1982 September 24

[HADJIANASTASSIOU, LORIS, PIKIS, JJ.]

NAVSIKA STYLIANOU AND OTHERS,
*Appellants-Defendants,*

*v.*

KYRIACOS PAPACLEOVOULOU AND ANOTHER,
*Respondents-Plaintiffs.*

(*Civil Appeal No.* 6163).

*Rectification—Presupposes an agreement though not necessarily a binding contract between the parties.*

*Practice—Pleadings—Issue not pleaded may be raised so long as pleaded facts justify a claim therefor.*

*Estoppel*—Equitable estoppel—Proprietary estoppel—Principles applicable—Encouragement to proceed with a transaction need not solely emanate or derive from representations of the promisor express or implied—A representation may in appropriate circumstances arise from silence—Sale of land—Conveyance of plot other than that covered by sale—Sellers sitting back and allowing purchasers to assume occupation of property, subject matter of the sale, and effect considerable improvements to it—Such conduct coupled with the other facts of the case constitutes representations from which it would be inequitable to allow sellers to withdraw—Proprietary estoppel applicable.*

Prior to 1951 Haralambou Savva Aresti ("Haralambou"), who was the sister of the appellants, became the registered owner of a plot of land belonging to her parents, which was identified as plot 116. Both she and her husband ("Savvas Aresti") as well as the transferors of the three quarter share in the property, that is the appellants, were under the impression that what was conveyed to Haralambou was a plot other than that represented by plot 116, notably what came to be identified

* For a further explanation of proprietary estoppel see *Odysseos* v. *A. Pieris Estates Ltd. and Another* reported in this Part at p. 557 post.

as plot 29. The land to which plot 116 related was barren land which was never cultivated by anyone. Plot 29 came in the possession of Haralambou and it was cultivated by her until 1951 when it was sold to the respondents.

Haralambou agreed to sell, in 1951, through her husband the arable plot of land she cultivated, that is now identified as plot 29, to respondent 1. She purported to convey the plot of land sold to respondent 1; but owing to a mistake in the indentification of the property, she transferred plot 116 instead of plot 29. Thereafter, respondent 1 assumed possession of the land represented as plot 29, believing to be the registered owner therefor. Labouring under this impression, not only he occupied the property but effected considerable improvements to it. In 1957, he purported to donate this plot of land to his daughter upon her marriage and believed he had accomplished this task, by transferring plot 116. So, the mistake was perpetuated. Thereafter, respondent 2 assumed, as the father had done earlier, possession of plot 29, adding to the improvements made by her father. In consequence of these improvements, the land in question has become a most valuable piece of land, the value of which is presently estimated in thousands of pounds.

The respondents were in blissful oblivion of the true facts until 1971, when Savvas Aresti discovered that what Haralambou had acquired by registration and transferred to the respondents, was a plot of land other than plot 29, viz. plot 116.

In an action by respondents the trial Court found that Appellant 3, the brother, gifted on his own volition and initiative his hereditary share in all the properties of his parents to his three sisters, including plot 29 and executed a power, constituting Savvas Aresti his attorney to implement the gift; that this Aresti purported to do in accordance with the instructions of his principal albeit without success with regard to plot 29, for, instead, plot 116 was transferred; that the remaining two appellants, the sisters of Haralambou, agreed to sell to their sister their share in all the properties of their parents in consideration of a sum of £50.- paid to each one of them; that as in the case of their brother, they issued Savvas Aresti with a power of attorney in order to transfer their share in all the properties of their parents to Haralambou; that thereafter, Savvas Aresti took the appropriate steps to have the property first registered

in the name of the heirs and them transferred it in the name of his wife. But owing to a mistake arising from the certificate issued by the mukhtar of the village, the land now represented by plot 29 was identified as plot 116. So, in the years 1948–49, when Savvas Aresti purported to convey the land in question to his wife in exercise of the powers that appellants vested in him, he transferred plot 116 instead of plot 29.

After finding as above the trial Court made an order for rectification of the register so that plot 29 be registered in the name of respondent 2 and plot 116 in the name of the administrator of the estate of Haralambou.

*Upon appeal by the defendants:*

*Held*, (1) that rectification presupposes an agreement, though not necessarily a binding contract, between the parties, to the instrument to be rectified; that the facts of the case nowhere disclose any agreement between respondents and appellants, nor were they parties to any instrument susceptible to rectification; and that, consequently, the submission of the appellants that the judgment of the trial Court is fraught with a misdirection with regard to the applicability of the remedy of rectification is well founded.

(2) That though respondents' case was not cast on proprietary estoppel this does not appear to be an insurmountable obstacle provided the pleaded facts and the findings of the trial Court justify the appreciation of the case in that perspective; that the facts of this case warrant the application of proprietary estoppel in vindication of the rights of the respondents (see p. 554 post); that the encouragement to proceed with a transaction need not solely emanate or derive from the representations of the promisor express or implied; that a representation may, in appropriate circumstances arise from silence.

(3) That applying this reasoning to the facts of the case, the appellants sat back and allowed the respondents to assume occupation of the property and effect considerable improvements to it; that such conduct, coupled with the authorisation earlier furnished to Savvas Aresti to dispose of their property, constitutes representations from which it would be inequitable to allow the appellants to withdraw, having regard to the way respondents modified their position thereafter; that the above

conduct of the appellants could not but strengthen the belief of the respondents, that no one other than themselves had a right over the property in consequence of which they took trouble and incurred considerable expenses to improve the property; that the appellants should not, in such circumstances, be allowed, in equity, to reap any benefits from their conduct or watch the respondents suffer such injustice; that in view of all the above, proprietary estoppel is properly applicable to the facts of the case, thereby justifying the remedies granted by the Court, and inasmuch as a court of equity must ensure that its orders do not work injustice the subsidiary order made for the vesting back of plot 116 in the estate of Haralambou, is a remedy perfectly warranted by the facts of the case; and so, for reasons different from those given by the trial Court, the judgment of the Court will be upheld.

*Appeal dismissed.*

Cases referred to:

*Beale* v. *Kyte* [1907] 1 Ch. 564;

*Thomas Bates & Sons* v. *Wyndham's Lingerie Ltd.* [1981] 1 All E.R. 1077;

*Joscelyn* v. *Nissen* [1970] 1 All E.R. 1213 (C.A.);

*Saunders* v. *Anglia Building Society* [1970] 3 All E.R. 961 (H.L.);

*Drane* v. *Evangelou* [1978] 2 All E.R. 437;

*Re Vandervell's Trusts* (No. 2) [1974] 3 All E.R. 205 (C.A.);

*Hadji Yiannis* v. *Attorney-General* (1970) 1 C.L.R. 32;

*Papadopoullos* v. *National Bank of Greece* (1979) 1 C.L.R. 10;

*Central London Property Trust* v. *High Trees House Ltd.* [1947] 1 K.B. 130;

*Hughes* v. *Metropolitan Railway Co.* [1874-1880] All E.R. Rep. 187 at p. 191;

*Crabb* v. *Arun D.C.* [1975] 3 All E.R. 865;

*Inwarde* v. *Baker* [1965] 1 All E.R. 446;

*Taylor Fasions Ltd.* v. *Liverpool Victoria Trustees Co.* [1981] 1 All E.R. 897;

*Amalgamated Investments* v. *Texas Commerce* [1981] 1 All E.R. 923;

*Western Fish Products* v. *Penwith D.C.* [1981] 2 All E.R. 204;

*Greasley* v. *Cooke* [1980] 3 All E.R. 710;

*Spiro* v. *Lintern* [1973] 3 All E.R. 319.

**Appeal.**

Appeal by defendants 2, 3 and 4 against the judgment of the District Court of Paphos (Kourris, P.D.C. and Kronides, D.J ) dated the 4th September, 1980 (Action No. 814/71) whereby it was ordered that certificate of registration No. 8465 of plot 29 in the name of defendants 2, 3 and 4 be cancelled and be registered in the name of defendant 1 and that defendant 1 transfer the said plot in the name of plaintiff No. 2.

*G. Constantinides* with *A. Pandelides,* for appellant 1.

*A. Pandelides,* for appeallants 2 and 3.

No appearance for respondent 1, defendant 1 at the trial.

*E. Korakides,* for respondents-plaintiffs.

*Cur. adv. vult.*

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: The appellants, defendants 2, 3 and 4 before the trial Court, and Haralambou Savva Aresti, deceased, were the children of Stylianos Yianni and Myrianthi Panayi, who passed away, the mother in 1927 and the father in 1933. The estate of Haralambou was represented in these proceedings by her husband, the administrator, Savvas Aresti. The couple of Stylianos and Myrianthi owned immovable property in three villages of the Paphos district, at Tremithousa, Emba and Mesoyi, that devolved on their death to their children; the appellants and Haralambou. What became of these properties after 1933, and arrangements and agreements made among the heirs for their cultivation and distribution, were the subject of conflicting contentions and evidence before the trial Court. There were, however, some indisputable facts to which we may refer in order to elucidate the background to the case:

Haralambou became, prior to 1951, the registered owner of a plot of land belonging to her parents, identified as plot 116. Savvas Aresti, her husband, who, according to every indication, played a dominant role in the management of the property affairs of his wife, testified that both he and his wife, as well as the transferors of the three quarter share in the property, that is the appellants, were under the impression that what was conveyed to Haralambou was a plot other than that represented by plot 116, notably what came to be identified as plot 29. In

actual fact, the land to which plot 116 relates is barren land which was to all appearances never cultivated by anyone, either by the heirs or their parents. But it belonged, as the adjoining plot 29, to the parents of the appellants and Haralambou. Plot 29 came, in the evidence of Aresti, in the possession of his wife and it was that plot that she cultivated until 1951 when she sold it to the plaintiffs before the trial Court, the respondents in this appeal.

The version of the respondents before the trial Court supported by that of the administrator of the estate of Haralambou, as to events surrounding the sale of a plot of land by Haralambou to the respondents, is the following:

Haralambou agreed to sell, in 1951, through her husband the arable plot of land she cultivated, that is now identified as plot 29, to respondent 1. She purported to convey the plot of land sold to respondent 1, but owing to a mistake in the identification of the property, she transferred plot 116 instead of plot 29. Thereafter, respondent 1 assumed possession of the land represented as plot 29, believing to be the registered owner thereof. Labouring under this impression, not only he occupied the property but effected considerable improvements to it. In 1957, he purported to donate this plot of land to his daughter upon her marriage and believed he had accomplished this task, by transferring plot 116. So, the mistake was perpetuated. Thereafter, respondent 2 assumed, as the father had done earlier, possession of plot 29, adding to the improvements made by her father. In consequence of these improvements, the land in question has become a most valuable piece of land, the value of which is presently estimated in thousands of pounds.

The respondents were in blissful oblivion of the true facts until 1971, when Savvas Aresti discovered, to his surprise and dismay, that what Haralambou had acquired by registration and transferred to the respondents, was a plot of land other than plot 29, viz. plot 116. This he discovered in consequence of the imposition of taxation on the heirs of his deceased parents-in-law.

Savvas Aresti sought to remedy the mistake by invoking the collaboration of the appellants in virtue of alleged agreements among the heirs of his deceased parents-in-law as to the disposition of their hereditary share and the authority they furnished

him with by the issue of powers of attorney to implement the agreements among the heirs. The appellants refused to collaborate, notwithstanding the absence of any protestation on their part to the possession and enjoyment of the property by the respondents for more than two decades; rising, so to say, from their slumber with regard to their alleged rights, they claimed ownership of the property. Thus they resisted the action of the respondents for a correction of the mistake and the rectification of the instrument of transfer and registration, and pressed forward a counterclaim for trespass, charging the respondents with unauthorised entry and occupation of the property.

The trial Court, in a detailed and well reasoned judgment, evaluated the contentious evidence before it, and concluded, as we may appropriately summarise, that appellants were doing nothing other than endeavouring to gain an advantage from an error that occurred at the time of the registration of the property in the name of their deceased sister perpetuated thereafter in the circumstances above indicated. They found the evidence of the appellants to be contradictory, unreliable, and in many respects, false. These findings were, so far as we may judge from the printed record, not only warranted by the evidence before the Court, but inescapable. There is no room whatever for disturbing these findings. On the contrary, there is every reason for upholding them and we so adjudge.

In accordance with the findings of the trial Court, appellant 3, the brother, gifted on his own volition and initiative his hereditary share in all the properties of his parents to his three sisters, including plot 29, and executed a power, constituting Savvas Aresti his attorney to implement the gift. This Aresti purported to do in accordance with the instructions of his principal albeit without success with regard to plot 29, for, instead, plot 116 was transferred. The remaining two appellants, the sisters of Haralambou, agreed to sell to their sister their share in all the properties of their parents in consideration of a sum of £50.- paid to each one of them. As in the case of their brother, they issued Savvas Aresti with a power of attorney in order to transfer their share in all the properties of their parents to Haralambou. Thereafter, Savvas Aresti took the appropriate steps to have the property first registered in the name of

the heirs and then transferred it in the name of his wife. But owing to a mistake arising from the certificate issued by the mukhtar of the village, the land now represented by plot 29 was identified as plot 116. So, in the years 1948-49, when Savvas Aresti purported to convey the land in question to his wife in exercise of the powers that appellants vested in him, he transferred plot 116 instead of plot 29. Not that plot 116 was outside the agreement of the parties; for the heirs had furnished Savvas Aresti with power to transfer all the immovable properties of their deceased parents to Haralambou.

The respondents in their statement of claim contended that it would be unconscionable to allow the appellants to reap such considerable benefits from the situation above arising, and that it would be unjust to allow them to resile from their acts and the representation made, inter alia, by their attorney, Savvas Aresti. Elsewhere, they laid stress on the absence of any protestation from the appellants to the use and occupation of the property, for years, by the respondents, in order to emphasize the encouragement given in that way by the appellants to the respondents to effect improvements to the property. They prayed for an order of rectification in order to correct the error that occurred with regard to plots 116 and 29. Also, they raised a claim for the ownership of the property by virtue of adverse possession, though this part of their case was not much pressed before the Court. In the defence submitted on behalf of the estate of Haralambou, there is an acknowledgment of the correctness of the averments of the respondents reinforcing its factual validity, coupled with an averment that respondent 1 was, at the time of purchase of the property, aware of the background facts of the case, that is that appellants had, prior to 1951, constituted Savvas Aresti as their attorney for the transfer of the property in the name of Haralambou. The trial Court does not, in its judgment, refer specifically to these admissions though, from the general tenor of the judgment, it can be safely inferred that they accepted them as a sound statement of facts. The trial Court, after making its findings, vindicated the claim of respondents by making an order for rectification of the register so that plot 29 be registered in the name of respondent 2, and plot 116 in the name of the administrator of the estate of Haralambou. The implications arising from the findings of the Court are not spelled out with the same

lucidity as their findings of fact; the impression one is apt to gain is that the trial Court was so impressed with the manifest justice of the case of the plaintiffs that they felt right to order rectification as the only practical means of doing justice to their case. We likewise feel the result arrived at, is a just one. But that does not give an end to the matter nor does it absolve us of responsibility to examine the implications in law, arising from the findings of the trial Court; and more specifically whether they warrant the remedies granted.

*RECTIFICATION*: Let us say straight away that if the action was one for rectification of the original instrument of transfer and consequent registration of the property in the name of Haralambou, in proceedings between Haralambou and the appellants, rectification would not only be a legitimate but an inevitable remedy. An instrument of transfer of immovable property is, on authority, amenable to rectification whenever, as a result of the common mistake of the parties to the transaction, it fails to give effect to the avowed intention of the parties to it. (See *Snell's Principles of Equity, 27th ed., p.* 617– *Beale v. Kyte* [1907] 1 Ch. 564). In the light of the findings of the Court, the instrument of transfer failed to give effect to the intention of the parties, by recording a plot other than that the appellants intended to convey to Haralambou, that is plot 116 instead of plot 29. (See *Snell's* supra, p. 612). Rectification, on the other hand, presupposes an agreement, though not necessarily a binding contract, between the parties, to the instrument to be rectified, and as Mr. Pandelides, counsel for appellants, rightly pointed out, this element is altogether missing in the instrument here under consideration and the registration that followed. Therefore, he submitted the remedy of rectification was not available at the instance of the respondents. The case of *Thomas Bates and Sons v. Wyndham's Lingerie Ltd.* [1981] 1 All E.R. 1077 (C.A.), contains a statement on the nature of the remedy of rectification and its application nowadays. Despite the emphasis laid on the equitable nature of the relief, it is more than clear that the remedy is not available against persons, not parties to an agreement, or, more appropriately, not parties to the instrument sought to be rectified. A prior agreement and execution of an instrument found thereon, is an indispensable prerequisite for a valid invocation of the remedy of rectification. (See *Joscelyn v. Nissen* [1970] 1 All

E.R. 1213 (C.A.)). Regrettably, the trial Court overlooked the nature of the equitable relief of rectification and is vulnerable on that score. The passage in the judgment of the trial Court, sanctioning rectification, reads as follows:-

> "As we have been satisfied that defendants 2, 3 and 4 were entitled to be registered as owners of plot 29, and as we have been satisfied that there was a common mistake in the registration of plot 116 in the name of plaintiff 1, and subsequently in the name of plaintiff 2, we grant the order for rectification, and we order that the certificate of registration, No. 8465, of plot 29 in the name of all the defendants, be cancelled, and that plot 29 of Sheet/Plan 45/59 at the locality of 'Katarrakhtes' in the area of Emba village, be registered in the name of defendant 1 ....."

We completely discard the possibility of the trial Court's attention being directed towards a common mistake of the nature of non est factum for, where a common mistake of this category is relied upon, the remedy is not rectification but rescision. (See *Saunders v. Anglia Building Society* [1970] 3 All E.R. 961 (H.L.)).

The facts of the case nowhere disclose any agreement between respondents and appellants, nor were they parties to any instrument susceptible to rectification. Consequently, the submission of the appellants that the judgment of the trial Court is fraught with a misdirectton with regard to the applicability of the remedy of rectification, is well founded. Counsel for the respondents rested his impassioned address on the justice of the case so strong as to cry out for a remedy in law or equity. To leave the respondents, he submitted, remediless in the circumstances of the case, would be tantamount to allowing the respondent to reap considerable benefits from their unconscionable conduct. Like any other Bench, we are sensitive to the merits of the case, but may we remind that our mission is to do justice according to law. To this end, we applied ourselves feeling dutybound to ascertain whether the findings of the Court warrant the remedies granted or any other remedies.

*PROPRIETARY ESTOPPEL:* The facts of the case, vocal as they are about the merits of the case of the respondents, led us focus our attention on the equitable doctrine of estoppel with a

view to deciding whether they justify its application in the circumstances of the case. Equitable estoppel has gained, in recent decades, considerable ascendency under the guidance of Lord Denning M.R., as a fundamental aspect of English law. The imaginative, if we may say so with respect, application of the doctrine by English courts, in diverse circumstances, has broadened the frontiers of justice. The difficulty is that respondents' case was not cast in that frame nor did the trial Court endeavour to evaluate the facts from the angle of equitable estoppel. That does not, however, appear to be an insurmountable obstacle provided the pleaded facts and the findings of the Court justify the appreciation of the case in that perspective. In *Drane* v. *Evangelou* [1978] 2 All E.R. 437, it was held that the trial Court could raise the issue of trespass notwithstanding the fact that it had not been pleaded so long as the pleaded facts justified a claim for trespass. In another case, Lord Denning pointed out that so long as the material facts giving rise to a claim are pleaded, a party may obtain any remedy warranted thereby, the rule being that he is not precluded from departing from his pleading with regard to the remedies warranted, as a legal consequence of pleaded facts. (See *Re Vandervell's Trusts* (*No.* 2) [1974] 3 All E.R. 205 (C.A.) ). This being the law, we directed out minds to deciding whether the facts of the case, as found by the trial Court, warrant the application of proprietary estoppel.

The principles of equity, also known as the doctrines of equity, are part of Cyprus law in virtue of the provisions of s.29(c) of the Courts of Justice Law (14/60). Equitable estoppel is a fundamental doctrine of equity and it is recognised as such in Cyprus, as well. (See *Hadji Yiannis* v. *The Attorney-General* (1970) 1 C.L.R. 32). The decision of the Supreme Court in *Papadopoulos* v. *National Bank of Greece* (1979) 1 C.L.R. 10, suggests that equitable estoppel is applicable in Cyprus in much the same way as in England, and is subject to the same limitations. It should not be extended beyond its proper boundaries.

The impetus for the widespread application of equitable estoppel in modern times stemmed from the decision of Denning, J., as he then was, in *Central London Property Trust* v. *High Trees House Ltd.* [1947] K.B. 130—[1956] 1 All E.R. 256.

The learned Judge found ample authority for its existence, especially in the exposition of the law on the subject, by Lord Cairns in *Hughes* v. *Metropolitan Railway Co.* [1874–1880] All E.R. Rep. 187, 191. Lord Cairns pronounced that it is the first principle of the courts of equity that a person will not be allowed to insist on his strict legal rights whether arising under a contract or on his title deeds or by statute, when it would be inequitable for him to do so having regard to the dealings between the parties. Since the decision in the *High Trees* case the law reports abound with decisions where equitable estoppel was successfully invoked to mitigate the vigour of the law. Its juridical basis was expanded. It has come to be acknowledged as a fundamental precept of justice designed to ensure standards of probity in the dealings of mankind, so that law and justice may march hand in hand. It is established that a party, making a promise, cannot resile therefrom when it would be inequitable for him so to do notwithstanding the absence of a legally recognised relationship between the promisor and the promisee. And it is inequitable for the promisor to resile from his promise whenever, as a result of such representation, the promisee has modified his position in a way that it would be unjust for the promisor to withdraw from his representations; provided always, of course, that the representations made are clear and unambiguous, such as could lead the promisee to act upon them. At one time the view prevailed that for the promisee to rely successfully on promissory estoppel, he had to establish suffering detriment as a result of acting upon the representations of the promisor. That is no longer the case and the proof of detriment as such, is not regarded as indispensable for the application of equitable estoppel. The basis of the doctrine has been broadened; all that the promisee need establish, is that it would be inequitable for the promisor to insist, in view of his representations by word of conduct, on the enforcement of his strict legal rights. And inasmuch as the doctrine of equity in this area was founded on promise, it was labelled promissory estoppel.

Until the decision in *Crabb* v. *Arun D.C.* [1975] 3 All E.R. 865, it was debatable whether promissory estoppel could found a cause of action. The prevalent view was that it could be put forward as a shield but not used as a sword for the vindication of the rights of the promisee. In *Crabb* supra,

the Court of Appeal found there is no justification for this limitation nor any intrinsic need for thus limiting a fundamental doctrine of justice, and pronounced that in appropriate circumstances it could be invoked to find property rights; hence proprietary estoppel. The decision in *Crabb* was foreshadowed to a degree by that in *Inwarde* v. *Baker* [1965] 1 All E.R. 446. In *Crabb* supra, an arrangement between riparian owners, involving the alteration of access to the property of plaintiff, was found to be legally enforceable and was made the subject of an order directing the registration of an easement in accordance with the arrangement of the parties. The Court held it would be inequitable to leave the plaintiff remediless and allow the defendant to sit back and enjoy the fruits of his unconscionable conduct. Proprietary estoppel has, since, come to be recognised as an aspect of equitable estoppel. (See, inter alia, *Taylor Fashions Ltd.* v. *Liverpool Victoria Trustees Co.* [1981] 1 All E.R. 897, and *Amalgamated Investments* v. *Texas Commerce* [1981] 1 All E.R. 923). It must be noted, however, that the recent decision of the Court of Appeal in *Western Fish Products* v. *Penwith D.C.* [1981] 2 All E.R. 204, suggests that proprietary estoppel should, in its application, be limited to the acquisition of rights in land, there being no justification for its extension beyond that.

In our judgment, proprietary estoppel forms part of the doctrines of equity and as such is applicable in Cyprus in accordance with s.29(c) of the Courts of Justice Law, 14/60.

Next, we must decide whether proprietary estoppel applies to the facts of the case. We have examined the findings of the trial Court with the greatest care, without losing sight of the proper limitations of the doctrine. As Oliver, J., pointed out in *Taylor Fashions* supra, it is undesirable to pigeonhole proprietary estoppel in watertight compartments or postulate its application to diverse circumstances; nor do the authorities suggest, as the learned Judge pointed out, an inflexible approach. The facts of each case must be pragmatically evaluated in order to decide whether proprietary estoppel properly applies to the facts of the case.

In our judgment, the following facts of the case warrant the application of proprietary estoppel in vindication of the rights of the respondents:-

1. The appellants put it within the power of Savvas Aresti, and through him within the power of Haralambou, to dispose of plot 29 as they might deem appropriate.

2. The sale of the property of Haralambou to respondent 1 was negotiated by Savvas Aresti who was still, at the time of negotiation and transfer, lawfully entrusted by appellants with authority to dispose of their interest in plot 29; in fact, all the properties of his parents-in-law.

3. Respondent 1 was aware of these facts and could validly presume that Savvas Aresti was properly authorised by the true owners to transfer the property to him.

According to Robert Goff, J., in *Amalgamated Investments* supra, the encouragement to proceed with a transaction need not solely emanate or derive from the representations of the promisor, express or implied. The question is whether the conduct of the promisee was materially influenced by such an encouragement. Indeed, there is a presumption that the representee acted on a representation made by the promisor, the burden being on the representor to prove otherwise. (See *Greasley* v. *Cooke* [1980] 3 All E.R. 710).

4. A representation may, in appropriate circumstances, arise from silence; so it was held in *Spiro* v. *Lintern* [1973] 3 All E.R. 319. It arises in this way, as the Court put it:-

> "If A, having some right or title adverse to B, sees B in ignorance of that right or title acting in a manner inconsistent with it, which would be to B's disadvantage if the right or title were asserted against him thereafter, A is under a duty to B to disclose the existence of his right or title. If he stands by and allows B to continue in his course of action, A will not, if the other conditions of estoppel are satisfied, be allowed to assert his right or title against B _____". (See p. 326 Letters G-H).

Applying the above reasoning to the facts of the case, the appellants sat back and allowed the respondents to assume

occupation of the property and effect considerable improvements to it. Such conduct, coupled with the authorisation earlier furnished to Savvas Aresti to dispose of their property, constitutes representations from which it would be inequitable to allow the appellants to withdraw, having regard to the way respondents modified their position thereafter. The above conduct of the appellants could not but strengthen the belief of the respondents, that no one other than themselves had a right over the property in consequence of which they took trouble and incurred considerable expenses to improve the property. The appellants should not, in such circumstances, be allowed, in equity, to reap any benefits from their conduct or watch the respondents suffer such injustice.

In view of all the above, proprietary estoppel is properly applicable to the facts of the case, thereby justifying the remedies granted by the Court. And inasmuch as a court of equity must ensure that its orders do not work injustice the subsidiary order made for the vesting back of plot 116 in the estate of Haralambou, is a remedy perfectly warranted by the facts of the case.

So, for reasons different from those given by the trial Court, we uphold the judgment of the Court.

Notwithstanding the rule that costs follow the event, we shall make no order as to costs regarding the costs of this appeal for, having regard to the reasoning of the judgment of the trial Court, to take this appeal, was a reasonable step.

In the result, the appeal is dismised. There will be no order as to costs.

*Appeal dismissed. No order as to costs.*