1987 July 29

[SAVVIDES J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PARASKEVOU STAVRINIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF FINANCE AND/OR THE COMMISSIONER OF ESTATE DUTY,

Respondent

(Case No. 95/86)

Administration of Estates — Renunciation of an estate — The Administration of Estate Law, Cap. 189, section 51 and The Administration of Estates Rules, 1955, Rule 17 and Form 18 of Appendix A — Document not in compliance with Form 18 — Not a valid renunciation — Document made after the expiration of the time limit specified in section 51(1) — Not a valid renunciation — Heir, purporting to renounce the estate, received a benefit in cash therefrom — In view of section 51(4) the renunciation is not valid

Gifts — Perfection/Completion of — Principles applicable

Taxation — Approach of this Court to taxing matters — Principles applicable

The applicant, who is the sister of the deceased Savvas Koupatos, complains that the respondent wrongly treated the property, which the deceased had inherited from his predeceased brother (who died in 1977), but which was registered in the name of the applicant in 1983 (within three years prior to the death of the deceased, who died in 1984), as forming part of the taxable by estate duty estate of the deceased

Counsel for the applicant put forward two submissions, namely that (a) On 13.2.79 the deceased renounced his right in the property of his predeceased brother, and, in the alternative, (b) The said renunciation amounts to an irrevocable and unreserved gift of the aforesaid property by the deceased to the applicant

The Court, after reviewing the principles governing the approach of this Court, as an administrative Court, to taxing matters,

Held, *dismissing the recourse* (1) Renunciation by an heir of an estate of a

deceased is governed by section 51* of Cap 189 The relevant formalities are prescribed in rule 17** of the Administration of Estate Rules 1955 which refers to Form 18 of Appendix A

As the document of 13 2 79 is not in compliance with Form 18, the alleged renunciation was not a valid renunciation

(2) Under the document of 13 2 79 the deceased received a benefit in cash from the estate of his predeceased brother and, therefore in view of sub section (4) of section 51 of Cap 189, which provides that « shall receive no benefit from the estate of such deceased either by operation of law or under the will of the deceased», this is another reason why the alleged renunciation was not valid

(3) In any event, the alleged renunciation was made after the expiration of the time limit of three months specified in sub-section (1) of the aforesaid section, and this is yet another reason of its invalidity

(4) As regards the second submission of counsel for applicant it is common ground in this case that the alleged gift was completed by the transfer of the property in the name of the applicant in 1983, that is, within the period of three years from the death of the donor.

The question is when the gift was in fact completed From what emanates from the authorities, the test is whether the donor has done everything on his part or whether any act remains to be done by him, and not the donee or trustee, in order to perfect the title to the property concerned A title in real property in Cyprus is perfected, according to our Laws, only by the transfer of the property effected in the appropriate District Lands Office

(5) It follows that the sub judice decision was reasonably open to the respondent

Recourse dismissed
No order as to costs

Cases referred to

Georghiades v Republic (1982) 3 C L R 659,

Re Rose, Midland Bank Executor and Trustee Co Ltd v Rose [1949] Ch 78,

Re Rose, Rose v IRC [1952] Ch 499,

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* *Quoted at pp 1232-1233 post*
** *Quoted at p 1233 post*

Re Fry, Chase National Executors and Trustees Corporation v. Fry [1946] Ch. 312;

PapaGeorghiou v. Komodromou (1963) 2 C L.R. 221.

Recourse.

Recourse against the decision of the respondents whereby the property which the deceased Savvas Koupatos, late of Paphos inherited from his predeceased brother Costas Koupatos and which was registered in the name of applicant, an heir of Savvas Koupatos, within three years prior to Koupatos' death was assessed at £23,877 and estate duty amounting to £9,654 was demanded from applicant.

A. S. Angelides, for the applicant.

A. Evangelou, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant, in the present recourse, is one of the heirs of the deceased Savvas Koupatos, late of Paphos, who died on the 1st July, 1984.

Letters of administration of the estate of the deceased were granted to Elisavet Savva Koupatou of Paphos under Probate Application No. 114/84. The Commissioner assessed the value of the deceased's estate at £410,059. In his assessment the Commissioner included the property which the deceased inherited from his predeceased brother, Costas Koupatos, who died in 1977 and which was registered in the name of the applicant in 1983, that is, within three years prior to the death of the deceased. This property, which forms the subject matter of this recourse, was assessed at £23,877 and estate duty, amounting to £9,654 was demanded from the applicant. The administrator objected to the inclusion of the said property to the taxable estate of the deceased, on the ground that the deceased had renounced his inheritance in favour of his sister (who is the applicant in the present case). The objection was dismissed by the Commissioner, who communicated his decision to the administrator by letter dated 2.12.1985, treating the property in question as having been gifted to the applicant by the deceased and the gift as having been completed and perfected within three years prior to the death of the deceased.

The applicant filed the present recourse against the above decision, raising the following legal grounds:-

1. That the sub judice decision was taken under misconception of law and fact.

2. It is the result of abuse and/or excess of power.

3. There is lack of due inquiry.

4. It lacks due reasoning.

5. It is the result of wrong interpretation and/or procedure.

The applicant's case, according to the arguments advanced by her counsel, is twofold.

The first submission is that the deceased Savvas Koupatos had renounced on 13.2.1979 his right in the property which he had inherited from his brother and as a result such property ceased to form part of his estate and is, therefore, exempt from estate duty.

The second submission, in the alternative, is that if such renunciation is considered null and void, the property could not be treated as part of the estate because it amounts to an unreserved and irrevocable «gift» effected in writing by the deceased on 13.2.1979, that is, more than three years prior to his death, and the document embodying such renunciation was filed in the Probate file of the administration of the estate of Ariadni Koupatou who predeceased her husband Costas Koupatos from whom the deceased Savvas Koupatos inherited the subject-matter property.

Counsel for the respondent in dealing with the first contention of counsel for applicant argued that the alleged renunciation was not made in accordance with the provisions of section 51 of the Administration of Estates Law, Cap. 189, that is, within three months from the date that the deceased became aware of the death of his brother but more than a year from such date and it is, therefore, void.

In answering the alternative submission of counsel for applicant that the subject matter property was gifted by the deceased to the applicant more than three years prior to his death, counsel for the respondent contended that such gift was an imperfect gift which was perfected by transfer of the property in the name of the applicant in 1983, that is, within a period less than three years from the death of the deceased and as such it could not be exempted from estate duty.

The principles governing the approach of the Court to the validity of a taxing decision are well settled and I need not go into considerable length in dealing with them.

The position may be summarised in the judgment of the Full Bench in *Georghiades v. Republic* (1982) 3 C.L.R. 659, at pp. 668, 669 as follows:-

> «Unlike the powers vested in the District Court before independence to adjudicate upon a taxation by s. 43 - Cap. 233 - and earlier by virtue of s. 39 of Cap. 297 (of the old edition of the Statute Laws of Cyprus), the Supreme Court has no jurisdiction to go into the merits of the taxation and substitute, where necessary, its own decision. The power of the Supreme Court is limited, as indicated, to the scrutiny of the legality of the action, and to ascertain whether the administration has exceeded the outer limits of its powers. Provided they confine their action within the ambit of their power, an organ of public administration remains the arbiter of the decision necessary to give effect to the law; and so long as they make a correct assessment of the factual background and act in accordance with the notions of sound administration, their decision will not be faulted. In the end, the courts must sustain their decision if it was reasonably open to them.»

It should also be borne in mind that the initial burden of satisfying the Court that it should interfere with the decision of the Commissioner in taxation matters lies on the applicant.

I am coming now to consider the first submission of counsel for applicant.

Section 51 of the Administration of Estates Law, Cap. 189, provides as follows:

> «51.(1) Where an estate vests in and devolves upon an heir, under the provisions of this Law, such heir may unconditionally renounce the estate at any time within three months from the time when he first became aware of the death of the deceased and of the fact of his being an heir to such deceased.
>
> (2) Renunciation under this section may be effected by filing with the registry of the Court a declaration in such form as may be prescribed by Rules of Court.

(3) Any renunciation which is made by an heir with the object of defeating the rights of any of his creditors may be set aside by the Court on the application of any creditor and upon proof of such object.

(4) An heir who has renounced the estate shall incur no liability in respect of the debts of the deceased and shall received no benefit from the estate of such deceased either by operation of law or under the will of the deceased.»

The formalities for an effective renunciation of estate under sub-section (2) of section 51 have been prescribed by the Administration of Estates Rules, 1955, and in particular rule 17 which provides that:-

«The form of declaration of renunciation of an estate shall be in Form 18 of Appendix A.»

From 18 Appendix A is as follows:

«In the District Court
Probate Jurisdiction.
In the matter of late of , deceased.
whereas late of , deceased, died on the ..... day of 19 at ..... having at the time of his death his fixed place of abode at , within the jurisdiction of this Court;

And whereas I of , am his lawful child/next of kin;

Now, I, the said , do hereby expressly renounce my right to inherit from the said deceased.

In witness whereof I have hereunto set my hand this day of , 19

(Signature)

Signed in the presence of »

A perusal of the alleged document of renunciation discloses the following:-

(a) The alleged document is not described as a renunciation of inheritance but a «written consent», embodying an agreement of distribution of the property between the heirs, signed by all of them and stamped as an agreement.

(b) It is not in compliance with Form 18 and no witness is

mentioned in the presence of whom the document was signed.

It is apparent that the drafting of the said document does not satisfy the provisions of sub-section (2) of section 51.

Assuming, however, that such non-compliance does not amount to an irregularity which may render any renunciation null and void, the alleged renunciation is not a valid renunciation under sub-section (4) of section 51 and in particular in that an heir «..... shall receive no benefit from the estate of such deceased either by operation of law or under the will of the deceased». Under paragraph (e) of the agreement of 13.2.1979 the deceased Savvas Koupatos derived a benefit in cash from the estate of Costas Koupatos, which he did not renounce.

Furthermore, under the provisions of sub-section (1) of section 51 an heir may unconditionally renounce the estate at any time within three months. It is an undisputed fact that the deceased Savvas Koupatos came to know of the death of his deceased brother the latest sometime in 1978 as he was the administrator of such estate under Probate Application 5/78 of the District Court of Paphos. Nevertheless if his intention was to renounce the estate to which he was entitled he had to do so within the next three months from the time he first came to know of the death, as provided by section 51(1). An alleged renunciation effected more than a year later is not a valid renunciation within the ambit of section 51 of Cap. 189.

In the result the contention of counsel for applicant that there was a valid renunciation fails.

I shall now proceed to examine the alternative contention of counsel for applicant that the property in question could not be treated as forming part of the estate of the deceased Savvas Koupatos because it was gifted to the applicant more than three years prior to his death.

It is common ground in this case that the alleged gift was completed by the transfer of the property in the name of the applicant in 1983, that is, within the period of three years from the death of the donor.

In Halsbury's Laws of England, 4th Ed. Vol. 20, the following are stated at p. 36, para. 62:-

«62. *Court will not complete incomplete gift.* Where a gift

rests merely in promise, whether written or verbal, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it. A promise made by deed is, however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which, according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do If a gift is intended to be effectuated by one mode, for example by actual transfer to the donee, the court will not give effect to it by applying one of the other modes.

An incomplete gift can be revoked at any time; there is a power to draw back so long as the gift is incomplete. No question of conscience enters into the matter, for there is no consideration and there is nothing dishonest on the part of an intending donor who chooses to change his mind at any time before the gift is complete».

A number of authorities were cited by counsel for the respondents to which I need not refer here, as they are to be found in the Halsbury's Laws of England (supra). I need only say that from what emanates from those authorities, the test is whether the donor has done everything on his part or whether any act remains to be done by him, and not the donee or trustee, in order to perfect the title to the property concerned. (See *Re Rose, Midland Bank Executor and Trustee Co. Ltd. v. Rose* [1949] Ch. 78; *Re Rose, Rose v. IRC* [1952] Ch. 499; *Re Fry, Chase National Executors and Trustees Corporation v. Fry* [1946] Ch. 312). A title in real property in Cyprus is perfected, according to our Laws, only by the transfer of the property effected in the proper forms in the appropriate District Lands Office (see the case of *Rodothea PapaGeorghiou v. Komodromou* (1963) 2 C.L.R. 221).

In the present case there was undoubtedly an intention or promise on the deceased's part to donate his share in the property inherited from his brother, to the applicant. This intention or promise, however, did not materialise until 1983, when the

property was actually transferred to the applicant. Applying the Law, as expounded above, to the facts of the present case, I find that it was reasonably open to the Commissioner to reach the sub judice decision.

In the result this recourse fails and is hereby dismissed with no order for costs. 5

Recourse dismissed.
No order as to costs.