

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

MICHAELAKI L. TRIANTAPHYLLOIDES,

Plaintiff,

v.

STYLLI SOLOMO AND OTHERS,

Defendants.

HUTCHIN-
SON, C.J.
&
TYSER, J.
1904

Nov. 26

THE CIVIL PROCEDURE AMENDMENT LAW, 1885 (X. OF 1885) SECS. 48, 53.

*The only house of a judgment debtor had been mortgaged to a third person and the judgment creditor applied for its sale under Sec. 53 of Law X. of 1885.**HELD: that Sec. 53 must be read with Sec. 48, and that as no sufficient house accommodation was left to the debtor the order for sale could not be granted.*

APPEAL from the District Court of Nicosia.

The Plaintiff having obtained judgment for £5, interest and costs against the Defendants, applied that one Constandino M. Constantinides the mortgagee of a house which was the property of Yanni Sava one of the Defendants, should be ordered to sell the house, and that any balance of the purchase money after payment of the mortgage debt should be paid to the Plaintiff in execution of the judgment.

Various points were raised in the Court below and the Court dismissed the application on grounds which are immaterial to this report.

The house was the only house of the judgment debtor.

Artemis for the Applicant amongst other arguments contended that the application was under Sec. 53 of Law X. of 1885, that Sec. 53 made no exception similar to that contained in Sec. 48 and that the judgment creditor could claim the sale of mortgaged property whether there was another house or not.

Stavriniades relied on Sec. 48 of Law X. of 1885.

The Court gave judgment as follows:—

Judgment: In this case the judgment creditor applied that a house, which was the mulk immoveable property of the judgment debtor and which had been previously mortgaged to another person by the judgment debtor, should be sold in satisfaction of his judgment.

It was admitted that the house was the only house of the debtor, and he opposed the application upon this amongst other grounds, relying on the provisions of Sec. 48 of Law X., 1885.

The judgment creditor contended that, as his application was under Sec. 53 of the Law, Sec. 48 did not apply, and that under Sec. 53 the Court was bound to order the sale.

In our opinion the Law must be read as a whole, and the intention of the Legislature must be gathered from all the provisions contained in it. Sec. 53 cannot be read by itself. For example it is clear that no writ of sale of immoveable property under that section could be granted, unless either the debtor consented or it appeared that he had no moveable property (Sec. 22).

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Now the mortgaged property is the immoveable property of the debtor; and Sec. 48 provides that, where immoveable property to be sold consists in whole or in part of a house, there shall be left to or provided for the debtor sufficient house accommodation. This proviso applies to all immoveable property, and contains no exception of immoveable property which has been mortgaged, and we do not think it at all likely that the Legislature meant to introduce such an exception by Sec. 53. Sec. 53 provides a means of procedure for realising property which is mortgaged, but does not confer upon the creditor a right to take property which he could not take under Sec. 48.

As the house is the only house of the debtor and no house accommodation is left or provided for the debtor the application must be refused.

It is unnecessary to consider the other points raised in the Court below.

Appeal dismissed.

HUTCHIN-
SON, C.J.
&
TYSER, J.
1905
April 8

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

ELENI ANTONI STRATOURA,

Plaintiff,

v.

YEORGHI YAKOUMI,

Defendant.

MARRIAGE, LEGALITY OF—ORTHODOX GREEK—CHRISTIANS LAW, PROOF OF—
QUESTION OF FACT.

In an action for maintenance, the Plaintiff claiming to be the wife of the Defendant, the Defendant pleaded that by the laws of the Orthodox Greek Church the marriage was illegal. Both Plaintiff and Defendant were members of the Orthodox Greek Church.

HELD: that the Court could not take judicial cognizance of the laws of the Orthodox Greek Church relating to the legality of marriages and that they must be proved to the Court as facts.

APPEAL from the District Court of Famagusta.

The Plaintiff claimed to be the wife of the Defendant and sued him for maintenance.

The Defendant pleaded that the marriage was not legal as it had not been contracted with the leave of the Church Authorities.