CASES

DECIDED BY THE

SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE ASSIZE COURTS AND DISTRICT COURTS.

1940
March 7.

LOIZOS SAVVA v. MAROULLA PARASKEVA AND ANOTHER.

[CREAN, C.J., AND GRIFFITH WILLIAMS, J.]

LOIZOS SAVVA, *Plaintiff-Respondent,*

v.

MAROULLA PARASKEVA AND ANOTHER, *Defendants-Appellants.*

(Civil Appeal No. 3641.)

BUILDING ON ANOTHER'S LAND—ARTICLE 35 OF THE OTTOMAN LAND CODE—INJUNCTION TO DEMOLISH THE BUILDING—SECTION 56 OF THE CIVIL WRONGS LAW, 1932.

The appellants, after having the boundaries of their plot fixed by a Land Registry Officer, built a house which, on examination by a second Land Registry Officer, was found to be encroaching on respondent's land. Thereupon the respondent brought this action and asked for an injunction of the Court to order the appellants to demolish the encroaching building. The trial judge decided that the encroaching part of the building should be pulled down; and the appellants appealed from this decision.

HELD: (1) *As the appellants built their house in good faith and in the belief that they had a right to the whole land, they are entitled to the protection of Article* 35 (iii) *of the Ottoman Land Code;*

(2) *That the damage to the respondent is :* (a) *small,* (b) *capable of being estimated in money,* (c) *can be adequately compensated by a money payment, and* (d) *it would be oppressive to the appellants to grant an injunction; hence no injunction can be granted —Section* 56 (1) (b) *of the Civil Wrongs Law,* 1932.

P. Paschalis for the appellants.

G. Emphiedjis for the respondent.

The judgment of the Court was delivered by the Chief Justice.

CREAN, C.J.: The appellants were the owners of a plot of land adjoining land of the respondent. A house was built by the appellants on their land, but before it was completely finished it was discovered that one of the walls of the house had encroached on the respondent's land to the extent of 1 to 2½ feet in depth and 62½ feet in length.

The evidence shows that on the 20th March, 1936, the Land Registry Officer went to Leonarisso and fixed the boundaries of appellants' plot and prepared a plan. When this plan was prepared the respondent was present and agreed to the boundaries and subsequently when appellants had almost finished building their house they applied to the Land Registry Office for the issue of title-deeds to it.

1940
March 7.

LOIZOS SAVVA v. MAROULLA PARASKEVA AND ANOTHER.

On the 22nd July, 1937, another official of the Land Registry Office went to the property and prepared a plan so that title might be issued to the appellants. He made measurements and found that the appellants' building had encroached 1 foot on the north and 2½ feet on the south and 62½ feet in length on the respondent's land.

Article 35 of the Ottoman Land Laws is as follows:—

"Art. 35.—(i) If anyone arbitrarily erects buildings, or plants "vineyards or fruit-trees on land in the lawful possession of another "the latter has the right to have the buildings pulled down and the "vines and trees uprooted through the Official.

"(ii) If anyone erects buildings or plants trees on the entirety of "land held under a joint title by himself and others without being "authorized so to do by his co-possessors, the latter can proceed in "the manner pointed out in the preceding paragraph so far as their "share is concerned.

"(iii) If anyone erects buildings or plants trees on land which he "possesses by a lawful title which he has obtained by one of the "means of obtaining possession, as for instance by transfer from "another person, or from the State, supposing that the land was "vacant (mahloul), or by inheritance from his father or his mother, "and there afterwards comes forward another person claiming to have "the right to the site on which the buildings or trees are situated, "and proves his right to it, in that case if the value of the buildings "or of the trees, if they were to be uprooted, exceeds that of the site, "payment shall be made to the successful claimant of the value of "the site, which shall then remain in the hands of the owner of the "buildings or trees. If on the contrary the value of the site is "greater than that of the buildings or trees then the value of the "buildings or of the trees as they stand shall be paid to their owner "and they shall be transferred to the successful claimant of the site."

The relevant part of this article seems to be subsection (iii) and from it one might gather that if a person erects a building on land which he possesses by a lawful title and afterwards another person comes forward claiming to have a right of the site on which the building is erected, and proves his right to it, if in such a case the value of the building exceeds that of the site, payment shall be made to the successful claimant of the value of the site, which shall then remain in the hands of the owner of the building.

From the evidence and from the judgment in this case it appears that the appellants built their house in good faith and in the belief that they owned all the land on which they were building, and there is evidence that the respondent agreed to their building and raised no

objection until the formalities were being gone through by the Land Registry Officer prior to the issue of title-deeds for the property.

This officer told the respondent that there had been an encroachment by the appellants, and began preparing a document which had to be signed by the respondent before a title-deed could be issued in the appellants' name. From what this official says, about an hour passed, and then respondent refused to sign. Shortly after, this action was instituted for the demolition of the encroaching building.

The District Judge in his judgment deplores the fact that the parties did not settle this dispute amicably between themselves, and we are inclined to agree with him: However, the respondent brought this action, and after hearing the evidence the learned judge decided that the encroaching part of the building was to be pulled down, but did not allow the respondent his costs of the action.

In his judgment, the judge says there is no need to have recourse to the English decisions on the question as Article 35 of the Ottoman Land Code is quite clear and sets out the law on the question for decision in this case.

It has already been decided or at least mentioned in the case of *Antoni Englezakis* against *Ioannou Loizou*, Cyprus Law Reports, Vol. IX, p. 28, that if a person does not build in the belief that he had a right to the land he cannot claim the protection of Article 35. In this case it is admitted that the appellants did believe that they had a right to the land, and that they had a valid title to the plot on which they built with the exception of this small encroachment. With these facts proved we are of the opinion that the appellants are entitled to the protection of Article 35. But we are bound to say that part (iii) of this article is not as clear as it might be. When it refers to a valid title, we do not know if it means a valid title to the plot on which he built or a valid title to the part on which he encroached. There is no doubt appellants had a valid title to substantially the whole of the plot, but by what appears to be a genuine mistake they also built on a small portion of land belonging to respondent to which they had not a valid title. If there is any difficulty about interpretation of the wording it does no harm to refer to the English law on the point as one is almost certain to find what is the principle on which the law is founded.

A reference to the case of *Shelfer v. City of London Electric Lighting Co.* reported at p. 287, Chancery Division, 1895 (1), which has been referred to by Mr. Paschalis in his argument, throws a good deal of light on the subject and sets out what principle should guide the Court in a case such as this. Lord Justice Smith in that case said: " It may

1940
March 7.

LOIZOS SAVVA
v.
MAROULLA PARASKEVA AND ANOTHER.

"be stated as a good working rule that damages may be given in "substitution for an injunction in cases where there are found in "combination the four following requirements, viz., where the injury "to the plaintiff's legal rights is (1) small, (2) capable of being estimated "in money, (3) can be adequately compensated by a small money "payment, and (4) where the case is one in which it would be oppressive "to the defendant to grant an injunction." And section 56 of the Civil Wrongs Law, 1932, follows the above rule.

In this case the injury to the plaintiff's rights is small, and it is capable of being estimated in money, it can be adequately compensated by a small money payment and in our opinion the case is one in which it would be oppressive to the defendants to grant an injunction. And as the evidence shows that the appellants did not act arbitrarily when they erected this building but on the contrary had the consent of the respondent before they built and acted in good faith in so doing, we can see no reason why the above-mentioned working rule should not be applied to this case.

The trial judge has found that the demolition of the building of appellants would cause them damage to the extent of £22 and the respondent himself says that the building erected on the strip of his land has caused him damage which he assesses at £5; therefore, in our opinion, the appeal should be allowed with costs in this Court and in the Court below, and appellant ordered to pay £5 as damages for this encroachment on respondent's land and the order to demolish reversed.

Appeal allowed with costs, appellants ordered to pay respondent £5 as damages, and the order to demolish reversed.