

1953  
February 10

ANNOU HAJI  
TOFI  
KANNAVKIA  
v.  
KLEOPATRA  
ARGHYROU  
AND 7  
OTHERS.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(February 10, 1953)

ANNOU HAJI TOFI KANNAVKIA OF AY. PHYLA,

*Appellant,*

v.

KLEOPATRA ARGHYROU & 7 OTHERS,

*Respondents.*

(Civil Appeal No. 3946.)

*Prescription under Article 10 of Ottoman Land Code—Not merely a defence—Application by owner for registration—Offence committed on the land in dispute—Neither application nor offence disturb adverse possession.*

The trial Court found that the plaintiff-appellant had failed to prove her title to the land in dispute but that 1st, 2nd, 4th, 5th and 6th defendants had acquired title each over a certain portion of the land "by adverse possession for the period of prescription independently of who was the owner of the land on which they built." The period of prescription was that prescribed in Art. 10 of the Ottoman Land Code. While the period was running, the plaintiff applied for but did not obtain registration of the land. The defendants had, contrary to law, built on the land without obtaining a permit.

*Held* : (1) Prescription under Art. 10 is not merely a shield : a title by prescriptive right can be based thereon.

(2) A mere application to register a title to land does not interrupt the prescriptive period ; possession continues "without dispute" under Art. 10. The principle in *Savvas Haji Kyriacou v. Principal Forest Officer* (3 C.L.R. 87) applied.

(3) An offence against the state committed by the defendants on the land while the prescriptive period was running, did not affect the acquisition of prescriptive rights by the defendants.

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Appeal by plaintiff from the judgment of the District Court of Limassol (Action No. 388/48).

*Chr. Mitsides* with *P. Papaioannou* for the appellant.

*Zenon Rossides* for the respondents.

A great part of this judgment concerned issues of fact as a result of which the appeal was allowed in respect of land claimed by the plaintiff and not occupied by 1st, 2nd, 4th, 5th and 6th defendants ; but the plaintiff's appeal was dismissed as regards land occupied by those defendants. Only that part of the judgment is here set out which deals with the points of law referred to in the head-note.

The judgment of the Court was delivered by :

HALLINAN, C.J. : . . . . It is, we think, only necessary to refer shortly to three of these arguments. The point which counsel laboured most is that, before the prescriptive period can begin to run in favour of any party there must be an opposing party who has a right of action which he fails to assert within the prescriptive period. It follows, according to Mr. Mitsides' argument, that since the trial Court held that the appellant had no title to the land in dispute, there was no one against whom the prescriptive right could run and no title by prescription could therefore be acquired. It has long been the practice in these Courts to treat Article 20 of the Ottoman Land Code not merely as a statutory limitation providing a defence to an action brought against a person in long possession, but as giving to the person in long possession a right to claim a title by prescriptive right.

Another point taken by Mr. Mitsides was that at the end of 1929 the appellant had applied for registration of this land and he argued that by doing so the appellant had "disputed" the possession of the respondents and had thereby interrupted the prescriptive period. A similar point was taken in the case of *Savvas Haji Kyriacou v. The Principal Forest Officer* (3 Cyprus Law Reports, 87). In that case the point was taken with reference to article 78 of the Ottoman Land Code, but the phrase "without dispute" must have the same meaning in both article 20 and article 78. The judgment of the District Court at page 89 states, quite shortly: "I think the only disturbance contemplated is a disturbance by legal procedure. . . . or a physical disturbance." With this decision of the District Court we agree, subject of course to this reservation: If a person obtains registration as owner of immovable property that registration will interrupt any prescriptive period which is running against him in respect of that property at the time of his registration.

Lastly, we would refer shortly to the submission by counsel for the appellant that because the respondents had erected buildings on the land contrary to the law of the Colony therefore their possession of the land was illegal and the prescriptive period could not run in their favour. By building on the land without permit, the respondents had committed an offence against the State, but that in no way affects the fact that they were in possession of the land as against the appellant. The fact that they committed an offence against the State while on the land does not obviate the fact that they were in possession *nec vi nec clam nec precario*, neither as the result of force, secrecy or evasion, nor as dependent upon the consent of the owner, nor was the appellant a person under disability. . . . .

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