[JOSEPHIDES, LOIZOU & HADJIANASTASSIOU JJ.]

ANASTASIS GEORGHIOU TOSOUNOGLOU,

Appellant – Defendant,

v.

THE ATTORNEY GENERAL OF THE REPUBLIC

Respondent – Plaintiff.

(*Civil Appeal No.* 4719).

Immovable Property—Hali land—No valid title can be acquired in any such land otherwise than under a grant made by the Colonial Governor or the Council of Ministers since Independence (August 16, 1960)*—The Government Lands Law, Cap.* 221 *(enacted on April* 23, 1941) *sections* 2 *and* 3*—Position prior to the enactment of that Law—Position under the Ottoman Land Code before* 1904*—Hali land could become* arazi mirie *if a private individual "with the leave of the Official" (that is, the Land Registry Official) cultivated the land for a period of ten years without dispute and obtained a title-deed—But under a notice issued by the Ottoman Government prior to the British occupation* (1878) *hali land might be broken up and cultivated, such notice being interpreted as a general authority which rendered the consent of the "Official" unnecessary, so that a private individual might open up hali land and by prescription occupy it as* arazi mirie*—Position after* 1904*—By notice No.* 7038 *of the* 23*rd February,* 1904, *published in the Cyprus Gazette of the* 26*th February,* 1904, *the aforesaid notice of the Ottoman Government was cancelled—So that thereafter a private person could not convert hali land into* arazi mirie *and obtain a right to its use without the consent of the Commissioner of the District—Which means that private persons could not obtain any right over hali land by mere prescription—The Ottoman Land Code, articles* 6 *and* 103.

Hali land—Conversion of hali land into private land—Acquisition of title by private persons in such land—Position before and after 1904*—The Ottoman Land Code, articles* 6 *and* 103*; Notice No.* 7038 *of the* 23*rd February,* 1904, *published in the Cyprus Gazette of the* 26*th February,* 1904 *cancelling a notice issued by the Ottoman Government prior to the British Occupation*

1969
Mar. 28
—
ANASTASIS GEORGHIOU TOSOUNOGLOU
v.
ATTORNEY GENERAL OF THE REPUBLIC

of the island; Government Lands Law, Cap. 221 (*enacted on April* 23, 1941), *sections* 2 *and* 3—*See also hereabove under Immovable Property.*

This is an appeal by the defendant against the judgment of the District Court of Nicosia whereby he was restrained from trespassing upon certain Government land and ordered to deliver up possesion, and his counterclaim (for a declaration that he was entitled to be registered as the owner of the land in question) was dismissed. The facts of the case are shortly as follows:

The Government has since September, 1954, been the registered owner of the four plots in dispute which at all material times were *hali land* until 1946 when the categories of land were abolished under the provisions of section 3 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. The appellant without any authority and without the leave or consent of any Government official or department entered and cultivated such *hali land* between the years 1932 and 1938 and in 1943 he applied for a grant. Owing to his obstinacy in refusing to pay the assessed value of £27.3.0 his application never reached the then Governor and no grant or disposition was ever made in respect of these properties in favour of the appellant either by the Colonial Governor before Independence (August 16, 1960) or by the Council of Ministers thereafter.

Section 3 of the Government Lands Law, Cap. 221 (enacted on April 23, 1941) provides:

> "Notwithstanding anything in any other Law contained, from and after the commencement of this Law no valid title shall be acquired in any vacant or unoccupied lands in the Colony not being privately owned or in any Government owned lands, whether registered in the name of the Government or not, except under a grant or disposition made by the Governor (editor's Note: now by the Council of Ministers) under the provisions of section 2".

And section 2 of that Law provides that, notwithstanding anything in any other Law contained, the Governor (now the Council of Ministers) may make grants and dispositions of such lands subject to such terms and conditions as to him may deem fit.

Dismissing the appeal, the Court:

Held, (1) (a). Prior to the enactment of the Government Lands Law, Cap. 221, on the 23rd April, 1941 *hali land* could, under the provisions of the Ottoman Land Code, become *arazi mirie* if a private individual "with the leave of the official (that is, the Land Registry Official) cultivated the land for a period of ten years without dispute and obtained a title deed".

(b) It appears that the Ottoman Government prior to the British occupation of the island had issued a notice that *hali land* might be broken up and cultivated. This was interpreted as a general authority which rendered the consent of the "Official" unnecessary, so that a private individual might open up *hali land* and by prescription occupy it as *arazi mirie.*

(c) By notice 7038 of the 23rd February, 1904, published in the Cyprus Gazette of the 26th February, 1904, the said notice of the Ottoman Government was cancelled so that thereafter a private person could not convert *hali land* into *arazi mirie* and obtain a right to its use without the consent of the Commissioner of the District.

(d) After 1904, therefore, a private person could not obtain any right over *hali land* by mere prescription: See Articles 6 and 103 of the Ottoman Land Code; *Hadji Kyriako* v. *The Principal Forest Officer* (1894) 3 C.L.R. 87; *Caterina Socratous* v. *The Attorney-General* (1952) 19 C.L.R. 133, at p. 135.

(2) (a) In the present case the appellant conceded that he cultivated and possessed the land in dispute without any leave or authority from any Government official or department, and that, until the enactment of Cap. 221, in April 1941 (*supra*), he had not possessed the aforesaid land for a period of ten years.

(b) Consequently, the appellant did not acquire any valid title to the said properties under the old law in force until April, 1941, when Cap. 221 (*supra*) came into operation.

(3) Coming now to the period starting from the enactment in April, 1941, of the Government Lands Law, Cap. 221 (*supra*) it follows that, as there is no evidence of any grant to the appellant either by the Colonial Governor or the Council of Ministers since Independence, under the provisions of that Law, especially sections 2 and 3 thereof, the appellant has failed to acquire

any valid title to the land in dispute, and that the trial Court rightly gave judgment in favour of the respondent Government (plaintiff in the action) and dismissed the defendant's-appellant's counterclaim.

Appeal dismissed with costs.

Cases referred to:

Hadjikyriako v. *The Principal Forest Officer* (1894) 3 C.L.R. 87;

Caterina Socratous v. *The Attorney-General* (1952) 19 C.L.R. 133, at p. 135.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Mavrommatis & Stylianides D.JJ.) dated the 26th April 1968, (Action No. 2756/66) whereby he was restrained from trespassing upon certain Government land and was ordered to deliver up possession and his counterclaim for a declaration that he was entitled to be registered as the owner of the land in question was dismissed.

Appellant in person.

G. Platritis, for the respondent.

The judgment of the Court was delivered by:

JOSEPHIDES, J.: This is an appeal by the defendant against the judgment of the District Court of Nicosia whereby he was restrained from trespassing upon certain Government land and ordered to deliver up possession, and his counterclaim was dismissed.

The property in question consists of the following four plots within the area of Strovolos, the total extent of which is 15 donums, 3 evleks and 300 square feet; (a) plot 47, in Block "J", under registration J. 37, (b) plot 13, in Block "K", under registration K. 10, (c) plot 21, in Block "K", under registration K. 16, and (d) plot 25, in Block "K" under registration K. 20. All plots were registered in the name of the Government of Cyprus on the 10th September, 1954, and they are described as "hali-land".

The facts as found by the trial Court are as follows:

The appellant-defendant is a 65-year old resident of Nicosia and the respondent-plaintiff is the Attorney-General of the Republic representing the Government of the Republic of Cyprus. In the years 1932, 1936 and 1938 the appellant cleared away the rocks and started planting trees in the aforesaid plots of land which were of the hali land category at the time. He did so without any permission, authority or consent from any Government official. In the year 1940 when the General Survey of the area took place it appears that the appellant was advised to apply to the Government for a grant, and he did so either in 1941 or 1943. There is some dispute as to the exact year but that is not material for the purposes of the present case. The relevant application number in the Land Registry Office of Nicosia is 1332/43.

A local enquiry was carried out by a Land Registry clerk, which was the first step in setting in motion the machinery for the granting of hali land by the Government to a private individual. The next step, after the assessment of the value of such land, would be for the grantee to deposit the assessed value of the property with the Land Registry Office whereupon the file would be submitted to the District Commissioner's office for a recommendation to the then Colonial Governor for approval of the grant or otherwise.

The value assessed by the Land Registry Office in the present case was the sum of £27.3.0. The defendant was then requested to pay this amount, but he never in fact did so. It seems that he had some dispute with the Government as regards the compulsory acquisition of part of some other property which he had in the Strovolos area, such acquisition having been made for the purposes of the construction of the Strovolos by-pass. From an office copy of a judgment of the District Court of Nicosia in Application No. 93/50 dated the 7th May, 1952, it appears that the Full District Court held that no compensation was payable to the appellant in respect of the acquisition of his land as the value of the unacquired portion of his property had been considerably increased as a result of the construction of the by-pass.

To revert to the sequence of events with regard to the appellant's claim for a grant of the hali land in question, no evidence has been adduced to show that his application for a grant ever reached the Colonial Governor. In any event there is no evidence of any decision ever having been taken by the

Governor. In fact the documentary evidence shows, that on the 13th April, 1950, in a letter addressed to the appellant by the Commissioner of Nicosia and Kyrenia, it was pointed out to him that he had failed to pay the value assessed by the Land Registry to enable action to be taken for the grant of the hali land in question to him. That letter concludes as follows: "In the circumstances, the matter rests entirely with you and it is up to you to take the next step for the grant of the hali lands in question".

It seems that the appellant failed to move in the matter and that he persisted in possessing and cultivating the land in dispute and he was in 1953 charged before the District Court of Nicosia (Case No. 2955/53) with occupying Government-owned land, not registered in the name of the Government, contrary to section 4(b) of the Government Lands Law Cap. 227 (now Cap. 221). He admitted the occupation of all four plots but he, *inter alia*, put forward the defence of a bona fide claim of right under the provisions of section 8 of the Criminal Code, which eventually succeeded, and he was discharged by the Court on the 25th November, 1953. Still, the appellant took no action in the matter, either to pay the aforesaid sum of £27.3.0 to the Land Registry or (if he based his claim on some other right) to vindicate his right in the Courts, until the present action was instituted by the Attorney-General of the Republic in August, 1966, when the appellant filed a counter-claim for a declaration of the Court that he was the owner of the aforesaid properties.

To sum up: the Government has since September, 1954, been the registered owner of the four plots in dispute which were hali land until 1946 when the categories of land were abolished under the provisions of section 3 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. The appellant without any authority and without the leave or consent of any Government official or department entered and cultivated such land between the years 1932 and 1938, and in 1943 he applied for a grant. Owing to his obstinacy in refusing to pay the assessed value of £27.3.0. his application never reached the Governor and no grant or disposition was made by the Governor in respect of these properties in favour of the appellant.

Prior to the enactment of the Government Lands Law, Cap. 221, on the 23rd April, 1941, hali land could, under the pro-

visions of the Ottoman Land Code, become arazi mirie if a private individual, "with the leave of the Official" (that is, the Land Registry Official) cultivated the land for a period of ten years without dispute and obtained a title deed. It appears that the Ottoman Government prior to the British occupation had issued a notice that hali land might be broken up and cultivated. This was interpreted as a general authority which rendered the consent of the "Official" unnecessary, so that a private individual might open up hali land and by prescription occupy it as arazi mirie. By Notice 7038 of the 23rd February, 1904, in the Cyprus Gazette of the 26th February, 1904, the notice of the Ottoman Government was cancelled so that thereafter a private person could not convert hali land into arazi mirie and obtain a right to its use without the consent of the Commissioner of the District. After 1904, therefore, a private person could not obtain any right over hali land by mere prescription: See Articles 6 and 103 of the Ottoman Land Code; *Hadji Kyriako* v. *The Principal Forest Officer* (1894) 3 C.L.R. 87; and *Caterina Socratous* v. *Attorney-General* (1952) 19 C.L.R. 133, at page 135.

In the present case the appellant conceded that he cultivated and possessed the land in dispute without any leave or authority from any Government official or department, and that, until the enactment of Cap. 221, in April 1941, he had not possessed the aforesaid land for a period of ten years. Consequently, the appellant did not acquire any valid title to the said property under the old law in force until April, 1941, when Cap. 221 came into operation. Section 3 of Cap. 221 reads as follows:

> "3. Notwithstanding anything in any other Law contained, from and after the commencement of this Law no valid title shall be acquired in any vacant or unoccupied lands in the Colony not being privately owned or in any Government owned lands, whether registered in the name of the Government or not, except under a grant or disposition made by the Governor under the provisions of section 2".

And section 2 of that Law provides that, notwithstanding anything in any other Law contained, the Governor may make grants and dispositions of such vacant or unoccupied lands in the Colony, subject to such terms and conditions as to him may deem fit.

It, therefore, follows that, as there is no evidence of any grant to the appellant, either by the Colonial Governor or the Council of Ministers since Independence, under the provisions of Cap. 221, the appellant has failed to acquire any valid title to the land in dispute, and the trial Court rightly gave judgment in favour of the respondent Government and dismissed the appellant's counter-claim.

In the result the appeal is dismissed with costs.

Appeal dismissed with costs.