

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

(December 20, 1956)

CHRISTOS HAJI LOIZI STOKKAS, *Appellant*,

v.

CHRISTINA ARGHYROU SOLOMI of Nikitas, *Respondent*.
(*Civil Appeal No. 4202*)

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CHRISTOS
HAJI LOIZI
STOKKAS

v.

CHRISTINA
ARGYROU
SOLOMI

Prescription — Immovable Property Law, Cap. 231, section 9 — Land unregistered and not Crown land — Period of prescription begun before the commencement of Law. Cap. 231 — Period of prescription under old Ottoman Law.

The plaintiff claimed possession of certain land as owner. The land had not been registered and was not Crown land and therefore the period of prescription prescribed by section 9 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, applied, the prescriptive period for the category of the land in dispute being 10 years. The trial Court found that the defendant having been in possession from 1938 to 1952 had acquired a prescriptive right under the proviso to that section.

Upon appeal,

Held: That the decision of the trial Court was correct. Where land is not Crown land and is unregistered and the period of prescription had started to run before Law, Cap. 231, came into force, all matters relating to prescription in such a case are governed by the old Ottoman Law including the period of prescription itself.

Appeal dismissed.

Appeal by plaintiff from the judgment of the District Court of Nicosia (Action No. 1026/55).

Lefcos Clerides for the appellant.

G. Constantinides for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C. J.: In this case the parties dispute the ownership of a piece of land. The plaintiff-appellant alleges that his predecessors in title were in possession of this land up to 1913 and are the owners, whereas the defendant-respondent alleges that she has acquired a prescriptive right having been in possession from 1938 to 1952. The trial Court found that the defendant had been in adverse possession of this land from 1938 to 1952, and that under the Immovable Property Law, Cap. 231, section 9 and the proviso thereto, the period of prescription was that under the Ottoman Law, namely, 10 years.

This appeal has been argued on two grounds, the first that the evidence of the defendant's possession was insufficient to support the finding of fact in her favour. We can dispose of this ground at once by saying that

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we consider, having gone through the evidence, that the trial Judge was right in so finding.

The other ground is a question of law and has not been the subject of a previous decision in this Court. Section 8 of the Immovable Property Law provides that there can be no adverse possession against the Crown or a registered owner. Then section 9 provides that where land has not been registered or is not Crown land, the period of prescription should be 30 years. The first proviso to this section is as follows:—

“Provided that nothing in this section contained shall affect the period of prescription with regard to any immovable property which began to be adversely possessed before the commencement of this Law, and all matters relating to prescription during such period shall continue to be governed by the provisions of the enactments repealed by this Law relating to prescription, as if this Law had not been passed.”

Counsel for the appellant submits that on a true interpretation of this proviso the period of prescription for unregistered land, which started to run but was not complete before the Immovable Property Law came into operation, is still 30 years, and the effect of the proviso is that any period that had run before the Law came into operation should count towards and be included in the 30 years period; and that, apart from the number of years prescribed by section 9, all other matters dealing with prescription should be dealt with under the provisions of the Ottoman Law. We are unable to accept this interpretation. If the legislature had intended that where the period of prescription which had started to run in a case of unregistered land before the Law came into operation should be 30 years, then the proviso would have been cast in quite a different form. In our view the determination of the trial Court was correct. Where land is unregistered land and the period of prescription has started to run before the Law, Cap. 231, came into force, all matters relating to prescription in such a case are governed by the old Law, including the period of prescription itself.

For these reasons this appeal is dismissed with costs.