

[BELCHER, C.J., DICKINSON, J., FUAD, J.]

CHRISTODOULOS AYIOMAMITIS

v.

NICOLA PROTOPAPA.

BELCHER,
C.J.,
DICKIN-
SON,
J.,
FUAD,
J.
1928.} Jan. 9.

REGISTRATION—POSSESSORY RIGHTS, PROTECTION OF—PURCHASE OF LAND BY PLAINTIFF FROM PURCHASER AT PUBLIC AUCTION OF A CERTAIN JUDGMENT DEBTOR'S PROPERTIES—DEPENDANT HAVING ACQUIRED THE SAME LAND BY PRESCRIPTION—SIMILARITY IN NAMES OF THE PREDECESSOR IN TITLE OF THE DEFENDANT, AND OF THE JUDGMENT DEBTOR—LAND CODE, ARTICLE 20—LAW 15 SHEVAL, 1288, ARTICLE 13—CIVIL PROCEDURE LAW, 1885, SECTIONS 21 AND 31—AUCTION NOTICE—DEBTOR'S INTEREST.

Appeal of plaintiff from the judgment of a District Court.

Stavrinakis for appellant.

Panayides for respondent.

The facts appear sufficiently from the judgments.

Judgment. THE CHIEF JUSTICE. This was an action wherein the plaintiff as registered owner of certain arazi mirié lands sought to have defendant restrained from interference with the land. Defendant pleaded prescription and counterclaimed to have plaintiff's registration set aside, and as to the counterclaim plaintiff set up that his own registration was obtained in circumstances which determined any possessory rights defendant may have had. On the evidence the Court below found that plaintiff was registered (after as it seems an intermediate registration not material) in pursuance of a purchase made at an auction sale ordered under a District Court judgment against a debtor who was not registered as owner of the land and who in fact had no interest in it. At the date of the sale the defendant in the present action had been in undisturbed possession of the land (but without being registered), for a period which, under Article 20 of the Land Code, renders an action against him not maintainable. The District Court accordingly held that defendant was entitled to obtain a title for the land, and ordered the plaintiff's registration to be set aside, and that the land should be registered in the name of the defendant: but because defendant had taken no steps to stay the sale it refused him his costs. From this order the plaintiff now appeals.

It is not suggested that the findings of fact were incorrect. The plaintiff (appellant) contends that by Article 13 of the Law 15 Sheval, 1288, -such possessory rights as the

BELCHER,
C.J.,
DICKIN-
SON,
J.,
FUAD,
J.

CHRISTO-
DOULOS
AYIOMA-
MITIS
v.
NICOLA
PROTOPAPA.

respondent may have had have been lost once and for all by his failure to bring an action before final adjudication on the sale coupled with his failure to show that he was prevented from bringing any such action before that time, by a lawful excuse within the meaning of that article.

Article 13, and Section 31 of the Civil Procedure Law, 1885, give alternative modes by action and application respectively whereby a person having possessory rights may protect them when the land he occupies is being sold under a judgment. Neither was resorted to in time by the respondent in this case, and the first question for us to consider is whether the respondent was bound to have recourse to either of them to protect his rights.

Section 21 of the Civil Procedure Law No. 10 of 1885 provides that the immovable property of a judgment debtor which may be sold in execution shall include only the property standing registered in his name in the books of the Land Registry Office. I think that is really conclusive of this case. For here the property sold was never registered in the debtor's name at all, though the Land Registry official, misled as it seems by a similarity in names, thought that it was. It is significant that the contract of sale constituted by the biddings at the auction was (as appears from the terms of the auction notice), for the sale of the interest of the debtor in the property, so that not only was the sale of this land one which it was outside the power of the District Court to order, but by the very terms of sale that which was expressed to be sold and bought was something admitted to have no existence so that no valid registration could be founded upon it. The case of *Christodoulo Yorghis Koumi v. Haji Sofokli Haji Christofi*, C.L.R., Vol. III., p. 59, is in point: the facts were not quite the same as there were two registrations subsisting at the same time, one in an original vendor and one in his purchaser, who became registered not on the purchase but later by possession. The land was sold for the original vendor's debt and the original purchaser's heirs, even after sale, were held entitled to have the auction purchaser's registration set aside; the Court holding that the second registration, based on a prescriptive occupation, had the effect of rendering the property no longer rightly registered in the name of the first registered owner (the judgment debtor) though it remained formally so registered and though no action had been brought within the time laid down by Article 13.

In the present case the registration relied on by the appellant is equally wrong, though for different reasons; there because it had been superseded by a valid registration

and here because there was never any justification for registering: but applying the principle of that decision we have no difficulty in saying that the appellant's registration ought to be set aside and the land registered in respondent's name, as counterclaimed by him.

It is not, therefore, necessary to consider whether the excuses which respondent might have set up under Article 13 were good excuses in terms of that article or not, for Article 13 has no application.

The appeal should be dismissed with costs.

DICKINSON, J.: This is an appeal by the plaintiff who purchased a certain piece of land from Symeo Michaelides and Ch. Ayiomamitis who themselves had purchased it at public auction.

The plaintiff seeks to have the judgment and order of the District Court of Famagusta, dated 22nd March, 1926, set aside, on the grounds that the judge trying the case did not sufficiently consider the effect of Article 13 of Law 15 Sheval, 1288, and that inasmuch as the defendant who claimed to have a possessory right over the said property did not commence his action before the final adjudication of the property.

The facts established by the evidence given at the trial are as follows:—

The defendant purchased the property in question 40 years ago from a certain Michael Nicola Tsangari, in whose name the property remained registered at the date of the sale, and the defendant has been in undisputed possession from that date.

A certain Michael Nicola Towli was a judgment debtor and the District Court ordered the sale of his immovable properties in payment of the judgment debt.

In the sale notice the piece of land, the subject matter of this dispute, was included, and, according to the Land Registry clerk, this was probably due to the similarity of the name of the registered owner Michael Nicola (Tsangari) to that of the judgment debtor Michael Nicola (Towli).

The defendant admittedly in making his claim to possessory rights to the property did not comply with the provisions of Article 13 of Law 15 Sheval, 1288, but contented himself with making a written protest to the nearest Land Registry official, namely the witness Philon Ioannides, stationed at Yialousa. The auction took place and the property in dispute was knocked down to the highest bidders Symeon Michaelides and Ch. Ayiomamitis,

BELCHER,
C.J.,
DICKIN-
SON,
J.,
FUAD,
J.
—
CHRISTO-
DOULOS
AYIOMA-
MITIS
D.
NICOLA
PROTOPAPA.

BELCHER,
C.J.,
DICKIN-
SON,
J.,
FUAD,
J.

CHRISTO-
DOULOS
AVIOMA-
MITIS
v.
NICOLA
PROTOPAPA.

and later was registered in their joint names. Plaintiff purchased the property from them and was registered as owner in 1925.

Apparently the defendant remained in possession of the property until the plaintiff instituted the present action asking for an injunction restraining the defendant from trespassing on this land. The District Court gave judgment in favour of the defendant and the plaintiff appeals.

Mr. Stavrinakis argued that inasmuch as the defendant claimed proprietary rights over the land it was incumbent upon him to institute an action before the property was finally adjudicated upon, *i.e.*, registered in the purchasers' names, and that as he did not do this he has lost his right to be registered.

It is to be noted that it would appear that the translation of Article 13 of Law 15 Sheval, 1288, in Fisher's Land Code is not accurate. The word translated "proprietary" should be "possessory."

Now this law (15 Sheval, 1288) is headed "Sale of immovable property for payment of debt." In the present case the debt is a judgment debt (*vide evidence*) due by Michael Nicola Towli. It is necessary to read the Civil Procedure Law of 1885, Section 21, to find what immovable property may be sold for such a judgment debt.

The wording of Section 21, Law 10 of 1885, is as follows:—

"The immovable property of a judgment debtor which may be sold in execution shall include only the property standing registered in his name in the books of the Land Registry Office."

From the evidence it is clear that the property in dispute was never registered in the name of Michael Nicola Towli.

It was never liable, therefore, to be sold for his debts. No judge or court had jurisdiction to make such an order.

It seems to me that Article 13 of Law 15 Sheval, 1288, can only refer, certainly since the passing of Law 10 of 1885, to a possessory claim to such property as is registered in a judgment debtor's name and which is to be sold in execution of his judgment debt, and to no other property, particularly not to property registered in the name of another person.

I, therefore, find that the judgment of the District Court is right and that the appeal should be dismissed with costs.

FUAD, J.: I concur.

Appeal dismissed with costs.