

HUTCHIN-
SON, C.J.
&
PARKER,
ACTING J.
1904
June 28

[HUTCHINSON, C.J. AND PARKER, ACTING J.]

ABDULLAH HUSSEIN, *Plaintiff,*
v.
SELIM DILAVER, *Defendant.*
EX-PARTE RATIB EFFENDI IRIKZADE.

JUDGMENT DEBT—EXECUTION AGAINST ARAZI-MIRIE OF DECEASED DEBTOR—
LAW OF 15 SHEVAL 1288, SEC. 1—LAW 9 OF 1896, SEC. 8.

D., who was indebted to R., died, leaving S. his heir. A. obtained a judgment for debt against S. and in execution of his judgment got an order for sale of Arazi-mirié which was registered in D.'s name. R. then sued the heirs of D., and got judgment for the amount of D.'s debt to him, and applied to stay the order for sale.

HELD: that R. was entitled to priority.

APPEAL by Ratib Effendi against an order of the District Court of Papho.

The Plaintiff Abdullah Hussein obtained a judgment against the Defendant Selim Dilaver before the Village Judge of Papho for a small sum on the 31st January, 1903. In May, 1903, he took steps to enforce his judgment against certain Arazi-mirié which fell to the Defendant's share on the death of his father Dilaver; and on the 1st July, 1903, he obtained an order for sale of the Defendant's interest in that property in satisfaction of the judgment.

Dilaver owed Ratib a sum of money which was secured by mortgage of some other property. In April, 1903, Ratib procured the sale of the mortgaged property; but the proceeds were not enough to satisfy his mortgage, and on the 5th December, 1903, he applied to the District Court for and obtained a temporary order to stay the sale under the order of the 1st July. On the 16th December he obtained judgment in an action which he had brought against Selim and the other heirs of Dilaver for the payment of £36 4s. 2cp. (the balance of his mortgage debt) from the estate of Dilaver.

Upon the hearing of his application to confirm the temporary order for stay of the sale the District Court dismissed the application and discharged the temporary order.

Ratib appealed.

G. Chacalli for the Appellant.

Pascal Constantinides for the Plaintiff.

Chacalli: The Defendant inherited the land subject to the payment of his father's debt; and the Plaintiff is not entitled to have it sold, except subject to the payment of Dilaver's debt. Law of 15 Sheval 1288, Sec. 1; Law 9 of 1896, Sec. 8.

Pascal : My client obtained judgment in January, 1903, and in May, 1903, he procured the registration of the property in the Defendant's name, and in August he obtained the order for sale. Ratib took no steps until we had incurred all the expense, and then, he applied to stop the sale.

Judgment : The Court stated the facts and proceeded :

The reason given by the District Court for its decision is that " as between two persons whose equities are otherwise equal the more diligent person is to be preferred." That was a principle which the English Judges in the " Equity " Courts applied as between persons who had only " equitable " rights and no " legal " rights. It would not in England have had any application to the case of a litigant who had a " legal " right. And here Ratib had a legal right to have Dilaver's property applied in payment of Dilaver's debt to Ratib.

With regard to the costs we do not see that Ratib has been guilty of anything which disentitles him to them. The right form of order for us to make will, we think, be that the sale proceed and that the proceeds be applied in paying in the following order of priority, (1) the costs of sale, (2) the Plaintiff's costs of obtaining the registration in the Defendant's name and of procuring the order for sale, (3) Ratib's debt and his costs of this application and appeal, (4) the Plaintiff's debt and costs.

HUTCHIN-
SON, C.J.
&
PARKER,
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—
ABDULLAE
HUSSEIN
v.
SELIM
DILAVER
—

[HUTCHINSON, C.J. AND TYSER, J.]

HAJI HAFUZ ZIAI EFFENDI (QADI OF NICOSIA), *Plaintiff*,
v.
MEHMED NIDAYI EFFENDI HAJI OSMAN, *Defendant*.

HUTCHIN-
SON, C.J.
&
TYSER, J.
1905
—
April 14
—

POWER OF ATTORNEY—CONSTRUCTION—AUTHORITY TO BUY—AUTHORITY TO BORROW—SPECIAL POWER—GENERAL POWER—UNIVERSAL POWER.

The Defendant gave a document to H. Y. appointing him his irrevocable vekyl to recover claims, institute proceedings, buy property and sell and exchange, and generally to deal with and dispose of any of his affairs in Cyprus, and giving him full liberty to act in all matters according to his discretion in the Defendant's name.

The Qadi of Nicosia lent money to H. Y. and took a bond from him for the amount lent, such bond being made out in the name of the Defendant.

Held: that the document under which H. Y. was appointed did not authorise him to borrow money or give the bond in name of the Defendant and that the Defendant was not liable.

This was an appeal from the District Court of Nicosia.

The action was originally brought in the name of " Qadi Hussein Effendi, Director of the Ottoman Orphans' Trust Fund, on behalf of the infant children of Ezder Halil, Hava Daoud and others."