

1971  
April 6

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, JJ.]

IBRAHIM  
AZIZ HASAN  
ASHIK  
AND OTHERS  
v.  
EMINE  
RUSTEM

IBRAHIM AZIZ HASAN ASHIK AND OTHERS,  
*Appellants-Applicants,*

v.

EMINE RUSTEM,

*Respondent.*

(Civil Appeal No. 4886).

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*Immovable Property—Held in undivided shares—Sale of their shares by some of the co-owners to an outsider—Right of “option” of the other co-owner—Section 25 (2) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224—Lodgment by such co-owner of the amount representing the agreed sale price with the District Lands Office within 30 days as from the date of advertisement of the sale in the press—Acceptance of such lodgment by the District Lands Officer well after expiry of the said statutory period—Due to the provisions of an interim order issued by the District Court of Kyrenia directing postponement of the running of that period—The District Lands Officer acted correctly in accepting the lodgment as aforesaid—Because, irrespective of whether or not the said interim order could in law effectively affect the running of the period in question, he was bound to act as he did—It not being open to him, an administrative organ, to act as a Court of Appeal in the matter of the interim order—Therefore, he has correctly acted as being bound to accept the lodgment of the amount even after the expiry of the statutory period, treating such period as having just commenced to run.*

The respondent, in her capacity as co-owner of certain properties, was allowed to lodge in the Kyrenia District Lands Office the amount of the price at which appellants No. 1 and No. 2, the other co-owners of the said properties, had agreed to sell their shares to appellant No. 3; the respondent lodged that amount in exercise of her right of “option” under section 25 (2) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, to have the said shares of appellant No. 1 and No. 2 registered in her name, instead of in the name of appellant No. 3. But the lodgment was made and accepted by the Kyrenia District Lands Officer well after the expiry of the period

1971  
April 6

—  
IBRAHIM  
AZIZ HASAN  
ASHIK  
AND OTHERS  
v.  
EMINE  
RUSTEM

laid down in this connection by section 25 (2), viz. thirty days as from the date of the relevant advertisement in the press of the sale in question. The said District Lands Officer had so accepted the lodgment after the expiry of the statutory period of thirty days (*supra*) due to an interim order made by the District Court of Kyrenia in respect of the properties concerned and directing the postponement of the running of the said period.

Against this decision of the Kyrenia District Lands Officer the appellants lodged an appeal in the District Court of Kyrenia under section 80 of Cap. 224 (*supra*); the District Court having dismissed their appeal, the appellants took the present appeal to the Supreme Court against such dismissal.

After reviewing the facts, the Supreme Court dismissing with costs this appeal :—

*Held*, (1). Irrespective of whether or not an interim order of the District Court, providing for the postponement of the running of the statutory period of thirty days under section 25 (2) of Cap. 224 (*supra*), could in law effectively affect the running of such period,—the District Court correctly held in the instant case that it was not open to an administrative organ (the Kyrenia District Lands Officer, acting for the Director of Lands and Surveys), to act in a judicial capacity, as a Court of Appeal in the matter of the interim order; and that, consequently, he (the said Officer) has correctly acted as being bound to accept, as he did, the lodgment of the amount in question, treating the relevant period as having just commenced to run:

(2) It follows, that this appeal against the judgment of the District Court of Kyrenia, on appeal, under section 80 of Cap. 224 (*supra*), from the decision of the District Lands Officer, Kyrenia, is dismissed with costs in favour of the respondent here and in the Court below.

*Appeal dismissed with costs.*

### **Appeal.**

Appeal by the applicants against the judgment of the District Court of Kyrenia (Demetriades, D.J.) dated the 26th March, 1970 (Appeal No. 1/67) dismissing their appeal, under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, against the decision of the

1971  
April 6  
—  
IBRAHIM  
AZIZ HASAN  
ASHIK  
AND OTHERS  
v.  
EMINE  
RUSTEM

District Lands Officer, Kyrenia, whereby he allowed respondent, in her capacity as co-owner of certain properties, to lodge the sale price and registration fees thereof, after the expiry of the period laid down by section 25 (2) of Cap. 224 (*supra*).

*A. Christofides*, for the appellants.

*A. Dana*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: In this case the appellants appeal against the judgment given by the District Court of Kyrenia, on appeal, under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law (Cap. 224), from a decision of the Kyrenia District Lands Officer exercising powers, under Cap. 224, of the Director of Lands and Surveys.

By such decision the respondent, in her capacity as a co-owner of certain properties, was allowed to lodge in the Kyrenia District Lands Office the amount of the price at which appellants Nos. 1 and 2, co-owners of the said properties, had agreed to sell their shares to appellant No. 3; the respondent lodged the amount in exercise of her right, under section 25 (2) of Cap. 224, to have the shares of appellants Nos. 1 and 2 registered in her name, instead of in the name of appellant No. 3; but the lodgment was made and accepted by the Kyrenia District Lands Officer well after the expiry of the period laid down in this connection by section 25 (2), *viz.* thirty days as from the date of the advertisement in the press of the sale.

The circumstances in which the lodgment was accepted after the expiry of the relevant period are, in short, that on the 17th April, 1967, in proceedings initiated by the respondent under the Fraudulent Transfers Avoidance Law (Cap. 62) in respect of the properties concerned, an interim order was made and was allowed to remain in force without objection on the part of the appellants, who were parties to the proceedings, which, *inter alia*, provided that the afore-mentioned period of thirty days should run as from the date when the proceedings under Cap. 62 would be concluded.

The interim order was, eventually, discharged, on the 12th December, 1967, by consent of the parties, after an

application to that effect by the appellants. On the same day, and after the discharge of the order, the respondent made the lodgment about the acceptance of which the appellants complain.

The learned trial Judge who decided the appeal from the decision of the District Lands Officer (a decision which could only have been reached on the basis of the view that the interim order had already had its effect of postponing the commencement of the running of the period specified in section 25 (2) of Cap. 224) held that it was not open to the Lands Officer to act contrary to the interim order, because, then he would have acted as a Court giving his own interpretation to section 25 (2) and the effect in relation thereto of the interim order.

Leaving open the issue as to whether or not the interim order could effectively, in law, affect the running of the period under section 25 (2)—as it is not necessary to resolve such issue for the purposes of the present appeal—we are of the view that it was correctly held by the District Court, within the narrow ambit of an appeal from the decision of the District Lands Officer, that it was not open to such administrative organ to act in a judicial capacity, as a Court of Appeal, in the matter of the interim order; and that the said organ correctly acted as being bound to accept the lodgment of the amount of the sale price, treating the relevant period as having just commenced to run, irrespective of whether or not this could have been validly brought about by the interim order.

As a result this appeal, against the judgment of the District Court, on appeal from the decision of the District Lands Officer, is dismissed, with costs in favour of respondent here and in the Court below.—

*Appeal dismissed with costs.*

1971  
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