1969
Dec. 12
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MELPOMENI PANAYIOTOU CHRYSANTHOU & OTHERS
v.
NEOCLIS ANTONIADES

[JOSEPHIDES, STAVRINIDES AND LOIZOU, JJ.]

MELPOMENI PANAYIOTOU CHRYSANTHOU AND OTHERS,
Appellants-Defendants,

v.

NEOCLIS ANTONIADES,
Respondent-Plaintiff.

(*Civil Appeal No.* 4821).

Immovable Property—"Error or omission" in records of District Lands Office—Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, *section* 61—*Cf. section* 80 *of the same statute—Land divided pursuant to an oral agreement and resulting plots registered accordingly—Dispute as to whether the delineation in the Official Survey plan is correct or not, having regard to the said oral agreement—Alleged error not apparent in the Land Registry records—Correction of the alleged error being incidental to the main issue which concerns the rights of ownership of the parties rightly the plaintiff (respondent) proceeded by action—Provisions of sections* 61 *and* 80 *of Cap.* 224 (supra) *inapplicable—Principles laid down in* Chakkarto *v.* The Attorney-General 1961 *C.L.R.* 231 *and* Sherife Moustafa Moulla Ibrahim *v.* Mehmet Salih Souleyman (1953) 19 *C.L.R.* 237, *at p.* 239, *followed. The cases* Papa Loizou *v.* Themistokleous (1957) 22 *C.L.R.* 177 *and* Andronikou *v.* Rousou (1959) 24 *C.L.R.* 107, *distinguished—Cf. sections* 58 (*former* 56), 59 *and* 75 *of the Immovable Property etc. etc. Law, Cap.* 224 (supra).

"Error" or "ommission"—In section 61 *of Cap.* 224 (supra)—*Meaning, scope and effect—See hereabove.*

Words and Phrases—"Error or omission" within section 61 *of the Immovable Property (Tenure, Registration and Valuation) Law, Cap.* 224.

This is an appeal by the defendants against a ruling of the trial Court (the District Court of Limassol) rejecting their objection which was set down for hearing in the form of a preliminary point law. The facts are shortly as follows:

A piece of land, in the village of Pissouri, under plot 193 belonged originally to the plaintiff and one Chrysanthou. In

1944 the plaintiff and Chrysanthou agreed to divide this plot (No. 193) between themselves. They agreed orally as to the division and, on their application a Land Registry clerk went on the spot and carried out a local inquiry. At the local inquiry both co-owners showed to the clerk where they wanted the two plots to be. Subsequently title-deeds were issued to the plaintiff and Chrysanthou; Chrysanthou being alloted plot 193/1 and the plaintiff plot 193/2. Plaintiff, however now contends in his statement of claim that the Land Registry clerk, acting under a " wrong impression or misconception ", included the disputed two strips of land in plot 193/1 and, consequently, these strips (which really are one angular strip) were included in the title-deed issued in the name of Chrysanthou as aforesaid, whereas they should have been included in the above-mentioned plot 192/2 and form part of plaintiff's title-deed No. 21100. The defendants (respondents) in the present action (whom we may call the successors of the said Chrysanthou) denied these allegations of the plaintiff and raised a preliminary objection in the way of a point law which was set down for hearing by the trial Court as a preliminary point under the relevant provisions of the Civil Procedure Rules. This objection was framed as follows:

> "That the statement of claim discloses no cause of action and/or that the action cannot proceed in view of the fact that the plaintiff has failed to resort to the remedies open to him under the provisions of sections 61 and 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, which is a condition precedent to the bringing of the present proceedings ".

Section 61 of Cap. 224 *supra* reads:-

> 61(1). The Director may correct any error or omission in the Land Register or in any book of the District Lands Office, or in any certificate of registration and every such Register, book or certificate of registration so corrected shall have the like validity and effect as if such error or omission had not been made.
>
> (2) No amendment shall be made under the provisions of sub-section (1) of this section unless thirty days' previous notice is given by the Director to any person who might be affected thereby and any person may within the period of thirty days from the date of the giving of such notice,

lodge an objection with the Director who shall thereupon investigate the same and give notice of his decision thereon to the objector".

Section 80 of Cap. 224, *supra* reads:

"80. Any person aggrieved by any order, notice or decision of the Director made, given or taken under the provisions of this Law may, within thirty days from the date of the communication to him of such order, notice or decision, appeal to the Court and the Court may make such order thereon as may be just but, save by way of appeal as provided in this section no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of this Law.

Provided that the Court may, if satisfied that owing to the absence from the Colony, sickness or other reasonable cause the person aggrieved was prevented from appealing within the period of thirty days, extend the time within which an appeal may be made under such terms and conditions as it may think fit."

The learned trial Judge, after hearing argument, held that, in the circumstances and facts set out in the pleadings the "Wrong impression or misconception" of the Land Registry clerk (alleged by the plaintiff *supra*) did not come within the class or category of errors or omissions referred to in sections 61 and 80 of Cap. 224 (*supra*), which call for remedy or correction as contemplated under the said sections. He further held that "it is within the exclusive jurisdiction of this Court to decide upon the question of ownership in respect of the property claimed by both sides. Any decision in respect thereof has to be based on the production of evidence and certainly the Director of the District Lands Office cannot and is not entitled to hear such evidence."

Dismissing the appeal, the Court:-

Held, (1). We may say here and now that we are in agreement with that conclusion of the learned trial Judge (*supra*) and we shall proceed to give our reasons for this conclusion.

(2) This is not a case where what is actually in dispute is where the physical boundary should run on the land according

to the official Survey plan; and where the Director has in his possession both the Survey plan and the title-deed; and he is, thus, in a position through his officers to investigate the matter and correct a probable error. The present case is not actually a boundary dispute but a dispute as to whether the delineation in the official Survey plan is correct or not, having regard to the agreement made between the parties in 1944; and it will not be possible for the Director to decide this matter unless he hears the evidence on oath of the parties concerned and this he has no power to do (*Papa Loizou* v. *Themistokleous* (1957) 22 C.L.R. 177, *distinguished*).

(3) In the present case the alleged "error" is not apparent from the Land Registry records. It would perhaps, be so if the parties had actually filed in 1944 with the Land Registry Office a plan to scale showing exactly the boundary line where they wished it to be; but that, according to counsel, has not been done. If the Director had in his records such a plan to scale, then that would be a case where by comparing the plan agreed upon and signed by the parties with the official Survey plan, he would be in a position to detect the alleged error (*Andronikou* v. *Rousou* (1959) 24 C.L.R. 107, *distinguished*).

(4) We are of the view that the present dispute between the parties is within the principle laid down in *Chakkarto* v. *The Attorney-General*, 1961 C.L.R. 231. It should be added that the case of *Sherife Moustafa Moulla Ibrahim* v. *Mehmet Salih Souleyman* (1953) 19 C.L.R. 237, at p. 239 lends support to the view we are taking in the present case.

Appeal dismissed with costs.

Cases referred to:

Papa Loizou v. *Themistokleous* (1957) 22 C.L.R. 177;

Andronikou v. *Rousou* (1959) 24 C.L.R. 107;

Chakkarto v. *The Attorney-General*, 1961 C.L.R. 231;

Sherife Moustafa Moulla Ibrahim v. *Mehmet Salih Souleyman* (1953) 19 C.L.R. 237, at p. 239.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Papaioannou, D.J.) dated the 19th May,

1969 (Action No. 2368/66) whereby a preliminary point of law, put forward by them, in an action for a declaration, *inter alia*, that two strips of land belonged to plaintiff, was dismissed.

E. Shakalli (Miss), for the appellants.

J. Potamitis, for the respondent.

The judgment of the Court was delivered by:

JOSEPHIDES, J.: In this case the plaintiff-respondent brought an action in the District Court of Limassol claiming, *inter alia*, a declaration that two strips of land belonged to him and that they should be included in his title-deed. He, further, claimed a declaration that the official Survey plan wrongly included these two strips of land in the name of the defendants-appellants under registration No. 22284, and that the respective title-deeds should be rectified.

After the close of the pleadings, the following point of law was set down for hearing as a preliminary point:-

> "That the statement of claim discloses no cause of action and/or that the action cannot proceed in view of the fact that the plaintiff has failed to resort to the remedies open to him under the provisions of sections 61 and 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, which is a condition precedent to the bringing of the present proceedings".

The learned trial Judge, after hearing counsel, held that, in the light of the facts and circumstances set out in the pleadings, the "wrong impression or misconception" of the Land Registry clerk (to which we shall revert later) did not come within the class or category of errors or omissions referred to in section 61 of Cap. 224, which call for remedy or correction as contemplated under sections 61 and 80 of the aforesaid Law. He further held that "it is within the exclusive jurisdiction of this Court to decide upon the question of ownership in respect of the property claimed by both sides. Any decision in respect thereof has to be based on the production of evidence and certainly the Director of the D.L.O. cannot and is not entitled to hear such evidence".

I may say here and now that we are in agreement with that conclusion of the learned Judge and I shall proceed to give our reasons for this conclusion.

Originally, plot 193, sheet plan LII/62, in the village of Pissouri, belonged to the plaintiff and one Panayiotis Chrysanthou. The present defendants 1 and 2 (respondents 1 and 2) are the children of Panayiotis Chrysanthou, and defendant 3 (respondent 3) is his son-in-law. In 1944 the plaintiff and Chrysanthou decided to divide this plot (No. 193) between themselves. They agreed orally as to the division and, on their application, a Land Registry clerk went on the spot and carried out a local inquiry. At the local inquiry both co-owners showed to the clerk where they wanted the boundary of the two plots to be. Subsequently title-deeds were issued to the plaintiff and Chrysanthou; Chrysanthou being allotted plot 193/1 and the plaintiff plot 193/2. These facts are, more or less, common ground.

Plaintiff, however, now contends in his statement of claim that the Land Registry clerk, acting under a " wrong impression or misconception ", included the disputed two strips of land (which are really an angular strip) in plot 193/1 and, consequently, this angular strip was included in the registration issued in the name of Chrysanthou, while it should have been included in plot 193/2 and form part of plaintiff's title-deed No. 21100. The defendants in the present case denied these allegations and it is their case that the Land Registry clerk in 1944 divided the original plot 193 *correctly*, and I underline the word correctly, in the presence of the two interested parties and that no question of wrong impression or misconception arises on his part; that the plaintiff accepted such division; that he is estopped from disputing the said division; and that the facts alleged by the plaintiff do not amount to an " error or omission " within the ambit of section 61 of Cap. 224 to require any rectification by the Director of Lands and Surveys, and/or that the plaintiff's claim has no legal foundation.

It is, further, alleged by the plaintiff that since the time of the division of the original plot in 1944, he, the plaintiff, was possessing and cultivating the said angular strip of land (now in dispute) as part and parcel of his plot 193/2, which was then allotted to him and that Chrysanthou was possessing and cultivating plot 193/1, excluding the angular strip in dispute. The plaintiff, further, alleges that, relying upon the division agreed upon in 1944, he grafted 10 carob trees standing on the one part of the strip in dispute, which trees he cultivated and enjoyed without any disturbance by Chrysanthou or the defendants, and that the present defendants 1 and 2, in whose name

Chrysanthou transferred in the meantime plot 193/1, relying on the division agreed upon in 1944, separated the said plot from the plaintiff's plot by poles and wire-fencing, leaving the angular strip in dispute outside the enclosed land of theirs.

Finally, the plaintiff alleges that, shortly before the institution of the present action, the defendants, relying on a decision of the District Lands Office, based on the Survey plan as amended at the time of the local inquiry in 1944 or later, removed the wire from its previous position and placed it in a new position, this time including the angular strip of land in dispute in their own plot. The defendants reply that, on the application of the plaintiff, two local inquiries were held by the District Lands Office, one in 1964 and another in 1966, for the determination of the boundaries between the plots of the parties and that in both cases the Director decided (on the 14th December, 1964 and the 7th April, 1966) that the angular strip of land was within the physical boundaries of the defendants' land in accordance with the official Survey plan. The defendants further allege that this was a proper determination by the Director, against which the plaintiff did not appeal to the Court under the provisions of Section 80 of Cap. 224.

The present action was instituted by the plaintiff in the District Court of Limassol on the 26th November, 1966.

The first point taken today on behalf of the appellants (defendants) by Miss Shakalli who, we may say, argued her case very ably and has helped the Court considerably, was that this was a case which came within the expression " error " within the ambit of section 61 of Cap. 224; that the facts in this case amounted to an " error " either in the Land Register and/or in the certificate of registration of the parties and that, consequently, under the provisions of section 61, the plaintiff should have first applied to the Director of the Lands and Surveys to rectify this error. As the plaintiff failed to do so, counsel contended, under the provisions of section 80 of Cap. 224, the District Court of Limassol was precluded from entertaining the present action.

Counsel for appellants added that there may exist records in the Land Registry which might assist the Director to detect the error. She, very frankly, conceded that the 1944 agreement between the original parties was an oral one but contended that they showed the boundary line to the Land Registry clerk

on the spot who traced it on the plan. She also conceded that they do not know what documents the Land Registry have in their possession with regard to this matter and she concluded by saying that the right course for the plaintiff (respondent) would have been to apply, in the first instance, to the Director of Lands and Surveys for the rectification of the " error " under section 61.

In making her submissions, learned counsel relied on two cases decided by the Supreme Court of Cyprus: The first case is that of *Papa Loizou* v. *Themistokleous* (1957) 22 C.L.R. 177; and the second, is that of *Andronikou* v. *Rousou* (1959) 24 C.L.R. 107.

We are of the view that both cases can be distinguished from the present one. In the *Papa Loizou* case the appellant originally applied to the Director to determine the boundaries of his land under section 56 (now 58) and the Director fixed the boundaries according to the plan. The Director decided the case against the appellant who did not appeal to the Court but, instead, he brought an action claiming an injunction restraining the respondent from interfering with his land. That was a case originally tried by a Magistrate and, on appeal, by the President of the Court who reversed the Magistrate's decision on the ground that there was a mistake in the Land Registry plan. On appeal to the Supreme Court it was held that when a mistake in the Land Registry records or plans was alleged, the combined effect of sections 75 and 59 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231 (as it then was), was that the matter should, in the first instance, be referred to the Director of Land Registration and Surveys for his decision; and that, unless the Director decided, the matter could not be pursued before the District Court.

It will be seen that the facts in that case were completely different from those in the present case. There, what was actually in dispute was where the physical boundary should run on the land according to the official Survey plan; and the Director had in his possession both the Survey plan and the title-deed and he was in a position, through his officers, to investigate the matter and correct a probable error. The present case is not actually a boundary dispute but a dispute as to whether the delineation in the official Survey plan is correct or not, having regard to the agreement made between the parties

in 1944; and it will not be possible for the Director to decide this matter unless he hears the evidence on oath of the parties concerned and this he has no power to do.

The *Andronikou* case (*supra*), on which learned counsel for the appellant also relied, can also be distinguished, because in that case a consent judgment had been lodged with the Land Registry Office who failed to make the necessary rectification in the title-deeds of the parties. That was an obvious case of error.

In the present case the alleged " error " is not apparent from the Land Registry records. It would, perhaps, be so if the parties had actually filed in 1944 with the Land Registry Office a plan to scale showing exactly the boundary line where they wished it to be, but that, according to counsel, has not been done. If the Director had in his records such a plan to scale, then that would be a case where by comparing the plan agreed upon and signed by the parties with the official Survey plan, he would be in a position to detect the error.

We are of the view that the present dispute between the parties is within the principle laid down in *Chakkarto* v. *The Attorney-General*, 1961 C.L.R. 231. There, the facts were different but the principle is the same. Here, the correction of the error, if there is an error in the Land Registry records, is incidental to the main issue which concerns the legal rights of the parties as regards the disputed strip of land.

It should also be added that the case of *Sherife Moustafa Moulla Ibrahim* v. *Mehmed Salih Souleyman* (1953) 19 C.L.R. 237, lends support to the view we are taking in the present case. In the course of his judgment in the *Ibrahim* case, the learned Chief Justice said (at page 239):

> " We consider that the kind of dispute to which section 56 (now sec. 58) applies is one in which the boundary is described in the title-deed or delineated on a plan, and the dispute is as to where the physical boundary should actually run on the land so as to conform with the deed or the plan. It does not apply where there is a dispute as to whether the description in a deed or delineation in a plan is correct or not. The trial Court, therefore, had jurisdiction to deal with what we consider the main issue in this case, namely, as to whether there has been a mistake in the registration ".

In the present case, as already stated, the dispute is as to whether the delineation in the official Survey plan is correct or not, having regard to the oral agreement between the co-owners in 1944; and the correction of any error in the Land Registry records or plan is incidental to the above-mentioned main issue which concerns the legal rights of the parties.

In the result the appeal is dismissed with costs.

Appeal dismissed with costs.