23 and 24 of the Civil Procedure Law, Cap. 6, was opposed by the administrators under the first proviso to section 23 of Cap. 6 (*supra*) on the ground that the house in question was the only accommodation available for the family of the said deceased which consisted of his widow (who was one of the administrators) and his children. The trial Judges overruling that submission ordered the sale of the house, holding that the administrators of the estate are not judgment-debtors to whom the provisions of the first proviso to section 23 of Cap. 6 (*supra*) apply. The administrators appealed against that order, on the main ground that the administrators are judgment debtors within the meaning of the word in section 2 of Cap. 6 and that they are consequently entitled to the protection of the first proviso to section 23 as aforesaid.

In dismissing the appeal and upholding the order of sale given by the trial Judges but for different reasons, the High Court :—

Held, (1) the trial Court held that the administrators of the estate are not judgment-debtors to whom the provisions of the first proviso to section 23 apply. As the house in question belongs to the estate, the trial Court ruled that the family of the deceased were not entitled to have the house exempted from the sale because they are not “ judgment debtors ” to whom the property belongs.

(2) Assuming that the argument on behalf of the appellants is correct, without deciding that the administrators of the estate of the deceased are entitled to protection under section 23,

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on the facts of this case we are of the view that the trial Court were justified in ordering the sale of the house

(3) We are of the view that even if this house is sold and the judgment debt satisfied, there would still be left a sum of approximately £4 300 or more, with which the judgment debtors could buy another house so that sufficient house accommodation will have been provided for them

Appeal dismissed with costs

Appeal.

Appeal against the order of the District Court of Nicosia (Evangelides and Ioannides D.J.J.) dated the 26 2 63 (Action No. 5575/60) directing the sale of a house situated at Strovolos to raise a sum of money due by defendant's to plaintiff under a judgment of the District Court of Nicosia dated 4 1 62

M. Kyprianou for the appellant

Frixos Markides for the respondent

WILSON, P. . Mr Justice Josephides will deliver the judgment of the Court.

JOSEPHIDES, J . This is an appeal by the Defendants from the Order of the District Court of Nicosia directing the sale of a house situated at Strovolos, registration No M 415, plot 354

The judgment debtor in this case is " The estate of the deceased Leonidas Theodorides by the administrators (a) Maroulla L. Theodoridou and (b) Charalambos Tsitsekli, both of Morphou "

The cause of action was the breach of a contract to sell the aforesaid house to the plaintiff. The agreed sale price was £4,500 and it was contended in the statement of claim that the defendants broke the agreement by refusing to transfer the house for £4,500, claiming £5,000. The plaintiff claimed the transfer of the house and, in the alternative, the sum of £1,112 500 mils as damages for breach of contract.

The defendants, after putting in a defence denying the claim, eventually appeared before the Court on the 4th of January, 1962, and a consent judgment was given for the plaintiff against the defendants for the sum of £120 and £40 costs.

The facts, as appearing on the record, are that the first administrator Maroulla Theodoridou is the widow of the deceased and the mother of the minor children of the deceased, and that they all reside at Morphou where the children have been attending school for the past three or four years. The house at Strovolos, the sale of which has been ordered by the trial Court is leased and the rent is received by the administrators.

The application for sale is based on sections 22, 23 and 24 of the Civil Procedure Law, Cap. 6, and it is opposed by the administrators on the ground that the house in question is the only house accommodation available for the family of the deceased. At the hearing of the application, and before us, a procedural point was also taken which we think has no substance.

Counsel for the judgment creditor (respondent) submitted in the Court below that the house in question should be sold on the grounds that—(a) the house is not required as house accommodation in view of the fact that the family is residing at Morphou and the house at Strovolos is leased ; (b) the house is far beyond the requirements of the family of the deceased ; and (c) that the provisions of section 23 of Cap. 6 apply to physical persons and not to legal persons.

The trial Court held that the administrators of the estate are not judgment-debtors to whom the provisions of the first proviso to section 23 apply. As the house in question belongs to the estate, the trial Court ruled that the family of the deceased were not entitled to have the house exempted from the sale because they are not “ judgment debtors ” to whom the property belongs.

Learned counsel for the appellant to-day has argued that the judgment debtors in this case come within the definition of “ judgment debtor ” in section 2 of the Civil Procedure Law, and that they are consequently entitled to the protection under section 23 of the Law, even though they are the administrators of the estate of the deceased. Assuming this, without deciding that the administrators of the estate of the deceased are entitled to protection under section 23, on the facts of this case as already stated, we are of the view that the trial Court were justified in ordering the sale of the house.

The judgment debt in this case is £120 plus £40 costs. The family of the deceased live at Morphou. The house

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is at Strovolos and leased to other persons, and even following the wording of the first proviso to section 23, *i.e.* “that there shall be left or provided for the debtor such house accommodation as shall in the opinion of the Court be absolutely necessary for him and his family”, we are of the view that even if this house is sold and the judgment debt satisfied, there would still be left a sum of approximately £4,300 or more, with which the judgment debtors could buy another house so that sufficient house accommodation will have been provided for them.

In these circumstances, the appeal is dismissed with costs.

Appeal dismissed with costs.