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

HUTCHINSON, C.J. & TYSER, J. 1903 December 3

IANNI PIERI AND ANOTHER, *Plaintiffs*,

v.

MARIOU PHILIPPOU AND OTHERS, *Defendants*.

TITLE-DEED FOR IMMOVEABLES, EFFECT OF—PRESCRIPTIVE TITLE—LIMITATION OF ACTIONS—LAND CODE, ART. 20—MEJELLE, ART. 1660—LAW IV OF 1886.

A title by length of possession cannot be recognised without registration.

Notwithstanding the lapse of the times mentioned in Art. 20 of the Land Code and Art. 1660 of the Mejelle a registered owner may sue for and recover possession of immoveable property.

If the Defendant claims to hold by length of possession he must bring a cross action to set aside the registration in the Plaintiff's name and for a declaration that he is entitled to be registered as owner of the land in dispute. Ibrahim Mehmed v. Haji Panayoti, 1 C.L.R., 12, explained.

This was an appeal of the Plaintiffs from a judgment of the District Court of Nicosia.

The facts so far as they are material to this report were as follows:

The claim of the Plaintiffs was that a certain house and yard and garden were jointly owned in undivided shares by the Plaintiffs and the Defendants under certain qochans, and the Plaintiffs claimed that the Defendants should be restrained from interfering with the Plaintiffs' shares and that partition of the properties should be made.

The Defendants denied that the Plaintiffs had any right of ownership in the properties and stated that for many years they (the Defendants) had been in possession without dispute.

The only issue settled was as follows:

Plaintiffs to prove their ownership in the property in dispute.

At the trial the Plaintiffs produced a mulk qochan for the house and an Arazi Mirié qochan for the garden shewing that they and the Defendants were registered as joint owners of both properties.

The Defendants gave evidence that they had been in possession for very many years.

The District Court gave judgment and found that the Defendants had proved a prescriptive right in both the properties for which the Plaintiffs produced qochans and ordered that the qochans produced by the Plaintiffs be cancelled and that new qochans be issued in the names of certain of the Defendants, and that the Land Registry Office should act accordingly; and the Court dismissed the Plaintiffs' claim.

The formal order as drawn up was in the following terms:

The Court doth order and adjudge that the claim of the Plaintiffs be dismissed with costs.

HUTCHINSON, C.J. & TYSER, J.

IANNI PIERI v. MARIOU PHILIPPOU

Theodotou for the Appellants argued:

That the Court was bound to give effect to the qochan until it was set aside. That the Defendants ought to have brought a cross action to set aside the qochans of the Plaintiffs if they relied on a title by length of possession.

Epainetos for the Respondents:

Length of possession gives stronger title than registration. The Plaintiffs' action cannot be heard. Land Code, Sec. 20; Mejellé, Art. 1660. Ibrahim Mehmed *v.* Haji Panayoti, 1 C.L.R., 12. Cross action not necessary.

December 14

Judgment: The only point for us to decide is whether a Defendant who proves a title by possession is entitled to judgment in an action to recover Arazi Mirié or mulk immoveables when the Plaintiff is the registered owner.

Now one principle seems perfectly clear, viz.: that the Court cannot give judgment for something which is not claimed.

In this action there was no claim to set aside the registration in the name of the Plaintiffs or for registration in the name of the Defendants.

Therefore so much of the judgment as ordered the qochans to be cancelled and new qochans to be issued was bad because it was a judgment which was not asked for. Moreover the order directed to the Land Registry Office was bad because the Land Registry Office was not a party to the action.

This seems to have been recognised when the formal order was drawn up as it merely directs that the Plaintiffs' action be dismissed.

But if this judgment stands the ownership of the Defendants is recognised and they are by the judgment allowed to hold the land without registration. This is contrary to Art. 1 of the Regulations about Tapu seneds so far as regards the garden which was Arazi-Mirié, and contrary to Art. 1 of the Law of 28 Rejeb, 1291, as regards the house and yard which are mulk.

Therefore the judgment is bad.

As to the case of Ibrahim *v.* Haji Panayoti, 1 C.L.R., 12, the only point argued in that case was whether the true meaning of Sec. 20 of the Land Code is, that a person who has possessed land with a Tapu title for ten years without dispute thereby acquires a valid title by prescription; or, that a person who has possessed without dispute for ten years land for which some other person has a Tapu title thereby acquires a valid title by prescription.

The effect of Art. 1 of the Regulations about Tapu seneds was never brought to the attention of the Court.

That case is no authority as to the effect of these Regulations. As to the point really decided in it, it has been subsequently dealt with by the legislature in the Laws IV of 1886 and V of 1887 (1).

The case is no authority against our decision on the Regulations about Tapu seneds and the Law 28 Rejeb, 1291.

The appeal must be allowed, with costs both here and in the District Court; but as it is right that the Defendants should be enabled to put forward their claim in a proper form, there will be a stay of execution for one month to enable the Defendants to bring a cross action, and if within that time the Defendants bring their cross action no execution will issue without the leave of the Court.

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

HUTCHINSON, C.J. & TYSER, J. 1904 January 1

HAJI ARAKLIDI HAJI SYMEON AND OTHERS AS COMMITTEE (Ἐπίτροποι) OF THE CHURCH OF AGIO DOMETI, *Plaintiffs,*

v.

PAPA CHRISTODOULO H. GEORGI, *Defendant.*

JURISDICTION—DISTRICT COURT—ECCLESIASTICAL MATTERS—BERAT OF ARCHBISHOP OF CYPRUS, ARTS. 9 AND 45—CRIMES AND OFFENCES CONTRARY TO RELIGION—RELIGIOUS MATTERS—CYPRUS COURTS OF JUSTICE ORDER, 1882, SECS. 21 AND 29.

The Plaintiffs, the Committee of the Church of Agio Dometi, claimed an injunction to prevent the Defendant (who was priest of the Church and who, as they alleged, had been suspended by the Holy Synod), from trespassing upon the Church by opening it with a new key without leave and officiating therein without right.

HELD: *that the District Court had jurisdiction to try the case.*

This was an appeal by the Plaintiffs from the judgment of the District Court of Nicosia by which that Court decided that it had no jurisdiction to hear the action.

The claim in the writ was in the following terms:

"The said Plaintiffs claim by the said action that you shall not "trespass upon the Church of Agio Dometi, by opening it without the "leave of the Committee and with a new key and performing services "in it without right."

At the settlement of issue the Advocate for the Plaintiffs stated that the Defendant had been suspended by the Synod of the Orthodox Church in Cyprus and also by the Church Committee of Agio Dometi and for that reason he asked that the claim be granted.

(1) By Sec. 3 of Law IV of 1886, it is enacted that an action for the recovery of immoveable property, of which some person in whose name the same has not been registered has had undisputed adverse possession for the period of prescription, shall be maintainable, where the person instituting it has during some part of the time aforesaid been lawfully entitled to be and has been actually registered as the owner thereof.