

[CREAN, C.J., AND HALID, J.]

GEORGHIOS HAJI STYLIANOU, *Appellant*,

v.

GEORGHIOS YEROLEMOU AND OTHERS, *Respondents*.

(Civil Appeal No. 3715.)

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GEORGHIOS
HAJI
STYLIANOU
v.
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AND OTHERS.

Writ of execution—Judgment already paid—Transfer to another District Court for execution—Rules of Court 1938—Courts directions as to execution under Order 40, rule 15.

Judgment was obtained in the District Court, Larnaca, and a writ of execution issued thereon against one of the three defendants, who resided in Limassol District. This writ was transferred to the District Court, Limassol for execution, and was duly executed. The judgment had in fact been paid before execution issued.

Held: A judgment debt once paid ceases to be, and any order made relating to such judgment, subsequent to payment of the judgment debt in full, is of no effect. There is no provision under the Rules of Court, 1938, for transfer of a writ of execution from one District Court to another for execution. Order 40, r. 15 of the Rules of Court, 1938, contemplates only applications in respect of how and in what form the execution is to be levied and not in respect of matters which arise after execution.

Appeal from an order of the District Court of Larnaca.

J. Potamitis for the appellant.

P. Papaioannou for the respondents.

The facts are set forth in the judgment of the Court which was delivered by:—

CREAN, C.J.: An action was brought in the Larnaca District Court in the year 1935 by one Stylianou against three defendants, Yerole mou, Yiannakou and Louka. Judgment was given in favour of Stylianou and the judgment debt was paid off by Yiannakou and Louka with the exception of a sum of £10 which, according to the evidence of Stylianou, was paid by Yerole mou; and it appears from his evidence that the payment of this judgment debt took place in 1938 and 1939.

On or about the 7th February, 1941, Stylianou, through his advocate, applied for the issue of a writ of sale of Yerole mou's movable property. This writ was issued out of the Larnaca District Court Registry, and it was transferred to the Limassol District Court for execution. It was duly executed and a sum of £42. 19s. 2p. was realised by the sale of Yerole mou's properties which the Deputy Sheriff of Limassol deposited in the District Treasury there. This sum is still intact and so far as we can see from the record before us, it has been the subject of an interim order by the Limassol District Court, and this sum is also the subject of an order of the Larnaca District Court which orders this sum to be paid to Yerole mou.

The interim order that the £42 remain in Court till final determination of the case was made in an action brought against Stylianou, Yiannakou and Louka in the Limassol Court by Yerole mou claiming from them, amongst other things, damages for improperly levying execution and trespass on his movable property. When this case came on for hearing before the District Judge in Limassol he stayed

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the action, being of opinion that as the cause of action arose in the Larnaca District the proceedings should have been instituted there. This Order was appealed from and the Supreme Court came to the conclusion that the learned judge was right and dismissed the appeal. This action was instituted on the 24th February, 1941.

The order of the Larnaca District Court was made on an application made by Yerole mou on the 10th October, 1941, when he applied for directions that the proceeds of sale, realised from the writ executed in Limassol, be paid to him ; that is, the £42. 19s. 2p. already referred to as having been realised by the sale in Limassol District on writ No. 56107 issued out of the Larnaca Court.

The application was heard on the 1st November, 1941, and judgment given on the 14th November, 1941. By this judgment the above proceeds of the sale by way of execution were directed to be paid to Yerole mou and costs assessed at £4. 19s. were ordered to be paid by Yiannakou.

This order is the subject of the present appeal, and Mr. Potamitis for the appellant submits that the order is wrong in law because Rule 15 of Order 40 of the Rules of Court, 1938, does not apply when the writ has already been executed by the seizure and sale of the property of the judgment debtor and the amount levied deposited with the District Treasury. Another submission of counsel for the appellant is that as the applicant Yerole mou had previously brought an action in Limassol Court whereby he asked for the cancellation of the above writ as wrongfully issued and the return of the £42. 19s. 2p. he is barred from starting any other proceedings before the determination of this action which was at date of the order, and still is pending, and in which action an interim order was made by the Limassol Court that this sum be kept in Court until the determination of that action.

From the arguments put before us and the records the position seems to us a very complicated one, and a very untidy one.

First we have the action brought in 1935 in Larnaca Court in which execution was issued and an admission by the judgment creditor in that case that his judgment debt was paid. Then on the 7th February, 1941, a second writ of execution was issued though the judgment debt had been paid, and the amount realised on it was lodged in the District Treasury of Limassol as the writ had been transferred to District Court there for execution. On the 24th February, 1941, an action is brought by Yerole mou in the Limassol Court against those who procured the issue of this writ of execution for the £42. 19s. 2p. realised thereon and £50 for damages. This action was stayed by order of the Limassol Court on the 29th September, 1941, and the £42. 19s. 2p. was ordered to remain in Court until the final determination of the action. But an application purporting to be under Order 40, Rule 15, of the Rules of Court, 1938, was made to the Larnaca Court for an order directing payment of this sum to Yerole mou, plaintiff in Limassol action. It is not very clear from the record before us in what action this application was made ; but, as Yerole mou in his affidavit describes himself as one of the defendants we think it must mean the first action instituted in 1935.

An order was made by the District Judge at Larnaca ordering this sum to be paid to Yerolemou. In a considered judgment the learned trial judge refers to the fact that the judgment creditor on oath said he had no claim on the above sum; therefore it must have been accepted that the total amount of the judgment debt and costs had been paid, and so it was declared that the money belonged to the applicant Yerolemou.

One fact emerges clearly from all the different procedures undertaken, and that is, the judgment debt and costs in the 1935 action were paid. Therefore any proceedings taken in that 1935 action were taken on foot of a judgment which had been fully satisfied, and that appears to us to be a peculiar situation. Another matter which we find difficult to understand is the application of Yerolemou in the 1935 action for payment of the £42. 19s. 2p. when he had already a fresh action pending for the same amount and which amount was lodged in Court.

Though it was mentioned during the hearing of this appeal that the judgment debt in the 1935 action had been paid it was not argued that such fact had any strong bearing on the case. But it seems to us, it affects the whole position of these different proceedings in the two District Courts. For, we have a writ of execution issuing out of the Larnaca District Court in February, 1941, on foot of a judgment debt which had been paid in 1938 or 1939. As the judgment debt was paid, the judgment ceased to be. It was at an end; therefore any order made relating to that judgment was made without any basis or foundation, and was consequently of no effect.

The authority for this proposition of law is the case of *Clissold v. Cratchley*, 2 K.B.D., 1910, p. 244. This was an action against a solicitor and his client to recover damages for improperly levying execution, and in the alternative for trespass. It is unnecessary to set out the facts of that case except perhaps to say that execution was levied about three hours after the debt had been paid, and that when this was done neither the solicitor nor his client knew of the payment of the debt.

It was held that the solicitor and client were liable in trespass, though in the absence of malice they were not liable in an action on the case. In the judgment of Vaughan Williams, L.J., his Lordship says, "not a single authority has been cited to justify the proposition that a satisfied judgment is nevertheless still an existing judgment for the purpose of issuing a writ of execution, it is manifest that the writ of execution issued under it was void *ab initio*, and that an entry has been made on the plaintiff's premises under a writ void *ab initio*". In the same case the remarks of Fletcher Moulton, L.J., appear to us to be very apposite to this appeal where it is said by him, "I am satisfied in this state of things the order was dead for all purposes, and that the suing out of a writ of execution under an order which had already been obeyed was an act void *ab initio* and could justify nothing". And in the same case it is said by Farwell, L.J., that "no writ of execution can lawfully issue on a judgment that has been paid or satisfied before issue of the writ".

With this authority before us it seems clear that the suing out of the writ of execution in February, 1941, under the judgment which had already been paid could justify nothing. That being,

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so, it could not justify the making of the order on it in November, 1941, which ordered the £42 to be paid to Yerole mou. But even if that were not so, and the Larnaca District Court was right in allowing the suing out of this writ of execution we can see no authority for the transfer of it to Limassol Court for execution. Under the Rules of Court 1927 such a transfer could have been made, but no one has shewn us a similar authority in the 1938 Rules of Court which allows of such a transfer.

Having come to the conclusion that any order as to the judgment in the 1935 action after it had been paid, is void *ab initio*, it is hardly necessary to mention the transfer of this writ of execution from Larnaca Court to Limassol Court. But it may be instructive if we were to say that under the 1927 Rules of Court such a transfer could be made, but that there does not appear a similar authority in the 1938 Rules of Court. Consequently it would appear that the issue of this writ of execution by the Larnaca District Court was irregular and without authority.

Though the interpretation of Order 40, Rule 15, is not now a point of vital importance to the decision of this appeal, we think it well to mention the argument of Mr. Potamitis on it. It is submitted by him that the directions mentioned in this rule contemplate directions as to how the execution of the writ is to be carried out, but cannot be read so as to include an application for an order for directions as to whom the proceeds of sale are to be paid, after the writ has been executed and proceeds lodged in the District Treasury for the Court.

In our opinion this is the correct interpretation of the rule, and that it contemplates only applications in regard to how, and in what form the execution is to be accomplished, and not to matters which rise after the execution such as the application in this case. And as to Mr. Papa Ioannou's argument that even though the writ of execution was returned to the Limassol Court, such a return should not be considered as returned for the purposes of Order 40, Rule 14, as it was not returned to the Larnaca Court from where it issued, we think it is quite ingenious. But our view is, that this writ of execution expired when it was returned to the Registrar of the Limassol Court because the meaning of "return to a writ" is a certificate from the proper person of what has been done under it. There is such an endorsement or certificate on this writ by the Court officers of the Limassol Court and so it was returned and expired, consequently we think no directions could be given under it.

For all the above reasons we allow the appeal with costs.