[VASSILIADES, MUNIR AND JOSEPHIDES, JJ.]

HJI ERINI NICOLA,

Appellant-Plaintiff,

v.

CHARALAMBOS CHRISTOFI AND ANOTHER,

Respondents-Defendants.

(*Civil Appeal No.* 4500)

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*Immovable property—Unregistered prescriptive title—Claim against registered seller and subsequent purchaser for value of registered title—*Bona fide *purchaser for value without notice—Ownership by prescriptive title—Finding that purchaser had no notice set aside—Immovable Property (Tenure, Registration and Valuation) Law, Cap.* 224 *sections* 9 *and* 10.

Practice—Appeal—Amendment of Notice of Appeal to allow appeal against part of judgment not appealed against—Exercise of the powers of the Supreme Court under section 25 (3) *of the Courts of Justice Law,* 1960, *and Order* 35, *rule* 8, *of the Civil Procedure Rules.*

Adjournments—Should be avoided except in Unusual circumstances—Piecemeal hearing of cases deprecated—Observations in Tsiartas v. Yiapana 1962 *C.L.R.* 198 *cited with approval—Constitutional right of citizen to speedy trial—Duty of Courts—Constitution, Article* 30.2

Appellant-plaintiff filed an action in the District Court of Nicosia for a declaration that a piece of land situate in her village, valued at £70 belongs to her by inheritance from her mother and prescriptive possession for the full period of over 30 years, entitling her to registration for the whole interest in the property.

Appellant's case was that the second defendant (the seller) by false and inaccurate pretences to the competent authority succeeded in unlawfully obtaining a registration in her name for the plot of land in question, which she proceeded forthwith to sell and transfer to the first defendant (the buyer) for £70 which the latter paid, accepting transfer of registration knowing that the property belonged to plaintiff.

Respondents put in a joint defence wherein respondent No. 1 alleged that he was a *bona fide* purchaser for value without any knowledge of the facts alleged in the statement of claim

and respondent No. 2 denied appellant's allegation of inheritance and possession and alleged that she came into possession of the property by inheritance.

The main issues of fact before the trial Court were two : namely : 1. Plaintiff's possession for the period required to give her a prescriptive title; and 2. knowledge or notice of appellant-plaintiff's claim to the property on the part of the buyer, at the material time.

On the above two main issues the trial Judge found for the appellant-plaintiff on the first issue ; and for the buyer on the 2nd issue ; and gave judgment for the latter dismissing appellant's-plaintiff's action against him ; and judgment for the plaintiff against the seller (defendant No. 2) for £70. At the stage of delivery of their reserved judgment the Supreme Court exercising their powers under section 25(3) of the Courts of Justice Law, No. 14/60 and rule 8 of Order 35 of the Civil Procedure Rules granted leave to the appellant for the amendment of the Notice of Appeal to allow an appeal against part of the judgment not appealed against.

Held, (I) the issue upon which this appeal turns, is whether the appellant has been able to show to the satisfaction of this Court that the reasoning behind the trial Court's finding that the second defendant is a *bona fide* purchaser for value without notice, is unsatisfactory, or, that such finding " is not warranted by the evidence considered as a whole ". (*Patsalides* v. *Afsharian* (reported in this vol. at p. 134 *ante*)).

(*II*) (1) The learned trial Judge, guided by the judgment in *Arnaout* v. *Zinouri* (19, C.L.R. p. 249 at p. 257) to which he referred, rightly took the view that the burden of proof lies on the buyer to show that he is a *bona fide* purchaser for value without notice ; and that this is a question of fact in each case. He found that " in all probability (the buyer) had seen plaintiff's husband cultivating a field in that locality, which in fact consisted of the disputed field and another adjoining field, owned by plaintiff's husband himself ". (Plots 3 and 8.) But he considered that the period was " too short for defendant No. 1 (the buyer) to assume that plaintiff's husband was cultivating the disputed field in exercise of an unregistered prescriptive title ". With all respect to the learned trial Judge, we take a very different view on this point. We are of the opinion that the evidence of the buyer considered in the light of the other evidence in the case, points strongly in the direction that the buyer knew all the time, that plot 3 was in the possession of the plaintiff and her husband, under a claim of right.

(2) We are clearly of the opinion that there is a misdirection, in the statement of the trial Court that the buyer had neither actual nor constructive notice of plaintiff's prescriptive title, and that his title of the disputed field cannot be disturbed, both on the factual and on the legal aspect of the matter.

The misdirection on the legal aspect, is that the notice required to put the buyer on the same footing as his seller regarding defect in the latter's title, is notice of reasonable claim of right on the part of another person ; and not a certainty that such other person has a prescriptive title. By merely shutting his eyes to any defects in his seller's title, a buyer cannot cure such defects ; and at the same time destroy another person's legal rights, such as they may be, *vis-a-vis* the seller. If the buyer chooses to step into his seller's title without making reasonable enquiries regarding possible defects, he must be content with what his seller had; and no more. He must be prepared to meet other claims, from the same position as that of his predecessor in title.

(3) The right of the plaintiff to be registered for the tenure of plot 3 as owner by virtue of a prescriptive title, a well recognized right under the law of Cyprus, far from being adversely affected by the provisions of sections 9 and 10 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, (as the trial Judge seems to have thought) it was duly preserved, and expressly recognized as capable of registration under the new law, as it was under the law in force prior to 1946. And as the trial Judge held it to be *vis-a-vis* the seller.

(4) The appellant has satisfied this Court, upon the record, that the finding of the trial Court that the first respondent is a *bona fide* purchaser for value without notice, is not warranted by the evidence considered as a whole ; and must, therefore, be set aside. The judgment of the District Court, resting on such finding must equally be set aside. And, subject to the filing by the appellant of a drawn up order granting her leave to amend her notice of appeal so as to include the part of the judgment affecting the seller (the second respondent herein) followed with the required amendment, we hold that the appellant-plaintiff is entitled to the declaration sought in paragraph 6 (1) of the statement of claim ; to the injunction sought in paragraph 6 (2) against both defendants ; and to the cancellation of the registrations made in the name of either of the respondents in respect of the property described in the writ. The claim of the plaintiff in paragraph 6 (4) of the statement of claim to stand dismissed.

(5) As to costs we take the view that, in the circumstances, the plaintiff is entitled to her costs in the action against both defendants ; and to her costs in the appeal against the first res-

pondent. But the appellant must bear the costs incidental to the amendment of her notice of appeal.

Observations by the Supreme Court regarding the undesirability of adjournments and piecemeal hearings of cases :

In a judgment delivered by the High Court some time prior to the hearing of this case by the trial Judge, observations were made by the High Court deprecating the piecemeal hearing of a case and the delays in the delivery of reserved judgments by trial Courts. Furthermore, the view was expressed that adjournments should, as far as possible, be avoided, except in unusual circumstances, and that once a trial was begun it should proceed continuously day in and day out, where possible until its conclusion (*Tsiartas and another* v. *Yiapana*, 1962 C.L.R. 198).

These observations of the High Court are based on the provisions of Article 30, paragraph 2, of the Constitution regarding the constitutional right of a citizen to a fair trial within a reasonable time. It cannot be too highly stressed that trial Courts should comply with these constitutional provisions with meticulous care.

Appeal allowed with costs in the action against both respondents ; and with costs in the appeal against first respondent. Costs of amendment of notice of appeal to be borne by appellant.

Cases referred to :

Patsalides v. *Afsharian* (reported in this vol. at p. 134 *ante*) ;

Arnaout v. *Zinouri* 19 C.L.R. 249 at p. 257 ;

Newtons of Wembley v. *Williams* (1964) 1 W.L.R. 1028 ;

Blyth v. *Blyth and Pugh* (1965) 3 W.L.R. 365 at p. 371 ;

Estate of Osman Ahmed Pasha v. *Mehmed Kadir Osman Pasha* 19 C.L.R. 226 at p. 227-232 ;

Tsiartas and another v. *Yiapana* 1962 C.L.R. 198.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Georghiou, D.J.) dated the 26.11.63 (Action No. 4937/61) dismissing plaintiff's claim for a declaration that a piece of land in her village, belongs to her by inheritance from her mother and prescriptive possession for the full period of over 30 years, entitling her to registration for the whole interest in the property.

Al. Tziros, for the appellant.

A. Hji Constantinou, for respondent No. 1.

L. Clerides, for respondent No. 2.

Cur. adv. vult.

The judgment of the Court was delivered by :

VASSILIADES, J.: This is an appeal from a judgment of the District Court of Nicosia dismissing appellant's claim for a declaration that a piece of land in her village, valued at £70, belongs to her by inheritance from her mother and prescriptive possession for the full period of over 30 years entitling her to registration for the whole interest in the property.

The claim was made by an action against the registered owner of the property (the first defendant in the action) who bought it from the holder of the registered title (the second defendant). In addition to the claim for the land (and the incidental claims for injunction and registration) there was a further claim against the second defendant (the seller) for the sale price of £70, if the plaintiff eventually failed in her claim for the property.

The case for the plaintiff—put in a nutshell—as pleaded in the statement of claim, is that the second defendant (hereinafter referred to as the seller) " by false and inaccurate pretences to the competent authority " (obviously the Land Registry Office) succeeded in " unlawfully obtaining " a registration in her name for the plot of land in question, which she proceeded forthwith to sell and transfer to the first defendant (hereinafter referred to as the buyer) for £70 which the latter paid, accepting transfer of registration, " knowing " that the property belonged to plaintiff (paragraphs 2 and 3 of the statement of claim).

The defendants (buyer and seller) made a joint defence wherein the buyer (defendant No. 1) denied the claim on the ground that he was a *bona fide* purchaser for value, " without any knowledge of any of the facts alleged " in the statement of claim (paragraph 1 of the defence) ; while the seller (defendant No. 2) contested plaintiff's claim by denying the allegations of inheritance and possession made in plaintiff's pleading (paragraph 2) and by alleging that she (the seller) came into the property by inheritance from "Eleni Mosaikou and arrangement with all the other heirs " by virtue of which she "obtained a title-deed " which she sold and transferred to the buyer (paragraph 2 (*c*) and (*d*)). At the trial the evidence disclosed that Eleni Mosaikou is the mother of the seller ; and that the person who is alleged in the defence (paragraph 2 (*a*)) to have been the original owner of the property, Erini Nicola, is her (the seller's) grandmother.

The main issues of fact, clearly arising from the pleadings are :

1. Plaintiff's possession for the period required to give her a prescriptive title ; and
2. " Knowledge " or notice of plaintiff's claim to the property on the part of the buyer, at the material time.

Six witnesses were called in support of the claim ; and five witnesses were called for the defence.

The evidence presents very little difficulty ; especially after the findings of the learned trial Judge who apparently went carefully into the matter, and whose judgment, with the exception of some confusion as to the original ownership of the property, gives a clear picture of the relevant facts.

On the two main issues as above, the trial Judge found for the plaintiff on the first ; and for the buyer on the second. He, therefore, gave judgment for the latter (the first defendant) dismissing plaintiff's action against him, with part of his costs ; and judgment for the plaintiff against the seller (the second defendant) for £70 with adjustment of the costs in that connection.

From that part of the judgment which dismissed her claim against the buyer (the first defendant) and from the part of the order for costs which deprived her of her costs against the seller (the second defendant) the plaintiff appealed ; the grounds of her appeal, stated in an elaborately prepared notice (3 pages) may be summarised in the first few lines of the notice, namely that the finding of the trial Judge regarding the buyer's knowledge of plaintiff's claim to the property, " is not justified by the evidence ", as learned counsel has put it.

Before, however, dealing further with the matter, one may observe that the joining of these two, apparently inconsistent claims, in the same action, has led to a confusion. Obviously, the plaintiff cannot claim the property (and incidental remedies to protect her possession) against the registered buyer (the first defendant) and, at the same time, " in addition ", the sale price, against the seller (the second defendant). Making the second claim conditional on plaintiff's failure in the first claim, does not seem to have prevented the confusion caused by their joinder. They are two different claims, inconsistent with one another, made against two different defendants, on fundamentally different complaints.

Regardless of the merits of the second claim, such as they may be, the confusion created by joining the two in the same writ, becomes more apparent in the appeal. By appealing against the part of the judgment dismissing her action against the buyer (the first defendant) and leaving her judgment for the £70 against the seller (the second defendant) undisturbed, the plaintiff condemns her own appeal by her own hand. Obviously she cannot succeed in her appeal for the property, and at the same time hold, now a final judgment, against the second defendant for the sale price. It must, therefore, be assumed that the appeal can either proceed as an appeal against the whole of the judgment, or, it cannot proceed at all. And subject to such procedural amendments as may be necessary (with consequential directions for the costs) we are inclined to the view that, in the circumstances of this case, the interests of justice require that the provisions of section 25 (3) of the Courts of Justice Law, 1960, and Order 35, rule 8 of the Civil Procedure Rules, be brought into play, to enable the Court to deal with the present appeal as an appeal from the whole of the judgment ; and to dispose of it accordingly. As this point was not taken during the hearing, and was not argued before us, we propose proceeding with the case as above, unless any one of the parties wishes to be heard further in this connection.

(None wished to be heard)

The Court went on—

To appreciate and assess correctly the finding of the trial Court on the issue of the buyer's notice of plaintiff's claim to the property at the time of the sale, one must bear in mind the facts leading to that issue. They are shortly these :—

Plaintiff's mother, Eleni Yeronicola, through whom the plaintiff claims to have come to the property in dispute, in 1918 (P.W. 2 p. 11D) was the daughter of plaintiff's grandfather, Yeronicolas, who was apparently the owner of the disputed plot 3, and the adjacent plot 5,on the Land Registry plan, exhibit 1. (D.W. 5, Christodoulos Yeronicolas, p. 21, EF). Besides his son, witness Christodoulos, the original owner, Yeronicolas, had two daughters, plaintiff's mother, Eleni, and the seller's (defendant No. 2) grandmother, Erini Yeronicola (D.W. 2, p. 18, C ; and the judgment at p. 23, B C D). He apparently gave to Eleni plot 3 and to Erini plot 5 (P.W. 5, p. 14, C). Now this must have been very many years ago, as Christodoulos (D.W. 5) is now over 80 ; Eleni gave plot 3 to her daughter the plaintiff, in 1918 ; and Erini died about ten years later, in 1928 (P.W. 2, p. 12A).

Eleni Yeronicola had a daughter Erini (now Hji Erini, the plaintiff) and a son, PapaSavvas (P.W. 2, p. 11, G). Her sister, Erini Yeronicola (the seller's grandmother) had a daughter Eleni (the seller's mother). Hence the probability of confusion in the names, intentional or unintentional, in the course of time, cannot be excluded in connection with the registration of plot 3 in the seller's name. We have two sisters Eleni and Erini Yeronicola ; and we have their respective daughters Erini and Eleni first cousins (the plaintiff, and the seller's mother). And we have these adjacent plots 3 and 5 in the family. Plot 3 in the possession of Erini (the plaintiff, through her husband) since 1918 ; and plot 5 in the possession of PapaSavva (plaintiff's brother) for a while through his aunt Erini (P.W. 2, p. 11, G) or, through his cousin Eleni (P.W. 2, p. 11, G and P.W. 2, p. 12F).

The plot, however, we are now concerned with, is plot 3 ; and the evidence for the possession and enjoyment of this plot is clear and positive. It was given to the plaintiff as dowry by her mother in 1918, forty three years before action ; and was in her exclusive possession and enjoyment ever since, in a manner which gave her a good legal title to the property and the right to be registered as owner thereof ; " to be deemed to be the owner of such property, and to have the same registered in her name ", under the provisions of the Immovable Property (Tenure, Registration and Valuation) Law, 1946 (Cap. 224 ; section 10).

In fact, the plaintiff formally applied for such registration in June, 1960, when she filed application 2804/60 in the District Lands Office (P.W. 1, p. 10, E and G) intending now in her turn, to give and transfer the plot in question to her daughter as dowry. The third generation of girls in the family to get it as part of their marriage settlement.

About eighteen months later, on November, 22, 1961, the plaintiff was notified by the Lands Office that plot 3 could not be registered in her name because the certificate of the village Authority was wrong (P.W. 1, p. 10, H). In fact the property was in the meantime registered in the name of plaintiff's niece (the second defendant) referred to as the seller in this judgment, about a year earlier (25.11.60) under a certificate from presumably the same village Authority, to the effect that plot 3 was in the possession of the seller's mother for the last 33 years (P.W. 1, p. 10, D). This registration was effected under application 4684/60 (P.W. 1,

p. 10, G) without any notice to the plaintiff (P.W. 3, p. 13, B) whose application for registration was still pending when the Lands Office had the property registered in the seller's name.

We are not concerned in this appeal with the circumstances in which registration for this property was refused by the Lands Office to the plaintiff, and was granted to her niece, as the finding of the trial Court that " the plaintiff had acquired a prescriptive title by very long undisputed possession of the disputed field, and that when she had applied on 27.6.60 to the D.L.O. of Nicosia to be registered as owner by uninterrupted and undisputed possession for 33 years, she was entitled to be registered as such ", (Judgment at p. 26, DE) was not challenged here ; and was, in our opinion, fully justified upon the evidence. But the striking fact remains that the seller who was registered, presumably by virtue of a prescriptive title, had left the village with her parents many years earlier, when she was still a child (P.W. 5, p. 15, E) and she frankly admitted in the witness-box that she did not know the property. " I never saw this field " she said (D.W. 2, p. 18, E) ; although she had it registered in her name, and had the title in her hands, for about a year before this sale.

The issue upon which this appeal turns, is whether the appellant has been able to show to the satisfaction of this Court, that the reasoning behind the trial Court's finding that the second defendant is a *bona fide* purchaser for value without notice, is unsatisfactory, or, that such finding " is not warranted by the evidence considered as a whole " (*Patsalides* v. *Afsharian*, (reported in this vol. at p. 134 *ante*)).

The main evidence on this issue is that of the buyer himself (first defendant ; D.W. 1). He admits that the property in question (Plot 3) was being advertised for sale on behalf of the registered person (now his seller) for about a month ; and that he had made two offers, on two separate occasions, by writing his name and price on each such occasion, upon what he described as " auction bill " (D.W. 1, p. 16/17, A). He also admits that he owned a vegetable-garden " very near, about half a donum " from the property in dispute, for at least six years before the sale and transfer in question, which (vegetable garden) he visited very often (D.W. 1, p. 17, B). He stated that the property in dispute was, as far as he could see, uncultivated ; but he admits that when he purchased it, in 1961, it had been cultivated with a tractor by one Panayiotis Kamburis (D.W. 1, p. 17, C).

In answer to questions from counsel for the plaintiff, the buyer admitted that he did not make any enquiries as to who was the owner or who was cultivating the disputed field. (D.W. 1, p. 18, A). He was satisfied, he said, as to the owner from the title-deed shown to him by the " auctioneer ".

Counsel for the appellant argued that the buyer made no enquiries about the property, because he knew all about it. He was PapaSavva's son-in-law for about ten years before the sale (D.W. 1, p. 17, E ; and p. 18, B) ; and the brother-in-law of Nicolas Papa Savva who had the use and enjoyment of the adjacent plot 5 (judgment p. 26, F). He was, therefore, well in the family circle, being the husband of plaintiff's niece, and the first cousin of plaintiff's daughter who was getting plot 3 as part of her dowry ; also being the husband of the seller's second cousin. And all this family connection, in the community of a Cyprus village.

The learned trial Judge, guided by the judgment in *Arnaout* v. *Zinouri* (19, C.L.R. p. 249, at p. 257) to which he referred, rightly took the view that the burden of proof lies on the buyer to show that he is a *bona fide* purchaser for value, without notice ; and that this is a question of fact in each case. He found that " in all probability (the buyer) had seen plaintiff's husband cultivating a field in that locality, which in fact consisted of the disputed field and another adjoining field, owned by plaintiff's husband himself " (plots 3 and 8 ; P.W. 1, p. 10, B and P.W. 3, p. 12, F, and the judgment at p. 28, B). But he considered that the period was " too short for defendant No. 1 (the buyer) to assume that plaintiff's husband was cultivating the disputed field in exercise of an unregistered prescriptive title ". With all respect to the learned trial Judge, we take a very different view on this point. We are of the opinion that the evidence of the buyer considered in the light of the other evidence in the case, points strongly in the direction that the buyer knew all the time, that plot 3 was in the possession of the plaintiff and her husband, under a claim of right.

What appears to have greatly influenced the mind of the trial Judge in this connection, is what he described as " very important " (judgment, p. 28, E) : namely the period of 40 days during which the property was being advertised for sale ; and also the two applications, by the plaintiff and by the seller respectively, to the District Lands Office for registration. " The Court finds (he says) that if defendant No. 1 (the buyer) had made reasonable enquiries he would have discovered that defendant No. 2 (the seller) was regis-

tered as owner by a recent application to the D.L.O., supported by a village certificate. Whereas the application of the plaintiff had been rejected. This is very important " evidence in favour of defendant No. 1, in the mind of this Court ", the trial Judge concludes. (Judgment p. 29, CD). And " weighing all the evidence ", he reaches the result that the buyer had neither actual nor " constructive notice of plaintiff's prescriptive title, and that his title of the disputed field cannot be disturbed ". (Judgment p. 29, F).

We are clearly of the opinion that there is a misdirection in this statement, both on the factual and on the legal aspect of the matter. The fact is that the buyer, on his own admission, did not make any enquiry, either at the village or the L.R.O., as to who was in possession of the property. It is, we think, clear that he knew all about it. And as to what he could have discovered, had he made an enquiry, we think that the information that the plaintiff had also made an application for registration, supported, as it must have been, by a village certificate, would give him a most clear indication that the plaintiff had a definite claim of right to the ownership of the property. The misdirection on the legal aspect, is that the notice required to put the buyer on the same footing as his seller regarding defect in the latter's title, is notice of a reasonable claim of right on the part of another person ; and not a certainty that such other person has a prescriptive title. By merely shutting his eyes to any defects in his seller's title, a buyer cannot cure such defects ; and at the same time destroy another person's legal rights, such as they may be, *vis-a-vis* the seller. If the buyer chooses to step into his seller's title without making reasonable enquiries regarding possible defects, he must be content with what his seller had ; and no more. He must be prepared to meet other claims, from the same position as that of his predecessor in title.

In the sale of goods, the matter is governed by the provisions of the appropriate statute, as interpreted and applied by the Courts. The judgment of Davies L.J. in *Newtons of Wembley* v. *Williams* (1964) 1, W.L.R. p. 1028, is a very useful guide in that connection. In the sale of property, a similar rule applies. Here as from September, 1946, we have the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as interpreted and applied by the Courts during the last nearly twenty years now.

As to the effect of this statute on plaintiff's existing rights on plot 3, on September 1, 1946, when Cap. 224 came into force, the position is clearly settled. Citing

from well established precedent, the learned authors of Maxwell on the Interpretation of Statutes (11th Edition 1962, p. 205) state it as follows :

> " Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

The principle was restated again in the judgment of Willmer L.J. in *Blyth* v. *Blyth and Pugh* (1965) 3, W.L.R. p. 365 at p. 371, in the Court of Appeal in England, where after reference to the above statement in Maxwell, one reads :—

> " Authority is so abundant as scarcely still to be needed for the proposition that statutes are construed as operating only in cases or on facts which come into existence after the statutes were passed, unless a retrospective effect be clearly intended. A retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards a matter of procedure, unless that effect cannot be avoided without doing violence to the language of an enactment."

The right of the plaintiff to be registered for the tenure of plot 3 as owner by virtue of a prescriptive title, a well recognised right under the law of Cyprus, far from being adversely affected by the provisions of sections 9 and 10 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, (as the trial Judge seems to have thought) it was duly preserved, and expressly recognised as capable of registration under the new law, as it was under the law in force prior to 1946. And as the trial Judge held it to be *vis-a-vis* the seller.

As to the doctrine of the *bona fide* purchaser for value without notice, upon which the judge seems to have decided plaintiff's rights *vis-a-vis* the buyer, making reference to *Arnaout* v. *Zinouri* (*supra*), apart from what is stated in that case regarding the position under the English law on the point, in the judgment of Hallinan C.J., at p. 251, the position under the Ottoman Land Law in force in

Cyprus, is summed up in the judgment of Zekia J. at p. 256 where one reads :—

> " It seems to me that the general rule that a vendor cannot convey a better title to the purchaser than that of his own has been vigorously applied in land transfers under the Ottoman Laws, I do not think that under the English Law a different rule is obtaining. I may cite a passage from Cheshire's Modern Real Property 6th Edition, p. 692 : The effect of the conveyance upon interest in land held by third parties varies according as these interests are legal or equitable. The purchaser of a legal estate is subject to all legal estates and interests which were enforceable against the land while it was in the hands of the vendor, it is immaterial whether the purchaser has notice of such interest or not."

This should be sufficient to clear the way out of the confusion developed in the course of years, in the law of Cyprus, by the endeavour to avoid harshness arising in certain cases from the fact that well recognised legal rights in immovable property, were not transferable by ordinary legal contract. If the rights were not registered, or if the property did not happen to be registered, as it was very frequently the case, especially in the earlier days, property rights could not be legally transferred, without prior registration of the property. Absentees, incapacitated persons, or obstinate heirs, often blocked the way. But the flow of human affairs in the ordinary life of the people of Cyprus, went down its course, sometimes over, and sometimes round, these legal impediments. Unregistered property changed hands from father to son, from seller to buyer, or from grantor to grantee, althouth the legal title to the property remained caught on the legal pegs. And when the good faith upon which such transactions were founded, became too weak or too old to support them, the matter ended in litigation. The Courts called these " private sales " to distinguish them from " official " or registered transfers ; and treating them as " illegal ", they refused to enforce them. But this often resulted in harshness and unfair consequences, which the Courts endeavoured to mitigate by resorting to methods which they called equitable principles.

The matter is obiter in this case, and need not be pursued further, except for a reference to the judgment of Hallinan C.J. in the *Estate of Osman Ahmed Pasha* v. *Mehmed Kadir Osman Pasha*, (19, C.L.R., p. 226 at p. 227–232) where

he described the position as he saw it soon after he was posted in Cyprus. "The law concerning 'private sales' (he says at p. 229) made prior to 1946, when the Immovable Property Law came into operation, cannot be considered as satisfactory. The Courts on an interpretation of the Ottoman Law which is at least questionable, decided that these uregistered transactions, not only failed to pass title to land, but created no contractual obligation. Apart from any question of the interpretation of the Ottoman Law, it is difficult to see why public policy required that the contractual obligation of the parties to the transaction should be declared void so that no damages might be awarded for a breach of these obligations. The Courts apparently soon realised that their decisions with regard to private sales caused hardship, so they afforded relief on grounds which it is easier to understand from the point of morality than from that of legal principle."

Returning now to the case in hand, we may conclude by summing up the result of this appeal as follows : The appellant has satisfied this Court, upon the record, that the finding of the trial Court that the first respondent is a *bona fide* purchaser for value without notice, is not warranted by the evidence considered as a whole ; and must, therefore, be set aside. The judgment of the District Court, resting on such finding must equally be set aside. And, subject to the filing by the appellant of a drawn up order granting her leave to amend her notice of appeal so as to include the part of the judgment affecting the seller (the second respondent herein) followed with the required amendment, we hold that the appellant-plaintiff is entitled to the declaration sought in paragraph 6 (1) of the statement of claim ; to the injunction sought in paragraph 6 (2) against both defendants ; and to the cancellation of the registrations made in the name of either of the respondents, in respect of the property described in the writ. The claim of the plaintiff in paragraph 6 (4) of the statement of claim to stand dismissed.

As to costs we take the view that, in the circumstances, the plaintiff is entitled to her costs in the action against both defendants ; and to her costs in the appeal against the first respondent. But the appellant must bear the costs incidental to the amendment of her notice of appeal.

Before concluding this judgment we would like to make the following observations with regard to adjournments.

The case was originally fixed for hearing on the 19th September, 1962, but it was adjourned for want of time to the 6th December, 1962, when it was again adjourned

for want of time to the 2nd April, 1963. On both occasions, when the case was adjourned, the witnesses had been summoned and the cost of their attendance incurred, in addition to the appearances by counsel.

On the 2nd April, 1963, the hearing was began at 12 noon and continued in the afternoon until 5 p.m. It was then adjourned to the 18th April, 1963, but at 11.20 a.m. on that day the trial Judge made a note that he was feeling unwell and he then adjourned the case, which was partly heard, until after the summer vacation, that is for 6 1/2 months, to the 4th November, 1963. The hearing was resumed on that day at 3 p.m. and continued for two hours and 40 minutes, when it was adjourned to the 11th November, 1963. It was again taken in the afternoon at 2.50 p.m. and concluded. The typed note of all the evidence, and addresses in the case is 13 pages (1 1/2 space) in all.

In deciding the question of costs in this case the trial Judge said : " Now as to costs involved between plaintiff and defendant 2, which are quite high, enhanced as the case was heard piecemeal due to the very heavy list of actions and applications with which this Court is daily burdened..... " It is very regrettable that the trial Judge admits in his judgment that the piecemeal hearing of the case increased the cost of litigation. In a judgment delivered by the High Court some time prior to the hearing of this case by the trial Judge, observations were made by the High Court deprecating the piecemeal hearing of a case and the delays in the delivery of reserved judgments by trial Courts. Furthermore, the view was expressed that adjournments should, as far as possible, be avoided, except in unusual circumstances, and that once a trial was begun it should proceed continuously day in and day out, where possible, until its conclusion (*Tsiartas and another v. Yiapana* 1962 C.L.R. 198).

These observations of the High Court are based on the provisions of Article 30, paragraph 2, of the Constitution regarding the constitutional right of a citizen to a fair trial within a reasonable time. It cannot be too highly stressed that trial courts should comply with these constitutional provisions with meticulous care.

In the result the appeal is allowed, with judgment for the appellant as above, and order for costs accordingly.

Appeal allowed. Order as to costs as stated earlier in the judgment.