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

MIDDLETON, ACTING C.J. & COLLINSON, ACTING J. 1897 Dec. 28

CONSTANTI HADJI ANTONI, *Plaintiff,*

v.

KYRIAKO HADJI ANTONI AND OTHERS, *Defendants.*

IMMOVEABLE PROPERTY, SALE OF, UNACCOMPANIED BY REGISTRATION—NO INTENTION TO REGISTER—DEATH OF VENDOR—POSSESSION TAKEN BY HEIRS OF VENDOR BY VIRTUE OF INHERITANCE—CLAIM BY VENDEE OF THE RETURN OF PURCHASE MONEYS—ILLEGAL TRANSACTION—EQUITABLE GROUNDS.

Hadji Antoni in 1888 *purported to sell, by a so-called private document of sale, certain land, trees and water to the Plaintiff for* 1,550 *c.p. Hadji Antoni died, and the Defendants, as his heirs, took possession of the properties so purporting to have been sold. The Plaintiff claimed the return of the purchase moneys from the Defendants.*

HELD: *that inasmuch as there was no intention to register in* 1888, *when the private document of sale was made, and that the same was an illegal transaction to which the Defendants were not parties, no equitable grounds existed on which the Defendants could be made liable to repay the purchase moneys to the Plaintiff.*

APPEAL and cross-appeal from the District Court of Kyrenia by leave.

Pascal Constantinides for the Defendants.

Loizides for the Plaintiff.

The facts and arguments sufficiently appear from the judgment.

1898 Jan. 8

Judgment: This was an action brought to recover the sum of 1,550 c.p., purchase money of certain land, trees and water purporting to be sold by Hadji Antoni, the father of the parties to the action, to the Plaintiff on the 13th January, 1888, according to a document signed by the vendor and produced in evidence.

The property was never registered in the name of the Plaintiff, and after their father's death, in 1891, with the exception of one-seventh which was sold for the debt of one of the heirs, Nicola, it was divided amongst the other six heirs including the Plaintiff.

The findings of the District Court after hearing the evidence on both sides were:

1. That the deceased Hadji Antoni sold the property in dispute to the Plaintiff, and the price 1,550 c.p. was paid.
2. That after the death of the vendor, the Plaintiff remained in possession of the property purchased, with the exception of one-seventh share sold under an execution against Nicola, until the time of division.

MIDDLETON, ACTING C.J. & COLLINSON, ACTING J.

CONSTANTI HJ. ANTONI v. KYRIAKO HJ. ANTONI AND OTHERS

3. That when the division was made, the Plaintiff reserved to himself any right of compensation that the law gave him, and did not make any agreement to abandon that right.

4. That when the contract was made in 1888, there was no intention to register the property sold in the name of the purchaser.

5. That the Arazi was sold for 300 c.p., the trees for 700 c.p., and the water for 550 c.p.

Upon these findings the District Court entered judgment for the Plaintiff for four-sevenths of 700 c.p. and 550 c.p., the values respectively of the trees and water, holding that the Plaintiff could not recover as regards the Arazi.

Both Plaintiff and Defendants obtained leave to appeal from this judgment, the Plaintiff's appeal being as to the exclusion of the value of the Arazi, and Defendants' appeal being against the judgment as it stands.

Before us it was stated by the Advocate for the Defendants that he did not dispute the findings of the Court as to the facts, but contended that the Plaintiff had no more right to recover purchase money paid for Mulk on a private contract of sale from the heirs of the deceased vendor than he had that paid for Arazi-mirié; and he quoted the cases of Christinou Stavrino Yanni *v.* The Queen's Advocate, Vol. I., C.L.R., p. 46; Theodulo Zenobio *v.* Meirem Osman, Vol. II., C.L.R., p. 168, and Michail Gavrilidi *v.* Sava Giorghi and another, Vol. III., C.L.R., p. 140, in support of his contention.

He also urged that, according to Article 1642 of the Mejellé, Plaintiff should sue all the heirs together or each separately for his share.

For the Plaintiff it was argued that he had as much right to recover that portion of the purchase money which represented the Arazi-mirié property as that which represented the Mulk, and that if the Supreme Court had held in cases of private sales that the purchaser, on disturbance in possession by the vendor, was entitled to recover the purchase money on equitable grounds, then, that the heirs of the vendor who did the same thing were equally liable on the same grounds to make good to the purchaser the loss he would sustain by being deprived of the property sold. In support of these contentions, parts of the judgments in the case of Theodulo Zenobio *v.* Meirem Osman were relied on and the case of Topal Ahmet *v.* Hj. Hassan Agha, Vol. I., C.L.R., p. 31, and parts of the judgment in the case of Georghi Hadji Petri, &c., *v.* Kypriano Hadji Petri and others, &c., Vol. II., C.L.R., p. 187, were quoted.

It was also submitted that the document in this case was different to the one in the case of Theodulo Zenobio *v.* Meirem Osman, inasmuch as it contemplated the legalization of the sale by future registration.

The Court, however, by their 4th finding have negatived this assumption, and we see no reason to differ either from their conclusion on that point or the one arrived at in the first finding.

This being so, we have to consider whether a purchaser of immoveable property under a document purporting to convey such immoveable property is entitled to recover from the heirs of his deceased vendor, who have dispossessed him of the property sold, the purchase money which has been actually paid under such a document.

We purposely use the word *immoveable* property, for, in our opinion, no professed sale under a document which purports to convey either Arazi-mirié or Mulk property can be deemed to be valid, unless the same is completed by registration. It is as much necessary for the purposes of conveying Mulk that the sale should be completed by registration and evidenced by a title-deed as it is for conveying Arazi-mirié, and we fail to see that any distinction can be drawn between these two kinds of property in this respect.

This, moreover, is a principle which has been upheld and adhered to in all the decisions of the Supreme Court.

We have had the document put in evidence in this case translated, and we cannot say we agree with the contention of Plaintiff's Advocate that it contemplates registration. It is true it says in case the vendor does not go voluntarily to legalize the property and they have recourse to the Court, the vendor is bound to pay all the Court expenses, but seeing that it commences with the words " I sell and admit the property is the vendee's," and nothing was done to procure registration from 1888 to the death of the vendor, we think it was intended to be an actual conveyance, and that the proviso with regard to legalization and costs merely meant that the parties agreed that the more likely event of a refusal to register should be provided for by enabling the vendee to get his costs if he had recourse to the Court to recover the purchase money. There was no agreement to register, but only an agreement to pay costs on failure to register which the parties clearly contemplated. We think also that the terms of the contract as to costs clearly imply a recognition by the parties that the transaction they were entering into was illegal.

We think it is clear from the judgment in the case of Christinou Stavrino Yanni *v.* The Queen's Advocate that the Plaintiff could not recover the money he claims from the Defendants, on the ground that it

was a debt due by their father for which, as his heirs, they were responsible to the extent of the estate inherited by them from him.

Is it possible for him, then, to recover it, on the equitable grounds which have been held to make a vendor under a so-called private sale liable for the return of the purchase money, if he disturbs his vendee in the occupation of property so purporting to be sold?

The only authority we can find in favour of such a proposition is the wording of a sentence in the judgment in the case of Topal Ahmet v. Hadji Hussein Agha where it is said that, " so long as he (the purchaser " under an informal sale) remains in occupation without any interference " on the part of Rahmè (the vendor) or ' her heirs ' he has got all that " he *could* under the contract and has no further rights against anyone." The words " her heirs " would seem to imply that the Court contemplated that, in case the heirs of the vendor did disturb the vendee in his possession, then, they would have to refund to the vendee the amount of the purchase money.

It did not, however, decide in fact that the heirs would be liable to do so, and if we look at the judgment in the later case of Theodulo Zenobio v. Meirem Osman, we find that the heirs of the vendor under a private sale were not held liable to refund the purchase money, where the property purporting to be sold was afterwards sold in execution by a creditor of the vendor.

Again in the judgment in the case of Michail Gavrilidi v. Sava Georghi and another the Court said, " We, therefore, hold in conformity " with the former decisions of the Court, that the only rights which will " be recognized are the right of the purchaser to have possession of the " property as against the vendor *himself* until the latter repays the " purchase money."

This would seem to imply that, as against the heirs of the vendor who had taken possession in conformity with the laws of inheritance, the purchaser would have no rights.

Again in the case of Georghi Hadji Petri, &c., v. Kypriano Hadji Petri and another, &c., the vendor in the private document of sale inserted a covenant purporting to bind his heirs to return the purchase money, " should they ever acquire a claim in the property," and to pay a penalty in case of cheating. In this case the heirs of the deceased vendor took possession, after his death, of the property purporting to be sold under the private document of sale. The Court, however, did not hold in this case that the heirs were not liable to refund the purchase money as there was no money to refund, it not being proved that any money was actually paid. With regard, however, to the penalty sought for, the

Court refused to enforce it, on the ground that the heirs should not be made to pay a penalty for declining to recognize a transaction directly contrary to the law.

In the case now before us, the heirs have only taken possession of property which the law recognizes as that of their father and to which they are entitled under the laws of inheritance. Are they, then, to be compelled to pay what practically amounts to a price for taking that which the law gives them as their right? They were no parties to the illegal transaction between their father and the Plaintiff, and we cannot see that on equitable grounds they should be made to pay for property which the law recognizes as theirs by inheritance.

To hold the contrary would have a tendency to encourage these illegal transactions to which the Courts have never given any greater effect than they were obliged.

Under these circumstances, we think that the judgment of the District Court should be set aside, and the Defendants' appeal be allowed. The appeal of the Plaintiff will be dismissed, and the costs of the whole appeal and action will be borne by the Plaintiff.

Appeal of the Defendants allowed with costs.

Cross-appeal and action dismissed with costs.