[ZEKIA, J. and ZANNETIDES, J.]

CHRYSSOULA YIANNAKOU ANDRONIKOU,
*Appellant (Defendant)*,

*v.*

DORA NIKOU ROUSOU,
*Respondent (Plaintiff)*.

*(Civil Appeal No. 4286)*.

*Immovable Property—Trespass—Consent order—Affecting rights of property—Terms of, not embodied in the title-deeds—Error or omission in the Land Register etc.—Rectification—Not by action—The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, s.s. 59 and 75.*

*Immovable Property—Consent order—Transfer or change of rights on immovable property—Ineffective, unless such transfer or change registered or recorded in the Land Registry Office—Cap. 231 (supra) s. 39 (1)—Whether such consent order, affecting part of the roof of a house, is binding—Validity of consent orders not conforming with the provisions of Cap. 231 (supra).*

The parties were owners of adjoining houses. In an action for trespass upon part of the roof of the respondent's (plff's) house, the appellant (defendant) pleaded ownership of that part of the roof by virtue of a consent order made on the 16th April 1936 in a previous action of the District Court of Nicosia where the parties therein were the predecessors in title of the present litigants. The trespass complained of was mainly to the effect that the appellant-def. some time in the year 1957 built a door on the roof in dispute, thus depriving the respondent of the access to that roof from her house. The Land Registry Authorities, however, through a mistake or knowingly, did not alter title-deeds of the parties so as to conform with the terms of the consent order of the Court, although those title-deeds were issued much later after the consent order and notwithstanding that reference is made thereto in the title deeds in question. The appellant-defendant counterclaimed for the inclusion of that portion of the roof in her title-deed. The trial Judge dismissed the counterclaim on the ground that the only way for the rectification of mistakes in the books of the Land Registry is that provided by sections 59 and 75 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, and gave judgment for the plaintiff (resp.) directing the removal of the obstacles complained of.

On appeal, affirming the judgment of the lower Court.-

*Held:* (1) The trial Court was right in holding that the appellant was precluded by sections 59 and 75 of Cap. 231

(*supra*) from seeking the correction of her title deed by way of counterclaim. Consequently, he was justified in dismissing the counterclaim.

(2) Having found that the acts of interference by the appellant-defendant were proved, the trial Court was right in directing the appellant (def.) to remove the obstacle in question.

*Appeal dismissed with costs.*

*Per curiam:* We are of opinion that further reasons might be advanced for dismissing the counterclaim:

(1) The consent order to be binding should conform with the provisions of the law. The least one could say is that it is highly questionable whether part of the roof of a house is susceptible of a separate registration from the house itself. As this point has not been argued before us we do not wish to express a final opinion on it.

(2) Another reason which might be advanced is that the appellant could only have such rights as have been transferred to her by her predecessor in title. Even if we assume that the predecessor in title of the appellant was entitled to the registration of the portion of the roof in question the appellant could not be considered to be the assignee of such right inasmuch as by section 39 (1) of the Immovable Property (Tenure, Registration and Valuation) Law "No transfer of, or charge on, any immovable property shall be valid unless registered or recorded in the Land Registry Office." Therefore, assuming that the predecessor in title of the appellant by virtue of the consent order of the Court was entitled to part of the roof of the respondent, his daughter, the appellant, who obtained the house by way of gift from the father could not step into his shoes and claim a right under the Court order.

**Appeal.**

Appeal by the defendant against the judgment of the District Court of Nicosia (Ch. Pierides D.J.) dated April, 7, 1959, (Action No. 2627/57) whereby the defendant was ordered to remove the obstacle erected on the roof of the plaintiff's house and her (the defendant's) counterclaim was dismissed.

*M. Triantafyllides* with
*Phoebus Clerides* for the Appellant.
*G. Constantinides* for the Respondent.

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court, delivered by:—

ZEKIA, J : The appellant-defendant and the plaintiff-respondent are owners of two adjoining houses The rights of the appellant over part of the roof of the house of the respondent constituted the subject-matter of the action. The door of the upstairs room of the house of the appellant opens onto the roof in question and from that door the appellant admittedly has the right to step onto the said roof and walk along part of it to a W.C. which is built at the edge of the said roof

The respondent attempted to put a water spout on the part of the roof in question with a view to conduct the rain water falling on that roof of her house down into her yard The appellant prevented her from doing so and went further and erected iron rails on that part of the roof in such a way as to render inaccessible to the respondent part of the roof in question. These are the relevant facts in a nutshell

The plaintiff-respondent had asked for (a) an order or injunction restraining the defendant from interfering in any way with her house and (b) prayed the Court to direct her, the defendant, to remove all buildings and structures placed on the roof of his house.

The following acts of interference were found proved by the trial Court at page 15 of the record

> " In June, 1957, the plaintiff, tried to place over the disputed part of the roof of her house a water spout for the rain water of the roof of her house to be taken down to the yard of her house, but defendant prevented her to do so and later on, i e in July or August, 1957, she (the defendant) built a door on the same roof and by this way the plaintiff could not have access to the roof of her house from her house As a result of this act of the defendant the rain water of the roof of the upstairs house of the plaintiff fell in the down-stairs room of her house instead of the yard, and caused damage to the furniture and various other goods of the plaintiff As defendant continued preventing plaintiff to use the disputed part of her roof, alleging that it belongs exclusively to her by virtue of term 3 of the judgment of the Court (exhibit 2) plaintiff, on the 16 8.57, brought against her the present action by which she claims as follows".

The appellant-defendant on the other hand claimed absolute ownership of the part of the roof in dispute by virtue of a consent order made on the 16th April, 1936, (in Action No 236/35) where the parties in that action were the predecessors in title of the present litigants The title-deeds of the appellant as well as of the respondent have been produced before the Court both of which were issued after the judgment referred to above and both have reference to the said judgment describing the right of the appellant along the part of the roof

in dispute as a right of way to the W.C. owned by her. The consent judgment, which was based on a settlement, purported to recognise part of the roof of the house of the respondent as property of the appellant and that such portion of the roof was to be included in the previous owner's title-deed. The title-deed of the appellant, however, did not include part of the roof in dispute as part of his property although it was issued much later after the consent order and notwithstanding that it has on the face of it reference to that order.

The Land Registry Authorities either by mistake or knowingly did not alter the title-deeds of either of the litigants so as to conform with the above mentioned term of the consent order of the Court.

The appellant counterclaimed for the part of the roof as his own property by virtue of the consent order and sought the inclusion of that portion of the roof into her title-deed. The learned Judge refused to do so and referred to a previous decision of this Court that when an error or mistake is alleged in the books of the Land Registry the only way to proceed with the correction of such alleged mistake is to comply with sections 59 and 75 of the Immovable Property (Tenure, Registion and Valuation) Law, Cap. 231, and the appellant having failed to do so he was precluded from seeking the correction of the title-deed on the ground of mistake by way of a counterclaim.

We are of the opinion that the trial Court was right and indeed further reasons might be advanced for rejecting the counterclaim :

(1) The consent order to be binding should conform with the provisions of the law. The least one could say is that it is highly questionable whether part of the roof of a house is susceptible of a separate registration from the house itself. As this point has not been argued before us we do not wish to express a final opinion on it.

(2) Another reason which might be advanced is that the appellant could only have such rights as have been transferred to her by her predecessor in title. Even if we assume that the predecessor in title of the appellant was entitled to the registration of the portion of the roof in question the appellant could not be considered to be the assignee of such right inasmuch as by section 39 (1) of the Immovable Property (Tenure, Registration and Valuation) Law "No transfer of, or charge on, any immovable property shall be valid unless registered or recorded in the Land Registry Office". Therefore, assuming that the predecessor in title of the appellant by virtue of the consent order of the Court was entitled to part of the roof of the respondent, his daughter, the appellant, who ob-

tained the house by way of gift from the father could not step into his shoes and claim a right under the Court order.

The learned trial Judge was justified in rejecting the counterclaim and having found that the acts of interference by the appellant-defendant were proved, to order the appellant-defendant to remove the obstacle erected by her on the respondent-plaintiff's house.

The appeal therefore is dismissed with costs.

*Appeal dismissed with costs.*