

NETTLE-  
TON,  
C.J.  
&  
DICKIN-  
SON,  
P.J.  
1926

June 25

[NETTLETON, C.J. AND DICKINSON, P.J.]

MARTOU THEODORO (FARMER) OF SPITALLI

v.

COSTA GAVRIELIDES (MERCHANT) OF LIMASSOL.

LAW X. OF 1886, SEC. 1—DISCRETIONARY POWERS OF LAND REGISTRY OFFICIAL—  
INHERENT JURISDICTION OF COURTS—LAW 17 OF 1919, SEC. 5—PROCEDURE—  
APPLICATION.

*This is an appeal of plaintiff from the judgment of a District Court dated 5th January, 1926, by which the District Court dismissed the claim of plaintiff for (inter alia) an order declaring that certain acts done by a Land Registry official under the discretionary powers vested in him by section 1, Law 10 of 1886, to be null and void by reason of the fact that the Land Registry official had not exercised that discretionary power in a judicial way.*

*The District Court held that the Court had no jurisdiction to interfere with anything done by such official by reason of this discretionary power conferred on him by the law.*

**HELD:** *Reversing the District Court: That unless the jurisdiction of the Court is expressly ousted, the Courts have an inherent jurisdiction to see that all acts done by an official under a quasi-judicial discretionary power are exercised in a judicial manner.*

For Appellant (Plaintiff) *P. Kakoyanni.*

For Respondent (Defendant) *Paschal and E. Zenon.*

Plaintiff mortgaged her property to defendant. Defendant sought to recover his loan by foreclosure and sale through the Land Registry Office by Law 10 of 1886. Plaintiff objected to this being done claiming that she had not made default under the mortgage agreement, but the Land Registry Official declined to stay proceedings without an order of the Court, and plaintiff brought the present action claiming:—

1. That all proceedings before the Land Registry Office should be declared null and void;
2. That defendant should be forced to prosecute any claim he had against her through the Courts instead of by Land Registry Office procedure so that she could raise all legal defences;
3. That documents produced to the Land Registry Office be produced in Court; and
4. That accounts between defendant and herself be re-opened under section 5, Law 17 of 1919.

It was argued for the defendant that the writ disclosed no cause of action; also that the proper documents were produced before the Land Registry Official, and that he had discretionary power to decide whether the mortgagee had satisfied him that everything was in order, and that the Court could not interfere.

It was further argued that plaintiff ought to have proceeded by application and not by action, in respect of the last part of her claim, *i.e.*, for a re-opening of account.

*Judgment:* We find, following the reasoning in the judgment in *Skoufarides v. District Education Committee of Nicosia*, C.L.R., Vol. IX., p. 15, and on general principles, that there is an inherent jurisdiction in the Courts to see that statutory authorities exercising quasi-judicial discretion, exercise such discretion in a judicial manner, and that, inasmuch as the particular officer of the Land Registry Office, who dealt with the matter, declined to stay the proceedings, instituted before him, by the defendant, to sell the property of plaintiff, she had no alternative but to move the Court to order those proceedings to be stayed.

The submission of respondent that plaintiff should have proceeded by application to re-open the accounts between her and her creditor may be correct, in view of the finding in *Zeno v. Haji Ali*, Preliminary Issue No. 20, C.L.R., but this would not have given her all the remedies she claims and which she may be entitled to, and therefore we find that she is entitled to include this among the other items of her claim in this action. To hold otherwise would be to encourage multiplicity of proceedings.

Among other things plaintiff states she has practically paid off the mortgage debt by delivering 100 cantars of carobs and paying £15 in cash leaving only a small balance owing.

It is in no way the province of the Land Registry official to say whether or not there have been payments on account and in claiming to decide this the Land Registry official was wrong. It is also stated by the District Court that inasmuch as statements made in affidavits before the Land Registry Office, in such matters, may be the subject matter of criminal proceedings for perjury, debtors are adequately protected against such false statements.

It seems to us that it is a very doubtful remedy for a mortgagor to be required to institute criminal proceedings of such a character, which of their nature are protracted, when the mortgagee can probably defend himself by claiming that he has only made an honest mistake.

We allow the appeal and reverse the judgment of the District Court and give judgment for plaintiff for costs here and in the District Court, but inasmuch as the Registrar General has set aside the whole of the proceedings before the Land Registry Office, the plaintiff has obtained the remedy she sought, and therefore it is not necessary to send the case back to the District Court for trial on its merits.

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