

1959  
July 7,  
Nov. 26

[ZEKIA, J., and ZANNETIDES, J.]

AFFET OSMAN  
AND ANOTHER  
v.  
ODETTE  
(TROESTER)  
BOURDJI

AFFET OSMAN AND ANOTHER,  
*Appellants (Defendants),*  
v.  
ODETTE (TROESTER) BOURDJI,  
*Respondent (Plaintiff).*

(Civil Appeal No. 4289).

*Administration of Estates—Judgment against the administrators—Execution—Writ of sale of immovables—Properties standing registered in the name of the deceased—Writ to issue—The Civil Procedure Law, Cap. 7, sections 22 and 28—Although the properties vest in the Administrators—The Administration of Estates Law, 1954, section 26 (2)—Additional remedies provided by section 33 of that Law—No bar to the reliefs provided by the Civil Procedure Law, Cap. 7.*

*Execution—Writ of sale of immovable Property— Issue of writ of sale of movables not necessarily a condition precedent for the issue of writ of sale of immovables—The Civil Procedure Law, Cap. 7, section 21.*

By section 21 of the Civil Procedure Law, Cap. 7, “ no writ of execution by sale of immovable property shall issue ..... unless it appears that the debtor has no movable property actually in his possession”.

Section 22 of the same Law provides: “The immovable property of a judgment debtor which may be sold in execution shall include only the property standing registered in his name in the books of the Land Registry Office .....”.

Section 28 of the aforementioned Law, Cap. 7 (*supra*) reads: “Where a writ has been issued for the sale of immovable property in satisfaction of a judgment debt owing by a deceased person, and the property stands registered in the books of the Land Registry Office, in the name of the deceased, the Land Registry Department shall sell the property in satisfaction of the debt without first requiring its registration to be effected in the name of the heirs”.

By section 33 (1) of the Administration of Estates Law, 1954:

“The Court may in respect of any part of the estate order the sale..... or other disposition thereof, as in the opinion of the Court expedient.....” and by sub-section (4) of the same section: “An application to the Court under this section may be made by a personal representative or any person or beneficiary interested in the estate of the deceased”. Section 42 of the same Law defines the order of payment of debts by the executors or administrators.

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The respondent brought an action against the appellants as administrators of the estate of the deceased A. M. for a debt owing to her by the said deceased. She obtained in due course judgment accordingly and, eventually, applied for an order of sale of the immovable properties of the deceased in satisfaction of the judgment. The learned Judge granted the order directing the sale applied for. The immovable properties involved in this case continued to stand registered in the name of the deceased. On the other hand, no writ of sale of movables was issued in the first instance. On those facts, the administrators appealed from the order made by the learned Judge on three grounds: (1) The properties in question, not being registered in the name of the administrators, cannot be made the subject of a writ of execution in view of the provisions of section 22 of the Civil Procedure Law, Cap.7; (2) The only remedies open to the judgment creditor are those provided by section 33 of the Administration of Estates Law, 1954, which section is bound up with section 42 of that law; (3) The writ of sale of immovables was *wrongly issued because no writ of sale of movables was issued in the first instance.*

*Held* : affirming the order made by the lower Court:—

(1) The primary object of section 22 of the Civil Procedure Law, Cap. 7 is to make sure, before putting up for sale the properties of the judgment debtor, that such debtor is the actual owner and was entitled to registration in respect of such properties and indeed by section 28 of the Civil Procedure Law provision is made in cases the judgment debt is owed by a deceased person that registration of the properties of such deceased need not be effected in the name of his heirs, who are cited as a party in the action for the claim against the estate of the deceased, prior to the issue of an order of sale.

We are of the opinion that although by section 26 (2) of the Administration of Estates Law, 1954, the property of the deceased shall vest in the administrators as from the date of the grant of letters of administration to them and not in the heirs, yet for the purpose of the issue of writ of sale of the immovable properties we do not think that registration of the properties of the deceased in the name of the administrators is a prerequisite for the purposes of section 22 of the Civil Procedure Law.

(2) What section 33 of the Administration of Estates Law, 1954, provides is an additional remedy for a creditor who seeks satisfaction of his claim against the estate, and the learned District Judge was right, in our view, in holding that in the absence of any express provision a judgment creditor is not precluded from having recourse to the remedies provided under the Civil Procedure Law for the satisfaction of debts due to him. When the legislator wanted to interfere with

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the rights of a judgment creditor under the Civil Procedure Law, he expressed in unambiguous terms such an intention. See for instance section 27 (2) (a) and (b) of the Administration of Estates Law, 1954.

(3) The affidavit filed in support of the application of the respondent for a writ of sale of immovables contains a statement to the effect that the deceased left no movable property liable to seizure. This satisfies the requirements of section 21 of the Civil Procedure Law, Cap. 7, which provides, *inter alia*, that no writ of execution of sale of immovable property shall issue unless it appears that the debtor has no movable property actually in his possession.

*Appeal dismissed with costs.*

### Appeal.

By the administrators (defendants) in the action and respondents in the application against the order of the District Court of Larnaca (Michaelides, D.J.) dated the 24th April 1959 (in an application in Action No.430/58) directing the sale of immovable properties in satisfaction of the judgment debt in that action under the relevant provisions of the Civil Procedure Law, Cap. 7.

*A. Demetriou* for the appellants.

*Mrs. C. M. Varda* for the respondent.

*Cur. adv. vult.*

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

ZEKIA, J. : A certain Ahmed Teoufic Mehmed of Larnaca died on the 11th October, 1957, indebted to the respondent in the sum of £56 as arrears of rent. On the 20th December, 1957, appellants were granted letters of administration in respect of the estate of the said deceased. The said administrators failed to make the necessary arrangements for the payment of the debt in question and as a result the respondent in April, 1958, filed an action and obtained judgment against the said estate on the 27th May, 1958, for the sum mentioned above with costs. The judgment debt not being satisfied the judgment creditor applied on the 25th February, 1959, for an order of sale of the immovable property of the deceased for the satisfaction of the said debt.

The learned District Judge issued on the 24th April, 1959, an order directing the sale of certain immovable properties of the deceased for the satisfaction of the judgment debt in question. From this order of sale the administrators of the deceased appealed on the following grounds:

**Ground 1 :** The properties, subject-matter of the order of sale, not being registered in the name of the administrators

could not be sold under a writ of execution in view of the provisions of section 22 of the Civil Procedure Law.

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**Ground 2 :** The judgment creditor has to seek satisfaction by applying to the Court for an order or direction under section 33 of the Administration of Estates Law, 1954, which section is subject in turn to section 42 of the same law.

**Ground 3 :** It was contended that the writ of execution by the sale of immovable property could not be issued prior to the issue in the first instance of a writ of sale of the movable property of the debtor and before the return of such writ unexecuted or unsatisfied to the Court.

As to **ground 1** the primary object of this section (sect. 22) is to make sure, before putting up for sale the properties of the judgment debtor, that such debtor is the actual owner and was entitled to registration in respect of such properties and indeed by section 28 of the Civil Procedure Law provision is made in cases the judgment debt is owed by a deceased person that registration of the properties of such deceased need not be effected in the name of his heirs, who are cited as a party in the action for the claim against the estate of the deceased, prior to the issue of an order of sale.

We are of the opinion that although by section 26 (2) of the Administration of Estates Law, 1954, the property of the deceased shall vest in the administrators as from the date of the grant of letters of administration to them and not in the heirs, yet for the purpose of the issue of writ of sale of the immovable properties we do not think that registration of the properties of the deceased in the name of the administrators is a pre-requisite for the purposes of section 22 of the Civil Procedure Law.

As to **ground 2**, what section 33 of the Administration of Estates Law, 1954, provides is an additional remedy for a creditor who seeks satisfaction of his claim against the estate, and the learned District Judge was right, in our view, in holding that in the absence of any express provision a judgment creditor is not precluded from having recourse to the remedies provided under the Civil Procedure Law for the satisfaction of debts due to him. When the legislator wanted to interfere with the rights of a judgment creditor under the Civil Procedure Law, he expressed in unambiguous terms such an intention. See for instance section 27 (2) (a) and (b) of the Administration of Estates Law, 1954.

**Ground 3.** This is not correct in view of the wording of section 21, because the same section contains a further clause which reads:

“No writ of execution by sale of immovable property shall issue .....

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unless it appears that the debtor has no movable property actually in his possession”.

The affidavit filed in support of the application of the respondent for a writ of sale of immovable property contains a statement to the effect that the deceased left no movable property liable to seizure.

For the aforesaid reasons we think that the appeal should be dismissed with costs.

*Appeal dismissed with costs.*