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ANDRIANI
A. IOSIFAKIS
AND 3 OTHERS
v.
MOHAMMED
ABDUL GHANI

[TRIANTAFYLLIDES, STAVRINIDES AND LOIZOU JJ.]

ANDRIANI A. IOSIFAKIS AND 3 OTHERS,
Appellants-Defendants,

v.

MOHAMMED ABDUL GHANI,
Respondent-Plaintiff.

(*Civil Appeal No.* 4572).

Contracts—Consideration—Abandonment of right to sue—Illegality—Agreement for the exchange of immovable properties and subsequent compromise agreement—Consideration of the compromise agreement being the abandonment of the right to sue on the original agreement for the aforesaid exchange of properties—The respondent having a bona fide claim against the appellants and being determined to seek his remedy in Court, the abandonment by him of his said right to litigate is a good consideration in law—No matter whether or not his original claim was well-founded—The Contract Law, Cap. 149, *sections* 2 *and* 25*—Cfr. sections* 2 *and* 25 *of the Indian Contract and Specific Relief Acts—Respondent an alien—The issue of the legality of the said exchange and compromise agreements—In view of the provisions of the Immovable Property Acquisition (Aliens) Law, Cap.* 109 *and the Order made thereunder—Precluding acquisition by an alien of immovable property, otherwise than by inheritance, without the consent of the Council of Ministers first obtained—And rendering any registration of immovable property effected in contravention of those provisions null and void—In the present case no such consent had been obtained—But such consent could have been validly obtained after the conclusion of the said exchange agreement—And failure to obtain it amounts to an* irregularity*—Such irregularity in no way taints with illegality either the original exchange agreement (as it was not its object nor was it contemplated) or the subsequent compromise agreement—There being nothing to show that such compromise aimed at covering up the said irregularity—On the contrary everything pointing on the part of the alien respondent to take such steps as might be required in future to regularize the position.*

Consideration—Abandonment of the right to sue is a good consideration in law to support an agreement—See above.

Legality of a contract—Irregularity of a contract which can be cured—The Immovable Property Acquisition (Aliens) Law, Cap. 109 and the Order made thereunder—Failure to obtain the required consent of the Council of Ministers for the acquisition by an alien of immovable property—Effect of such failure on the basic agreement and a subsequent compromise agreement—See under Contract above.

Aliens—Acquisition of immovable property by aliens—Cap. 109 (supra) and the Order made thereunder—See above under Contract.

Illegality of a contract—See above under Contract.

Irregularity in the performance of an otherwise legal contract—See above under Contract.

Immovable Property—Acquisition by an alien—The Immovable Property Acquisition (Aliens) Law, Cap. 109 and the Order made thereunder—See above under Contract.

This is an appeal by the refendants in action No. 871/65 from the judgment of the District Court of Famagusta whereby they were adjudged to pay to the plaintiff-respondent the sum of £150 due under an oral agreement entered into in the circumstances hereinafter set out.

The respondent-plaintiff is a Syrian national: his claim was based on an oral agreement alleged to have been concluded between him of the one part and the appellants 2 and 4 personally and/or as agents of appellants 1 and 3 of the other part.

The salient facts of the case are as follows:

The first appellant is the daughter of appellants 3 and 4 and the wife of appellant 2. The third appellant was the registered owner of a property with a house standing thereon at Famagusta. This property was given to the first appellant as dowry. Adjacent to this property is a half building site also registered in the name of the third appellant under a separate title-deed. The respondent, on the other hand, was the registered owner of a house at Famagusta. Early in 1965 appellant 2 approached the respondent and proposed to him the exchange of the two properties. Some time later they resumed negotiations and they eventually agreed as to the exchange, the respondent undertaking to pay £225 over and above his own property. On the 11th March, 1965, the second appellant accompanied by his wife (appellant 1) and his mother-in-law (appellant 3) attended at the District Lands Office and so did the respondent with a view to giving effect to the exchange agreement by

registration of the respective properties. The respondent paid there and then the agreed sum of £225 and the properties were duly transferred and registered with the exception of the said half building site. The allegation of the respondent was that in the course of the negotiations the second appellant told him that the half building site in question, adjacent to the said property of the third appellant, was included in the property to be exchanged and that he could build another house thereon if he wanted. On the day after the registration of the properties the respondent became aware that the aforesaid half building site had not been registered in his name. This was conveyed to him by appellant 4 who offered it to him for sale. Thereupon the respondent went to his advocate and instructed him to take legal proceedings with a view to cancelling the exchange and recovering his money on the ground that it was misrepresented to him by appellant 2 that the half building site was included in the deal. The advocate there and then called appellants 2 and 4 to his chambers with a view to a settlement. There followed a long discussion and bargaining and the allegation of the respondent was that at the end a compromise agreement had been concluded, the appellants 2 and 4 agreeing to pay him £150. Those two appellants gave evidence at the trial and they denied that they agreed to pay any sum of money to the respondent. The trial Judge found that the agreement in question was concluded and gave judgment for the respondent. The appellants now appeal from this judgment.

It was argued on behalf of the appellants, *inter alia*, that :

(1) The judgment appealed against was contrary to the evidence adduced.

(2) The compromise agreement was tainted with illegality in view of the fact that the aforesaid exchange agreement was illegal in that it involved registration of property in the name of an alien without the required consent of the Governor (now the Council of Ministers) contrary to the provisions of the Immovable Property Acquisition (Aliens) Law, Cap. 109.

(3) The compromise agreement, if made at all, was void because of lack of consideration in that the appellants 2 and 4 (who concluded the alleged agreement with respondent, *supra*) had no interest in the original exchange agreement.

(4) There was no evidence, in any event, that appellants 2 and 4 acted as agents of appellants 1 and 3.

The Supreme Court in allowing the appeal on the point (4) hereabove and setting aside the judgment of the trial Court only against appellants 1 and 3, rejecting all other grounds of appeal and leaving undisturbed the judgment of the trial Court as regards appellants 2 and 4 :

Held, I. As to (1) *hereabove* viz. *as to whether the judgment appealed from was against the weight of evidence* :

There was abundant evidence to the effect that appellants 2 and 4 agreed to pay to the respondent the sum of £150 as alleged by the latter. Therefore, the finding of the trial Judge on this issue cannot be disturbed.

Held, II. As to (2) *hereabove* viz. *as regards the issue of the illegality of the contract sued on* :

(1) In our view the exchange agreement was not, as such illegal. The effect of Cap. 109 (*supra*) and the Order made thereunder is to prevent ownership of immovable property being acquired by an alien otherwise than by inheritance, without the consent of the Council of Ministers first obtained, and to render any registration effected in contravention of the Order null and void.

(2) Assuming that the registration of the property in the name of the alien respondent required such consent it could have been validly obtained even after the conclusion of the exchange and failure to obtain it amounts, in our view, to an irregularity committed in the course of the performance of an otherwise legal contract; such irregularity in no way taints with illegality either the original agreement for the exchange of properties—as it was not its object nor was it contemplated—or the subsequent compromise agreement, for there is nothing to show that such compromise agreement aimed at covering up the aforesaid irregularity, but on the contrary everything points to an intention on the part of respondent to take such steps as might be required in future to regularize the position; clearly the object of the compromise agreement was to settle the dispute which had arisen regarding the extent of the property which had been transferred in the name of the respondent in exchange of his own property.

Held, III. As to (3) *hereabove* viz. *as regards the issue of lack of consideration* :

(1) It was submitted by counsel for the appellants that the compromise agreement, if made, was void because it was made without consideration and this because the two appellants (2 and 4) had no interest in the original exchange agreement. We are of the view that there is no substance in this argument either.

(2) It is quite clear from the evidence adduced that the respondent had a *bona fide* claim against the appellants and that he was determined to seek his remedy in Court; it is further clear that he abandoned his right to litigate as a result of the compromise. The abandonment of this right is in our view good consideration in law and this would be so even if his claim was not well-founded because what he abandoned was not his ultimate right or claim but his right to have the assistance of the Court to determine and, if admitted or held good, to enforce it. (See the commentary on sections 2 and 25 of the Indian Contract and Specific Relief Acts by Pollock and Mulla (8th ed.) which are substantially the same with sections 2 and 25 of our Contract Law, Cap. 149).

Held, IV. As to (4) *hereabove* viz. *as to whether appellants* 2 *and* 4 *acted also as agents of appellants* 1 *and* 3 :

(1) There is absolutely no evidence at all that the appellants 1 and 3 authorized appellants 2 and 4 to act as their agents in compromising the dispute. On the contrary the evidence points to the conclusion that the husbands (appellants 2 and 4) did not inform their wives (appellants 1 and 3) at all.

(2) For this reason the finding of the trial Judge on this issue cannot be supported in the light of the evidence.

(3) In the result the appeal on this ground must be allowed and the judgment against appellants 1 and 3 be set aside.

(4) The order for costs is hereby set aside and there shall be an order for costs in favour of the respondent against appellants 2 and 4 for half his costs here and in the Court below.

Appeal allowed to the extent as aforesaid. Judgment against appellants 1 *and* 3 *set aside. Order for costs as aforesaid.*

Appeal.

Appeal against the judgment of the District Court of Famagusta (Zihni D.J.) dated the 28th January, 1966, (Action No. 871/65)

whereby the defendants were adjudged to pay to the plaintiff the sum of £150 by virtue of an oral agreement.

A. Emilianides and *E. Emilianides*, for appellants.

Cl. Antoniades, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES, J. : The Judgment of the Court will be delivered by Mr. Justice Loizou.

LOIZOU, J : This is an appeal by the defendants in Action No. 871/65 from the Judgment of the District Court of Famagusta whereby they were adjudged to pay to the plaintiff the sum of £150 with interest and costs.

The respondent, plaintiff in the Action, is a Syrian national who has been resident in Cyprus for 26 years; his claim was based on an oral agreement alleged to have been concluded between him of the one part and the appellants 2 and 4 personally and/or as agents of appellants 1 and 3 of the other part.

The salient facts as they appear from the record are shortly as follows :

The first appellant is the daughter of appellants 3 and 4 and the wife of appellant 2. The third appellant was the registered owner of a property 2720 square feet in extent with a house standing thereon situated at Ayios Loucas quarter in Famagusta. This property was given to the first appellant as dowry. Adjacent to this property is a half building site also registered in the name of the third appellant under a separate title. The respondent was the registered owner of a house at Kato Varoshia. Towards the end of 1964 or beginning of 1965 appellant 2 approached the respondent and proposed to him the exchange of the two properties. It would appear that at first they were not able to agree; the second appellant was demanding that the respondent should pay £500 on top and the latter was offering £200. Some months later, however, they resumed the negotiations and they eventually agreed that the respondent should pay £225 over and above his own property.

On the 11th March, 1965, the second appellant accompanied by his wife and mother-in-law attended at the District Lands Office and so did the respondent with a view to giving effect to the agreement by registration of the properties. The respondent

could not understand Greek well and the declaration of sale was translated to him by a Turk who was present. He paid the sum of £225 there and then to the first and third appellants and the properties were duly registered. The allegation of the respondent is that in the course of the negotiations when he and the second appellant visited the property of the third appellant, appellant 2 told him that the half building site adjacent to the property was included in the property to be exchanged and that he could build another house on it if he wanted. In fact before the respondent signed the declaration of tranfer form at the D.L.O he asked the D.L.O clerk whether the "yard" was also included in the title-deed and the clerk replied in the affirmative because, as he said in evidence, the title of the house of the third appellant included a small yard and he thought the respondent was referring to that.

The trial Judge believed the respondent on this issue and found that "when the plaintiff paid £225 over and above the registration of the house in the name of the defendants, he knew it that he would be also the owner of the building site. I cannot say whether the defendant 2 defrauded him, but it was clear that there was a common mistake on the part of both or at most a misrepresentation on the part of defendant 2".

On the day after the registration of the properties the respondent became aware that the half building site was not registered in his name. This was conveyed to him by appellant 4 who offered it to him for sale. Thereupon the respondent went to his advocate and instructed him to take legal proceedings with a view to cancelling the exchange and recovering his money on the ground that it was misrepresented to him by appellant 2 that the half building site was included in the deal. The advocate there and then called appellants 2 and 4 to his chambers with a view to a settlement. There followed a long discussion and bargaining and the allegation of the respondent is that at the end the appellants 2 and 4 agreed to pay him £150.

It would appear that in the course of the discussion counsel for the respondent mentioned to the appellants 2 and 4 that the respondent, being an alien, could not own property except with the consent of the Council of Ministers and that the transaction might be cancelled on this ground also. Those two appellants gave evidence at the trial and they denied that they agreed to pay any sum of money to the respondent. The learned trial Judge found that the agreement in question was concluded and gave judgment for the respondent. We need only say that

there was abundant evidence to this effect and that it was open to the Judge to come to the conclusion that he did.

The appellants now appeal from the judgment of the District Court on the following grounds :

"1. The Hon. Judge erred as to the validity of the agreement, because if same was made, it was based on false pretences and on blackmail by the Plaintiff for the cancellation of the sale, as he was an alien.

2. The Hon. Judge accepts in his judgment that the Defendants in accepting to pay the amount of £150 they relied on a false declaration and blackmail (Page 3 of the judgment).

3. The Hon. Judge erred as to the agreement and did not take into consideration that the title-deed of the field was handed to the Plaintiff who kept and examined it and subsequently he delivered it to the Turkish Cooperative Bank to which he mortgaged the property.

4. The judgment appealed against contravenes basic principles of law by virtue of which the purchaser has to examine the title-deed and the property before the purchase In the present case Defendants delivered to respondent the title-deeds of their property which remained in the Purchaser's possession for a number of days, he examined them and he also mortgaged the property.

5. The title-deed of the property was read to the respondent by the L.R.O clerk and was translated in detail for him by a turkish advocate in the presence of another turk, and the extent of the field was mentioned also.

6. The judgment appealed against is contrary to the evidence adduced.

7. The Hon. Judge erred as to the legality of the agreement

8. No evidence was adduced to the effect that Defendants 1 and 3 gave any instructions or authority to Defendants 2 and 4 to negotiate or to undertake any obligation on their behalf.

9. Defendants 2 and 4 had not any dealings with him and they were not the interested persons and the alleged agreement lacked consideration".

Grounds 1 and 2 relate to the statement made by counsel for the respondent at the meeting in his chambers to the effect that the respondent was an alien and as such he could not own property without the consent of the Council of Ministers and that the exchange of properties might be cancelled on this ground and also to the respondent's declared intention to institute proceedings against the appellants with a view to cancelling the registration of the properties and recovering his money on the ground that he was not given the whole of the property agreed.

With regard to these grounds we wish to point out that it is not correct to say that the judge "accepts in his judgment that the defendant in accepting to pay the amount of £150 they relied on a false declaration and blackmail" as stated in ground 2. This part of the judgment is not, in our view, capable of such construction. What is more, there is nothing in the record to show that in concluding the agreement sued upon the appellants 2 and 4 or either of them were acting under duress or were in any way induced to enter into the agreement as a result of the statement made by counsel for the Respondent. Both these appellants gave evidence on oath and neither of them said anything about being induced by such statement. On the contrary they both denied that any agreement was concluded. As to the respondent's "threat" to sue this was no more than a threat to exercise his legal rights which in no case can amount to duress or "blackmail" as it is put in the grounds of appeal.

With regard to grounds 3, 4 & 5 it seems to us that such grounds are not relevant for the purposes of the agreement, the subject-matter of the action, as they obviously relate to the original agreement for the exchange of the properties. In so far as these grounds may be taken to imply that the compromise was invalid for lack of consideration because the Respondent had not a good cause of action we think that what is material for the purposes of this case is not whether or not the Respondent would be certain to succeed in an action to set aside the exchange of the properties but the fact that he, no doubt, felt that he had been defrauded and he was *bona fide* threatening to institute proceedings; the abandonment of his right to litigate was the consideration for the compromise agreement.

Regarding ground 6 we need only repeat that in our view there was abundant evidence (evidence of the Plaintiff and

P.W. 2 Andreas Tsangarides) to the effect that the two appellants agreed to pay to the respondent the sum of £150 and that, to say the least, it was open to the Judge to come to the conclusion that he did and that, therefore, his finding on this issue cannot be disturbed.

With regard to ground 7 it was argued by counsel for the appellants that the compromise agreement was tainted with illegality in view of the fact that the exchange agreement was illegal in that it involved registration of property in the name of an alien without the required consent. In our view the exchange agreement was not, as such, illegal. The effect of the Immovable Property Acquisition (Aliens) Law Cap. 109 and the Order made thereunder is to prevent ownership of property being acquired by an alien otherwise than by inheritance, without the consent of the Council of Ministers first obtained, and to render any registration effected in contravention of the Order *null and void*. Assuming that the registration of the property in the name of the Respondent required such consent it could have been validly obtained even after the conclusion of the exchange and failure to obtain it amounts, in our view, to an irregularity committed in the course of the performance of an otherwise legal contract; such irregularity in no way taints with illegality either the original agreement for the exchange of properties—as it was not its object nor was it contemplated—or the subsequent compromise agreement, for there is nothing to show that such compromise agreement aimed at covering up the aforesaid irregularity, but on the contrary everything points to an intention on the part of the Respondent to take such steps as might be required in future to regularize the position; as already stated the object of the compromise agreement was to settle the dispute which had arisen regarding the extent of the property which had been transferred in the name of the Respondent in exchange of his own property.

We now come to ground 9 *i.e.* lack of consideration. It was submitted by counsel for the appellants that the agreement, if made, was void because it was made without consideration and this because the two appellants (2 and 4) had no interest in the original agreement. We are of the view that there is no substance in this ground either. It is quite clear from the evidence adduced that the Respondent had a *bona fide* claim against the Appellants and that he was determined to seek his remedy in Court; it is further clear that he abandoned his right to

litigate as a result of the compromise. The abandonment of this right is in our view good consideration in law and this would be so even if his claim was not well-founded because what he abandoned was not his ultimate right or claim but his right to have the assistance of the Court to determine and, if admitted or held good, to enforce it. (See the commentary on sections 2 and 25 of the Indian Contract and Specific Relief Acts by Pollock & Mulla (8th ed.) which are substantially the same with sections 2 and 25 of our Contract Law Cap. 149).

Finally we come to ground 8 *i.e.* whether it was satisfactorily proved that appellants 2 and 4 were acting as agents of appellants 1 and 3. In dealing with this issue the learned trial Judge had this to say : "I have considered all the evidence before me very carefully. From the evidence before me I have no doubt that defendant 2 was acting as agent of defendants 1 and 3. I agree that defendant 4 initially did not take any part in the proceedings. I find that the plaintiff told the truth when he said that defendant 2 told him that in the agreement the building site would be included also and that he could build another house on it if he wanted". It is quite clear that the learned Judge here had in mind and was referring to the agreement to exchange the properties.

Further down in the judgment the learned trial Judge says this : "Therefore, on the date when defendants 2 and 4 went to the office of Mr. Antoniades, there was a dispute between them and their wives and the plaintiff on the other hand to settle or else the case would have gone to Court. It is clear also that defendant 1 and defendant 3 authorized defendant 2 and defendant 4 to act as their agents and therefore, it was proper and lawful for the two defendants to make a settlement or compromise in the office of Mr. Antoniades".

There is absolutely no evidence at all that the appellants 1 and 3 "authorized appellants 2 and 4 to act as their agents" in compromising the dispute. On the contrary the evidence points to the conclusion that the husbands did not inform their wives at all.

There can be no doubt, indeed it is admitted, that in concluding the agreement to exchange the properties appellant 2 was acting as the agent of appellants 1 and 3 but it seems to us that neither this authority nor the relationship of the appellants could be construed or presumed to include or infer authority to compromise the dispute which was an altogether separate transaction.

For this reason we are of the view that the finding of the trial Court on this issue cannot be supported in the light of the evidence.

In the result the appeal on this ground must be allowed and the judgment against the appellants 1 and 3 be set aside. The Order for costs of the trial Court is hereby set aside and there shall be an Order for costs in favour of the Respondent against Appellants 2 and 4 for half of his costs here and in the Court below.

Appeal allowed. Judgment against Appellants 1 *and* 3 *set aside..Order for sosts of the trial Court set aside. Order for costs in favour of the Respondent entered as aforesaid.*