[MIDDLETON, ACTING C.J. AND TYSER, ACTING J.]

MIDDLETON, ACTING C.J. & TYSER, ACTING J. 1897 Dec. 16

GEORGHI HADJI IOANNOU AND OTHERS, *Plaintiffs*,

*v.*

CONSTANDI HADJI GEORGHIOU AND ANOTHER, *Defendants*.

ARAZI-MIRIE, ACTION TO RECOVER—TITLE-DEED—REGULATIONS REGARDING TAPU SENEDS, 7 CHABAN, 1276, ARTICLE 1.

*Article 1 of the Regulations regarding Tapu Seneds enacts that henceforth no one shall be allowed under any circumstances to hold Arazi-mirié without title-deed. It shall be obligatory for persons having no title-deeds to take them out . .*

*It is not a condition precedent to the right of a plaintiff to judgment, in an action to recover possession of Arazi-mirié, that he should be the registered owner of the land in dispute, nor is it a condition precedent that he should have applied for registration.*

*Where a plaintiff, who seeks to recover possession of Arazi-mirié, is not registered as possessor of the land in dispute, judgment in his favour should provide for his obtaining registration, as required by the Regulations regarding Tapu Seneds (7 Chaban, 1276), before he takes possession.*

*It will be sufficient for this purpose if judgment is given subject to the production of a title-deed by the Plaintiff.*

*In an action to recover Arazi-mirié the Plaintiff was neither registered nor had he applied for registration before or after action brought.*

*For this reason the District Court dismissed the action.*

HELD (*reversing the judgment of the District Court*): *that this was no ground for dismissing the Plaintiff's claim, and that the action must be sent down to be re-heard.*

APPEAL from the District Court of Nicosia.

*Kyriakides* for the Appellants.

*Theodotou* for the Respondents.

The facts and arguments sufficiently appear from the judgment.

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*Judgment*: In this case the Plaintiff claims to restrain the Defendants from interfering with certain land and to recover two shillings damages in respect of vetches alleged to have been uprooted by the Defendants, and he further claims that any registration for the said land in the Defendants' name be set aside.

On the hearing of the appeal, the Counsel for the Plaintiffs (the Appellants), stated that the Plaintiff's claim was limited to a piece of land lying to the E. of a place called Asproyi, so that it is only necessary

to consider the judgment of the District Court in so far as it applies to this land.

The facts of the case, in so far as they are admitted, are as follows:

1. The property in dispute was part of the property of one Hadji Georghi.

2. Hadji Georghi died about 30 years ago (*i.e.*, about 1867), leaving certain sons surviving him, amongst whom were Constanti, the Defendant, and Hadji Ioanni, the father of the Plaintiffs. The second Defendant is the son of Constanti.

4. About five years ago (about 1892), Hadji Ioanni, the father of the Plaintiffs, died.

5. Prior to the action, the Plaintiffs sowed vetches in the land.

The Plaintiffs alleged that the land of Hadji Georghi (their grandfather), had been divided, and that they had inherited the land in question from their father, Hadji Ioanni, at his death. The Plaintiffs further alleged that the Defendants had encroached on the land and had uprooted the vetches sown by them.

These allegations were denied by the Defendants, and the following are the material issues settled for trial:

1. Was the land in dispute included in the land of Hadji Georghi which after his death was divided among his children.

If so, did it fall to the share of Hadji Ioanni.

2. Have either of the Defendants encroached.

3. Have the Defendants uprooted the vetches sown by the Plaintiffs, and, if so, what is the damage.

At the trial no evidence was called on the first issue, but there was evidence that the land of Hadji Georghi was registered in the name of his sons, that Hadji Ioanni had had possession of the land in dispute for ten or fifteen years, and that the Plaintiffs had possessed it since his death.

There was also evidence that the second Defendant had uprooted the vetches and caused damage to the extent of two shillings.

It was admitted on behalf of the Plaintiffs that they had no kochan and that they had not applied for one either before or after action brought, and on this ground, at the conclusion of the Plaintiff's case, the Court, without calling upon the Defendants, dismissed the action.

The Court did not consider whether the Plaintiffs had acquired a prescriptive title or whether their claim had been properly put forward. We must, therefore, for the purposes of this appeal, assume that the Plaintiffs had properly claimed, and had proved such possession as would

entitle them to be registered, and must determine whether under such circumstances they are disentitled to judgment because they are not registered and have not applied for registration in their own names.

This question must be considered with reference to the claim made by the Plaintiff.

The claim for an injunction and to set aside registration in the name of the Defendant, though not very accurately framed, seems to us to be equivalent to a claim that the Defendant should be deprived of the legal possession of the land in dispute and forbidden for the future to exercise the rights of a proprietor over it on the ground that the Plaintiff is entitled to it. In other words, it is a claim of the Plaintiff to the possession and enjoyment of the land.

If registration in the name of the Plaintiffs were necessary, no action to set aside improper registration could ever be successful, because, in such an action, it is assumed that the Defendant is already registered, and as two registrations for the same property ought not to exist, the Plaintiff could not ordinarily be registered.

For this reason we are of opinion that, in such an action as the present, registration in the name of the Plaintiff is not required.

It remains to be considered whether an application for registration is a condition precedent to their right to recover judgment.

Such application can only be necessary if it is required by some rule of procedure or law.

There is no such rule amongst the present rules of procedure, or in any rules applicable to suits about land.

We know of no law requiring it.

Therefore, such an application is not necessary.

The only object of such a rule would be to ensure the observation of the law requiring registration of property, and it would not effect that object, because there would be nothing to ensure that the Plaintiff would complete the registration.

The Law does provide that " nobody shall be allowed under any circumstances to hold Arazi-mirié without title-deed " (Art. 1 Tapou Law, 7 Chaban, 1276).

Where the Plaintiff claims, as in this case, that the Defendant's registration be set aside, and that the Defendant be restrained from interfering with the land, he is in effect claiming a decision that he (the Plaintiff) is entitled to hold the land.

The Plaintiff is admittedly without title-deed, and a decision that he should hold and enjoy the land would be contrary to the terms and intent

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of the Law above quoted, unless provision is made that he shall obtain registration in his own name.

This end may be attained by providing in the judgment that the judgment shall take effect only upon the Plaintiff obtaining registration in his own name, *i.e.*, subject to the production of a kochan. Thus his claim is granted on his complying with the provisions of the Law, which it is the duty of the Court to enforce.

The appeal must be allowed, and the case sent down to be decided on its merits. The costs of the appeal to be costs in the cause.

*Appeal allowed.*