[STRONGE, C.J., AND THOMAS, J.]

HASSAN TAHSIN, *Plaintiff-Appellant,*

v.

PANAYI CALOHORITI, *Defendant,*

AND

THEOHARI KYRIAKIDES & ANOTHER,
Ex Parte Applicants-Respondents.

(*Appeal No.* 3536.)

Civil Procedure Law, 1885, *section* 22 — *Writ of immovables issued without order of judge directing its issue* — *Section* 56 — *Judgment creditors, priorty of, as regards rights to execution against immovables where registration of their judgments has expired*— *Rules of Court*, 1927 — *Validity of Order* 18, *rule* 16.

A writ of immovables issued by a registry without the order of a judge directing its issue as required by section 22 of the Civil Procedure Law, 1885, is a nullity.

The priority of charge upon a debtor's immovables which section 56 of that Law gives to a judgment creditor's debt as from the time of registration ceases with the expiration of the registration; and where several judgment creditors have allowed registration to expire priority of right to execution by sale of immovables is regulated by the dates of their respective writs for such sale. The effect of sections 22 and 23 of that Law read together is that where a writ for the sale of immovables remains, by reason only of the non-payment of the expenses of sale, unexecuted for a year the writ shall upon return to the Court of issue cease to have effect but the Court in such circumstances may at any time before expiration of the year direct the writ shall remain in force for a further period. So far as Order 18, rule 16 of the Rules of Court, 1927, purports to go beyond these provisions it is void.

Appeal by plaintiff, a judgment creditor of the defendant, from an order of the Famagusta-Larnaca District Court (Himonides, A.D.J.) dated 30th July, 1935, directing that the sale of the judgment debtor's immovable property should be carried out under a writ for sale of immovables obtained by the *ex parte* applicants who were also judgment creditors of the defendant in another action. The material facts are stated in the judgment of the Chief Justice.

Vassiliades for the appellant:

On the expiration of the periods of registration priority derives from the respective dates of the writs for the sales of immovables: *Ioachim* v. *Christofi*, 5 C.L.R., 74. *Markou* v. *Christodoulou*, 8 C.L.R., 62. Therefore appellant had priority over the respondents and the sale should be carried out under appellant's writ for sale of defendant's immovables. Order 18, rule 16 of the Rules of Court, 1927, if in conflict with section 23 of Law No. 10 of 1885 is *ultra vires* and void.

Nicolaides (with him *Economakis*) for respondents:

A writ of execution so long as not returned into Court remains alive. I admit that if Order 18, rule 16 contradicts section 23 of Law No. 10 of 1885 the statute must prevail. If the person lodging the writ for sale of immovables has the prior memorandum of registration he secures priority of execution because

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the writ of execution in such circumstances has a certain priority given to it by the registration and continues to have such priority even though the registration expires.

Cur. adv. vult.

The following judgment was read by the Chief Justice:—

STRONGE, C.J.: This is an appeal by one Tahsin, plaintiff in action 59/30, from an order dated 30th July, 1935, made in the Famagusta-Larnaca District Court by Himonides, Additional District Judge, directing that the sale of the judgment debtor's immovable property should be carried on under the writ of execution No. 72/32 issued in action 60/30 in which action the *ex parte* applicants herein were plaintiffs. The material facts which gave rise to the application are these:

Both Tahsin and the *ex parte* applicants obtained judgment in actions No. 59/30 and No. 60/30, respectively, against the same judgment debtor.

On 21st November, 1930, the *ex parte* applicants in pursuance of section 53 of the Civil Procedure Law, 1885, registered their judgment by depositing at the L.R.O. Memorandum No. 438. Tahsin, the plaintiff in action 59/30, similarly registered his judgment on the 22nd November, 1930, by depositing Memorandum No. 439. Orders were obtained in 1932 from the Court, by both Tahsin and the *ex parte* applicants, that writs of execution do issue for the sale of the judgment debtor's immovable property. On the 30th March, 1932, Tahsin lodged his writ of immovables No. 47/32 with the L.R.O., and on the 27th April, 1932, the *ex parte* applicants lodged their writ of immovables No. 72/32 with the L.R.O. A good deal of wrangling ensued about priorities and culminated in an appeal to this Court as to which I need say nothing more than that the Supreme Court on the 6th March, 1934, allowed the appeal which was from an order made by the District Court on the 7th February, 1933—a date when both memorandums were still in force—directing that the sale of immovables should proceed for the benefit of Tahsin and the *ex parte* applicants *pro rata*. Following upon this appeal Mr. Vassiliades, on behalf of Tahsin, without making any fresh application to a judge of the District Court for an order that another writ of execution for the sale of immovables do issue, got the registry of the District Court to issue such a writ (No. 25/34). Having regard to the fact that the previous order of the judge for the issue of a writ of execution for the sale of immovables had unquestionably been fulfilled by the issue of writ 47/32, it is clear that that order could not serve as authority for the issue of a fresh writ and that consequently the registry of the District Court in issuing the fresh writ without an order of the judge was acting without authority. The writ so issued must therefore be regarded as a nullity in view of the provisions of section 22 of the Civil Procedure Law. 1885.

In this state of facts the L.R.O. took the view that the registration of the *ex parte* applicants' judgment under Memorandum 438 having expired, the priority given to their judgment debt by section 56 of the Civil Procedure Law, 1885, so long as such registration remained effective, had expired with the expiration of the registration. As the registration of Tahsin's judgment under Memorandum 439 had also expired the L.R.O. considered that the only matter to be now looked to as governing priority of right of execution against the debtor's immovables, was the respective dates of lodgment of the writs for the sale of immovables and as the writ of Tahsin (No. 47/32) had been lodged prior to that of the *ex parte* applicants (No. 72/32) the sale ought consequently to be carried out for the benefit of Tahsin.

The learned judge in the Court below held, as we have seen, that the view of the L.R.O. was erroneous. In my opinion, however, that view was the correct one for the following reasons:—

It is clear that under section 56 of the Civil Procedure Law, 1885, the effect of registration of a judgment is that the judgment creditor's debt becomes and remains, so long and only so long as the registration remains in force, a charge on the debtor's immovable property in priority to all debts not specifically charged thereon at the date of deposit of the memorandum with the L.R.O. It follows that no writ for the sale of the debtor's immovables lodged by another creditor during the time such registration is in force can displace the priority thus given by the law to the judgment creditor who has registered his judgment. So long as his registration is kept alive he will be entitled by reason of it, and by reason of it alone, to have the debtor's immovable property sold under a writ of sale of immovables in priority to any other creditor whether or not the date on which he lodged his writ for sale of immovables with the L.R.O. is anterior or subsequent to that of such other creditor, provided always, of course, that such other creditor had not procured the issue of his writ for the sale of immovables prior to the date the judgment creditor deposited his memorandum with the L.R.O. (*Haji Nikola Markou* v. *Constanti Haji Christodoulou*,— 8 C.L.R., 62).

It is, I think, a misapprehension of the language used in section 56 of the Civil Procedure Law, 1885, to contend, as Mr. Nicolaides did, that registration gives priority to a writ for the sale of immovables. Registration, in my opinion, does nothing of the kind. Registration only makes, as section 56 explicitly states, the judgment creditor's debt a charge on the debtor's immovables in priority to all other debts not already specifically charged. Therefore, as from the moment of registration the judgment creditor possesses this priority, and, as the result of this

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priority which registration of his judgment gives him, it follows that the debtor's immovables will be sold at his instance and for his benefit alone, whenever during the currency of his registration he obtains from the Court that order for their sale known as a writ of execution of immovables. During the time registration is in force under section 56, the sole and only priority existing is that conferred by the section, and the writ for the sale of immovables is only a means of giving effect to that priority which already exists as from the moment of registration. It follows from what has been said that since the priority of the judgment creditor's charge is expressly stated by section 56 to be "during the time that the registration remains in force" he loses that priority the moment his registration expires. If he has, during the time his registration was effective, obtained a writ of execution for the sale of immovables which, for one reason or another, remains still unexecuted when his registration expires, then, inasmuch as there no longer exists any priority of charge by reason of registration to be given effect to, his writ of execution of immovables can only be regarded in the light of the judgment in the case in 8 C.L.R. already mentioned as specifically charging the debtor's property as from the date of the issue of the writ itself.

In the present case, as I have already said, both registrations had ceased to be effective. The *ex parte* applicants had chosen to forgo the protection and priority which they might still have retained by applying to the Court obtaining an order prolonging the registration of their judgment. Both they and Tahsin are accordingly forced back upon the date of issue of their respective writs of execution for the regulation of their priorities and Tahsin's being the prior in date it follows his writ must be regarded as creating a charge upon the debtor's property prior to the writ of the *ex parte* applicants.

It is, however, argued that since under Order XVIII, rule 16 every writ of execution, if unexecuted, shall remain in force for one year and that since the year in the case of these two writs expired, as regards respondents' writ, on the 27th April, 1933, and as regards the writ of the appellant, on the 30th March, 1933, both writs have no longer any effect, not having been renewed as provided by the rule referred to. This rule is identical with rule 20 of Order 42 of the English Supreme Court Rules. But the English rule is based upon statute, to wit, section 125 of the C.L.P. Act, 1852, and there is apparently no statutory authority for the Cyprus rule.

Section 23 of the Civil Procedure Law does, it is true, provide that a writ of execution for the sale of immovables remaining unexecuted for a year for non-payment of expenses of carrying out the sale may be returned to the Court and shall cease to have effect. This section is subject

to the provisions of the immediately ensuing section that the Court may before one year has expired order that the writ shall remain in force. The construction I place upon these two sections is that the legislature saw fit to provide that in a particular contingency a writ of execution for the sale of immovables if not renewed by the Court should cease to have effect at the expiration of a year. I am unable to read the sections as implying that every writ of execution remains in force for one year only. If my interpretation of these two sections is correct it follows that rule 16 in so far as it goes beyond the provisions of section 23 of the Civil Procedure Law of 1885 is *ultra vires*. In the present case the contingencies specified in that section had not happened, and it follows that rule 16 of Order XVIII so far as it is sought to apply it to these two writs of execution is void.

For the reasons given, I think, this appeal should be allowed and the judgment of the lower Court reversed with costs in favour of Tahsin here and below.

Appeal allowed.

[STRONGE, C.J., AND THOMAS, J.]

POLICE

v.

PAUL CSAPO.

(Criminal Application No. 31/37.)

Cyprus Criminal Code, Section 162 — Charge of "publicly" committing an Act of Indecency under a Section prohibiting the committing of Acts of Indecency in a "Public Place" — Requirements of Clause 82 of the C.C.J.O., 1927, in regard to Form of Charge for an Offence committed in a Public Place.

The appellant was charged on a summons which stated that he "on or about the 22nd August, 1937, at Nicosia did publicly commit an act of indecency". The charge was laid under section 162 of the Cyprus Criminal Code, 1928, which prohibits the committing of any act of indecency in a public place. The evidence against him was to the effect that, as he was at his window or on the balcony of the house, he wilfully exposed himself to some children passing by. He was convicted of the charge as laid, and appealed by way of an application for the statement of a case under section 23 of the Courts of Justice Law, 1935.

(Nicosia Criminal Case No 3276/37)

H. Ioannides for appellant:—

The charge as laid does not state any offence; for section 162 of the Code says the indecent act must be committed in a *public place*, and section 5 distinguishes between *public place and publicly*. In this case the appellant was in private premises. Further, the summons should, pursuant to clause 82 of the C.C.J.O., 1927, specify the public place by name and the particular act of indecency complained of.

S. Pavlides, Crown-Counsel, for respondent:

I agree that the public place should be specified in the summons and do not support the form in which the charge