

1961
May 23,
June 2,
Nov. 7, 16,
Dec. 7

DORA STYLLI
KOUMI
& ANOTHER
v.
CHRYSSOULLA
ANDRONIKOU

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, J.J.]

DORA STYLLI KOUMI AND ANOTHER,

Appellants,

v.

CHRYSSOULLA ANDRONIKOU,

Respondent.

(Civil Appeal No. 4331).

*Immovable property—Error or omission in the Land Register—
Correction of, by the Director—The Immovable Property (Te-
nure, Registration and Valuation) Law, Cap. 224, section 61.*

*Appeal to the District Court against the order, decision or notice of
the Director—Section 80—Powers of the District Court on such
appeal—Where the appeal is against the refusal of the Direct-
or to consider an application for rectification of the Register, whe-
ther District Courts have power either to hear the case and make
such order as the Director should have made or to send the case
back to the Director with directions to examine it on its merits
and decide upon it.*

*Proceedings under section 80 of Cap. 224, pending at the time when
the Constitution came into operation—Preserved—Article 190,
paragraph 1, of the Constitution—Subject to appeal to the High
Court under Article 155 of the Constitution and the Courts of
Justice Law, 1960.*

The respondent applied to the Director of Lands and Surveys for rectification of the Land Register in respect of certain properties. The Director refused to deal with this application. On appeal by the respondent to the District Court under section 80 of Cap. 224, the court set aside the decision or notice of the Director and sent back the case to him with directions to consider it upon the merits and decide upon it. The proceedings on appeal before the District Court had started before the establishment of the Republic and continued thereafter until the 30th January, 1961, when the order, subject-matter of the present appeal to the High Court, was made. The respondents in that appeal to the District Court appealed to the High Court from the order setting aside the decision or notice of the Director as stated above.

Held:- (1) The establishment of the Republic pending the proceedings on appeal before the District Court did not

affect the position at all. Those proceedings came clearly within paragraph 1 of Article 190 of the Constitution and were thereby preserved. Therefore the District Court had power to hear and determine the proceedings, subject to appeal to the High Court under Article 155 of the Constitution and the provisions of section 25(1) of the Courts of Justice Law, 1960.

(2) The refusal of the Director to deal with the respondent's application was erroneous in law.

(3) (O' BRIAIN, P. *dubitante*): On appeal under section 80 of Cap. 224, the District Court has power to send the case back to the Director with directions to consider the case upon its merits and decide upon it.

Appeal dismissed.

Per curiam: In deciding that the District Court has power to make the order appealed against, we should not be taken as adopting the view which seems to have prevailed in the District Court, that after the Director's decision to refuse dealing with the application of the respondent for rectification of the Land Register, the District Court should not have been asked, as the law stood at that time, to make an order on the merits; or that the District Court should not have proceeded to do so.

Appeal.

Appeal against the order of the District Court of Nicosia, (Ioannides, D.J.), dated the 30.1.61 (in Application No.58/59) whereby the Court allowed an appeal of the respondent (in this appeal) against the decision of the Director of the Land Registry Office dated 3.10.1959 and set aside the decision of the Director of the L.R.O. with directions to the Director to examine the application on its merits and decide upon it with costs against the respondents (appellants in this appeal).

M.A. Chimen for Director of L.R.O.

G. Constantinides for appellant No. 1.

A. Triantafyllides for respondent.

Cur. adv. vult.

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The facts sufficiently appear in the judgment delivered by
VASSILIADES, J.

O' BRIAIN, P.: I agree with the learned District Judge that the ruling or rulings of the Director of Lands and Surveys were erroneous in law, but, in my view, the terms of section 80 of Cap. 224 are sufficiently wide to enable the District Court when seized of an appeal under that section, to make any order which should have been made, in the first instance, by the Director of Lands and Surveys. In this case, instead of proceeding to hear the whole case and making such an order as the Director should have made, the learned District Judge by his order of the 30th January, 1961, sent the case back to the Director with directions to examine the appellant's case on its merits and decide upon it. I have considerable doubt as to whether the District Court has power to make any order in that form. It seems to me an order in the nature of certiorari and mandamus. However, as this point was not taken by either of the appellants or set out by them amongst the many grounds of appeal, I shall not dissent from the view of my colleagues that the matter should be sent back to the Director of Lands and Surveys. I do not wish to be taken to have ruled that the District Court had such power - the point was not taken or fully argued. I prefer to leave that point for consideration in a case where it is expressly raised for the consideration of the Court.

ZEKIA, J.: I have had the advantage to read the judgment which is about to be delivered by my brother Vassiliades J. with which I concur.

VASSILIADES, J.: This is an appeal against an order made by a District Judge in a proceeding taken by the respondent herein, under section 80 of the Immovable Property (Tenure, Registration & Valuation) Law, Cap. 224, by way of appeal against the refusal of the Director of Land Registration and Surveys to her (respondent's) application for the correction of an alleged error in the Register, affecting certain property of which she is the registered owner.

The proceeding under section 80 arose in an apparently long-standing dispute between the owners of two adjacent houses in the town of Kythrea, one now belonging to the first appellant, and the other to the respondent herein. As long back as 1935, the owners of these neighbouring pro-

perties were in litigation (action 236/35 D.C. Nicosia) which resulted in a settlement and a consent-order made thereon, affecting their rights on the adjacent parts of the property, as standing registered prior to the settlement.

The respondent alleges that after the settlement in question, the parties concerned, used and possessed their respective properties according to the settlement; and that some time after the settlement the consent-order affecting the registrations, was lodged with the Land Registry Office. There is nothing on the record to show exactly when was that done; nor were counsel before us able to supply this information. But they agree that it was, in any case, done prior to the General Survey in that area, in 1940/1942.

In 1957 the owners of these houses were again in litigation over a fresh dispute arising from the use of the adjacent parts of the property. The parties' respective registrations came again into play. One of the parties contended that the consent-order made under the settlement in the earlier action, and acted upon ever since, had not been given proper effect to, in the Register; and counter-claimed for an amendment of the standing registration.

The matter was adjudicated upon, and was eventually taken before the Supreme Court on appeal (Civil Appeal 4286). We do not find it necessary, for the purposes of this appeal, to go further into those proceedings; and as they may have to be considered again, we do not propose dealing with them here.

What we have to consider in this appeal, is the order made by the District Judge on the 30th January, 1961, in the proceeding taken before him by the respondent herein, under section 80 of Cap. 224.

As we have already said, that was an appeal against the "decision" of the Director of Lands and Surveys, refusing to consider respondent's application for the correction of an alleged error in the register, regarding the registration of her rights on certain property, as settled in a Court-action and embodied in a consent-order.

Under section 80, the respondent, as a "person aggrieved" by the above "order, notice or decision" of the Director, could appeal against it, to the Court; and the Court could then make such order in the matter as it would appear to be

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just, in the circumstances. It would seem that the section gave to the Court in such proceedings, power to make any order in the matter which could be made by the Director. One must not lose sight of the peculiar nature of the proceeding, apparently intended by the legislator, to avoid or at least simplify and minimise litigation in property disputes.

Now in this case, it appears that the judge was not invited to make an order correcting or amending the register. He was merely called upon to set aside the decision of the Director or refuse dealing with respondent's application on its merits.

The Director was made a party to the proceeding; and his representative, Mr. Chimen, filed on his behalf a "Statement of the Director's reasons for his *decision*". (B1.4.)

In the course of the proceedings, counsel for the respondent (applicant in the District Court) addressing the Court on the subject, said -

"The issue in this appeal is simply this : Is the Director estopped by reason of the General Registration for acting at all under section 59 (now 61)? Further, if he is not estopped, is what is alleged in this application an error or omission?" (Page 4 of the stencilled notes; bl.39).

And Mr. Chimen replied:

"As regards the second submission.....I agree... and say that the Director has not looked to the merits of the case for two reasons : (a) because he was estopped from doing so, as mentioned in the reasons for his decision; and (b) because of the interpretation that he has given on the word error as mentioned in section 59" (now 61). (Page 5 of the notes; bl. 40).

That was the issue upon which the case was argued. And that was what the learned District Judge considered in a careful and elaborate judgment where he concluded: (at p.6; b1.61) -

"The failure of the Director to examine the merits of appellant's application and to include his conclusions thereon in his decision..... prevents the Court from making any order finally disposing of the rights of the parties in connection with the disputed property. In the circumstances the only order that the Court can make is that the Director's decision should be set aside, and that the Director should examine appellant's application on its merits and decide upon it".

The learned District Judge thereupon proceeded to make an order as above on the 30th January, 1961; the order which is now the subject-matter of this appeal.

What we first had to consider was whether the establishment of the Republic, and the constitutional and other changes effected thereby, pending the proceeding in question before the District Court, affected the position at all. After hearing counsel on the point, we ruled that the proceeding came clearly within the proviso to paragraph 1 of Article 190 of the Constitution, and was thereby preserved for determination by the Court before which it was pending, partly heard, on the 16th of August, 1960. The District Judge had power to hear further and to determine the proceeding; and the order he made therein, is subject to an appeal to this Court, under the provisions of the Constitution (article 155) and the provisions of section 25(1) of the Courts of Justice Law, 1960.

Going now to the substance of the order, upon which long and elaborate argument was advanced by counsel for both appellants, we are unanimously of the opinion that the appeal must be dismissed. We take the view that the District Judge was right on both points which were argued before him and on which his decision mainly rests.

As the matter is thus kept open for further consideration on the merits, we do not wish to say more about it; excepting that we should not be taken as adopting the view which seems to have prevailed in the District Court, that after the Director's decision to refuse dealing with the application in question, the District Court should not have been asked, as the law stood at that time, to make an order on the merits; or that the Court should not have proceeded to do so.

What we decide in this appeal, is that the District Judge had power to make the order setting aside the Director's decision on the 3rd October, 1959; and that the appeal of both appellants against that order, should be dismissed with costs against both appellants.

JOSEPHIDES, J.: I agree with the judgment which has just been delivered by my brother Vassiliades J.

O' BRIAIN, P.: In the circumstances, the appeal is dismissed with costs against both appellants.

Appeal dismissed.

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