[STAVRINIDES, HADJIANASTASSIOU, A. LOIZOU, JJ.]

THECLA YIANGOU ARADIPIOTI,
Appellant-Defendant,

v.

CHRISTOS KYRIAKOU AND OTHERS,
Respondents-Plaintiffs.

(*Civil Appeal No.* 4925).

Immovable Property—Certificate of Village Authority—Facts certified therein not within the personal knowledge of the Village Authority—Held to be false—Registration obtained on the strength of such certificate wrongly obtained—Section 82(3) *of the Immovable Property (Tenure, Registration and Valuation) Law, Cap.* 224.

Immovable Property—Adverse possession—Acquisition of ownership by adverse possession—Such adverse possession should be proved by positive evidence as to the acts of ownership which amount to possession which the nature of the land admits—See further infra.

Adverse possession—Must be actual possession of a nature that ousted the other claimants from possession or excluded them from possession—Proof of adverse possession—See also immediately hereabove.

Findings of fact—Credibility of witnesses—Appeal—Turning on findings of fact and credibility of witnesses—Principles upon which the Court of Appeal will interfere—Well settled—Restated—In the instant case the findings of fact made by the trial Court regarding the partition, adverse possession and cultivation of the disputed land were clearly open to the trial Court on the evidence before it—The Court of Appeal not convinced to reverse trial Court's decision because the reasoning behind its findings is neither unsatisfactory nor defentive.

Words and Phrases—'Adverse possession.'

The facts of this case sufficiently appear in the judgment of the Supreme Court, dismissing this appeal by the defendant from the judgment of the District Court of Larnaca in which it was adjudged and declared that the plaintiffs (now respondents) were entitled to be registered as owners of the one-seventh share in a piece of land.

Cases referred to :

Michail Gavrilides v. *Stiliano Hadji Kyriako and Others*, 4 C.L.R. 84, at p. 91 ;

Antonis Andrea and Others v. *Sadi Tourmoush*, 1962 C.L.R. 7 ;

Akil Hussein Arnaout v. *Emine Hussein Zinouri* (1953) 19 C.L.R. 249, at p. 255 ;

Charalambous v. *Ioannides* (1969) 1 C.L.R. 72, at p. 80 ;

Anna Soteriou v. *Heirs of Despina HjiPaschali*, 1962 C.L.R. 280, at pp. 281 and 282 ;

Williams Brothers Ltd. v. *Raftery* [1957] 3 All E.R. 593, at p. 599 ;

Philippos Charalambous v. *Sotiris Demetriou*, 1961 C.L.R. 14 ; at p. 29 ;

Christofis Vassiliou Tofas v. *The Republic*, 1961 C.L.R. 99, at pp. 101–102 ;

Stelios Simadhiakos v. *The Police*, 1961 C.L.R. 64 ;

Kyriacou v. *Aristotelous* (1970) 1 C.L.R. 172 at pp. 176–177 ;

Karavalis v. *Economides etc. etc.* (1970) 1 C.L.R. 271.

Appeal.

Appeal by defendant against the judgment of the District Court of Larnaca (Orphanides, D.J.) dated the 30th June, 1970, (Action No. 189/67) whereby it was adjudged that the plaintiffs were entitled to be registered as owners of the one-seventh share of a piece of land under Reg. No. 6566.

G. Constantinides, for the appellant.

C. Varda, for the respondents.

Cur. adv. vult.

STAVRINIDES, J. : The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU, J. : This is an appeal by the defendant from the judgment of the District Court of Larnaca, dated 30th June, 1970, in which it was adjudged and declared that the plaintiffs were entitled to be registered as owners of the one-seventh share of a piece of land under registration No. 6566 of plot 187/3, and for other consequential relief.

The plaintiffs are the children of Maritsa Ch. Christodoulou, late of Livadia, who died 26 years ago, and was the daughter and one of the heirs of Hadjitooulis Hadjichristodoulou. Hadjichristodoulou died 80 years ago leaving as his heirs (among others) the mother of the plaintiffs and Yiangos Hadjichristodoulou (who died 40 years ago) leaving as one of his heirs the defendant Thecla Yiangou Aradipioti.

The property in dispute (delineated in colour brown in *exhibit* 1) is a piece of land of 3 donums in extent and is situated at the locality of Lishines, within the area of Oroklini village, and is registered in the name of the defendant under registration No. 6566, plot 187/3 dated 29th November, 1962. This property was, during the general registration of lands in about 1913, registered originally for fiscal purposes, and with a view to a complete taxation of all arazi mirié, in the name of Hadjitooulis Hadjichristodoulou Aradipiotis, and ever since and until the year of 1962, his heirs continued paying the said tax on the property. *Cf. Michail Gavrilides* v. *Stiliano Hadji Kyriako* & *others*, 4 C.L.R. 84 at p. 91.

The registration in the name of the defendant was effected because of applications made by her A/663/62 dated 28.7.62, in which she was asking the Land Registry Office to issue certificates of registration in the names of the heirs of the deceased Yiangos Hadjitoouli, in accordance with the certification of the village certificate. On July 28, 1961, the Mukhtar of the village of Livadia, as well as two Azas signed the certificate attached to the application, certifying that their co-villager Yiangos Hadjitoouli, who died 35 years ago, left as heirs (among others) the defendant ; and that he left also a piece of land of 3 donums in extent at the locality Limnes within the area of Oroklini.

On September 26, 1962, the appellant applied to the Land Registry Office for a local enquiry in order to identify the property which is described in the new village certificate and issue a title deed of that property into her name. The said village certificate referred to in the application of the defendant appears to have been signed on the 26th September, 1962, by a certain Elias Georghiou, who was Mukhtar of the village of Oroklini who certified together with two Azas that the defendant has had in her possession since about 40 years ago a piece of land of 3 donums in extent sheet/plan 41/33, plot 187/3, which was gifted to her by her father who died about 35 years ago.

On June 12, 1969, the said Mukhtar, Elias Georghiou, said in Court that he knew the disputed property because he had issued the village certificate in 1962, and also because he was present at the local enquiry carried out on the 5th February, 1968. He explained that although he had no personal knowledge whether the defendant was in possession of the disputed property, he received information from the ex-mukhtar, Antonis Nicola, that the property in question was in the possession of the defendant and was cultivated by her husband.

In cross-examination, the witness said that the village certificate was asked for by the husband of the defendant, who informed him that the said lands were registered in the name of his father-in-law, and that he was in possession of the said land, being one of the heirs.

Having perused that village certificate, and in the light of the evidence before the trial Judge that, the facts which were certified by the village authorities of Oroklini were not within their personal knowledge, we are of the view that the said certificate has been shown to be false and that the registration was wrongly obtained because it contravened the provisions of section 82 (3) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. If authority is needed that the view taken also by the trial Judge was correct on this topic, we would quote a passage from the judgment of Josephides, J., in *Antonis Andrea and Others* v. *Sadi Dourmoush*, 1962 C.L.R. 7 at p. 13.

> " We would, however, like to observe that, although the defendant pleaded possession for over twenty years, he only proved possession since 1954 ; and, although he did not plead it, on the evidence of the Land Registry Clerk, it appears that he is the registered owner of the land in dispute under registration No. 1835 dated the 27th May, 1958. Both trial Judges are agreed that the said registration was obtained on the strength of a certificate dated 4th March, 1958, signed by the Mukhtar and Azas of the village of Softades (one of them being the respondent's father), which certificate has been shown to be false, and that the registration was wrongfully obtained. But in these proceedings, as the appellants had to rely on the strength of their case, and not on the weakness of the respondent's case, and as they failed to prove that they are the persons entitled to be registered as the owners of the field in dispute, it is not possible for this Court

to make any order with regard to the alleged wrong registration in the name of the respondent. Cf. *Akil Hussein Arnaout* v. *Emine Hussein Zinouri*, (1953) C.L.R. Vol. 19, 249 at p. 255.

The plaintiffs in paragraph 5 of their statement of claim, claimed that they were entitled to be registered as owners by virtue of a hereditary right of the disputed property of the one-seventh share, which is the share of their mother, but on the contrary, the defendant denied that the plaintiffs were entitled to one-seventh share out of the disputed property, and alleged in paragraph 5 of the statement of defence that such property originally belonged to her grandfather, " who held, possessed, cultivated it for over 40 years continuously uninterruptedly adversely and/or for the period of prescription and who during his lifetime gifted same to the father of the defendant who also held, possessed, cultivated and enjoyed same for the period of prescription undisputedly, adversely and uninterruptedly."

As is usual in land cases, there were two conflicting versions before the trial Judge, the plaintiffs alleging that no-one from the heirs was cultivating the disputed land, because of the unsuitability of the soil of the land, which was full of " lishines ". In accordance with the evidence of Christos Kyriakou (one of the plaintiffs), when he heard that the disputed land was cultivated by the husband of the defendant a few years ago, he asked him why he was interfering with the land, and his reply was that it was his own, a gift from his father-in-law when he became engaged to the defendant. In support of his evidence, Christofis Eleftheriou, mukhtar of the village of Oroklini from 1930–1940, said that he knew the disputed piece of land for a period of 50 years, as his father also owned land in that locality, and he was aware that no-one did cultivate it apart from a period of a few years ago, *i.e.* after the year 1960, when it was sown with barley.

The defendant, in support of her claim that she was continuously, undisputedly and adversely possessing and cultivating the disputed property for over 30 years, said that that piece of land was gifted to her as dowry by her father when she got engaged in 1917, and ever since she continued cultivating it together with his husband. In support of her evidence, Georghios Antoniou, a farmer who owned a tractor, said that from 1953–1957 he used to rent fields from the husband of the defendant. He knew the disputed land because he was asked to cultivate it for the

defendant. In cross-examination, he said that he was not interested to rent the fields within the area of Oroklini village, because the land was full of water and was unsuitable for sowing cereals.

Although a certificate of registration is *prima facie* evidence of ownership, once the trial Judge reached the view that the registration was wrongfully obtained, and in the light of the evidence adduced by the plaintiffs of non-cultivation of the disputed property, the defendant had to show that she was in possession of the said land, and that a right of ownership over that portion was created in her favour by adverse possession for the prescriptive period claimed by her.

In *Charalambous* v. *Ioannides* (1969) 1 C.L.R. 72, Josephides, J., after following the principle enunciated in *Anna Soteriou* v. *Heirs of Despina K. HjiPaschali*, 1962 C.L.R. 280 at pp. 281 and 282, said at p. 80 :—

> " 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 : ..... 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 '."

The trial Judge, after reviewing and weighing the evidence given by both sides made his findings of fact that the plaintiffs were entitled to be registered regarding the one-seventh share by virtue of inheritance of the disputed property. Furthermore, the Court after rejecting the evidence adduced on behalf of the defendant, reached the view (*a*) that there was no private partition among the heirs of Hadjitoouli including the disputed land which went into the possession of the father of the defendant ; (*b*) that the defendant did not have the said land in her possession for the period of prescription because it was gifted to her from her father ; and (*c*) that there was no satisfactory evidence regarding the cultivation of land by the defendant or her husband until recently, which period did not in any way support the right of registration because of prescription.

Although Mr. Constantinides raised in his appeal a number of points of law, he mainly tried on behalf of the defendant to show that these findings of the trial Judge were wrong or not supported by the evidence. The approach of this

Court in such matters is well settled, both as regards questions of findings of fact and the credibility of witnesses, which are within the province of the trial Judge. Needless to say, that does not mean that if the reasoning behind the trial Judge's findings is wrong this Court will not interfere with such findings. I think that the position was made clear since early 1961 in *Philippos Charalambous* v. *Sotiris Demetriou*, 1961 C.L.R. 14 by Josephides, J. at p. 29 :—

> " The findings of the trial Judge in this appeal were clearly based on his estimation of the witnesses. Having read and considered the whole record carefully, I am not prepared to reject the finding of the trial Judge on the facts deposed by the witnesses, especially when the finding, as in this case, is based on the credibility of the witnesses."

In *Christofis Vassiliou Tofas* v. *The Republic*, 1961 C.L.R. 99, Vassiliades J., having reviewed some of the authorities on the same topic had this to say at pp. 101-102 :—

> " In *Philippos Charalambous* v. *Sotiris Demetriou* (Civil Appeal No. 4314—decided on 10.2.61* Zekia, J., after citing the provisions of section 25 (3) of the Courts of Justice Law said :
>
> > ' A finding of the trial Court based on the credibility of a witness, save in exceptional instances according to English authorities which were followed hitherto in this Island, cannot be disturbed by an appellate Court.'
>
> In *Stelios Simadhiakos* v. *The Police* (Criminal Appeal No. 2298—decided on 20.4.61)** the verdict of the trial Court was attacked on appeal, mainly on the ground that, resting, principally, on the evidence of a witness whose testimony was contradicted by the appellant on oath, should not be considered as binding on this Court ; and that, in the circumstances, the Court might think fit to rehear the witness, or the appellant, or both, on the main issue so as to make its own finding. The majority of this Court took the view that on the evidence on record, the trial Judge's finding appeared to be well justified, and that the circumstances of the case did not seem to require the rehearing of any witness.

---

* Reported in 1961 C.L.R. 14.

** Reported in 1961 C.L.R. 64.

The view was expressed in that case that the trial Court findings continue to be the valuable conclusions reached by one or more trial Judges, subject only to unfettered investigation and criticism on appeal, where only if the circumstances so require, the Court should rehear any witness already heard, or order a retrial.

> 'Before such findings are disturbed, it was said in that case, the appellate Court must be satisfied to the extent of reaching a decision (unanimous or by majority) that the reasoning behind a finding is unsatisfactory ; or that the finding is not warranted by the evidence considered as a whole. And the onus must rest on the appellant, both in civil and in criminal appeals, to bring this Court to such a decision ; or else the trial Court findings remain undisturbed'."

Two recent decisions on this point are those in *Kyriacou* v. *Aristotelous* (1970) 1 C.L.R. 172 at pp. 176–177 *and Karavallis* v. *Economides* and *Economides and Another* v. *Karavallis* (1970) 1 C.L.R. 271. These cases summarize the principles and refer to previous decisions of this Court.

Having heard learned counsel for the appellant-defendant and having considered the whole evidence and the careful judgment of the trial Judge, we are satisfied that the findings of fact regarding the disputed land were clearly open to the Judge on the evidence before him, and we have not been convinced to reverse his decision, because the reasoning behind such findings is neither unsatisfactory nor defective.

For these reasons, we are of the view that the appeal should be dismissed, with costs in favour of the respondent.

Appeal dismissed with costs.