[ZEKIA, J. and ZANNETIDES, J.]

ALKIS MENELAOU STAVROU of Ktima

Appellant (Defendant)

v.

PERICLES STYLIANOU AND ANOTHER of Kritou Terra

Respondents (Plaintiffs).

(Civil Appeal No. 4249)

1958
May 8,
July 4

ALKIS M. STAVROU
v.
PERICLES STYLIANOU AND ANOTHER

Contract—Contract of lease—For a term exceeding one year—Should be signed by the party charged therewith—Contract Law, Cap. 192, Section 77, before its amendment by the Contract (Amendment) Law, 1959—Signature by agent of the lessor—The Contract is void—Section 77—Two lessors—Contract signed by the agent of the one—Validity of the contract as between the other and the lessee not affected—"Party to be charged therewith"—Meaning—Section 77 (a) and (b) (ii)—Contract of sale of immovable property—Simultaneous contract of lease in respect thereof entered into between the vendor as lessee and the vendee purchaser as lessor—Whether the two contracts are severable—Whether Contract of lease condition precedent, or, concurrent, or subsequent—Effect of its invalidity on the contract of sale—Contract Law, Sections 51 and 53.

Contract of sale of immovable property—Signature by agent—Attestation clause in that regard although misleading, immaterial—Attestation clause not required—Contract need not be in writing—Should be in writing only for the purposes of the Sale of Land (Specific Performance) Law, Cap. 238.

By a contract in writing dated the 18th April 1957, the appellant agreed to sell and the respondents (who are husband and wife) agreed to buy, certain premises belonging to the former, registration whereof in the name of the latter to be effected on the 24th April 1957. On the same day by an agreement in writing the respondents agreed to let to the appellant the aforesaid premises for a term of two years as from the 18th April 1957. Both contracts were signed by the appellant and by the husband, the latter acting personally and on behalf of his wife as her duly authorised agent. The words used in that regard appear to suggest the presence of the wife whereas she was, admittedly, absent

at the time of the execution of the aforementioned instruments. Those words were as follows :

The contracting Parties :

Alkis M. Stavrou

Pericles Stylianou

Katerina Pericleous (note: the wife)

By order of the above illiterate I sign and witness:

Pericles Stylianou.

By Section 77 of the Contract Law Cap. 192 (*see post,* in the judgment) contracts relating to leases of immovable property for any term exceeding one year :

"shall not be valid and enforceable unless (i) expressed in writing and (ii) signed at the end thereof by the party charged therewith and (iii) ....."

It is to be noted that soon after this judgment Section 77 was repealed by the Contract (Amendment) Law, 1959 and a new Section substituted therefor. (1)

By a letter and a telegram dated the 23rd April and 24th April 1957, respectively, the appellant repudiated both contracts. On the 1st May 1957 the respondents instituted an action in the District Court of Paphos claiming specific performance and/or damages for breach of contract. It was contended by the appellant that the contracts were void, mainly on the following grounds : (a) the contract relating to the lease was void because, *inter alia,* it was not signed personally by one of the parties charged therewith contrary to Section 77 of the Contract Law, Cap. 192. (b) the two contracts being interdependent and the contract of lease being void, the contract of sale should be held void as well. (c) In any event, the contract of sale was void, because the wife did not sign it inasmuch as she, being illiterate, could only sign by affixing her mark against her name. On the other hand as the wife was absent at the time of the execution of the contracts it was alleged that the husband could only sign the contract on behalf of his wife as her agent and not in the way he did whereby the presence of the wife is suggested and the affixture of her mark on the instrument expected.

The District Court held that under Section 77 a contract of lease

(1) The new Section 77 (1) reads as follows:

Section 77 (1) Contracts relating to leases of immovable property for any term exceeding one year shall not be valid and enforceable unless—

(a) expressed in writing; and

(b) signed at the end thereof, in the presence of at least two witnesses themselves competent to contract who have subscribed their names as witnesses, by each party to be charged therewith or by a person who is himself competent to contract and who has been duly authorised to sign on behalf of such party.

must be signed personally by the party charged therewith, signature by agent being insufficient. That view was upheld by the Supreme Court (*post*). But the District Court, relying on the case of *Laythorpe* v. *Bryant,* (1836) 5 L.J.C.P. 217, held that the words "party to be charged therewith" in that Section mean "the person against whom the action is brought" for enforcing the contract, and that, inasmuch as in this case the lessee - defendant signed personally the instrument of letting, the contract of lease was valid. The Supreme Court distinguished *Laythorpe* v. *Bryant* (*supra*) on the ground that it was a case on Section 4 of the Statute of Frauds where the contracts concluded contrary to the provisions of that Section are not void but voidable (*see: Maddison* v. *Alderson,* (1883) 53 L.J. Q.B. 737) whereas under Section 77 contracts not complying with the provisions thereof are void and unenforceable. Consequently the Supreme Court held that the view taken by the District Court was wrong and that the signature of "the party charged therewith" under Section 77 means the signature of each party to the contract, because otherwise there might have been leases void and unenforceable against the lessor and at the same time valid and enforceable against the lessor and at the same time valid and enforceable against the lessee, which would have been an untenable proposition. The Supreme Court held, however, that the contract of lease, although void as between the one lessor (the wife) and the appellant - lessee, was perfectly valid and enforceable as regards the latter and the other lessor (the husband). The Parties, after the hearing of the formal evidence of the Land Registry Clerk and the evidence of the husband, invited the District Court, before proceeding any further, to decide whether the contracts in question were valid or void. The Court accepted this course and after hearing addresses gave its judgment by which both contracts were held to be valid and enforceable. The defendant appealed from this decision.

Held : (1) On the true construction of Section 77 of the Contract Law, Cap. 192—,

(a) Signature by agent acting on behalf of a party charged therewith is insufficient.

(b) The phrase "party charged therewith" in that Section does not mean only the person against whom the action is brought for enforcing the lease, but all the parties to the contract.

Laythorpe v. *Bryant* (1836) 5 L.J.C.P. 217 *distinguished.*

(2) Although the contract of lease is void as regards the wife (respondent No. 2) and the appellant, it is still valid as between the husband (respondent No. 1) and the appellant.

(3) With regard to the validity of the contract of sale :

(a) Although the words appearing on the document of the 18th April 1957 under the name of the wife are somewhat misleading, still it is an undisputed fact that the husband respondent No. 1 signed it both personally and on behalf of his wife (respondent No. 2) as her duly authorised agent. This clause following the name of the wife

need not be there at all. There has been no infringement of any law in that regard and the contract of sale, therefore, taken by itself is valid and binding.

(b) The two contracts *viz.* the contract of lease and the contract of sale, are severable. In fact, they were made in two separate documents. It is obvious from the evidence, documentary or otherwise, that the execution of the contract of lease was a concurrent if not a subsequent condition, and its performance or non-performance does not affect or avoid the contract of sale. The execution of the contract of lease could not be a condition precedent because, by the nature of the transaction, until and unless there was a contract of sale of the properties described in the contract, the purchasers could not execute a contract of lease relating to the same properties. Consequently, even if the contract of lease were to be held void for one reason or other, this consideration need not affect the validity of the contract of sale.

Appeal dismissed.

Cases referred to :

Hyde v. *Johnson* (1836) L.J. C.P. 291.

Blucher (Prince) In re (1931) 100 L.J. Ch. 292.

Laythorpe v. *Bryant* (1836) 5 L.J. C.P. 217.

Liverpool Borough Bank v. *Eccles* (1859) 28 L.J. Ex. 122.

Maddison v. *Alderson* (1883) 53 L.J. Q.B. 737.

Mohori Bibee v. *Dhurmodas Ghose*, 30 Cal. 539; L.R. 30 I.A. 114.

Chakalli v. *Kallourena* 3 C.L.R. 246.

Per curiam : Contracts of sale of immovable property are binding even when made orally ;

(*see Chakalli* v. *Kallourena* 3 C.L.R. 246.

They have to be reduced in writing only for the purpose of the Sale of Land (Specific Performance) Law, Cap. 238.

Appeal.

Appeal by the defendant against the judgment dated 1st February 1958 of the District Court of Paphos (Zenon, P.D.C., Attalides, D.J.) in action No. 531/57 whereby it was held that both the contract of sale and the contract of lease dated the 18th April 1957 respectively and upon which the action was based were valid and enforceable. The action, brought by the plaintiffs - respondents was for specific performance and/or damages for breach of contract.

Sir Panayiotis Cacoyiannis with *G.K. Ioannides* for the appellant.

John Clerides, Q.C. for the respondents.

Cur. Adv. Vult.

ZEKIA, J. after stating the facts, summary of which was given in the head-note, went on:

It was argued that the contract of sale was not signed by respondent 2, the wife of respondent 1, inasmuch as she, being illiterate, could only sign by affixing her mark against her name. The wife was absent at the time of the execution of both contracts and the husband could only sign both on behalf of the wife as her authorized agent. The attestation clause appearing immediately under the name of the wife reads: "By order of the above illiterate I sign and witness". Indeed the clause following the name of the wife, inserted by her husband at the time of the execution of the contract, suggests the presence of the wife and in that case, she being illiterate, the affixture of her mark against her name was expected. The facts accompanying the execution of these documents are not disputed. We know that respondent 1, the husband, signed the name of his illiterate wife as her authorized agent. The appellant, the vendor, was asked by respondent 1 (one of the purchasers) whether he would like his wife to come down from the village to sign the contract or whether he would be content if the husband signed the documents in question on behalf of the wife as her authorized agent. He consented to the second course. It is an undisputed fact therefore that both documents were signed by respondent 1 personally and on behalf of his wife in his capacity as her authorized agent. It is correct that the clause following the name of the wife is not the usual or the customary one inserted in cases where an agent signs on behalf of an absentee principal. But this is not like the attestation clause in a will executed under the Wills and Succession Law, 1895, where the form of the attestation clause was prescribed and adherence to it was imperative. The clause following the signature of the wife need not be there at all. The name of the principal might be put there by the authorized agent on the document and might be signed directly by the agent for the principal. There was no infringement of any provisions of the law touching contracts of sale of immovable properties. Such contracts are valid and binding even when they are made orally. (1) They have to be reduced into writing for the

(1) Chakalli v. Kallouiena, 3 C.L.R. 246.

purpose of the Sale of Land (Specific Performance) Law, Cap. 238. We find therefore that the contract of sale taken by itself is valid and binding.

We pass now to the contract of lease. The greater part of the arguments was directed to the validity or otherwise of the contract of lease and its effect on the contract of sale if the former were found to be void. Could a contract of lease of immovable property for a term of two years be made without the personal signature of the lessor, as the contract in question was signed by the vendor of the premises as lessee and only by one of the vendees of the said premises as lessors ? One of the purchasers, the husband, signed the contract personally and he signed the name of the other purchaser, the wife, in her absence in his capacity as her agent.

The relevant section of our Contract Law is section 77 which reads :

"Contracts relating to—

(a) leases of immovable property for any term exceeding one year; and

(b) obligations in consideration of marriage, shall not be valid and enforceable unless—

(i) expressed in writing; and

(ii) signed at the end thereof by the party to be charged therewith; and

(iii) made in the presence of at least two witnesses themselves competent to contract and subscribed by them with their names as witnesses.".

The answer entirely depends on the construction of the words "(ii) signed at the end thereof by the party to be charged therewith". In *Hyde* v. *Johnson* (1) a similar point was raised regarding acknowledgment made in writing under section 1 of 9 George 4 c. 14 (Statute of Limitations) requiring the signature of the party to be charged. It was held that the words "signed by the party to be charged" excluded the signature by an agent. Tindal, C.J., in placing this construction gave his reason as follows :

(1) (1836) 5 L.J. C.P. 291.

"The legislature has, in many statutes, given equal efficiency to written instruments when signed by the parties and when signed by their agents; but in all those cases express words have been employed for that purpose.".

Examples were then cited from other statutes such as Statutes of Frauds. In *Blucher (Prince) In Re* (1) the words "signed by him" occurring in the Bankruptcy Act, 1914, section 16, were construed literally even in a case where the debtor was too ill to sign himself. Slesser, L.J., said at p. 295:

"Counsel's argument amounts to this: That some injustice and inconvenience would arise in the circumstances of the case if someone other than the debtor were restricted from signing on his behalf. But it was laid down many years ago and was followed in *Warhurton v. Loveland* 'where the language of an Act is clear and explicit we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak of the intention of the Legislature'."

Section 6 (2) of the Limitation of Actions Law reads:

"Every acknowledgment as in sub-section (1) hereof provided shall be in writing and signed by the person making the acknowledgment or his authorised agent".

Again in section 17 (1) of the Bankruptcy Law the words "signed by him or on his behalf" occur. Likewise section 91 (1) of the Bills of Exchange Law specifically provided for enabling an instrument or writing required to be signed by any person under the Law to be signed by another under the authority of such person. See also section 25 (1) (a) (b) and section 76 (1) (c) of the Contract Law. Our legislature appears to be quite familiar with the limitation imposed by such words and whenever it intended to avoid literal construction added to the appropriate words. We agree, therefore, with the trial Court that a contract of lease, under section 77 of the Contract Law, ought to be signed personally by the party to be charged therewith.

This brings us to the second point, namely, whether for the validity of a contract of lease both the personal signature of the lessee and that of the lessor is indispensable or

(1) (1931) 100 L.J. Ch. 292, 295.

signature by the party to be charged therewith is confined to the signature of the party against whom an action was brought. The trial Court relied on *Laythorpe* v. *Bryant* (1) and *Liverpool Borough Bank* v. *Eccles* (2) and found that for the validity of a contract of lease the signature of the person against whom an action is brought for enforcing the contract was sufficient. In *Laythorpe* v. *Bryant* (*supra*) it was section 4 of the Statute of Frauds which was the subject-matter of construction and the contracts entered into, contrary to the provisions of the said section, were not void but only not actionable. See *Maddison* v. *Alderson* (3). Whereas a contract of lease for a term exceeding one year unless signed by the party to be charged therewith is not valid and enforceable. An agreement not enforceable by law is said to be void under section 2 (g) of our Contract Law. It is not clear to us how the trial Court got over this difficulty. Can we hold that a contract of lease signed by a lessee only is enforceable against him and therefore valid as far as he is concerned and unenforceable and therefore void for the lessor? Can an agreement be valid and void at the same time? We are in great doubt as to the accuracy of such a proposition. A transaction may be valid for one party and voidable by the other; this is common. A contract might be valid for both parties and void for a third party; that is also possible. A contract might be voidable at the option of both parties. Furthermore a contract might be valid for one party and valid for one of the joint promissors of the other party and void in respect of one or more of the joint promissors of that party but not in respect of all of the other side.

It is difficult in our mind to reconcile with the Law the conception that a contract is valid for one party but void for the other when such contract contains reciprocal promises to be performed.

For reasons we propose to give the determination of this appeal does not rest on the solution of this point. The contract of lease in question cannot be considered as void because one of the lessors and the lessee duly signed it. The fact that it was not signed by one of the lessors does

(1) (1836) L.J. C.P. 217.
(2) (1859) 28 L.J. Ex. 122.
(3) (1883) 53 L.J. Q.B. 737.

not render the contract void. In a proper case if the other lessor refuses to sign the contract, the lessee might claim the right to avoid the contract. Under the heading "Joint Promissors" (Indian Contract and Specific Relief Acts, 6th Edition at p. 295) it is stated that "the minority of one of joint promissors does not affect the liability of the other."

As far as the minor is concerned the contract is void (1). The same was held by this Court in a promise of marriage case before the amendment of Section 11 of the law (2). One of the promissors in the contract of lease is the wife. The contract is void as far as she is concerned owing to lack of signature on her part but this does not invalidate the contract, exactly in the same way as when a minor happens to be one of the promissors in a joint promise, the minority of the one does not affect the liability of the other.

There are a good many questionable points in the way the contract of lease has been treated in this case. Some of them are: Is the document with a pending contract of lease a lease or a contract? The rent is prepaid and the lessee is put into possession; so strictly speaking there is a lease not a contract; the former an executed, the latter an executory agreement. Would then the provisions of section 77 apply at all? Woodfall, On Landlord and Tenant, 25th Edition pp. 211—212, says under the heading Lease or Contract of Lease:

> "The question in such cases is whether the parties intended to create a tenancy before the execution of any further instrument.".

If so it is considered to be a lease. Another pertinent question is: do the purchasers in a contract of sale of immovable property possess the title to grant a lease as the ownership in such property can only pass by transfer in the Land Registry? (*see* section 39 (1) of the Immovable Property (Tenure, Registration and Valuation Law).

Since by the terms of the said contract the tenancy was to take effect at the date of its execution and two years

(1) Judicial Committee's ruling in *Mohori Bibee* v. *Dhurmodas Ghose*, 30 Cal. 539; L.R. 30 I.A. 114.

(2) Editor's Note: Section 11 of the Contract Law, Cap. 192, was amended by Section 2 of the Contract (Amendment) Law, 1956 (No. 7 of 1956).

rent was paid would not that let in the equitable doctrine of part performance to operate and create at least a yearly tenancy between the parties if the contract was considered to be otherwise void? These points were not raised or argued before us and we do not intend to deal with them any further. There remains to consider the contracts of lease and sale in relation to each other. If both contracts are either valid or void, the necessity to consider this aspect of the case does not arise but we have already intimated our opinion that both contracts are valid with a qualification that the contract of lease is not binding on the wife, the respondent. But even if we assume that the contract of lease was void and of no effect this would not affect the validity of the contract of sale. It is obvious from the evidence, documentary and otherwise, that the execution of the contract of lease was a concurrent condition and its performance or non-performance does not avoid the contract of sale. The execution of a contract of lease could not be a condition precedent because by the nature of the transactions until and unless there was a contract of sale of the properties described in the contract the purchasers could not execute a contract of lease relating to the same property. So the execution of the latter contract could only be a concurrent condition if not a condition subsequent to be performed together with the contract of sale.

These two contracts are perfectly severable and in fact were made in two separate documents. So if the contract of lease is void for one reason or other this need not affect the validity of the contract of sale. We can do no better than read from Pollock, On Contracts, 13th Edition, p. 340, a summary statement of the law based on authorities.

> "And where a transaction partly valid and partly not is deliberately separated by the parties into two agreements, one expressing the valid and the other the invalid part; there a party who is called upon to perform his part of that agreement which is on the face of it valid cannot be heard to say that the transaction as a whole is unlawful and void.
>
> It was formerly supposed that where a deed is void in part by statute it is void altogether: but this is not so.

'Where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good'.".

If both contracts are one transaction, as the appellant contends them to be, then the position of the parties is governed by section 51 of the Contract Law which is "when a contract consists of reciprocal promises to be simultaneously performed, no promissor need perform his promise unless the promissee is ready and willing to perform his reciprocal promise".

If the contract of lease in the manner it was executed was not acceptable to the appellant he could only insist on the execution of another one and since the other party was willing and ready to meet such demand the appellant could not be heard to claim the right to revoke the contract of sale by simply preventing the execution of a valid contract of lease. Section 53 reads:

"When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract".

The appellant in this case from the very start flatly refused to perform his obligation under both contracts and returned the money paid. His endeavour to lend a colour of legal right to his breach of the contracts, for reasons given, is bound to fail.

We are of the opinion, therefore, that both contracts are valid with the qualification regarding the contract of lease as above indicated.

Appeal dismissed with costs.

Appeal dismissed.