

FISHER, Order 7, Sec. 8 (p. 686). "So far as an absent Defendant is concerned,"
C.J. that clearly points to proceedings in default of appearance and does
& not apply in this case. There are further points not necessary for us
STUART, to deal with.
P.J.

CHRYSAN-
THOS PARA-
SKEVA
v.
POLYDOROS
NICOLAIDES

The result is that the parties to the action are before a Court which has fundamental jurisdiction over them and there is no rule of Court which under the circumstances obliges us to say that that Court has no right or jurisdiction to proceed with the case. We therefore allow the appeal and remit the action for trial by the District Court on the merits, and direct the Defendant to pay the costs of the hearing before the District Court and of the appeal in any event.

FISHER,
C.J.
&
STUART,
P.J.
1922

January 5

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

POLYXENI CHRISTODOULOU AND ANOTHER

v.

1. MAHMOUD BEKIR
2. BEKIR KAMBER
3. HEIRS OF HAJI STEFANI PAPA GREGORI
4. DEMETRI PETROU

INHERITANCE—CHRISTIAN OR MOSLEM HEIRS—ILAM OF SHERI COURT—EFFECT OF—JURISDICTION OF DISTRICT COURT—C.C.J.O. 1882, CLAUSE 20.

Appeal by Plaintiffs from a judgment of a District Court dismissing the claim of Plaintiffs.

The facts are as follows:—

The Plaintiffs and first two Defendants are brothers and sisters, all the children of Christallou Karamanou of Drenia, and it is in respect of her property that the action is brought. Christallou had, up to some eighteen years before her death, been a Moslem, and then was known by the name of Sunduz, afterwards she changed her religion and later had the two Plaintiffs and a third child called Demetri. These were all baptized as well as Christallou and her husband.

For some seventeen years or so after Christallou's death the Christian children had undisputed possession of all Chrystallou's property, the Moslem children having apparently lived quite apart from the Christian family.

Then the four Moslem children applied to the Land Registry Office to register Chrystallou's (Sunduz) property in their names, and at the local inquiry held by the Land Registry Department the Christian children opposed this application. The local enquiry was then stopped.

After that the Moslem children applied to the Sheri Court and the Qadi issued an Ilam that Sunduz (Chrystallou) had died a Moslem and that they were the legal heirs.

The Moslem children produced this Ilam to the District Court and the District Court made an order confirming the Ilam under Sec. 95 of Law 10 of 1885.

On this the Land Registry Office registered the properties of Sunduz (Chrystallou's) in the names of the Moslem children.

The Plaintiffs then commenced this action.

The properties were sold by auction and after the commencement of this action were registered in the names of the purchasers, Defendants No. 3 and 4, therefore these persons were joined as Defendants by order of the Judge who heard the statements at the settlement of issues.

The District Court found that the Ilam was in force, and that they could not set it aside for two reasons (a) that there was no claim in the action to set it aside and (b) that only two of the persons in whose interests the Ilam was issued are parties to this action. They found as facts that Chrystallou died a Christian and that Plaintiffs are her heirs, and that Plaintiffs had had possession of the properties for over ten years, and that had the action been properly brought they would be entitled to be registered as owners.

The District Court dismissed the action on the first grounds.

For Appellants *Paschalis*.

For Respondents Defendants No. 3 and 4 *Hajipavlo* and *G. Ioannides*.

Respondents 1 and 2 (Defendants) absent.

Judgment: Reversing the District Court. The appeal is allowed without costs. The District Court judgment is set aside and judgment entered for Plaintiffs as claimed.

The Ilam of the Sheri Court cannot be held to be binding on non-Moslems. See clause 20 of the C.C.J.O., 1882.

FISHER,
C.J.
&
STUART,
P.J.

POLYXENI
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1. MAHMOUD
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