

FISHER,  
C.J.  
&  
GRIM-  
SHAW,  
P.J.  
1924

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

YANGOS CH. KYRIAKIDES

v.

TOFI MICHAEL KELEBESHI.

May 10

CONTRACT OF SALE OF IMMOVEABLE PROPERTY—SALE PRICE—PURCHASER IN  
UNDISTURBED POSSESSION—VENDOR READY TO TRANSFER.

*Plaintiff sued defendant on a bond—the defence is that this bond is for the amount of the purchase price of property sold by Plaintiff to Defendant, that the properties have not been registered in Defendant's name, that the contract was illegal and that the bond cannot be recovered.*

*Plaintiff replies—I was always ready and am still ready to register. I offered to register if Defendant would come and accept transfer, but Defendant declined. I have never interfered with Defendant in his possession of the properties which he has held since the contract was made.*

The District Court found as follows:—

The claim in this action is based on a bond in customary form. No allegation of fraud or any other reason based on equitable grounds are raised by the defence.

The Court finds the consideration of the bond is proved, *i.e.*, it represents the amount of the purchase money of the property sold by plaintiff to defendant.

The point raised by the defendant that the agreement of sale for which the first bond (of which the bond in the present action is a renewal) was given, is an illegal one, cannot be a defence to the claim on this bond.

The bond was given in the place of cash, and the defendant could only raise objection to its payment on the same grounds as those on which he could ask for the return of the purchase money, had he paid it in cash.

It has been already held by the Supreme Court that the purchaser in contracts of this nature could only ask for the return of the purchase money where the vendor had interfered with the property sold by him. As long as the purchaser (defendant in the present case) has taken possession and has remained in occupation of the property without any interference on the part of the vendor (plaintiff) he has no right to claim the return of the purchase money. On the same principle defendant cannot claim the cancellation of the bond.

The illegal contract alleged could not be a basis for damages for its breach; but this claim is not for damages and must be distinguished.

The Court find moreover in this case that the defence is not *bona fide*. Plaintiff has been always ready to transfer the property sold, and even in Court, he offered to do so. Defendant, on the contrary, not only does not allege any refusal for registration on behalf of the plaintiff, but he

admits having taken possession of the property since the agreement of sale, and that plaintiff has never disturbed him in his possession.

Defendant, on his oath, did not deliberately deny the allegation of the plaintiff, that the qochans of the property sold were handed to him on the date of the agreement, with the understanding that he (defendant) could go to plaintiff and ask for registration at any time he had the money ready.

The Court therefore is of opinion that the plaintiff is entitled to his claim with costs.

Defendant appeals.

For Appellant *Paschalis*.

For Respondent *Christis*.

*Judgment*: Affirming the District Court judgment as follows:—

In this case the plaintiff sued the defendant to recover a sum due on a bond. The defendant admitted the execution of the bond, he says that inasmuch as it was given in respect of purchase money for immoveable property which he agreed to buy from the plaintiff, and which property has not been registered in his name, the transaction is illegal and the bond is void. In reply the plaintiff alleged that, although the initial origin of the bond was an agreement to sell immoveable property, the obligation created by the bond is distinct, and, moreover, he says that inasmuch as the defendant was let into possession of the property, and has remained in undisturbed possession of the property ever since, and the plaintiff has always been ready and willing to register the property in the defendant's name. there is no illegality, so far as the plaintiff is concerned, in the transaction. Under these circumstances we have to consider whether the obligation under the bond which is in customary form can be enforced or not. It seems clear that registration in this case has not been effected owing to the default of the defendant, nor is there anything from which it can be inferred that the agreement for sale involved an intention to ignore the legal obligation to register the property. There is, therefore, no ground for saying that the bond is founded on an illegal transaction, and being so tainted cannot be enforced. No other ground for avoiding the bond has been suggested and it follows that it is enforceable against the defendant. Should the plaintiff hereafter seek to eject him and interfere with his possession other considerations may arise, but if such disturbance or interference should arise from the action of a third party with claims against the plaintiff, acting on his own initiative and responsibility, the defendant will only have himself to blame for deliberately refraining from protecting himself by registration.

*The appeal must be dismissed with costs.*

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