

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

MEHMED FAKHRI BEY MUHASEBEDJI SADYK EFF.

v.

MEVLEVI SHEKHI JELAL PERSONALLY AND AS ADMINISTRATOR OF  
JELALIEH VAQF.FISHER,  
C.J.  
&  
STUART,  
P.J.  
1922  
April 21IJARETEIN JELALIEH VAQF—PRIVILEGED VAQF—SPECIAL REGISTER—DUTIES  
AND PRIVILEGES OF MUTEVELLI—TRANSFER—MUTEVELLI'S CONSENT.

Appeal of Plaintiff from the judgment of the District Court dismissing the action.

For Appellant *Triantafyllides*.

For Respondent *Chrysafinis*.

In order to understand the judgment it is necessary to set out the facts as disclosed by the statements of counsel and the evidence given before the District Court at considerable length.

The Defendant is the local representative of a Moslem religious fraternity called the Dancing (Mevlevi) Dervishes, whose headquarters is situate at Ikonium (Konia) in Asia Minor.

The head of this brotherhood is called the Chelebi and the order was granted special privileges by Imperial Firman from the Padishah some 700 years ago, and which privileges have up till now (1922) remained in force. Among these special privileges is the right to administer the trust properties vested in them without interference by the Ministry of Evqaf (in Cyprus, the Delegates of Evqaf).

The Defendant was found by the District Court to be an independent unit administering the property of the fraternity in Cyprus for local purposes, by the authority of his appointment as such by the Chelebi.

He keeps a register of the holders of the properties, and registration in that register is the sole proof of ownership. It was found by the District Court that the house, the subject matter of this action, was Ijaretein Jelalieh Vaqf under the sole administration of the Defendant, and Mr. Triantafyllides in addressing this Court admitted that he could not contest the point as to the category of the property.

The first holder of the house in question that appears in the history of this case is Plaintiff's mother Fatma. She had three sons Muzaffer, Ihsan and Plaintiff. Fatma died 23rd May, 1913. Muzaffer died in 1911 or 1912. Ihsan died in December, 1920, or January, 1921.

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—

Now there was another property, a garden adjoining the house in question, admittedly also Ijaretein Jelalieh Vaqf which was at one time owned by the three brothers Muzaffer, Ihsan and Plaintiff in equal shares (probably derived from their deceased father). When Muzaffer died his share became Mahlul, and the Defendant sold this share to Ihsan on May 11th, 1914.

Plaintiff transferred his one-third share in the garden to Ihsan on the same day and a registration for the whole garden was effected in Ihsan's name on the same day.

Plaintiff asserts that after their mother's death Ihsan and he, the sole surviving children, divided all the undivided property of their deceased mother and father and that in the division, *inter alia*, Ihsan was to get all the garden and he, Plaintiff, all the house in question. Further that it was agreed that the whole of the house in question should be registered in his, Plaintiff's, name in the necessary register.

Now Plaintiff failed to get this house registered into his name in the Jelalieh Vaqf register, and the house at present stands in the name of Patma in that register.

The Defendant claims that the half share which fell to Ihsan in this property has now become Mahlul and he has seized it and put it up to auction. Plaintiff purchased the whole garden from Defendant after Ihsan's death for £25. Defendant stated that the half share in the house is worth £70 which was not contradicted or cross-examined to.

Now Plaintiff claims by his writ of summons:—

1. For an order restraining Defendant from interfering with a house which he claims to be his by inheritance and exchange and division.
2. That the said property be declared Mulk.
3. That it held to be Vaqf, that any registration in other names be set aside.
4. That the necessary entries be made in Defendant's books to show that Plaintiff is the owner.

The judgment of the District Court is as follows:—

“ We find that the property in question is Ijaretein Vaqf. That Plaintiff made a division with his brother Ihsan by which *inter alia* Plaintiff was to get the whole of the house in question and Ihsan the two-thirds joint share of Plaintiff and himself in the garden. Ihsan effected registration in Defendant's register for the garden, but Plaintiff did not in respect of the house in question. Plaintiff asserts that

“ he told Defendant all about the agreement with Ihsan, and that Defendant gave his permission. Defendant denies and we can only hold that Plaintiff has not proved conclusively that Defendant gave that permission.

“ We hold that the permission of the Mutevelli is essential. Therefore we find that Plaintiff is not entitled to be declared Mutessariff of the whole house.

“ As to the other points raised at issues:—

“ We are of opinion that the war between Turkey and England does not affect the position of Defendant. The Defendant administers independently of all outside authority property in Cyprus for local purposes.

“ We give judgment for Defendant, but as we consider he has been negligent we do not allow him costs.”

*Judgment* : Judgment of District Court upheld.

*Appeal dismissed without costs.*

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

NESIFOROS DIAMANTIDES

v.

YEORGHIOS DIAMANTIDES AND OTHERS

PROCEDURE—ESTOPPED ON APPEAL FROM RAISING OBJECTIONS TO JURISDICTION  
NOT RAISED BEFORE DISTRICT COURT.

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

October 21

For Appellant (Plaintiff) *Themistos*.

Respondents absent.

*Judgment* : The only matter for which this case is important is that a single Judge of the District Court tried the case. At the trial Plaintiff did not object to the jurisdiction, but having lost before such Court he now raises the matter.

The file of the District Court contains nothing to show that the single Judge had no jurisdiction, and this Court holds that the objection to jurisdiction was not taken at the proper time and therefore Plaintiff is estopped from raising the matter now.

*Appeal dismissed with costs.*