[HALLINAN, C.J., AND ZEKIA, J.]

(April 15, 1953)

SHERIFE MOUSTAFA MOULLA IBRAHIM, *Appellant,*

v.

MEHMED SALIH SOULEYMAN, *Respondent.*

(*Civil Appeal No.* 3978.)

Error in registration—Jurisdiction of Court not ousted by Immovable Property Law (Cap. 231) s. 56—Can unregistered prescriptive right be transferred?

Considerable evidence was adduced that certain land claimed by the plaintiff-respondent as property part of plot 30 of the survey plan had in error been registered as part of plot 29/1 that is to say as part of the defendant's land. The trial Court found for the plaintiff probably on the ground of prescriptive right. The defendant appealed.

Held: The Immovable Property (Tenure, Registration and Valuation) Law (Cap. 231) s. 56 (which provides that a dispute as to boundaries must in the first instance be determined by the Director of Land Registration and Surveys) does not preclude the Court from deciding whether there has been an error in registration.

Quaere: Under the law relating to lands prior to 1946 it is very doubtful if a person who has obtained by prescription alone a right to be registered, can transfer his right verbally to another unless he perfects his title by registration so as to give the transferee a right of action (a transferee might possibly, if a defendant, plead his possession as a defence to a claim against him).

Case remitted to trial Court to determine whether there had been a mistake in registration.

Appeal by defendant from the judgment of the District Court of Limassol (Action No. 179/51.)

M. Houry for the appellant.

J. Potamitis for the respondent.

The judgment of the Court was delivered by :

HALLINAN, C.J. : The claim of the plaintiff-respondent in this case concerns certain land at Evdhimou. Respondent's certificate of title to this land is No. 12,342 of 25th June, 1946, which he obtained on a transfer of the land from his father-in-law, Djaffer Halil. The registration prior to 1946 was made on the 6th November, 1923, and it was made after the general survey and is in all material respects the same land as that in registration of 1946. There is considerable evidence that the registration of 1923 was incorrect. The description of the boundaries in the certificate No. 12,342 does not correspond with the boundaries of plot No. 30 (to which the certificate refers) as these

boundaries are delineated on the survey plan. The area of the land in the registrations prior to 1923 was 25 donums but in 1923 for some unexplained reason it was reduced to 21 donums and two evleks. Furthermore, respondent has produced a certificate of registration No. 12,343 in respect of 168 carob trees on plot 30 whereas in fact there are only 56 carob trees on plot 30 as delineated on the survey plan. There are however 110 trees on the adjoining land in dispute which, together with the other 56 trees, would make 166. The respondent has also adduced strong evidence that he and his predecessors in title have for over 30 years been in occupation and enjoyment of the land in dispute. The certificate of title of the defendant-appellant No. 17,665 of the 23.5.46 shows that she is registered in respect of the land in dispute. But it is very significant that the previous registration (Certificate of Title 14,501 of the 13th October, 1931) purports to be in respect of an area larger than that to which certificate No. 17,665 relates, that is to say, the whole of plot 29 before it was sub-divided and the appellant received plot 29/1, yet the registration of plot 29 in 1931 was only 25 donums, whereas, for some unexplained reason, this plot 29/1 in 1946 became 91 donums and three evleks. Moreover, the title to the trees on plot 29 is contained in certificates of title Nos. 14,502 to 14,504 and the total number of trees in the certificates is 271 whereas the trees of plot 29/1 alone are to-day 347. It certainly appears as if an error has occurred in the registration in 1923 or subsequently.

If there has been such a mistake then we consider that it must be presumed that Djaffer Halil, the transferor to the respondent, was, before the mistake was made, the registered owner of the land claimed by the respondent and that Djaffer Halil in 1946 legally transferred all his rights in the land of which he was owner to the respondent. Defendant-appellant acquired her interest in plot 29/1 by gift; she is not a *bona fide* purchaser for value. If the appellant's predecessor in title by error obtained registration for part of Djaffer Halil's title, the register must be rectified. (*Mihtat* v. *Loiza*, 6 C.L.R., 13.)

In our view, the true issue in this case is whether delineation of plot 30 on the survey plan is correct or not, having regard to the description of the boundaries in the certificates of title No. 12,342, the evidence of trees in the certificates of title of both appellant and respondent, the changes in the areas of plots 29 and 30 over the material period, and lastly the evidence of actual possession of the land in dispute by either party or their predecessors in title.

If the respondent succeeds in this issue then it is not necessary to consider whether he has obtained a prescriptive right to the land in dispute. Under the law relating

to lands prior to 1946 it is very doubtful if a person who has obtained by prescription alone a right to be registered, can transfer his right verbally to another unless he perfects his title by registration so as to give the transferee a right of action. (A transferee might possibly, if a defendant, plead his possession as a defence to a claim against him). If, as in the present case, the transferee (respondent) is the plaintiff then he is on a much safer ground if he relies on the registered title rather than on prescription. However, long possession by the transferor and by the plaintiff may be very relevant evidence in support of the contention that there has been a mistake in the survey plan.

In the course of the trial, the question arose as to whether the issue in this case, apart from that of prescription, constitutes a dispute as to boundaries and ought to be determined in the first instance by the Director of Land Registration and Surveys under s. 56 of the Immovable Property Law (Cap. 231). The trial Court, after some discussion, made the following note : " The case confined to the question of prescription only." However, in his judgment the learned trial Judge considered the evidence as to registration of this land in some detail and concluded as follows :

> " Both from the registration of the plaintiff and the possession by him and his predecessor in title, I find that the part of the land shown in red and the trees standing on it are the property of the plaintififf and must be taken out of the title-deed of the defendant."

In our view, the circumstances of the present case are not such a dispute as to boundaries of registered land under section 56 as to preclude the Court from adjudicating thereon in the first instance. We consider that the kind of dispute to which section 56 applies is one in which the boundary is described in the title-deed or delineated on a plan, and the dispute is as to where the physical boundary should actually run on the land so as to conform with the deed or the plan. It does not apply where there is a dispute as to whether the description in a deed or delineation in a plan is correct or not.

The trial Court, therefore, had jurisdiction to deal with what we consider the main issue in this case, namely, as to whether there has been a mistake in the registration. Since the Court confined the evidence to the issue of prescriptive right, *the decision of the trial Court must be set aside and this case must be sent back to hear such further evidence on the issue as to the registration as the parties may wish to adduce, so that the trial Court may adjudicate afresh. There will be no order as to the costs of this appeal. The costs of this cause (other than the costs of the appeal) to be in the discretion of the trial Court.*