[JOSEPHIDES, STAVRINIDES & HADJIANASTASSIOU JJ.]

AGATHI CHARALAMBOUS, AS ADMINISTRATRIX OF THE ESTATE OF THE DECEASED CHARALAMBOS NEOPHYTOU,

Appellant—Plaintiff,

v.

IOANNIS K. IOANNIDES,

Respondent—Defendant.

(*Civil Appeal No.* 4651).

Immovable Property—Acquisition of ownership by prescription—Adverse possession—Gift not perfected by registration—Possession of the donee in the present case held not to be adverse possession of such a nature as to exclude the donor continuously and substantially from the enjoyment of the property—Renunciation—Assuming that the donee was entitled to set up a prescriptive right against the donor, still the donee's failure in the circumstances of this case to assert his rights leads to the irresistible conclusion that he had renounced his rights to such property—See, also, herebelow.

Adverse possession—"Adverse possession"—Definition of, in section 1 *of the Immovable Property Limitation Law,* 1886 (*Law* 4 *of* 1886) *and in section* 2 *of the Immovable Property* (*Tenure, Registration and Valuation*) *Law, Cap.* 224*—See, also, herebelow.*

Adverse possession—Should be proved by positive evidence as to acts of ownership amounting to possession which the nature of the land admits—There must be actual possession of a nature that ousted or excluded the owner from possession—See, also, hereabove.

Immovable Property—Prescription—Prescriptive period and matters relating to proscription against non-registered owners in cases where the property began to be adversely possessed prior to the coming into operation (*on September* 1, 1946) *of Cap.* 224, supra—*Governed by the law in force prior to that date—And the period of prescription need not have been completed by the aforesaid date i.e. September* 1, 1946—*Prescriptive period in accordance with the law in force prior to such date in respect of mulk pro-*

perty being under Article 1660 *of the Mejelle fifteen years—Sections* 9 *and* 10 *of Cap.* 224, supra.

Immovable Property—Prescription—Prescriptive period—Interruption as a result of registration of the property—Obtaining of registration as owner by a person interrupts any prescriptive period which is running against such person in respect of that property.

Prescription—Prescriptive period—Interruption—Prescriptive rights—Renunciation—See above.

Interruption—Interruption of prescriptive period by registration—See above.

Renunciation—Renunciation of prescriptive rights—Acquiescence—See above.

This is an appeal by the plaintiff, suing as administratrix of the estate of her deceased husband, from the judgment of the District Court of Nicosia, dismissing her claim for a declaration that she is the person entitled to registration as owner of a small village house at Galata, consisting of two rooms, a veranda, oven, W.C. and a yard. The plea on which the plaintiff (appellant) based her claim to the exclusive ownership of the property was that of undisputed and uninterrupted adverse possession for a period of 40 years by her deceased husband, Charalambos.

The undisputed facts are shortly as follows:

On March 1, 1925 when Charalambos became engaged to be married with the appellant, his mother Panayiotou by a contract of dowry gifted to him, *inter alia*, the house in question, the son (the said Charalambos) undertaking thereunder to maintain his mother during her lifetime and in case he "turned her out" and failed to maintain her ("ἐν περιπτώσει καθ' ἣν ἤθελον τὴν διώξω καὶ δὲν τὴν τρέφω") to pay her two shillings a day. The donor (the mother), who apparently was a widow, continued to occupy the bigger of the two rooms (*supra*) and the donee, her son Charalambos, used to store certain goods and various agricultural produce in either of the said two rooms of the house in question, from the time of his marriage in 1926 until about 8 years prior to his death which occurred on December 10, 1965. Charalambos went to live in the desputed house together with his mother Panayiotou, in the same room in the year 1957 or 1958 where he stayed until his death, living apart from his wife.

At the time of the General Survey and Valuation of the Galata village in 1926, an entry was made in the Land Registry book, known as "Form No 115", showing as the owner of the house in dispute the son Charalambos In 1951, 26 years after the said contract of dowry was signed, a title-deed was issued in respect of the said house in the name of the mother Panayiotou under Registration No 5070, dated the 14th December, 1951 This title-deed was issued after local inquiry, and in accordance with the usual practice the responsible local inquiry clerk must have consulted the book "Form No 115" referred to above and showing the son Charalambos as owner of the house

As already stated Charalambos (the son of Panayiotou and the husband of the appellant) died on December 10, 1965, and a short time thereafter, i e on February 1, 1966, his mother Panayiotou transferred the property in dispute by way of gift to the present defendant (respondent), who was her god-child The mother died 1 1/2 moths later, on the 16th March, 1966, and the present action was instituted on the 15th July, 1966

On the above facts, the trial Judge, relying on *Mourmouri* v *Hajilanni* (1907) 7 C L R 94, held that the plaintiff (appellant) failed to establish a prescriptive right strong enough to defeat the title-deed issued in 1951 in the name of the mother Panayiotou and subsequently transferred by her to the defendant (respondent) and he dismissed the action

As it is alleged that the property in dispute began to be adversely possessed in 1926, the law applicable with regard to the period of prescription and all matters relating to prescription during such period are governed by the law in force prior to the coming into operation (on the 1st September 1946) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap 224 (see section 10 and *Stokkos* v *Solomi* (1956) 21 C L R 209) It follows that, the property in dispute being admittedly under the old law a *mulk*, the period of prescription is under the provisions of article 1660 of the *Mejelle* fifteen years On the other hand the definition of adverse possession" is substantially the same under both the old law (Law 4 of 1886, *infra*) and the new one (Cap 224 *supra*) The Immovable Property Limitation Law, 1886 (Law 4 of 1886), section 1, defines ' adverse possession" as "possession by some person not entitled to possession, *where the express consent or permission* of the person so entitled has not been given or

obtained for such possession"; whereas in the definition of "adverse possession" in section 2 of the new statute Cap. 224 *"implied consent"* of the person entitled to possession has been added to the said definition.

Affirming the judgment of the trial Court and dismissing the appeal, the Court: —

Held, (1) It has been held that "if a person obtains registration as owner of immovable property that registration will interrupt any prescriptive period which is running against him in respect of that property at the time of his registration". *Kannavkia* v. *Arghyrou and Others* (1953) 19 C.L.R. 186, at p. 187; and *Angeli* v. *Lambi and Others* (1963) 2 C.L.R. 274. Consequently, the prescriptive period in favour of the son (the said Charalambos) against his mother Panayiotou should have been completed by 1951 when she obtained registration of the property in dispute (*supra*); and as she was not before 1951 the registered owner of such property, the period of prescription need not have been completed by the 1st September, 1946 (*supra*): See sections 9 and 10 of Cap. 224, *supra*; and *Papageorghiou* v. *Komodromou* (1963) 2 C.L.R. 221, at p. 237.

(2) It has also been held that adverse possession over the disputed land must be proved by positive evidence as to the acts of ownership which amount to possession which the nature of the land admits: *Soteriou* v. *Heirs of Despina K. Hji Paschali* (1962) C.L.R. 280, at pp. 281 and 282. Compare also the English case of *Williams Brothers Ltd.* v. *Raftery* [1957] 3 All E.R. 593, at p. 599 where Morris L.J. said that there must be "actual possession in the defendant of a nature that ousted the plaintiffs from possession, or excluded them from possession".

(3) In the present case we cannot say that possession of the son (the said Charalambos) was adverse possession of such a nature as to exclude the donor (the mother Panayiotou) continuously and substantially from the enjoyment of the property in dispute. The mother had substantial possession or occupation of the house until her death in 1966. Consequently the son cannot be held to have acquired a prescriptive right to registration.

(4) (a) Appellant's counsel, however, argued that the possession in the present case should be distinguished from that in *Mourmouri* case (*supra*), on account of the dowry agreement

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of the 1st March, 1925 (*supra*); that is to say, the appellant's case was based on a contractual right of the mother to live in the room by virtue of the aforesaid agreement of dowry.

(b) We are of the view that the wording of the said agreement of dowry does not support the appellant's proposition as it cannot be implied that the mother was given thereby the right to occupy the house in dispute during her lifetime, nor that she did so occupy it by virtue of that contract, or that her possession was the son's (donee's) possession adverse to herself.

(5) But assuming that the son (Charalambos) was entitled to set up a prescriptive right against the mother by 1941 (i.e. fifteen years after 1926 *supra*), his failure to assert such right in 1951 (when the house was registered in the mother's name) and subsequently until his death in December 1965, coupled with his failure for 40 years to have the property registered in his name, is by implication equivalent to renunciation, and his personal representative (the appellant) cannot now assert the prescription against the mother in whose favour the son renounced it. (See *Mourmouri* case, *supra*, at p. 96). Thus, the registration of the house in 1951 in the mother's name, after a local inquiry by the Land Registry,— and it is highly improbable that the son was not aware of such steps as well as of the said registration —, coupled with the son's inactivity for 40 years, until his death in 1965, to apply for registration in his name or assert his prescriptive right after the said registration in the mother's name in 1951, leads us to the irresistible conclusion that he had renounced his rights to such property.

Appeal dismissed with costs.

Cases referred to:

Mourmouri v. *Haji Ianni* (1907) 7 C.L.R. 94; and *ibid* at 96;

Stokkos v. *Solomi* (1956) 21 C.L.R. 209;

Kannavkia v. *Arghyrou and Others* (1953) 19 C.L.R. 186, at p. 187;

Angeli v. *Lambi and Others* (1963) 2 C.L.R. 274;

Papageorghiou v. *Komodromou* (1963) 2 C.L.R. 221, at p. 237;

Soteriou v. *The Heirs of Despina Hji Paschali*, 1962 C.L.R. 280, at pp. 281 and 282.

Williams Brothers Ltd. v. *Raftery* [1957] 3 All E.R. 593, at 599, per Morris L.J.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Attalides, Ag. D.J.) dated the 30th June 1967, (Action No. 2390/66) dismissing her claim for a declaration that she is the person entitled to registration of a small village house, and for other consequential relief.

A. C. Hadjioannou, for the appellant.

G. Constantinides, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:

JOSEPHIDES, J.: This is an appeal by the plaintiff, as administratrix of the estate of her deceased husband, from the judgment of the District Court of Nicosia, dismissing her claim for a declaration that she is the person entitled to registration of a small village house, and for other consequential relief. The plea on which the plaintiff (appellant) based her claim to the exclusive ownership of the property was that of undisputed and uninterrupted adverse possession for a period of 40 years by her deceased husband.

The property in dispute is a house at Galata village, under sheet/plan XXXVII/13 vil., plot 255, Registration No. 5070/1.12.1966, consisting of two ground-floor rooms, veranda, oven, W.C. and a yard with trees. The value of this property is, according to the appellant, about £300.—

The facts as found by the trial judge, and not challenged by either side on appeal, were as follows:

On the 1st March, 1925, when Charalambos Neophytou (the deceased husband of the present administratrix) became engaged to be married, his mother Panayiotou Michael by a contract of dowry gifted to him, *inter alia*, the house, subject matter of the present case, in the following terms:

"'Εγὼ ἡ Παναγιωτοῦ Μιχαὴλ ἐκ Γαλάτας τοῦ ἐν λόγῳ μνηστευομένου υἱοῦ μου Χαραλάμπους Νεοφύτου ὑποχρεοῦμαι καὶ

παραχωρῶ εἰς αὐτὸν μίαν αὐλὴν μὲ δύο δωμάτια ὡς καὶ ἅπαντα τὰ κινητὰ καὶ ἀκίνητα κτήματά μου τὰ ὁποῖα εὑρίσκονται εἰς Χωρίον Γαλάταν, Τεμπριάν, Νικητάριν καθὼς καὶ τὸ ἔπτατον τὸ ὁποῖον μοῦ ἀνήκει ἀπὸ τὸν ἀποβιώσαντα σύζυγόν μου Νεόφυτον Χαραλάμπους καὶ ὅλα τὰ δένδρα τὰ ὁποῖα εὑρίσκονται ἐντὸς τῶν κτημάτων μου ἥμερατα καὶ ἄγρια ἡ ἀξία ὅλης τῆς περιουσίας μου εἶναι τριακόσιαι λίραι".

In the same contract the son Charalambos undertook to maintain his mother Panayiotou during her lifetime and in case he "turned her out" and failed to maintain her, he undertook to pay her two shillings a day. This is the relevant extract from the agreement:

"'Ἐγὼ δὲ ὁ Χαράλαμπος Νεοφύτου ὑποχρεοῦμαι νὰ τρέφω τὴν μητέρα μου ἐν ὅσω ζῇ ἐν περιπτώσει καθ' ἣν ἤθελον τὴν διώξω καὶ δὲν τὴν τρέφω ὑποχρεοῦμαι νὰ πληρώνω εἰς αὐτὴν δύο σελίνια τὴν ἡμέραν".

The donor (Panayiotou), who apparently was a widow, continued to occupy the bigger of the two rooms and her son Charalambos used to store certain goods and various agricultural produce, and to shelter his animals in either of the two rooms, from the time of his marriage in 1926 until about 8 years prior to his death, which occurred on the 10th December, 1965. Charalambos, went to live in the disputed house together with his mother Panayiotou, in the same room, in the year 1957 or 1958 where he stayed until his death, living apart from his wife.

At the time of the General Survey and Valuation of Galata village in 1926, an entry was made in the Land Registry book, known as "Form N. 115", which showed as the owner of the property in dispute the son Charalambos. In 1951, that is, 26 years after the contract of dowry was signed in 1925, a title-deed was issued in the name of the mother Panayiotou: Registration No. 5070, dated the 14th December, 1951. This title-deed was issued by the Land Registry Office after a local inquiry; and, according to the Land Registry evidence, the practice was that the responsible local inquiry clerk must have consulted the book "Form N. 115" and, in spite of the existence of the entry in the name of Charalambos, the title-deed was issued in the name of his mother Panayiotou. There was also evidence from the Land Registry clerk that, according to the official records, the said property before 1951 was

registered in the name of two strangers, that is, Charitos Ierodiakonou Papayiakoumi for two-thirds share, and in the name of Costis Stylianou for one-third share. As already stated, Charalambos, died on the 10th December, 1965, and a short time thereafter, that is on the 1st February, 1966, his mother Panayiotou, transferred the property in dispute by way of gift to the present defendant (respondent), who was her godchild. Panayiotou died some 1 1/2 moths later, on the 16th March, 1966, and the present action was instituted on the 15th July, 1966.

On the above facts, the trial Judge, relying on the case of *Morphia Haji Ianni Mourmouri* v. *Michael Haji Ianni* (1907) 7 C.L.R. 94, held that the plaintiff (appellant) had failed to establish a prescriptive right strong enough to defeat the title-deed issued in 1951 in the name of the mother Panayiotou, and subsequently transferred by her to the defendant (respondent), and he dismissed the action.

The present case was argued by both sides on the basis that the property in dispute was mulk property – a house within the village of Galata. For the son Charalambos to succeed in his plea of adverse possession he must prove that he occupied the house in such a way for such a time as to oust the claim of his mother Panayiotou; and, the property being mulk, he must prove that he occupied the house adversely to his mother for 15 years, and that during that time his mother neglected to assert against him a right of suit which she possessed.

In the *Mourmouri* case (1907) 7 C.L.R. 94 (*supra*), it was held that possession for the period of prescription, under a gift of immovable property not perfected by registration, does not operate to supply the defect of want of registration so as to give a good title to the donee, unless such possession is maintained adversely to the donor, and is of such a nature as to exclude the donor continuously and substantially from the enjoyment of the property. A mere occasional and permissive user by the donor would not necessarily interrupt the prescription.

As it is alleged that the property in dispute began to be adversely possessed in the year 1926, the law applicable with regard to the period of prescription and all matters relating to prescription during such period are governed by the provisions of the law in force prior to the coming into operation

(on the 1st September, 1946) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (*Stokkos* v. *Solomi* (1956) 21 C.L.R. 209), but the definition of "adverse possession" is substantially the same under both enactments, with the only difference that in the definition of "adverse possession", in section 2 of Cap. 224, "implied consent" of the person entitled to possession has been added to the definition. In the old law, that is, the Immovable Property Limitation Law, 1886 (Law 4 of 1886), section 1, "adverse possession" is defined as "possession by some person not entitled to possession, where the express consent or permission of the person so entitled has not been given or obtained for such possession".

The period of prescription in respect of mulk property was, under the provisions of Article 1660 of the Mejelle, fifteen years.

It has been held that "if a person obtains registration as owner of immovable property that registration will interrupt any prescriptive period which is running against him in respect of that property at the time of his registration": *Annou Haji Tofi Kannavkia* v. *Kleopatra Arghyrou and Others* (1953) 19 C.L.R. 186, at page 187; and *Eleni Angeli* v. *Savvas Lambi and Others* (1963) 2 C.L.R. 274. Consequently, the prescriptive period in favour of the son in the present case against his mother Panayiotou should have been completed by 1951 when she obtained registration of the property in dispute. As she was not the registered owner of such property, the period of prescription need not have been completed by the 1st September, 1946; sections 9 and 10 of Cap. 224; and *Rodothea Papa-Georghiou* v. *Antonis Savva Charalambous Komodromou* (1963) 2 C.L.R. 221, at page 237.

It has also been held that adverse possession over the disputed land must be proved by positive evidence as to the acts of ownership which amount to possession which the nature of the land admits: *Anna Soteriou* v. *Heirs of Despina K. Hji Paschali*, 1962 C.L.R. 280, at pages 281 and 282. Compare also the English case of *Williams Brothers Ltd.* v. *Raftery* [1957] 3 All E.R. 593, at page 599, where Morris L.J. said that there must be "actual possession in the defendant of a nature that ousted the plaintiffs from possession, or excluded them from possession".

In the *Mourmouri* case (1907), *supra*, at page 94, the facts

were that a father by two successive documents in 1877 and 1893 purported to give to his daughter a room in his house. After the gift he made some small and occasional use of the room and also for some time actually lived in it. The daughter used the room up to her father's death in 1893. The Supreme Court of Cyprus, composed of Tyser, C.J. and Bertram, J., in the course of their judgment, at page 96, said: "If from the date of the gift from her father in 1877 to his daughter in 1893 the plaintiff had substantially speaking maintained the room in her own occupation, the mere fact of her allowing her father to make some slight and casual use of the room, for the deposit of his brooms or otherwise, would have had no special significance." And they expressed the view that such "a mere occasional and permissive user would not operate as an interruption of her prescription. But, if after his gift to the daughter he actually lived in the room, how can she possibly be supposed to have acquired a prescriptive title against him?" The Court were further of opinion that the "plea of prescription implies that the father, being dispossessed, neglected during 15 years, to bring an action to recover possession." "How could he", the Supreme Court said, "have brought an action to recover possession of the room while he was actually living in it?"

We humbly subscribe to that view and we are of opinion that the same reasoning applies to the present case.

In this case we cannot say that possession of the son was adverse possession of such a nature as to exclude the donor (the mother) continuously and substantially from the enjoyment of the property in dispute. The mother had substantial possession or occupation of the house until her death in 1966. Consequently, the son cannot be held to have acquired a prescriptive right to registration.

The appellant's counsel, however, submitted that the possession in the present case should be distinguished from that in the *Mourmouri* case, on account of the dowry agreement of 1925, quoted earlier in this judgment; that is to say, the appellant's case was based on a contractual right of the mother to live in the room by virtue of the aforesaid agreement. Having given the matter our best consideration we are of the view that the wording of the contract does not support the appellant's proposition as it cannot be implied that the mother was given the right to occupy the house in dispute. The maxi-

mum that can be inferred from the agreement is that the son was bound to provide for her food and shelter and that if he failed to do so he would be bound to pay her the sum of two shillings a day for such maintenance. Neither the expression "house" nor "shelter" is used in the particular clause regarding maintenance, and the words "ἐν περιπτώσει καθ' ἣν ἤθελον τὴν διώξω καὶ δὲν τὴν τρέφω" may imply that the son's obligation was to provide his mother with shelter, in addition to food; but the shelter to be provided would not necessarily be in the house in dispute.

To sum up: We are of the view that it could not be implied that the mother had a right to occupy the house in dispute during her lifetime, nor that she did so occupy it by virtue of that contract, or that her possession was the son's (donee's) possession adverse to herself.

But assuming that Charalambos was entitled to set up a prescriptive right against the mother by 1941, his failure to assert such right in 1951 (when the house was registered in the mother's name) and subsequently until his death in December 1965, coupled with his failure for 40 years to have the property registered in his name, is by implication equivalent to renunciation, and his personal representative cannot now reassert the prescription against the mother in whose favour the son renounced it.

As was said by the learned Judges in the *Mourmouri* case, at page 96, "It is we think an undoubted proposition that, if a person, who is entitled to set up a prescriptive right against another person, expressly renounces his prescription, or does an act which is by implication equivalent to renunciation, he cannot afterwards reassert the prescription against the person in whose favour he has renounced it."

The following facts have led us to the conclusion that the son renounced his right: –

(a) for 26 years (from 1926 to 1951) he possessed the property as alleged by him, yet he failed to obtain registration in his name, and in 1951 his mother had the property registered in her name;

(b) for 40 years (from 1926 to 1965) he possessed this property as alleged by him, yet for 25 years after the

completion of the prescriptive period and prior to his death in December 1965 he failed to obtain registration;

(c) for 14 years (1951 to 1965) after the registration of the property in his mother's name he failed to assert his prescriptive right. It should be borne in mind that for about 8 years prior to his death, that is, from 1957 or 1958, he lived apart from his wife and he resided in the same room with his mother in the house in dispute.

Having regard to village life in Cyprus and to the circumstances of this case, we are of the view that it is highly improbable that the son was not aware of the registration of the property in the mother's name in which he appears to have acquiesced.

In addition to these considerations, we have also the local inquiry which was held by the Land Registry in 1951 immediately prior to, and for the purpose of, having the property in dispute registered in the mother's name. There is evidence that the son's name was shown as owner in the Land Registry book "Form No. 115" at the time of the 1926 Survey. Nevertheless, the Land Registry after a local inquiry issued a title-deed in the mother's name in 1951, because they must have been satisfied after due inquiry that the mother had been in possession for a period exceeding 15 years, that is, since before 1936. We think that it can be safely assumed that the son had notice of the local inquiry and the issue of the title-deed in his mother's name.

Thus, the registration of the house in dispute in 1951 in the mother's name, after a local inquiry by the Land Registry, coupled with the son's inactivity for 40 years, until his death in December, 1965, to apply for registration in his name or assert his prescriptive right after the registration in the mother's name in 1951, leads us to the irresistible conclusion that he had renounced his rights to such property.

For these reasons the appeal is dismissed, with costs.

Appeal dismissed with costs.