1960
March 31
May 12

HALIL HUSSEIN MUSTAFA DAI AND ANOTHER,
Appellants (Defendants),

AND

RASIM HALIL SATRAZAM,
Respondent (Plaintiff).

(Appeal No. 3/59).

Immovable property—Immovable Property (Tenure, Registration and Valuation) Law Cap. 231, section 21 (1) and (2)—Ownership of shoots growing in a wild state from trunks of trees cut down by their owner—Owner of trees different from owner of land—Registration of trees does not cover shoots after trees had been cut down—New shoots growing in a wild state belong to owner of land—Estoppel—Right in immovable property cannot in law be acquired by estoppel.

The respondent (plaintiff) was the owner of a plot of land upon which there were six carob trees, the property of appellants (defendants). In 1943 the appellants (owners of the trees) cut down to ground level the said carob trees and sold them as fuel wood. A few years later the trunks of the carob trees which had been cut down gave some off-shoots which grew in a wild state. In 1950 the respondent (owner of land) had the new wild carob trees grafted. In 1953 the appellants (owners of the trees) made a declaration to the Land Registry Office to the effect that the said carob trees were non-existent. The respondent (plaintiff) claimed to be registered as owner of the new carob trees. The Magistrate found that the said shoots belong to the respondent (plaintiff) as the owner of the land according to the provisions of section 21 (1) and (2) of Cap. 231. Under the said section anything growing in a wild state on any land shall be deemed to be the property of the owner of the land.

The appellants (defendants) appealed against the finding of the Magistrate arguing that the off-shoots belong to them as the shoots in question grew on the old trunks of the carob trees registered in the name of appellants' predecessors in title (their father) and that such registration covered the wild off-shoots in question. Appellants further argued that the case of *Shakir Ilkay v. Halit Kiazim*, 20 C.L.R. Part I, p. 103 in which it was held that the building which the respondent erected on the roof of a house was not built on " land " within the meaning of section 21, should be applied by analogy to the present case, as the off-shoots grew on the old trunks and not on the land. Respondent (plaintiff) argued, *inter alia*, that the appellants were estopped from claiming the new trees by virtue of their declaration in 1953 to the L.R.O. that the trees (which had been cut down) were non-existent.

Held: (1) The old registration of the trees in the name of appellants' predecessors in title could not cover the new shoots as the old carob trees ceased to exist when they were cut down by appellants.

(2) The new grafted trees are considered new trees, as they grew in a wild state, and according to the provisions of section 21 (2) (ii) they are deemed to be the property of the owner of the land.

(3) The case of *Shakir Ilkay v. Halit Kiazim* is inapplicable in this case as the trees in question are actually growing on the respondent's land.

(4) The cases of *Loizo v. Papaphilippou* 6 C.L.R. 104 *and Mourmouri v. Hadji Yianni* 7 C.L.R. 94 cited by the respondent in support of his argument as to estoppel are not applicable, as these cases referred to loss of prescriptive right to registration, abandonment to the world at large and renunciation of prescription and they have nothing to do with the acquisition of rights for the registration of immovable property.

(5) In Cyprus no person may acquire rights in immovable property except under the provisions of Cap. 231 and there is no provision in that Law whereby a person may acquire rights in immovable property by the abandonment of immovable property or estoppel of another person, except by prescription, and this is not a case of prescription.

Cases referred to:

Loizo v. Papaphilippou 6 C.L.R. 105;
Mourmouri v. Haji Yianni 7 C.L.R. 94
Shakir Ilkay v. Halit Kiazim 20 C.L.R. Part I. 103

Appeal.

The appellants-defendants appealed from the judgment of the Magistrate who, *inter alia*, decided that they were not entitled to be registered as the owners of the old and six young carob trees in Civil Action No. 252/58.

A. Liatsos for the appellants.

C. Constantinides for the respondent.

Cur. adv. vult.

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

JOSEPHIDES, P.D.C. : This is an appeal from the judgment of the Magistrate who, *inter alia*, decided that the two appellants (defendants) were not entitled to be registered as the owners of one old and six young carob trees.

The facts as found by the trial Court are as follows: The plaintiff (respondent) is the registered owner of a field under Registration No. 2366 dated 26th February, 1943, plot No. 371/2, situate at Diorios.

On the date of the local enquiry, which was carried out

by the Land Registry clerk on the 16th March, 1959, there were 3 olive-trees and 8 carob-trees standing on the said field. Of the 8 carob-trees 2 are old grafted carob-trees, 5 are young grafted carob-trees and one is a wild carob-tree. The 5 young grafted carob-trees were grafted during the last 8 to 10 years. These 5 grafted trees together with the wild carob-tree are shoots which sprang from the trunks of old carob-trees which had been cut down at ground level some time in 1943.

The appellants (defendants 1 and 2) together with other persons are the heirs of the deceased Hussein Moustafa Dai of Diorios. The said deceased was the registered owner of 10 carob-trees and one olive-tree, standing on plaintiff's plot 371/2, by virtue of registration No. 2367 dated the 15th June, 1933.

The said Hussein Moustafa Dai died some time before 1939 and his heirs divided his properties among themselves. The plaintiff (respondent) acquired his plot 371/2 some time before 1943 but he was registered as the owner thereof on the 26th February, 1943. When he bought this field there were 7 carob-trees belonging to the heirs of the deceased Dai in addition to another carob-tree which was in dispute with the owner of the adjacent plot.

In or about 1943, the heirs of Dai, including defendants 1 and 2 (appellants), sold their carob-trees standing on the plaintiff's plot to wood-cutters to be uprooted or cut down and sold as fuel-wood. The wood-cutters, who were called as witnesses at the hearing of the case, said that they cut down at ground level all the carob-trees belonging to the heirs of the said Dai, except one carob-tree which was claimed by the owner of the adjacent plot to belong to him. Although the wood-cutters were entitled to uproot the trees they did not do so because, as they stated, it would have taken them a long time to do so and, in fact, as already stated, they cut down the said carob-trees to ground level.

A few years later the trunks of the carob-trees which had been cut down, gave some off-shoots and the plaintiff (respondent), who was the owner of the field, enclosed them with thorny bushes and saved them from being eaten up by the animals. These off-shoots grew up and in 1950 the plaintiff (respondent) had them grafted. Six wild carob-trees were grafted in this way but in the case of the one tree the grafting was unsuccessful and so it remained wild. The 5 grafted trees grew up and started to yield produce and the plaintiff (respondent) collected the produce for 3 to 5 years, but in 1958 the two appellants intervened claiming ownership of the trees.

On the 10th September, 1953, an application was filed with the District Lands Office, Kyrenia, on behalf of the heirs of the said deceased Dai for the purpose of obtaining

registration by inheritance and division in the name of the heirs of the property of the deceased. To this application a declaration or statement was attached (Exhibit 2) signed by all the heirs including the two appellants. In this declaration all the heirs agreed to the division of the property among themselves and they stated that one olive-tree and one carob-tree under registration No.2367 should be registered in the name of defendant 3 (who is not one of the appellants) ; and they further stated that the 9 other carob-trees were non-existent.

In pursuance of that application a Land Registry clerk carried out a local enquiry in August, 1954, and found that there were 8 carob-trees and 3 olive-trees ; the 2 of the carob-trees were old and the others were shoots grown on old trunks of carob-trees cut down at ground level. The Land Registry Office did not register the one olive-tree and one carob-tree in the name of the defendant 3 as requested in the application of the heirs of the deceased Dai but made the following registrations:

(*a*) Registration No.3801 dated 13th June, 1958, in the name of defendant 1 (appellant 1) in respect of "one carob-tree and 2 wild carob-trees" ; and

(*b*) Registration No.3800 dated the 13th June, 1958, in the name of defendant 2 (appellant 2) in respect of "4 wild carob-trees".

Some 12 years earlier, *viz.* on the 24th October, 1946, defendant 3 sold to the respondent (plaintiff) one unregistered grafted carob-tree and 3 olive-trees (unregistered) standing on the plaintiff's plot 371/2 for the sum of £8 which was paid to him (defendant 3). He undertook to transfer these trees in respondent's (plaintiff's) name by the 1st December, 1946, but he failed to do so, and one of the claims in the present action was that defendant 3 should be adjudged to pay damages to the respondent (plaintiff) for such failure. In the course of the hearing defendant 3 admitted the plaintiff's claim and stated that the particular carob-tree and olive-trees sold by him to plaintiff had been grafted by him (defendant 3) during the lifetime of his father and that they belonged to him (defendant 3) by virtue of his possession and not by inheritance from his father ; that he sold those trees to the plaintiff (respondent), in 1946 ; that he failed to transfer them as agreed because he had no title-deeds and that he had no objection to the registration of the said trees, i.e. one old carob-tree and 3 olive-trees, in plaintiff's (respondent's) name. As the carob-tree and the 3 olive-trees were unregistered property on the 1st September, 1946, when the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, came into force, and as defendant 3 who was entitled to be so registered, failed to apply for the registration thereof, within two years from the coming into operation of that Law, under section 21, sub-section (2), of the said Law,

the carob-tree and 3 olive-trees became the property of the owner of the land, *i.e.* of the plaintiff, and he is, accordingly, entitled to be so registered. In fact, there is no dispute as to that, and defendant 3 has not appealed against the decision of the learned Magistrate.

In this appeal we are concerned with the ownership of the 5 young grafted carob-trees, one wild carob-tree and one old grafted carob-tree. The trial judge decided that all these trees were the property of the respondent (plaintiff) by virtue of the provisions of section 21 (1) and (2) of Cap. 231.

It was argued on behalf of the appellants that the trial judge wrongly decided that the wild shoots which sprang from the old trunks could not form part of the old carob-trees, in that it was found that the shoots in question did grow on the old trunks of the carob-trees registered in the name of the appellants' deceased father, and that the registration in the name of the deceased covered the wild shoots in question. It was further argued that the trial judge erred in finding that the shoots in question were new trees growing on the respondent's (plaintiff's) field.

First, as regards the wild carob-tree. There is evidence that the shoots sprang from the trunk of the old carob-tree which was cut down to ground level, and that the shoots grew up some time between 1944 and 1950 when all the shoots were big enough to be grafted. Even today that tree is in a wild state and it is growing on the respondent's land, and under the provisions of section 21, sub-section (1) of Cap. 231 it is deemed to be the property of the owner of the land, that is to say, the respondent (plaintiff).

It was argued on behalf of the appellants that, as this young wild tree, as well as the other 5 grafted young trees, grew on the trunks of the old trees, they are not growing on the plaintiff's land but on the trunks of the old trees and, consequently, they are not covered by the provisions of section 21 (1) and (2) of Cap. 231. This argument was made by analogy to the case of *Shakir Ilkay* v. *Halit Kiazim*, 20 C.L.R., Part I, page 103, in which it was held that the building which the respondent erected on the roof of a house was not built on "land" within the meaning of section 21. Although the argument of appellants' counsel is very ingenious I must say that the *Ilkay* case, quoted above, is not applicable to the facts of the present case, and his proposition is untenable as all the trees in question are actually growing on the plaintiff's land.

As regards the 5 young grafted carob-trees there is evidence that they were grafted in 1950. As the old carob-trees, covered by the registration of the deceased father of the appellants, were cut down to ground level in about 1943, they ceased to exist and, consequently, the old registration

could not cover the young shoots which sprang up in a wild state after the old trees had been cut down. These 5 grafted trees are considered to be new trees, altogether unconnected with the previous registration of the deceased father of the appellants. They grew up in a wild state on the plaintiff's land and they were grafted in 1950, and under the provisions of section 21 sub-section (2) (ii) they are deemed to be the property of the owner of the land, that is to say, the respondent (plaintiff).

Finally, there is one old carob-tree standing on plaintiff's land which is claimed by the owner of the adjacent plot to belong to him. There is evidence that this tree originally formed part of Registration No. 2367 dated 15th June, 1933, in the name of the appellants' (defendants') father ; and it is this tree which was registered in the name of appellant 1 (defendant 1) in 1958, under Registration No. 3801 : see his title deed (Exhibit 6) in which it is stated that the previous registration is No. 2367, Hussein Moustafa Dai. Consequently, as this is a registered tree standing on plaintiff's land, under the provisions of section 21 the plaintiff is not entitled to this tree, and I am of the view that the trial Judge was wrong in holding that the plaintiff was entitled to be registered as the owner thereof. As already stated this old carob tree is the one claimed by the owner of the adjacent plot. Whether appellant 1 (defendant 1) is entitled to be registered as the owner of this tree as against the other heirs of his father, or against the adjacent owner, is not in issue in this case. What is certain is that the plaintiff is not entitled to be registered as the owner thereof.

This disposes of the appeal, but as the question of abandonment and estoppel was argued before me I think I ought to deal shortly with this point. It was argued on behalf of the respondent (plaintiff) that the appellants (defendants) abandoned the old trees which had been cut down, and that they were estopped from claiming these trees because in their declaration or statement made in 1951 (Exhibit 2) they declared that 9 of the carob-trees were non-existent. Two cases were cited in support of that argument, viz. *Loizo* v. *Papaphilippou* 6 C.L.R. 105, and *Mourmouri* v. *Haji Yianni*, 7 C.L.R. 94. Suffice it to say that those cases referred to loss of prescriptive right to registration, abandonment to the world at large and renunciation of prescription, and they have nothing to do with the acquisition of rights for the registration of immovable property. In Cyprus, no person may acquire rights in immovable property except under the provisions of Cap. 231, because section 3A of Cap. 231 (as set out in section 3 of Law 8 of 1953, and recently amended by Law 3 of 1960) provides that no estate, interest or right in any immovable property shall be created, acquired or transferred except under the provisions of Cap. 231 ; and there is no provision in that Law whereby a person may acquire rights in immovable

property by the abandonment of immovable property or estoppel of another person, except by prescription, and this is not a case of prescription..

To sum up:—

(1) The 5 young grafted carob-trees and the one wild carob-tree standing on the respondent's (plaintiff's) land are his property and shall be registered in his name.

(2) (*a*) Registration No. 3801, dated 13th June, 1958, in the name of appellant 1 (defendant 1) in respect of 2 wild carob-trees only, shall be cancelled.

(*b*) Registration No. 3800, dated 13th June, 1958, in the name of appellant 2 (defendant 2), in respect of 4 wild carob-trees shall be cancelled.

(3) The one carob-tree now standing registered in the name of appellant 1 (defendant 1) under Registration No. 3801 is not the property of the respondent (plaintiff), and the registration in the name of appellant 1 (defendant 1) in respect of this tree only shall stand.

(4) One old carob tree (unregistered), sold by defendant 3 to respondent (plaintiff) in 1946, became the respondent's (plaintiff's) property by operation of law, and it shall be registered in the name of the respondent (plaintiff).

(5) The 3 olive-trees (unregistered), sold by defendant 3 to respondent (plaintiff) in 1946, became the respondent's (plaintiff's) property by operation of law, and shall be registered in the name of the respondent (plaintiff).

The judgment of the lower court in respect of one old carob-tree, described in paragraph (3) above, is varied accordingly.

On the question of costs, as the appellant 1 (defendant 1) was partly successful in his appeal, the following order is made :—

(*a*) Order of the trial Court as to costs is set aside ;

(*b*) Appellant 1 (defendant 1) to pay one-fourth of the costs in the Court below only, and no costs of appeal;

(*c*) Appellant 2 (defendant 2) to pay one-half of the costs in the court below and one-half of the costs of appeal.

Appeal partly allowed. Judgment of the trial court varied accordingly.