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the sale of Mulk as it is about Arazié Mirié. The respondent has no kochan, and it is quite impossible that she should get one, and therefore she has no right to have the property registered in her name. With regard to the plaintiff's claim to be repaid the amount of the purchase money, we are of opinion that the fact that this property reverted to the State as Mahlul does not constitute the Government the successor to the deceased Michail and responsible for his debt. It appears to us that in this case it would be difficult to hold, that the fact that the respondent paid money for the possession of this property can be said to constitute a debt. As long as the person to whom she paid the money was alive, there was no debt due by him, and as long as the respondent had possession of the property she had everything she could acquire under such an agreement. The highest value we have ever given to these informal sales is, that we have held that the vendor should not be allowed to disturb the purchaser unless he returns the purchase money. This decision may seem hard on the respondent but she could have protected herself by getting registration when she paid her money.

Appeal allowed.

BOVILL, C.J. & SMITH, J. 1888. *March* 31.

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

AHMET HOULOUSSI MOUHASSEBEDJI OF EVKAF *Plaintiff,*

v.

YANCO APOSTOLLIDES, ZOITZA FRANCOUDI AND EVANTHIA GLYKYS *Defendants.*

VAKOUF—IDJARETEIN CHIFTLIK—SALES THROUGH DEFTER KHANE OF PORTIONS OF CHIFTLIK—APPOINTMENT OF IDJARE—CONSENT OF THE EVKAF.

The grantees of an Idjaretein Chiftlik cannot free themselves from their liabilities to pay the entire Idjaré by alienating portions of the lands of the Chiftlik without the consent of the Evkaf.

APPEAL from the District Court of Limassol.

Claim by the plaintiff for five years' Idjaré of Colossi Chiftlik held by the defendants under a grant in perpetuity from the Evkaf authorities so long as the said Idjaré is paid. The action as against Evanthia was withdrawn. The other defendants alleged that they had alienated portions of the chiftlik to certain third parties, and contended that those persons were responsible for so much of the Idjaré claimed, as would be attributable to the land purchased by them.

The evidence before the District Court went to shew that defendant Zoitza had sold the whole of her share in the Chiftlik to third persons through the Defter Hakani, and that those persons were duly registered, while it was not shewn that the consent of the Evkaf authorities had been definitely obtained either to these sales or to certain other alleged sales on the part of the defendant Yanco of portions of his share. The District Court gave judgment against Yanco for half the amount claimed and dismissed the action against Zoitza, the President dissenting from the latter part of the judgment.

The plaintiff appealed.

Collyer, Q.A., for the appellant.

The question is, are sales of portions of an Evkaf Chiftlik valid without the consent of the Evkaf? Sales have taken place through the local Defter Hakani as though the property had been Arazié mirié or Mulk. This is relied on by the defendants, who say, the sales were with the consent of the Government. From the documents of title it appears that this is a property that cannot be sold in portions without the consent of the Evkaf.

Diran Augustin, for the respondents:

There is no law which prevents a person disposing of his property held by Idjaretein. The respondents have sold legally and are not liable for the proportions of the Idjaré. No consent of the Evkaf is necessary for the sale of the Idjaretein.

May 21.

Judgment: This action comes before us on the appeal of the plaintiff from the judgment of the District Court of Limassol. The plaintiff claimed relief against several defendants, against one of whom the claim was subsequently withdrawn. The Court (consisting only of the President and one of the Cypriot Judges) agreed that the plaintiff was entitled to a portion of the relief he sought against one of the defendants, but differed in opinion as to the plaintiff's right against the other. Consequently the plaintiff's claim as against that defendant was dismissed and against that dismissal the plaintiff appeals.

The defendants were formerly joint owners in undivided shares of a vacouf property known as the Colossi Chiftlik, but the entire property subsequently became vested in the defendants Yanco and Zoitza in unequal undivided shares.

The property is of the category known as "Idjaretein" and is held subject to the payment of an annual rent or Idjaré, admitted to amount to £58 6*s.* 6*cp.*

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It is admitted that nothing has been paid for rent since 1882, and the plaintiff claims from the defendants payment in full down to the end of 1886.

This claim is resisted by the defendants on the ground that they have sold their interest in divers portions of the property to third parties, the effect of which transaction, as the defendants contend, is, that those persons are responsible to the plaintiff for the payment of so much of the annual rent of £58 6*s.* 6*cp.* as is fairly attributable to the land purchased, and that to that extent the defendants are exonerated from the payment of such rent. With regard to the amount to which these third persons would be responsible to the plaintiff, it has been suggested on the hearing before us that when certain of the sales by defendants to third persons were carried out, the parties to the transaction agreed upon an apportionment of the rent, or agreed upon a rent to be paid out of the property sold; and the rent so agreed upon was recorded in the books of the Land Registry Office at the time of the registration of the transfer, and it is suggested that the plaintiff is bound to accept the rents or apportioned rents so agreed upon, in satisfaction pro tanto of the entire rent payable.

We do not find anything said in the statement of the matters in dispute as to how the apportionment of rent was arrived at, nor is there any evidence before us on that point; but it has been suggested to us that the apportionment was made by the Officers of the Land Registry Office and that the plaintiff must be bound by an apportionment made by such an authority.

In reply to all this the plaintiff says that he regards the rent and the property answerable for it as indivisible, unless with his consent, which has not been obtained, except in the case of the sale by the defendant Evanthia as against whom the action was abandoned.

The property was dedicated to religious uses in the year 1035 of the Mahometan era, and it appears that previously to the dedication Mulknamés had been issued by the Sultans Osman and Mustapha, and the Sultan Amurath converting the whole of the agricultural land attached to the Chiftlik into land of the category of mulk.

With regard to this Mulknamé we would observe that it is extremely wide in its wording. By Article 121 of the Ottoman Land Code, a Mulknamé, *i.e.*, an Imperial Order declaring the land mulk, is required in every case in order to enable land of the category of Arazié mirié to be converted into vacouf. In these cases, as we understand, the land is declared to be mulk on condition that it is made vacouf; but in the Mulknamé we are here considering, the land is not made mulk in order solely that

it may be converted into vacouf, but it makes the land the absolute property (mulk) of Mahzer Eff., to sell or deal with as he pleases. We cannot therefore doubt this land became the absolute mulk of Mahzer Eff. We mention this because, had we been of opinion that this land was of the category Arazié-mevcoufé, other considerations would have arisen which we should have felt it necessary to discuss.

The vakfieh or instrument of dedication dedicates the entire chiftlik, buildings and land to religious uses.

By failure of heirs of the original founder the property became the absolute property of the Evkaf, and under the authority of an Imperial Irade given in the year 1261, it was converted into an Idjaretein property and granted to the predecessors in title of the defendants, they being under the obligation to pay the beforementioned annual rent of £58 6*s*. 6*cp*. in addition to the lump sum paid on possession being originally handed over to them.

The question for our decision is, whether the defendants can without the consent of the Evkaf, alienate specific portions of the chiftlik and apportion the rent which is payable in respect of the whole property, so as to make the portion alienated answerable in the hands of its purchaser for a specific portion of the rent, and so as to exonerate the remainder of the chiftlik and those in possession of it from the payment to an equal extent.

It appears to us that when any person makes a grant of a property to another in consideration of the payment of a rent issuing out of the entire property, it is necessary to conclude that the grantor intended that the entire property should remain a security to him for the payment of the rent, and every portion of it, and in the absence of any law to authorise such a practice, we consider that it would be wholly beyond the power of such a grantee to direct that purchasers from him should be responsible to the grantor for any specific portion of the rent so as to bind the grantor by his directions. If such a course were possible the whole rent might be apportioned in such a way as entirely to free the bulk of the property from the payment of rent, and the grantor might find his security reduced to a wholly inadequate portion of the property.

No law conferring any such power on such a grantee has been cited to us, and we are unable to find such a law, and are, therefore, of opinion that, unless portions of the chiftlik alienated by the defendants have been alienated with the consent of the Evkaf, and unless the Evkaf have assented to the apportionment of rent made on such alienation, the defendants must continue to be responsible to the plaintiff for the entire rent.

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As we have already stated there is no evidence before us to show how or by whom the apportionment of rent has been attempted to be made. Nor has it been shown to us in any way that the Evkaf could be bound by the consent of any other person or authority to abide by an alienation of a specific portion of the chiftlik and an apportionment of the rent on such alienation. It has been called to our attention that the transferring of vacouf properties is a duty which has been taken out of the hands of the Evkaf and made over to the Land Registry Office. We have looked into the laws which effected this arrangement, and we do not find that they confer upon the Land Registry Officials any authority to enter into any such transaction on behalf of the Evkaf as an apportionment of a rent.

We have made as close a study as we can of the law, and have been disappointed in not finding anything which really bears directly on the point on which we have to give a decision.

Our consideration of the law leads us to the conclusion that the object of the law is to prevent as far as possible the disintegration of chiftliks whether they be vacouf properties or not.

There may be rights existing between the defendants and their assignees which require further adjustment. With these we are not now concerned. We are concerned only with the rights existing between the plaintiff and defendants.

There is no doubt that the law empowers a person owning such a property as the Colossi Chiftlik to dispose of it to other persons, but we do not think the law ever intended that the holder of such a property should dispose of it by dividing it into small portions and attributing a specific portion of the original rent to each such portion. That would be a disposition of it which would wholly defeat the objects of the original grantor and possibly impose irremediable injury on him.

For these reasons we consider that the defendants have done nothing to absolve themselves from liability to pay to the plaintiff the rent charge issuing out of the property originally granted to their predecessors in title by the Evkaf, and that they are therefore answerable to the plaintiff for the entire rent. We must therefore order the judgment of the Court below to be varied by directing that defendants are to pay to the plaintiff the sum of £291 13*s*. 3*cp*. with interest from the 25th of February, 1887, and that they pay the costs of this action.

Appeal allowed.