FISHER, C.J. & GRIMSHAW, P.J. 1924

January 11

[FISHER, C.J. AND GRIMSHAW, P.J.]

THE MONASTERY OF AYIOS PANTELEIMON

v.

CHRYSANTHO COSTI TSARTA AND OTHERS.

CONTRACT OF LEASE—ESTOPPEL—ART. 107 LAND CODE.

The Plaintiffs sued the Defendants, six quarrymen of Myrtou, to restrain them from quarrying marbles on the property of Plaintiffs.

The District Court granted the injunction claimed and defendants appeal from that judgment.

The facts are set out in the judgment of District Court which runs as follows:—

This action is brought by the Abbot and officials of the religious corporation known as the Ayios Panteleimon Monastery against six defendants, inhabitants of the village of Myrtou and quarrymen.

The plaintiffs claim an injunction against the defendants to prevent them from interfering with a property bounded by Paliomilo river, Monastery Ayios Panteleimon, Monastery Ayios Panteleimon and Monastery Marki, Pavlos, and Panayotou Hj. Leftheri; and which the plaintiffs claim they are the owners of by reason of long possession and compliance with Law I. of 1893.

The interference complained of is that defendants are quarrying for marble at various points, mostly on the boundary of the property of plaintiffs and marked A–E on the plan C.H.J.I. Defendants admit the quarrying at all these places but set up as a defence—

1. That they are entitled so to do from time immemorial.
2. That plaintiffs are not entitled to sue by reason that the property claimed by plaintiffs has been from time immemorial a Mera of the village of Myrtou.

Defendants counterclaim for £50 the expenses they have incurred in opening a new quarry.

As to the facts of the case.

The disputed area which is stated to be Arazi-Miriè land comprises about five hundred donums, most of which is cultivated by the plaintiffs and the remainder is poor uncultivated land and mostly surrounded by cultivated land.

The defendants with many others have been in the practice of taking leases from plaintiffs (or are associated with persons who have done so)

to work the marble veins which run on the northern and eastern edges of the property marked round in red on the plan. These leases have been for a short period only—1 year or six months.

The rents have been paid up to the time of the commencement of this action by almost all the quarrymen without protest. However this year plaintiffs raised the rent to be paid by the quarrymen all round by twenty marbles a year per quarryman and this additional tax on their industry caused the present defendants to refuse to sign the new contracts.

We have evidence that some of the defendants have paid rents in the past for getting the permission of the plaintiffs to quarry in the disputed area.

It appears to the Court that these contracts have all been illegal by reason of Art. 107 Land Code, as it is admitted that all this quarrying has been without leave of the Government. But nevertheless the individual defendants who have in the past had contracts of lease with plaintiffs are estopped from denying the ownership of plaintiffs.

The plaintiffs being a religious corporation are in a peculiar position. They are unable to obtain registration for Arazi-Mirié in their corporate name. They filed a list of their properties with the Land Registry in the year 1891, thereby conforming to the requirements of Law I. of 1893, section 3 and 4, and by that law they are entitled to sue trespassers on such properties as are found in this list.

The property in dispute is stated to be contained within the boundaries of the properties described in this list. We find therefore that the plaintiffs are entitled to sue the defendants. We find that the defendants can never have been entitled to quarry marble from time immemorial as quarrying cannot be done without leave of the Government. We therefore find that plaintiffs are entitled to the injunction claimed against the defendants 1, 3, 4, 5 and 6. The case was withdrawn against defendant 2 during the trial. However, as the whole dispute has arisen from a continuous breach of law by plaintiffs as well as defendants, and there has been an attempt by plaintiffs to claim a higher rent than formerly without the plaintiffs having any right to lease the right to quarry at all, we think that plaintiffs are not entitled to their costs. We think it only right to point out to plaintiffs that the contracts of lease at present stated to exist between them and other quarrymen may be held to be illegal, and that whilst not prejudging disputes which are not before the Court, we feel that it may be our duty to decline to consider such contracts when any action based on such documents is brought before the Court. This decision must in no way

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be held to be prejudicial to the rights of the inhabitants of Myrtou village to bring an action against present plaintiffs in respect of the alleged Myrtou Mera the Court having in no way decided this matter.

Order for injunction granted against defendants 1, 3, 4, 5 and 6, counterclaim dismissed. No order as to costs.

For Appellants *Loizides*.

For Respondents *Paschalis, Chacallis* and *Christis*.

Judgment: Affirming the judgment of the District Court:—

In this case the plaintiff Monastery claimed to restrain the defendants from interfering with certain land by quarrying marbles from certain places within it. The defendants admitted interference at the places specified, but denied that the plaintiff Monastery had any right or title to the property and counterclaimed for £50 on the ground apparently that the plaintiff should not have allowed the defendants to go on quarrying when they, the Monastery authorities, claimed that they were not entitled to do so.

The District Court decided the issue, as to the title to the property, in the plaintiff's favour, and on the 2nd issue they found that, as the category of the land is Arazi-Mirié, the *ab antiquo* right claimed by the defendants could not arise by virtue of Art. 107 of the Land Code. They therefore granted an injunction and dismissed the counterclaim. There is no cross appeal as to the latter.

We can see no reason for saying that the decision on either of these issues was wrong. As regards the right to an injunction, the only deduction to be drawn from the evidence is, that, whatever the rights in the subsoil are, the excavations for marble do involve a trespass on the surface or possible damage to the surface which gives the plaintiff a right to have them stopped. The appeal must therefore be dismissed, but inasmuch as the defendants have been led into the position which resulted in this action by the attitude taken up by the Monastery, an attitude which, as at present advised, we think is based on an erroneous view of their legal position, we think under all the circumstances that there should be no order as to costs.