

[GRIFFITH WILLIAMS AND HALID, JJ.]

AFRODITI N. VASSILIADES, *Appellant.*

v.

THE OFFICIAL RECEIVER (TRUSTEE OF THE ESTATE OF HAJI
NICOLA VASSILIADES, A BANKRUPT), *Respondent.**(Civil Appeal No. 3683.)**Cyprus Courts of Justice Order, 1927, Clause 42—Stay of execution—Return of writ of execution into Court—Inherent power of Court over its own writs—Section 7 and 7A of the Immovable Property (Restriction and Postponement of Sales) Laws, 1935 to 1939.*

The appellant, a creditor in bankruptcy, on the 13th March, 1940, obtained an order under the Civil Procedure Law, 1885 for the issue of a writ of execution and sale against certain immovable properties of the debtor over which she held a memorandum of attachment, which was due to expire on 26th April, 1940. She applied to the L.R.O. to have the properties sold before the date of expiration, but they were unable to do so. On the application of the Official Receiver, the District Court held that it had power in a proper case to suspend the execution of a writ once issued after a memorandum of attachment had expired.

Held : The Court has power in a proper case to stay execution and order the return of the writ of execution into Court. Court has inherent power over its own writs. Property seized in execution is in power of Court from time execution is levied. *Haji Nicola Markou v. Constanti Haji Christodoulou*, 8 C.L.R. p. 62, followed.

Appeal from a judgment and order of the District Court of Famagusta.

G. N. Rossides for the appellant.

J. Clerides for the respondent.

The facts sufficiently appear from the judgment of the Court which was delivered by :—

GRIFFITH WILLIAMS, J. : This appeal is from a judgment of the District Court of Famagusta in which that Court held that it had power to suspend execution of a writ of sale against immovable property issued by it, and to order the return of the writ to the Court unexecuted.

The facts were shortly as follows :— On the 19th September, 1939, a Receiving Order in Bankruptcy was made against the defendant Hadji Nicolas Vassiliades. At the time of the Receiving Order the plaintiff Afroditi N. Vassiliades, the debtor's daughter, who was also petitioning creditor in his bankruptcy, was a secured creditor in respect of immovable property of the debtor by virtue of a Memorandum of Attachment, namely, No. 189 of 1938. She had also a memorandum on other properties of defendant, namely, Memorandum No. 17/1938 ; but this was registered at the Land Registry Office on 10th January, 1938, and expired on 9th January, 1940, and does not concern this application.

The plaintiff made an application to the Court for extension of the memorandum before it expired, but her application was refused, apparently on the ground that its extension would alter the security held by her and might prejudicially affect other creditors in the bankruptcy. On 13th February, 1940, the defendant Nicolas Vassiliades was adjudicated bankrupt, and thereupon his property

1942
April 17.
AFRODITI N.
VASSILIADES
v.
THE
OFFICIAL
RECEIVER
(TRUSTEE
OF THE
ESTATE
OF HAJI
NICOLA
VASSILIA-
DES, A
BANKRUPT).

1942
April 17
—
AFRODITI N.
VASSILIADIS
v.
THE
OFFICIAL
RECEIVER
(TRUSTEE
OF THE
ESTATE
OF HAJI
NICOLA
VASSILIA-
DES, A
BANKRUPT).

vested in the Official Receiver as Trustee for the creditors. On the 13th March, 1940, the plaintiff obtained from the Court an order under the Civil Procedure Law, 1885, for the issue of a writ of execution and sale against the defendant's immovable property, and she registered the writ at the Land Registry Office against the property subject to her memorandum.

The plaintiff then by her agent Afxentis applied to the Land Registry Office to fix the date of sale so that the property might be sold before her memorandum expired, namely, 26th April, 1940. This the Land Registry Office could not do, as at that time of year it was not permitted by the rules of the Land Registry Office to sell immovable property. For this reason the sale was never fixed, and on or about the 14th April, 1940, Afxentis acting as he alleged on behalf of defendant attended at the Land Registry Office and applied that the Principal Land Registration Officer (for this purpose the Commissioner of Famagusta) should postpone the sale by virtue of section 7 (1) of the Immovable Properties (Restriction and Postponement of Sales Law, 1935) Law 40/1935 as amended by section 3 of Law 26/1938. At the same time he paid to the Land Registry-Office the sum of £28 arrears of interest due under the writ, alleging that the payment was made on behalf of the debtor—*i.e.* Nicolas Vassiliades, the defendant herein.

On 1st May, 1940, the Official Receiver of the Estate of the debtor Hadji Nicolas Vassiliades took out a summons returnable on the 11th May, 1940, asking for suspension of the execution of the writ of sale given by the Court on 13th March, 1940, and for such amendment of the said order of 13th March, 1940, as to the Court might seem necessary, and for an order directing the Sheriff to return into the Court the said writ of sale.

This application was heard before the District Court of Famagusta, which gave judgment on 17th May on the preliminary point as to the powers of the Court to suspend execution of a writ once issued after the plaintiff's memorandum has expired, and, after hearing evidence, gave judgment on 29th May on the question of whether or not the Memorandum had been extended under section 7A of the said law added by Law 6/1939 by the action taken by the plaintiff's agent to obtain the alleged postponement of sale. The Court held that it had power to suspend execution in any case by virtue of clause 42 of the Cyprus Courts of Justice Order, 1927, and that moreover in cases of execution the property was in the power of the Court from the moment the order for execution was complete. In this the Court relied on the case of *Haji Nicola Markou v. Constanti Haji Christodoulou*, 8 C.L.R. 62. The Court further held that on the expiration of the memorandum the plaintiff's charge under the writ took second place to another existing memorandum on the property, but that this second charge would itself be an extension of her original security to the detriment of other creditors in the bankruptcy.

In the second judgment of the Court, delivered on 29th May, 1940, after hearing evidence, the Court held that since no sale date of the property had ever been fixed, the word "postponement" in Exhibit I—the report by the Land Registry Clerk to the Commissioner—should never have been used, and that the approval thereof by the Commissioner was therefore ineffective, and that no postponement had in fact taken place.

We do not wish to consider the efficacy of the words used to postpone or defer sale or rather to effect an extension of the plaintiff's memorandum by one year under section 7A of the Immovable Property (Restriction and Postponement of Sales) Law; as this case can be decided on more fundamental grounds.

It seems to us that if the Court had power to withdraw its writ the question of whether the Principal Land Registration Officer had acted effectively or not could not arise. The Immovable Property (Restriction and Postponement of Sales) Laws were passed for the relief of debtors against whom execution was issued, and they could only be held to operate while there was a writ of execution in existence registered at the Land Registry Office. On the withdrawal of the writ itself the whole foundation of the action under section 7 of that law would be removed. There is nothing in the law to take away any power which the Court may possess over its own writ. And actually the withdrawal of the writ itself is not antagonistic to the purpose and intention of the law, which is to benefit the debtor, the withdrawal of the writ being more for the benefit of the debtor than the mere postponement or deferment of action against the debtor thereunder. Section 7 of the law would therefore cease to be operative if the Court were to withdraw a writ. In the same way section 7A, which is to protect the security of the creditor, in case of action by the Principal Land Registration Officer under section 7, would cease to have effect.

In the present case it seems to us that there was not only good reason for the Court to exercise any power it might have of suspending execution of the writ after the original date of expiration of the memorandum on account of its giving creditor in bankruptcy an increased security to the detriment of other creditors, but there was the further substantial reason that the postponement, if any, was induced by the fraudulent misrepresentation of the creditor's agent and for the benefit not of the debtor but of the creditor. The ordinary effect of a postponement of sale under section 7 is to keep alive the writ of sale issued out of the Court until such sale may take place, and under section 7A to extend the memorandum on the property for a period of one year. But this misrepresentation by which the so called postponement of sale was obtained would prevent any of the legal consequences which would normally follow from the action of the Land Registry Office in postponing or deferring sale under the Law from acquiring any force or effect.

When Afentis paid the £28 to the Land Registry Office for the postponement of the sale under the writ the defendant was already adjudicated bankrupt, and he had been divested of his property. If therefore the £28 was paid on behalf of anyone other than the secured creditor it was paid on behalf of the Official Receiver. But the Official Receiver or other the Trustee in Bankruptcy could not be regarded as a debtor within the meaning of the Immovable Property (Restriction and Postponement of Sales) Law. And the whole object of the said law is to protect the immovable property of debtors. Because a man tenders a payment and says, "I am paying this on behalf of a named debtor", that of itself is not a payment on behalf of the debtor, if it is clear, beyond doubt, that it is done by the creditor not as agent of the debtor but entirely

1942
April 17
—
AFRODITI N.
VASSILIADES
v.
THE
OFFICIAL
RECEIVER
(TRUSTEE
OF THE
ESTATE OF
HAJI NICOLA
VASSILIA-
DES, A
BANKRUPT).

1942
 April 17
 ———
 AFRODITI N.
 VASSILIADES
 v.
 THE
 OFFICIAL
 RECEIVER
 (TRUSTEE
 OF THE
 ESTATE
 OF HAJI
 NICOLA
 VASSILIA-
 DES, A
 BANKRUPT).

for his own benefit. At the time the payment was made by Afxentis it is obvious that he was acting not for his father, the bankrupt, but for his sister Afrodite, the creditor. Indeed, only a few days before, he had been to the Land Registry Office on behalf of Afrodite pressing for an early sale of the property. What he was doing therefore in making his application was clearly an abuse of the law, and indeed the order for postponement of sale subsequently made was, without doubt, procured by his misrepresentation that he was paying on behalf of the debtor.

On receipt of the payment of £28, the Land Registry Clerk made his report to the Commissioner informing him of the payment and suggesting that the sale might be postponed, but he did not inform the Commissioner that no sale had ever been fixed. On the 3rd May, 1940, the Commissioner approved the postponement of sale, by a note to this effect on the report (Exhibit I) in the case.

Now in fact the sale had never been fixed, because the plaintiff had allowed her memorandum almost to expire—expecting to get it extended by order of Court—without applying for sale until too late in the year for the property to be sold before expiration of the memorandum.

The only question therefore for decision by this Court is whether the Court below had power to order the suspension and return of its writ unexecuted, for, as we have already shewn, we consider that as the attempted extension of the charges on the land was obtained by fraudulent misrepresentation, and was not and could not have been made on behalf of the debtor who was a bankrupt, any action taken thereunder by the Land Registry Office must be considered of no effect.

The relevant part of Clause 42 of Cyprus Courts of Justice Order, 1927, which gives power to suspend execution is as follows:—
 “The Court by which such judgment is given or any Court having jurisdiction to hear such judgment on appeal may at any time if it shall so think fit and whether an order for execution shall have been issued or not direct that execution of such judgment be suspended for such time and subject to such terms or otherwise as to such Court may seem just”.

It is argued that this clause refers only to the time before a writ of execution has in fact issued. But the words “may at any time” and “whether an order for execution shall have been issued or not” do not in themselves impose any limit on the Courts power. Under the Civil Procedure Law, 1885, no writ of sale against immovable property can issue at all without the express order of the Court under section 22, and the writ itself has to be signed by the judge issuing it. If any defect occurred in respect to the order for the issue of this writ it could, like any other order, be corrected under Order 25, Rule 5, of the Rules of Court as applied for by the Official Receiver in his application. The Court below, however, did not feel disposed to take this course, but preferred to rely on its inherent powers over its own process and on Clause 42 of the Cyprus Courts of Justice Order already quoted.

Now the writ of execution is directed to an officer of the Court for execution—Greer, L.J., in *Williams v. Williams and Nathan*—(All England Law Reports, 1937, Vol. 2 p. 561) said, “I think it is clear to demonstration . . . from a well known rule of law that

a sheriff and a sheriff's officer, executing a judgment of the Court, are acting, as we may say, on behalf of the Court". The sheriff then in levying execution is doing so on behalf of the Court, and not on behalf of any particular party.

The Sheriff or his officer being officers of the Court are under the control of the Court, and whether the writ of execution has been delivered to the Sheriff or not, or whether the writ has been in part executed or not, the Court still has power over the writ, which in a sense has never passed out of its control. Consequently where an order is obtained to suspend execution, where the writ is already in the hands of the sheriff the Court has power to see that that order is carried out. And no authority has been cited as to the inability of the Court to delay or postpone execution once it has been issued.

Williams on Bankruptcy, 12th Edition (*n*) to section 9 says, "The Court may at any time after the presentation of a bankruptcy petition stay any action, execution or other legal process against the property or person of the debtor . . .". This being a case in which the debtor, both at the time of the issue of the writ and when this application was made, was a bankrupt it is clear that following the English law the Court would have had power to stay execution "at any time". And this must mean even after the writ has issued. It seems that this power is not confined to cases where the debtor is bankrupt, but is merely declaratory of the Courts power in that instance, as Clause 42 of the Cyprus Courts of Justice Order, 1927, seems to give the Courts similar powers in all cases.

Clause 42 of our Cyprus Courts of Justice Order, 1927, gives the Court very wide powers as to staying execution at any time, even after execution has been issued, and does not limit it to cases where the writ of execution has not reached the hands of the Sheriff. In the present case execution cannot issue at all without an order of the Court, and the judge who made the order signing the writ of execution; but it cannot be argued that over such a writ the Court has less power than in the case of one the judge is not required to sign.

In the case of *Haji Nicola Markou v. Constanti Haji Christodoulou* 8 C.L.R., p. 62, relied upon in the Court below, this Court held that the property on which execution is levied is in the power of the Court from the moment the order is complete. Hence if the property is in the power of the Court it is within the power of the Court to deal with the property as it thinks proper—and since any action taken in respect of it by the Land Registry Office is done for the purpose of carrying out the Court's orders—the Court must be considered still to retain the power over its writ, and can, if necessary, order its return into Court.

We are satisfied for these reasons that the Court had power to stay execution and order the return of the writ in a proper case, and we consider that the present was a proper case for the exercise of its power.

The appeal will therefore be dismissed with costs.

1942
April 17
AFRODITI N.
VASSILIADES
v.
THE
OFFICIAL
RECEIVER
(TRUSTEE
OF THE
ESTATE
OF HAJI
NICOLA
VASSILIA-
DES, A
BANKRUPT).