

[BOVILL, C.J. AND SMITH, J.]

ATHANASSI CHRISTOFIDES

Plaintiff,

v.

NICOLA TOFARIDI

*Defendant.*BOVILL,
C.J.
&
SMITH, J.
1885.Jan. 15.SHUFA—COMPLETION OF SALE OF MULK PROPERTY—MEJELLE,
SECTIONS 1026, 1029 AND 1030.

By Article 1026 of the Mejellé, the right of pre-emption comes into existence when the property in respect of which the right arises has ceased to be in the legal possession of the vendor.

Property over which the plaintiff had a right of pre-emption was sold by auction to the defendant. On the day of sale, and subsequently to the defendant having been declared the highest bidder, the plaintiff took the measures required by the law to shew that he intended to exercise his right to pre-emption. The property was not at that time registered in the name of the defendant.

Held (reversing the decision of the District Court) that the sale to the defendant was not complete until the registration of his name had been effected, and that the proceedings taken by the plaintiff before that registration were of no avail to establish his right of pre-emption.

APPEAL of the defendant from the judgment of the District Court of Nicosia.

The facts of the case and the arguments of the parties appear sufficiently from the judgment of the Supreme Court, which was as follows :

Judgment : In this action the plaintiff claims a right of pre-emption over certain property in the town of Nicosia under the following circumstances.

Jan. 22.

The property in question is adjacent to a Mulk property belonging to the plaintiff and formerly belonged to one Michael, who has not been heard of for 45 years, and who is believed to be dead and to have left no heirs. Under these circumstances the property was put up for sale by order of the Government and on the 9th of April, 1884, it was adjudged to the defendant as the highest bidder. During the sale it had been called to the plaintiff's attention that he was believed to have a right of pre-emption over the property and he was requested to bid at the sale, but declined to do so as he said he intended to exercise his right of pre-emption, no doubt having in mind Article 1024 of the Mejellé. On the 9th of April he informed two persons of the sale and stated to them that he intended to exercise his right of pre-emption, and appears to have done this in order to comply with the provisions of Article 1030 of the

BOVILL,
C.J.
&
SMITH, J.
—
ATHANASSI
CHRISTO-
FIDES
v.
NICOLA
TOFARIDI.
—

Mejellé. On the 25th of April the defendant was registered at the Land Registry Office as the owner and kochans were given to him. On the 5th May, that is within one month from the date when the plaintiff considered that his right of pre-emption had accrued, the time limited by Article 1034 of the Mejellé, he commenced this action.

On the hearing, the District Court considered that he had proved his right to pre-emption, and had done all that is required of him by the law to enforce it and, accordingly, decided that the registration in the name of the defendant should be set aside and that plaintiff should have possession of the property.

The defendant appeals against this decision and the plaintiff opposes the appeal on several grounds. He says first, that the petition of appeal does not comply with the requirements of Article 106 of the Ottoman Code of Procedure. Under the provisions of the Cyprus Courts of Justice Order, 1882, and of the Rules of Court made thereunder, the requirements of the Article referred to are no longer in force, and the fact that the residence and occupancy of the parties and a statement as to the object of the appeal are omitted in the petition of appeal is immaterial.

Plaintiff also objects to any interference with an official title, but if this objection is to prevail it should have prevailed in the Court below, and the articles of the law on which plaintiff relies in support of this contention do not signify more than that title deeds are to be taken in evidence without proof of their authenticity.

Lastly, the plaintiff contends that he has proved his right to pre-emption and that he has done everything required by law to enforce that right. It appears to us that there are three points to be considered, viz. : Firstly, whether the plaintiff owns property which would confer a right of pre-emption upon him? Secondly, whether this right has come into existence? and, Thirdly, whether the plaintiff has done all that is required of him by law to enforce his right. We have no doubt that the plaintiff does own property which would confer this right upon him; and, with regard to the question whether he has done all the acts required of him by law, it appears to us that, if his right of pre-emption came into existence on the conclusion of the sale by auction, on April 9th, he probably has done all that is required to preserve his right. The provisions of Article 1026 of the Mejellé compel us to consider whether the right of pre-emption had come into existence on the 9th of April. This article says that the right of pre-emption arises when the ownership of the property passes from the seller to the purchaser.

The law of 28 Redjeb 1291 (which was quoted by plaintiff) enacts in Article 1, that no Mulk property can be held without the official title deeds; and, after making provision for the issue of these official titles, it enacts in Article II., that in sales of property the buyer and seller or their vakeels will, in presence of the Cadi and Defter khakani official, declare the sale of the property, and if both parties agree the matter will be noted and the Mejliss will approve of it, the approval of the Mejliss being necessary under Article 7 of the Law for the Issue of Titles. This law appears to have been modified, consents to sales having for some time past ceased to be taken before the Mejliss, and being now taken before a Village Judge under Law No. IV. of 1883. In this case the consent appears to have been dispensed with altogether as Government were the vendors. It appears, however, that under the law the purchaser cannot be regarded as the owner of the property to be transferred until it is actually registered in his name. Article 1029 of the Mejlé prescribes what the person having the right of pre-emption should do on hearing of the sale, but reading this with Article 1026, we consider that the sale alluded to in Article 1029 is the perfect and complete sale on which the ownership of the property passes from the vendor to the purchaser, and applying this view of the law to the particular case before us, we consider that the right of pre-emption did not arise until the 25th of April and that the plaintiff has not since that date taken any of the steps required for the preservation of his right, while those which he took prior to the 25th of April, though probably correct in form, are of no validity as at the time the right of pre-emption did not exist. For these reasons we are of opinion that this appeal must be allowed and this action dismissed with costs.

Appeal allowed.

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