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ABRAHAM HASSIDOFF
v.
PAUL ANTOINE-ARISTIDE SANTI AND OTHERS

[JOSEPHIDES, STAVRINIDES, LOIZOU, JJ.]

ABRAHAM HASSIDOFF,
Appellant-Applicant,

v.

PAUL ANTOINE-ARISTIDE SANTI AND OTHERS,
Respondents.

(*Civil Appeal No.* 4792).

Immovable Property—Error or omission in the Land Register—Double registration—Error made by a Land Registry clerk in 1919 *and not detected until* 46 *years later in* 1965*—Whether in the circumstances of the instant case the said error may be corrected by the Director of the Department of Lands and Surveys under the provisions of section* 61 *of the Immovable Property (Tenure, Registration and Valuation) Law, Cap.* 224*—In the instant case the intervening period between occurrence in* 1919 *of the alleged error and its subsequent detection in* 1965 *is so long as to admit, in view of other circumstances as well, the probability of a prescriptive right having been acquired over the property including the strip of land in dispute—Section* 61 *not applicable to such cases—Nor was it the intention of the legislature to empower the Director to carry out the kind of complicated investigation which he did in the present case—This being a case concerning legal rights in land, the parties affected should be left with their ordinary remedies and given full opportunity of vindicating their proprietary rights in a Court of law in the first instance with all the safeguards as to proof and admissibility of legal evidence.*

Error or omission in the Land Register—Or in any book of the District Lands Office, or in any certificate of registration—Section 61 *of Cap.* 224*—Section* 80 *of same Law providing for an appeal from the Director to the District Court—Error or omission etc. etc.—Meaning, scope—The instant case is outside the ambit of such "error" as aforesaid—See further* supra.

Registration—Double registration—Onus on the person seeking to disturb the title of the owner in possession.

Double registration—Onus—See supra.

Evidence—Admissibility—On an appeal from the Director to the District Court under section 80 *of Cap.* 224*, the Court can*

only receive legally admissible evidence and not hearsay evidence such as certificates issued by mukhtars etc. etc. and the village authorities—Such certificates are admissible so far as the District Lands Office is concerned (see section 39 *of Law No.* 12 *of* 1907, *repealed in* 1946, *and section* 82 (1) *of Cap.* 224 *now in force since September* 1, 1946)*—But the aforesaid certificates are not admissible evidence in a Court of law—See further* infra.

Village authorities—Certificates by such authorities—Whether and how far admissible in evidence—See supra ; *see further* infra.

Evidence—Files of District Lands Offices or District Courts—Undesirability of receiving in evidence whole such files without first considering whether the documents contained therein are admissible evidence—Within the well-established rules of evidence.

Natural justice—Violation of rules of natural justice by Land Registry clerk who gave private audience to a witness (a former mukhtar) in the absence of the parties—Deprecated.

Statutes and other enactments referred to in the present case—The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, *sections* 58, 61, 80, 82 (1)*—Law No.* 12 *of* 1907, *sections* 13, 39 *repealed in* 1946*—Article* 20 *of the Ottoman Land Code—Cap.* 224 *section* 58 (supra) *which is section* 56 *of the Immovable Property (Tenure etc. etc.) Law, Cap.* 231 *in the* 1949 *edition—Law No.* 14 *of* 1885 *(now Cap.* 217).

This appeal raises the question whether an error, alleged to have been made by a Land Registry clerk at a local inquiry in 1919, with consequential error in the area of a registered property, and to have been detected by another Land Registry clerk 46 years later, in 1965, may be corrected by the Director of the Department of Lands and Surveys under the provisions of section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. (Section 61 (1) and (2) is set out *post* in the judgment).

To put the matter very shortly, on March 20, 1965 the Director sent a notice to the appellant under the provisions of section 61 (2) (*supra*) stating that the latter's registration No. 6242 dated July 12, 1955 wrongly covered the whole of the area of his plot 187/1 and that an area of 4 donums and 1800 sq. feet of his (appellant's) aforesaid plot 187/1 was covered by Registration No. 2528, dated September 16,

1905, in the name of the deceased Paul Marco Santi predecessor in title of the first two respondents (the third respondent being the Director himself). The Director further notified the appellant (Mr. Hassidoff) that he proposed to correct the error by excluding from the latter's Registration No. 6242 (*supra*) the said strip of land (coloured red in the attached plan), and generally make all consequential entries in the official books. The appellant lodged an objection with the Director who, after investigating it, gave notice to the appellant (Mr. Hassidoff) on October 11, 1965, that he, the Director, was not convinced that he should change his intention of correcting the error described earlier. Mr. Hassidoff thereupon, feeling aggrieved by the Director's decision, appealed to the District Court of Larnaca under the provisions of section 80 of Cap. 224. The District Court gave a judgment in the matter whereby they sent the matter back to the Director " to be considered by him in the light " of a certain evidence to the effect that the property under Registration No. 2528 dated September 16, 1905, in the name of the aforesaid deceased Paul Marco Santi, was in 1916 recorded (at the General Survey and Valuation under the provisions of Law No. 12 of 1907) as hali land, and not in his name. Mr. Hassidoff now appeals against that judgment of the District Court of Larnaca.

It should be noted that Mr. Hassidoff (the appellant) and his predecessors in title have been in possession of the disputed strip of land since about 1916, if not earlier ; whereas the deceased Paul Marco Santi or his heirs (respondents No. 1 and No. 2) do not appear to have been in possession at least since 1916. To sum up, the present case appears to be a case of double registration ; and on principle and authority the onus is on the person seeking to dispute the registration of the owner in possession.

It is in evidence that the alleged error in the Land Registry records occurred in 1919 ; it was not detected until some 46 years later in 1965, by a comparison of the Land Registry file of 1919 with another file of 1906 which contained a rough sketch made by a clerk at the time. There was no official survey plan in 1906. On the other hand, two local enquiries were carried out after the alleged error in 1919, that is to say one in July 1936 and another in September 1954, on the basis of the official survey plan ; and the property was related to such plan. In spite of that, the alleged mistake not only was not detected but, on the contrary, the appellant's re-

gistration was identified and related to the plan in question. In these circumstances, the correction in 1965 would seem to affect the legal rights of the appellant, who may, *inter alia*, be in a position to prove long possession through his predecessors in title and himself of the whole area of his registration, including the disputed strip ; and, consequently, to establish acquisition of ownership over the said property by prescription before the coming into force of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (*viz.* 1st September, 1946). Editor's note : after that no acquisitive prescription runs against a registered owner).

Allowing the appeal and setting aside both the judgment of the District Court and the decision of the Director of the Department of Lands and Surveys, the Court :—

Held, (1)—(*a*). We are of the view that the provisions of section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 are inapplicable in the present case for the reasons explained herebelow. (Section 61 (1) and (2) is set out *post* in the judgment).

(*b*) The present case appears to be a case of double registration to be decided by a Court of Law, the onus being on the person seeking to disturb the registration of the owner in possession.

(2) This is not a straightforward case of an error or omission appearing in the Land Register or in any book in the District Lands Office or a certificate of registration, as provided in section 61 of Cap. 224 (see section 61 *post* in the judgment). In order to trace the alleged error, the Director had to make a detailed investigation and comparison of a considerable number of departmental files since 1904, based on a rough sketch prepared in 1906 and the boundaries appearing at the time. The comparison was not based on any official survey plan as none existed in 1906.

We do not think that it was the intention of the legislature to empower the Director to carry out this kind of complicated investigations which he did in the present case.

(3) The intervening period between the alleged error (in 1919) and its detection (in 1965) is so long as to admit of the probability of a prescriptive right having been acquired by the appellant and/or his predecessors in title prior to the 1st September, 1946 when Cap. 224 came into operation (*supra*) ; considering, especially, that the District Lands Office in

the meantime carried out two local enquiries (in July 1936 and September 1954) and, after finding the disputed strip of land in the undisputed possession of the appellant's predecessors in title and the appellant himself, issued certificates of ownership accordingly in the name of the appellant in 1937, 1954 and 1955. We are of opinion that it was not the intention of the legislature in enacting section 61 to make it applicable to such cases.

(4) This being a case concerning legal rights in land, it is obviously a case in which the parties affected should be given full opportunity of vindicating their legal rights in a Court of law in an action for declaratory judgment as to title or otherwise, with all the safeguards as to proof and admissibility of legal evidence. This is a case which does not fall within the ambit of an " error " in the land Register as envisaged in section 61 of Cap. 224.

(5) In the result the appeal is allowed, the judgment of the District Court of Larnaca and the decision of the Director of the Department of Lands and Surveys are set aside. Respondents No. 1 and No. 2 shall pay the costs of the appellant here and in the Court below. No order as to costs against the third respondent (the Director).

Appeal allowed; order for costs as above.

Per curiam :

(1) *Natural justice :* In the present case it would appear that there was a violation of the rules of natural justice by the District Lands Office clerk who gave private audience to a witness (a former mukhtar) in the absence of the parties. (Cf. *Galatis* v. *Savvides*) (1966) 1 C.L.R. 87).

(2) *Admissibility of evidence :* The District Court in their judgment in the present case expressed the view that in an appeal to the District Court under section 80 of Cap. 224 from a decision or order of the Director of the Department of Lands and Surveys the Court may properly receive any heresay evidence appearing in the District Lands Office files. We are afraid that we find ourselves unable to adopt that view. Court can only receive legally admissible evidence and not hearsay evidence, as the subject matter of such appeals to the District Courts concern legal and proprietary rights of the citizens. In this connection we would once more invite attention to the well-established rules as to the admis-

sibility of evidence as laid down by the Privy Council in the Cyprus case of *Ioannou and Others* v. *Demetriou and Others* (1951) 19 C.L.R. 72 ; and in the case of *Ellinas* v. *Yianni and Others* (1958) 23 C.L.R. 22 at p. 28 ; and we would reiterate the observations of the Supreme Court in the *Ellinas* case (*supra*) regarding the undesirability of receiving in evidence whole files of either the District Lands Offices or the District Courts without first considering whether the documents therein are admissible evidence within the well-established rules of evidence.

A village certificate signed by the mukhtar and two azas may well be evidence of any fact relating to the tenure or occupation, or for the purposes of registration of immovable property etc., so far as the District Lands Office is concerned. (See section 39 of Law No. 12 of 1907 repealed and replaced in 1946 and section 82 (1) and (3) of Cap. 224 which is now in force since September 1, 1946). Needless to say that such certificates may not pass the test of the rules as to the admissibility of evidence so far as a Court of law is concerned ; hearsay evidence is not admissible before a Court of law unless it comes within the four corners of the law and the recognised rules of evidence. This principle is also applicable in the case of any appeal from the Director of the Land Registration and Surveys to the District Court under section 80 of Cap 224 ; that is to say, only legally admissible evidence may be received and acted upon in such a Court.

Cases referred to :

Arnaout v. *Zinouri* (1953) 19 C.L.R. 249 ;

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

Sherife Ibrahim v. *Souleyman* (1953) 19 C.L.R. 237 at p. 239 ;

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

Chrysanthou and Others v. *Antoniades* (1969) 1 C.L.R. 622 ;

Galatis v. *Savvides* (1966) 1 C.L.R. 87 ;

Ioannou and Others v. *Demetriou and Others* (1951) 19 C.L.R. 72 ;

Ellinas v. *Yianni and Others* (1958) 23 C.L.R. 22 at p. 28 ;

Haji Sava v. *Mariolou* (1907) 7 C.L.R. 89.

Appeal.

Appeal by applicant against the judgment of the District Court of Larnaca (Georghiou, P.D.C. & Orphanides, D.J.) dated the 31st January, 1969 (Application No. 123/65)

refusing to confirm a decision of the Director of Lands and Surveys, whereby he intended to correct an error in the land register and sending the case back to the Director to be considered by him in the light of the evidence.

M. Houry, for the appellant.

G. Constantinides, for respondents No. 1 and No. 2.

A. Frangos, Senior Counsel of the Republic, for respondent No. 3.

Cur. adv. vult.

The judgment of the Court was delivered by :

JOSEPHIDES, J. : This appeal raises the question whether an error, alleged to have been made by a Land Registry clerk at a local enquiry in 1919, with consequential error in the area of a registered property, and to have been detected by another Land Registry clerk 46 years later, in 1965, may be corrected by the Director of the Department of Lands and Surveys under the provisions of section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

Section 61 of Cap. 224 reads as follows :

"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."

The appellant in this case is Mr. Abraham Hassidoff (to whom I shall refer in this judgment as " Mr. Hassidoff "); the first two respondents are Mr. Paul Antoine-Aristide Santi and Mr. Charles Antoine-Aristide Santi, respectively, who are described as the heirs of the deceased Paul or

Pavlo Marco Santi ; and the third respondent is the Director of the Department of Lands and Surveys (to whom I shall refer as " the Director ").

Mr. Hassidoff stands registered under Registration No. 6242, dated the 12th July, 1955, in respect of a field of an area of 38 donums and 1800 sq. ft., at locality " Lishines or Taoukshi ", in the village of Voroklini, Larnaca District, under Sheet/Plan XLI/33, plot 187/1 (see certificate of registration of 12.7.1955). The deceased Paul Marco Santi, stands registered under Registration No. 2528, dated the 16th September, 1905, in respect of a field of an area of 10 donums, at the locality " Ammies ", in the same village of Voroklini. This registration " was issued after a local inquiry which was held in 1905 and it is not based on the Government Survey Plan but on a sketch " (see Director's reasons for his decision dated 18.10.1965).

On the 20th March, 1965, the Director sent a notice to Mr. Hassidoff under the provisions of section 61 (2) of Cap. 224 stating that the latter's registration wrongly covered the whole of the area under plot 187/1 and that an area (marked red on the plan, annexed to the Director's notice) of 4 donums and 1800 sq. ft. of Mr. Hassidoff's plot, was covered by Registration No. 2528 in the name of the deceased Paul Marco Santi. The Director further notified Mr. Hassidoff that he proposed to correct the error by excluding from the latter's Registration No. 6242 the said strip of land (coloured red), and generally make all consequential entries in his books.

Mr. Hassidoff lodged an objection with the Director who, after investigating it, gave notice to Mr. Hassidoff on the 11th October, 1965, that he, the Director, was not convinced that he should change his intention of correcting the error described earlier.

Mr. Hassidoff thereupon, feeling aggrieved by the Director's decision, appealed to the District Court of Larnaca under the provisions of section 80 of Cap. 224.

The Full District Court, after receiving the evidence of the Lands Clerk who had investigated this case (Mr. Christodoulos Marcou), and hearing legal argument on both sides, refused to confirm the Director's decision on the ground that in 1916 the property of Paul Marco Santi, plot 183, was recorded (at the General Survey and Valuation under the provisions of Law 12 of 1907) as hali land, and not in his name. The Court thereupon sent the matter

back to the Director " to be considered by him in the light of the evidence that plot 183 covered by Registration 2528 in the name of Paul Marco Santi, dated 16.9.1905, has since been recorded in the books of the Lands Office as hali land and still remains as such to this date ". The Court, however, added that, had it not been for this fact, they would have agreed with the Director's decision and would have confirmed it as correct.

Mr. Hassidoff now appeals against that judgment of the District Court.

The District Court stated in their judgment that the Director's decision was substantially based on the investigation carried out by the Lands Clerk, Mr. Marcou, and on the findings of this clerk. The Court was satisfied that the Lands Clerk made a very reliable and exhaustive research to arrive at his conclusions. He went carefully through the relevant files of the District Lands Office, which were produced in evidence. He compared the boundaries of Mr. Hassidoff's property and those of Santi's property and in cross-reference with the boundaries of adjoining properties. He carried out a local enquiry on the spot and he prepared a sketch which he produced to Court. Mr. Marcou further traced the several previous registrations of Mr. Hassidoff's property since its original registration in the year 1904 (Registration No. 2431, dated 7th October, 1904) through to its present Registration No. 6242, dated the 12th July, 1955 ; and he likewise traced the registration of Paul Marco Santi from an undated record (No. 651), through registration No. 2427, dated 7th October, 1904, to the present Registration No. 2528, dated the 16th September, 1905. We shall presently give more details of the history of both registrations.

Registration No. 6242, in the name of Mr. Hassidoff, derives originally from registration No. 2431 of 7.10.1904 a field of 22 donums in the name of Adela Marco Santi (D.L.O. file A.508/904), which was transferred to Registration 2594 of 28.3.1906 in the names of Nicolas and Spyros Christofi Symeonides; this registration was carried to Registration No. 2655 of 29.7.1906 in the names of the same persons (see D.L.O. file A.274/1906). The boundaries at the time were the following : " Ahmet Rashid, Ismail Hakki, Aziz Cotrofo, road of Famagusta, Hji Antoni Sardo by two sides, Pavlo Santi, water channel, Stavrakis Michaelides, Kyriacou Michael, Christodouli Flourides, Michael Santi, Ahmet Rashid and Ismail Hakki ".

From here on the property (Reg. No. 2655) is divided into two halves. The one half of this registration was transferred to Registration No. 4899 of 29.10.1934 in the name of Mr. Hassidoff (one-half share), and to Reg. No. 4979 of 29.11.1935 in the name of Benjamin Kokia (one-half share). The other half share of Reg. No. 2655 was transferred to Registration No. 4126 of 16.5.1919 in the name of Chrysostomou Chr. Symeonides, one-half share of 53 donums.

Mr. Hassidoff's Registration No. 4899 was then carried to Registration No. 5092 of 26.8.1937. As from this date Mr. Hassidoff's title was related to the official survey plan under plot 187/1, and the area is stated to be 38 donums and 1800 sq. ft. This registration was issued after a local enquiry on the application (A. 1046/35) of Benjamin Kokia, who was a co-owner of the property with Hassidoff ; and the said registration has as one of its boundaries the Voroklini road and it includes the disputed strip of four donums and 1800 sq. ft. After the transfer of the shares of certain co-owners in registration 5092 in 1954 we find Mr. Hassidoff being registered under registration 6239 of 30.9.1954 in respect of 6/14ths shares and Victoria Bathero in respect of 1/14th share.

Reverting to the other half under Registration No. 4126 of 16.5.1919, that was transferred to Registration No. 4318 of 25.2.1924 (Nicolas Christofi Symeonides), which was subsequently transferred under Registration No. 4851 of 15.3.1934 to Mr. Hassidoff by purchase, one-half share of 53 donums. At this juncture, on the application of Mr. Hassidoff, his one-half share in Registration No. 4851 and 6/14ths shares in Registration 6239 were amalgamated into one registration (No. 6242 of 29.10.1954), 13/14ths shares ; and, eventually, the whole property under Registration No. 6242 was registered in the name of Mr. Hassidoff on the 12th July, 1955, under plot 187/1, and with an area of 38 donums and 1800 sq. ft.

Now, as regards the history of the registration of Paul Marco Santi : This registration is derived from the undated Record No. 651. These undated records are old records of immovable property and are not considered valid registrations. The original registration effected from Record No. 651 was Registration No. 2427, dated 7th October, 1904, a field of 10 donums, in the name of Paul Marco Santi (under application No. 507/1904). Registration No. 2427 was then transferred to the present registration 2528, dated

16th September, 1905, in the name of Paul Marco Santi (under application No. 463/1905). This registration is in respect of a filed of an area of 10 donums and, according to the evidence of the District Lands Clerk, it still stands to this date. Its boundaries in 1905 were stated to be " Road, Hji Antoni Sardo, Santi, orphana Hji Toouli with Pavli Stivadoro, Nicolas Symeonides and Adela Marco Santi ".

The District Lands Clerk, Mr. Marcou, carried out an investigation for the identification of the property under Registration No. 2528. He traced the file under which this registration was effected (No. A.463/1905) and consulted the report of the local enquiry clerk, the instructions of the then D.L.O., the application and the certificates, the sketch indicating the outlines of the property in question, the boundaries and the extent. It should here be noted that the local enquiry clerk in 1905 prepared a rough sketch because there was no official survey plan at the time. The first official survey plan was prepared in 1914. Mr. Marcou's conclusion was that Santi's Registration No. 2528 covers the portion coloured red, that is the disputed portion of 4 donums and 1800 sq. ft., and that this portion is not covered by Mr. Hassidoff's registration. As he explained, he reached that conclusion by checking the boundaries shown in the District Lands records in 1905 and he was satisfied that, due to a subsequent error, the disputed portion was included in Mr. Hassidoff's registration. According to him, the District Lands Office made two mistakes, one under Application No. 86/1919, under which the then local enquiry clerk identified wrongly Registration No. 2655, one half share, with the whole of plot 187 and gave a wrong area of 53 donums ; that is to say, the local enquiry clerk included not only the disputed portion but also the property of two other neighbours, Hji Antoni Sardos and the orphans of Hji Ttoouli. The second mistake, according to Mr. Marcou was made in July 1936 under Application No. 1046/1935. Whilst the local enquiry clerk detected the mistake in the previous application, according to Mr. Marcou he still made one mistake not to find out the property of Paul Marco Santi ; that is, he consulted the application under which Registration No. 2655 was effected, saw the boundaries, took into consideration all the boundaries except those of Paul Marco Santi ; he does not mention at all the property of Paul Marco Santi, neither the disputed nor the undisputed portion, according to Mr. Marcou.

Pausing there, we may say that, having inspected this file (A.1046/1935), we noted that the Land Registry clerk

at the time (Ali Riza) seems to have carried out a very careful local enquiry and to have made a memorandum of such enquiry in the file in which he included, for the first time, an official survey map to scale, and not a rough sketch as in 1906. He then proceeded to give on that plan all the boundaries. The western boundary of Mr. Hassidoff's property (plot 187/1) is shown on the plan as the road to Voroklini and not Santi's property (plot 183). Plot 183 is stated to be a " marshy field ", and its " previous owner " " Paul Santi ". Voroklini road is shown as the eastern boundary of plot 183. It should be clarified that Paul Santi is stated, by the Land Registry clerk Riza, to be the previous owner because this plot 183, which has been identified with Registration No. 2528 of Paul Santi, was, at the General Survey and Valuation carried out under Law 12 of 1907, recorded as hali land, and not in the name of Paul Marco Santi. It would appear that the latter left Cyprus before the year 1916 and that he died abroad.

As regards the Voroklini road which appears in the official survey plan, according to Mr. Marcou's evidence, it was not in existence prior to 1905 when the first registrations in question were made. He stated that from the records it appears that there was no road there at this point and that it must have been constructed some time between 1905 and 1911 when the survey plans were prepared.

On this material, the Director stated in his decision that the disputed strip of four donums and 1800 sq. ft. (coloured red on the plan), was included both in Registration No. 2528 in the name of Paul Marco Santi, and in Registration No. 6242 in Mr. Hassidoff's name, that is to say, that this was a case of double registration. The Director also stated that Registration No. 5092 of 26.8.37, in the name of Mr. Hassidoff (a subsequent registration to Registration No. 2655), was wrongly issued as covering also the disputed strip which was not included in the original Registration No. 2655 ; and he concluded that, as Registration No. 2655, from which Mr. Hassidoff's registration 6242 derives, does not include the disputed area, it was evident that the said area was wrongly included in Registration No. 6242 which should be corrected accordingly under the provisions of section 61 of Cap. 224.

The District Court, after hearing the parties, reached the conclusion which we have summarised earlier, and which is the subject of the present appeal.

Now, the first question which falls for determination is whether, in the circumstances of this case, the provisions of section 61 of Cap. 224 are applicable.

In considering this case it should be stated at the outset that this is not a straightforward case of an error or omission appearing in the Land Register or in any book in the District Lands Office or a certificate of registration, as provided in section 61. In order to trace the alleged error the Director, through his officers, had to make a detailed investigation and comparison of a considerable number of departmental files since 1904, based on a rough sketch prepared in 1906 and the boundaries appearing at the time. The comparison was not based on any official survey plan as none existed in 1906.

At the General Survey and Valuation, which was carried out in 1916, under the provisions of the Immovable Property Registration and Valuation Laws, 1907 to 1913 (sections 13 and 22 of Law 12 of 1907), Mr. Hassidoff's property, under plot 187, was recorded in the name of his predecessor-in-title Nicolaos Symeonides of Larnaca, and the nature of the property was stated to be " marsh ". The property of Paul Marco Santi, under plot 183, was recorded as hali land, and not in the name of Santi. The first official survey plan (which was prepared in 1914), shows the Voroklini road as the western boundary of plot 187 (Hassidoff's) and the eastern boundary of plot 183 (Santi's).

The alleged error in Mr. Hassidoff's registration is stated to have occurred in the year 1919, and to have been discovered by the District Lands Office in the year 1965 ; that is to say, a period of 46 years elapsed between the two dates.

The District Court found as a fact that Mr. Hassidoff is a *bona fide* purchaser for value in 1935 ; and that even if he had made proper enquiries " he would have probably not discovered the alleged mistake in his registration " (cf. *Arnaout* v. *Zinouri* (1953) 19 C.L.R. 249).

Santi's plot 183 as well as Mr. Hassidoff's plot 187, were stated in 1906 to be of the " Arazi Mirie " category. Consequently (failing any " valid excuse " under Article 20 of the Ottoman Land Code) a person possessing any of these registered properties for a period of ten years could become the owner by prescription if he had completed such period of possession not later than the 1st September, 1946, when Cap. 224 came into operation.

In the present case two local enquiries were carried out by the Land Registry after the year 1919 as follows :

(*a*) *On the 16th July*, 1936, a local enquiry was carried out by the Land Registry clerk, Ali Riza, in the presence of the then Mukhtar Ch. Eleftheriou and two azas, who certified (presumably under the provisions of section 39 of Law 12 of 1907), that plot 187/1 as shown in the official survey plan, which was copied in the Land Registry file by the clerk, was in the undisputed possession of the previous owners Nicola and Spyro Ch. Symeonides and " today it is in the undisputed possession of the present owner ". This local enquiry was carried out on the application of Benjamin Kokia (No. A.1046/1935) and Registration No. 5092, dated 26.8.37, was issued in the name of Benjamin Kokia, half-share, and Mr. Hassidoff, half-share. The plot is stated in the Land Registry file to be plot 187/1 and its area 38 donums and 1800 sq. ft. It further appears in the file that this property was bought in the year 1935 by the above-mentioned persons in undivided shares under Registration No. 4979 of 29.11.35 and No. 4851 of 15.3.34 (Hassidoff). It is significant that the Land Registry clerk included in the official file an extract of the official survey plan and noted the various boundaries of plot 187/1, including as boundary plot 187/4 in the names of Andonis and Maria Panayioti Sardo. Plot 183 (as stated earlier) is not shown as one of the boundaries of plot 187/1, but is shown on the other side of the road to Voroklini and it is stated to be a " marshy field ", and that the previous owner of that plot was Paul Santi. The net result, according to this local enquiry clerk, is that plot 187/1 and plot 183 do not adjoin each other but they have as common boundary the road to Voroklini.

(*b*) *The second local enquiry* (Application No. 682/1954) was carried out by the District Lands Office on the *18th September*, 1954. The usual certificate as to the possession of the property was obtained from the village authorities and Registration No. 6242 was issued on the 29th October, 1954 in the name of Mr. Hassidoff (13/14ths shares) ; and on the 12th July, 1955, the same Registration No. 6242 was issued in respect of the whole plot 187/1 (for an area of 38 donums 1800 sq. ft.) in the name of Mr. Hassidoff. There again one of the boundaries of plot 187/1 is shown as the road to Voroklini, and not plot 183. This application for a local enquiry was made by Mr. Hassidoff who submitted two certificates of registration showing different areas (Registration No. 4851 for an area of 53 donums,

and Registration No. 4899 for an area of 22 donums), and asked the District Lands Office to have them amalgamated into one.

The present case appears to be a case of double registration and the onus is on the person seeking to disturb the registration of the owner in possession. In support of this proposition we shall refer to certain authorities later in this judgment.

Prima facie, Mr. Hassidoff and his predecessors-in-title appear to have been in uninterrupted possession for a period beginning since before the year 1919. The Santi family, do not appear to have been in possession for the past 50–60 years. In 1916 Santi's plot 183 was recorded as hali land. Naturally, if Santi or his successors-in-title were the legal owners, this fact of itself would not deprive them of their ownership as the State does not appear to have confiscated the land under the provisions of Law 14 of 1885 (now Cap. 217). The net result of this recording as hali land in 1916, under the provisions of Law 12 of 1907, would appear to be that neither Paul Marco Santi nor his successors were assessed with " Verghi Kimat " or Immovable Property Tax for some 50 years (see section 13 of Law 12 of 1907). It would also appear that the first and second respondents in this case have never been in possession of the strip in dispute.

In these circumstances issues of, *inter alia*, ownership by long possession or otherwise may arise. It may well be that the heirs of Santi may be able to prove the mistake in their registration and/or " a valid excuse " under Article 20 of the Ottoman Land Code ; but we are of the view that those issues are issues which should properly be decided in the first instance by a Court of law, and not the Director under section 61.

As regards cases of double registration it was held in *Tsikkinou Haji Sava* v. *Mariolou* (1907) 7 C.L.R. 89, that, where either kotchan may include the disputed strip and where one of the parties is in possession of the land in dispute, the onus lies on the party seeking to disturb such possession to establish his claim to the satisfaction of the Court. In the present case, *prima facie*, it would appear that the deceased Santi or his heirs have not been in possession at least since 1916 ; and it would further appear that Mr. Hassidoff and his predecessors in title have been in possession since about 1916, if not earlier.

As stated by Zekia, J. in *Rodothea Papa Georghiou* v. *Komodromou* (1963) 2 C.L.R. 221, at page 237, before the General Survey and the system of registration with reference to a survey plan was introduced in this country, " transfers by kotchans or *tapou seneds* were in vogue. These kotchans and *seneds* as a rule did not relate to any survey plan and, therefore, where a dispute between two neighbouring land owners in respect of a portion of land falling between their properties arose, the only way of deciding the dispute was to find out which of the neighbouring land owners had undisputed possession over the disputed portion and in such cases possession by transferor and by transferee of the disputed portion could be computed together ".

A case in point is that of *Sherife Moustafa Moulla Ibrahim* v. *Mehmet Souleyman* (1953) 19 C.L.R. 237. In that case considerable evidence had been adduced that certain land claimed by the plaintiff as property part of a certain plot (plot 30 of the Survey plan) had in error been registered as part of plot 29/1, that is to say, as part of the defendant's land. The trial Court found for the plaintiff probably on the ground of prescriptive right, and the defendant appealed. It was held by the Supreme Court that the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, section 56 (now Cap. 224, section 58), which provides that a dispute as to boundaries must in the first instance be determined by the Director of Land Registration and Surveys, does not preclude the Court from deciding whether there has been an error in registration.

The plaintiff's certificate of registration in the *Sherife* case was dated 1946 ; and the registration prior to that was made in 1923 after the General Survey. There was considerable evidence that the 1923 registration was incorrect. The area of the land in the registration prior to 1923 was 25 donums but in 1923 for some unexplained reason it was reduced to 21 donums and 2 evleks. There was also some difference in the number of trees. The plaintiff adduced strong evidence that he and his predecessors in title had for over 30 years been in occupation and enjoyment of the land in dispute. The defendant's registration in 1931 was only 25 donums whereas for some unexplained reason his new plot 29/1 in 1946 became 91 donums and 3 evleks. In the view of the Supreme Court in that case the true issue was whether the delineation of plaintiff's plot 30 on the Survey plan was correct or not having regard to: (*a*) the description of the boundaries in the certificates of title ; (*b*) the evidence of trees in the certificates of

title of both parties ; (*c*) the changes in the areas of the plots of the parties over the material period ; and (*d*) the evidence of *actual possession* of the land in dispute by either party or their predecessors-in-title. In the course of their judgment the Supreme Court in that case expressed the view that " long possession by the transferor and by the plaintiff may be very relevant evidence in support of the contention that there has been a mistake in the survey plan " (*Sherife's case*, page 239).

In the result the Supreme Court held that the main issue in the *Sherife* case was as to whether there had been a mistake in the registration and that the District Court had jurisdiction to deal with the matter in the first instance, without it being first determined by the Director of Land Registration. They further expressed the view that section 56, regarding a boundary dispute, did not apply where there was a dispute as to whether the description in a deed or delineation in a plan was correct or not.

To revert to the present case, it is in the public interest that there must be some finality in the records of the District Lands Office. It is in evidence in this case that the District Lands Clerk stated that he detected the alleged error, some 46 years after it occurred in the Land Registry records, by a comparison of the Land Registry file of 1919 with another file of 1906 which contained a rough sketch made by a clerk at the time and a description of the boundaries. As already stated, there was no official survey plan in 1906.

Considering that two local enquiries were carried out after the alleged error, that is to say, one in July 1936 and another in September 1954, on the basis of the official survey plan, and that the property was related to such plan and, in spite of that, the alleged mistake was not detected but, on the contrary, Hassidoff's registration was identified and related to the plan, the correction of the alleged error would seem to affect the legal rights of Mr. Hassidoff, who may, *inter alia*, be in a position to prove long possession through his predecessors-in-title and himself of the whole area of his registration, including the disputed strip.

This being a case concerning legal rights in land, it is obviously a case in which the parties affected should be given full opportunity of vindicating their legal rights in a Court of law in an action for a declaratory judgment as to title or otherwise, with all the safeguards as to proof and admissibility of legal evidence: See *Chakkarto* v.

The Attorney-General, 1961 C.L.R. 231 ; and *Chrysanthou & Others* v. *Antoniades* (1969) 1 C. L. R. 622. The circumstances of this case are such that we do not think that it would be safe to let it be decided on the basis of a comparison made by District Lands Officers (*a*) of the department's files based on a rough sketch of 1906 and the boundaries at the time, prior to the existence of an official survey plan to scale, and (*b*) partly on the unsworn evidence received by the District Lands Office clerk from a person in the absence of the interested parties (we shall consider the question raised under (*b*) later in this judgment). The circumstances are such that we are of the view that this case does not fall within the ambit of an " error " in the Land Register as envisaged in section 61 of Cap. 224.

We would also observe that in a case of double registration, as in the present case, before any rectification is decided upon by the Director, he must satisfy himself as to who is in possession ; and, where a long time has elapsed since the alleged error and the one party has not been in possession of registered land for more than ten years prior to the 1st September, 1946, then he should decline to act under the provisions of section 61 and he should let the interested parties vindicate their legal rights in the Courts.

There remain two further points for consideration in the present appeal :

Rules of natural justice : The District Lands Clerk Marcou, in his evidence before the District Court, stated that after investigating the departmental files he carried out a " local enquiry " to " verify " his work (pages 35E and 44F of the record) ; " I tried to convince myself ", he stated, " about the error which was apparent from our records " (page 44F). On the spot he put questions to, and received information from, a former mukhtar of Voroklini village, Christofis Eleftheriou, aged 73, in the absence of the interested parties. Mr. Marcou stated that he put questions to this former mukhtar regarding the property of Paul Santi, Hassidoff, and Hji Antonis Sardo and the boundaries of such properties. No record of the information received from Eleftheriou was kept by Mr. Marcou but, as he stated, he already knew from his records what Eleftheriou told him.

The Director or his duly authorized officer may undoubtedly rely on his expert knowledge but he cannot hear evidence or receive information in the absence of any interested party unless he gives them the opportunity of

controverting it. In the present case it would appear that there was a violation of the rules of natural justice by the D.L.O. clerk who gave private audience to a witness (a former mukhtar) in the absence of the parties (cf. *Galatis* v. *Savvides* (1966) 1 C.L.R. 87 at pp. 96, 100 and 103).

The risks are apparent and we need not elaborate on them except to point out what *prima facie* appears to be an inconsistency between what this former mukhtar (Eleftheriou) may have stated to the District Lands Office clerk Marcou in 1965 (in the absence of any of the interested parties and without their knowledge), and what he (Eleftheriou) as mukhtar in 1936 certified with two azas of the village in a certificate (presumably under the provisions of section 39 of Law 12 of 1907), regarding the undisputed possession of the previous owners of plot 187/1 (Nicolas and Spyros Symeonides) and the undisputed possession of the owner in 1936. Mr. Hassidoff's property, including the strip in dispute, was in 1936 identified by the Land Registry clerk Riza and the very same Eleftheriou as mukhtar and the two azas at the local enquiry which was carried out on the 16th July, 1936, by the Land Registry clerk Riza (see certificate in D.L.O. file A.1046/35). The information contained in the 1936 certificate signed by Eleftheriou, with express reference to plot 187/1 in the official survey plan, appears *prima facie* to be inconsistent with the conclusion which the District Lands Office clerk Marcou drew, after consulting his departmental files and receiving information from the former mukhtar Eleftheriou some 30 years later, in 1965, in the absence of the interested parties, especially Mr. Hassidoff, who was not given an opportunity of controverting that information—(see the evidence of Mr. Marcou, at pages 35, 44, 46–47 in the record of the present appeal).

Admissibility of evidence : The District Court in their judgment in the present case expressed the view that in an appeal to the Court from the Director of Land Registration and Surveys under the provisions of section 80 of Cap. 224, the Court may properly receive any hearsay evidence appearing in the District Lands Office files. We are afraid that we find ourselves unable to adopt that view. For the reasons given below, we are of opinion that the Court can only receive legally admissible evidence and not hearsay evidence, as the subject matter of such appeals to the District Court concerns legal and proprietary rights of the citizens. In this connection we would once

more invite attention to the well-established rules as to the admissibility of evidence as laid down by the Privy Council in the Cyprus case of *Ioannou and Others* v. *Demetriou and Others* (1951) 19 C.L.R. 72 ; and in the case of *Ellinas* v. *Athanasia Yianni and Others* (1958) 23 C.L.R. 22 at page 28 ; and we would reiterate the observations of the Supreme Court in the *Ellinas* case regarding the undesirability of receiving in evidence whole files of either the District Lands Office or the District Courts without first considering whether the documents contained therein are admissible evidence within the well-established rules of evidence.

A village certificate signed by the mukhtar and two azas may well be evidence of any fact relating to the tenure or occupation, or for the purposes of registration, of immovable property etc., so far as the District Lands Office is concerned ; but that certificate may not pass the test of the rules as to the admissibility of evidence so far as a Court of law is concerned. It is quite clear from the provisions of section 39 of Law 12 of 1907 (which was repealed and replaced in 1946) and from section 82(1) and (3) of Cap. 224, which is now in force, that *hearsay* information in village certificates is receivable in the District Lands Office " as evidence of any fact relating to any matter affecting any immovable property ". Needless to say that hearsay evidence is not admissible before a Court of law unless it come within the four corners of the law and the recognised rules of evidence. This principle is also applicable in the case of an appeal from the Director of Land Registration and Surveys to the District Court, that is to say, only legally admissible evidence may be received and acted upon in such a Court.

To sum up, we are of the view that the provisions of section 61 are inapplicable in the present case for the following reasons :

(*a*) The intervening period between the alleged error (in 1919) and its detection (in 1965) is so long as to admit of the probability of a prescriptive right having been acquired prior to the 1st September, 1946, when Cap. 224 came into operation ; considering, especially, that the District Lands Office in the meantime carried out two local enquiries (in July 1936 and September 1954) and, after finding the strip in dispute in the undisputed possession of Mr. Hassidoff's predecessors-in-title (Symeonides' brother), and of Mr. Kokias and Mr. Hassidoff himself, issued certificates

of ownership accordingly in the name of Mr. Hassidoff in 1937, 1954 and 1955. We do not think that it was the intention of the legislature in enacting section 61 to make it applicable to such cases ;

(*b*) nor was it the intention of the legislature to empower the Director to carry out the kind of complicated investigation which he did in the present case, having to examine and consider a considerable number of departmental files covering a period of some 60 years, in the absence of an official survey plan to scale when the original registration was made in 1905.

We hold the view that in the circumstances of this case the registration standing in the name of Mr. Hassidoff (and his predecessors-in-title) for such a long period should not be disturbed by putting into motion the machinery provided under section 61. If the lawful heirs of Paul Marco Santi claim the disputed portion to belong to them, by succession or otherwise, on the basis of the registration of 1905, their remedy lies in a civil action before the District Court with all the safeguards as to evidence on oath, admissibility of evidence and, generally, the fundamental rules of the administration of justice, and not under the provisions of section 61.

In the result the appeal is allowed, the judgment of the District Court of Larnaca and the decision of the Director of the Department of Lands and Surveys are set aside.

As regards costs, considering the circumstances of this case, we are of the view that the appellant (Mr. Hassidoff) is entitled to his costs, both here and in the Court below and we accordingly direct that the first and second respondents shall pay such costs. There will be no order as to costs against the third respondent (the Director).

Appeal allowed ; order for costs as above.