

SMITH, C.J.

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TON, J.  
1892.

Dec. 27.

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

ELENI DIMITRI HADJI PETRI FOR  
HERSELF AND AS GUARDIAN OF THE  
INFANT CHILDREN OF DIMITRI HADJI  
PETRI DECEASED

*Plaintiff,**v.*

HADJI EPHROSYNI HADJI GLIGORI  
FOR HERSELF AND AS GUARDIAN OF  
THE INFANT CHILDREN OF HADJI  
GLIGORI PARASKEVA DECEASED

*Defendant.*

JOINT PURCHASE OF IMMOVABLE PROPERTY—REGISTRATION IN  
NAME OF ONE PURCHASER ONLY—DEATH OF PURCHASERS  
WITHOUT AMENDMENT OF REGISTRATION—SALE IN EXECUTION  
OF JOINTLY PURCHASED PROPERTY FOR DEBT OF THE PURCHASER  
IN WHOSE NAME IT WAS REGISTERED—RIGHTS AND LIABILITY  
OF THE DECEASED PURCHASER'S HEIRS.

A. and B. jointly purchased a share in a chiftlik, each contributing half the purchase money. For some reason not known, this share was registered in the name of B. A. and B. equally shared the produce of the property during their lifetime, B. at the constant request of A. promising to get the registration amended, by causing the property to be registered in their joint names. B. died, and subsequently A. died without the registration having been so amended. After A.'s death the whole share for the chiftlik as registered in B.'s name, was sold in execution, for the debt of B. without any claim or apparent objection on the part of A.'s heirs.

In an action brought by the heirs of A. to recover the amount of the purchase money paid by him.

HELD (reversing the decision of the Court below): That they were not entitled to recover this sum, but only one-half of the proceeds realized by the sale of the property.

APPEAL from the District Court of Kyrenia.

*Diran Augustin (Artemis with him)*, for the appellant.

*Pascal Constantinides* for the respondent.

The facts and arguments sufficiently appear from the judgment.

*Judgment* : The claim of the plaintiff, as expressed in the writ of summons, is to the following effect : the plaintiff claims that the defendant should cause to be registered in her name, the one-half of a fifth share of the Vassilia Chiftlik, which had been purchased in partnership with Hadji Gligori Paraskeva deceased, each having paid one-half of the purchase money, and which is now registered in the name of Hadji Gligori Paraskeva only, who on the 21st March, 1890, attempted to register it in the plaintiff's name, but died before he could carry this out. In the alternative, the plaintiff claimed £150 the equivalent value that had been paid.

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The circumstances of this case appear to be that in the year 1881, the Vassilia Chiftlik was sold, and purchased by different persons in undivided shares. Hadji Gligori Paraskeva and Dimitri Hadji Petri, the husbands of the defendant and plaintiff respectively, who are now both deceased, were the purchasers of one undivided fifth share for the sum of 50,000 piastres.

For some reason or other this one-fifth share was registered in the name of Hadji Gligori Paraskeva only. It is not easy, on the evidence before us, to come to any conclusion as to the reason why this registration was so effected. The witness Yanko Dimitriades says that "Dimitri Hadji Petro was absent when the kochans were issued, so Hadji Gligori was registered as owner and got the kochans."

Hadji Panayi Paraskeva says that he was present when the registration was effected, and that Demetri was absent ; that he heard plaintiff's father tell the "Registrar" to register half the share in Dimitri's name and half in Gligori's, but that he declined as Dimitri was not present. Hadji Nicola Solomonides says he was present when the title deeds were issued. "Dimitri allowed it to be registered in Gligori's name to save expense. Dimitri was present at the registration when Gligori was absent at Kykko—" "I am sure of it." He afterwards says that he cannot remember as to this latter fact. In cross examination he says : "Gligori was at Kykko on the 8th September when we got the kochans, and Dimitri was here in Kyrenia—" "I got all the kochans."

It is difficult on this evidence to come to any decision, as to what was the intention of the parties, as to the form in which the registration should be effected ; that is to say,

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 & be registered in Gligori's name only, or whether Dimitri  
 MIDDLE- had not authorised this to be done, and the registration  
 TON. J. was effected in Gligori's name, entirely owing to the fact  
 -- that he (Dimitri) happened to be absent at the time. There  
 ELENI is no suggestion in the case, that the registration was  
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The evidence further shews that Dimitri from time to time requested Gligori to cause the half of the fifth share to be registered in his name, and that Gligori said that he would do so ; but no active steps were taken by Dimitri to cause the registration in the name of Gligori to be amended, so as to show that he was the owner of the half of the fifth share of the chiftlik.

Matters remained thus down to the year 1890, the two men dividing the profits of the chiftlik between them. About a month before his death, Gligori, being ill at the time, on the 21st March, 1890, executed the document which was put in evidence in the District Court.

This document was a power of attorney appointing Mr. Artemis the attorney of Gligori, for the purpose of effecting a transfer of a half of the fifth share of the chiftlik into the name of Dimitri Hadji Petri. No steps were taken under this document, and about a month after its execution Gligori died. We should have supposed that the death of Gligori would have forcibly brought home to the mind of Dimitri, the necessity that existed for his taking some steps to get the registration amended ; but apparently matters were allowed to go on as before down to the time of his death, which occurred on the 8th or 9th May, 1891. On the 15th July, 1891, this action was brought ; but from some cause or other it does not appear to have come on for hearing until the month of May, 1892. It appears that at this date, the one-fifth share of the chiftlik had been sold, in satisfaction of a debt of Gligori Hadji Paraskeva's. There is no evidence as to the date of this sale, though we are informed that it was subsequent to the date of this action being brought.

The District Court considered that it had been established that the two men had purchased the one-fifth share of the chiftlik in partnership, and decided that the defendant

was liable to pay to the plaintiff 25,000 piastres, being apparently the sum which the plaintiff's husband had paid as his share of the purchase money.

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Against this judgment this appeal is made.

It is contended for the appellant, that this was a sale of immovable property which had not been perfected, as far as Dimitri was concerned, by registration in his name ; and that as Gligori had never interfered with Dimitri's possession of the property, he would have had no right of action against Gligori, had both been alive, and consequently that the plaintiff who represents him, can have none : that Dimitri, had he been alive could have brought no action for the purpose of causing his half of one-fifth of the chiftlik to be registered in his name ; that the share having now been sold, the plaintiff who made no effort to get the sale of the share stopped, is now precluded from setting up her claim, and that the loss has been occasioned by the fault or neglect of Dimitri alone in not getting his share registered in his name. It was further contended that in the event of the plaintiff being held entitled to recover anything, she could at the most only recover the one-half of the price for which the share was last sold ; viz. : the half of £135.

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For the respondent it was contended that as soon as Dimitri had become aware that the fifth share of the chiftlik had been registered in Gligori's name, he asked him to register one-half of his fifth share in his name ; that Gligori had recognised the right of Dimitri so to have the half registered, and had given a power of attorney for the purpose ; that this was not a case between vendor and purchaser, where property had purported to be sold without registration, but a case where one of two partners, each of whom had paid half of the purchase money, had procured the property to be registered in his name alone ; that as the property had now been sold to satisfy the debts of the partner in whose name it had been registered, the plaintiff was entitled to recover the 25,000 piastres, which her husband had paid for his share of the property.

With regard to these contentions, we may remark, that we agree in the argument that this is not an action between vendor and purchaser and that consequently the questions

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 & have not been perfected by registration, do not appear  
 MIDDLE- to us to arise in this case.  
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We have to decide in this case what are the respective rights of the persons who jointly purchase immovable property, where the property so purchased is registered in the name of one of the purchasers only, and has subsequently been sold in satisfaction of his debts.

It appears to us that the property may have so been registered under one of three circumstances. It may have been registered by fraud of the person obtaining registration, it may have been registered by mistake, or it may have been registered with the consent or approval of the other person. In the present case there is no suggestion that there was any fraud on the part of Gligori in getting the property registered in his name.

It is not easy to determine on the evidence adduced in this case, whether Dimitri authorised the registration in Gligori's name of the property they bought in partnership, or whether it was so registered by mistake. If it was registered by mistake, we think there is no doubt, that in case Gligori refused to consent to an amendment of the registration, the Courts would have ordered such an amendment, had Dimitri brought an action claiming an amendment, on the ground that he had jointly purchased with Gligori, and had paid half the purchase money.

We think it is a fair deduction from the evidence adduced before the District Court, that Dimitri did not authorise Gligori to have the property registered in the name of the latter alone, and that, however negligent he may have been in asserting his rights to have the registration amended, he never acquiesced in such a registration, as the evidence shows that from time to time he requested Gligori to cause the registration to be amended, by showing both of them as the owners of an undivided half of the fifth of the chiftlik. If this be the correct view of the evidence, it appears to follow that the right of Dimitri, and of the plaintiff after his death, to have the registration amended still subsisted, and was in existence when this property was put up for sale in satisfaction of Gligori's debt, and we are of opinion that this was the only right the plaintiff then had.

Down to that time we can see nothing in the circumstances of this case that would have entitled Dimitri, or the plaintiff after his death, to maintain an action against either Gligori, or the defendant after his death, for the recovery of the 25,000 piastres paid by Dimitri as his share of the purchase moneys of this one-fifth of the chiftlik.

To what extent, then, have the rights of the parties been altered by the sale of this property in satisfaction of Gligori's debt? The rights of the plaintiff may be considered from two points of view, viz.: her right as regards the property itself, and her rights against the defendant as the representative of Gligori's estate.

With regard to her rights against the property, whatever they may be, it is clear that the property, having passed out of the legal possession of the defendant, these rights, if indeed any still exist, cannot be enforced in this action. The property having been sold, the plaintiff's claim against the defendant to have the registration amended falls to the ground; but although it is not necessary for us to express our views about it, it appears to us convenient that we should do so. It appears to us, however, that although Dimitri had not expressly authorised or entirely acquiesced in the registration in Gligori's name, he had knowingly allowed the registration to subsist for a considerable number of years without taking the proper steps to get it amended; and we consider, that as against a *bona fide* purchaser, without notice of the right to be registered as part owner, he would be estopped from setting up any claim to the property itself. He must be taken to have acquiesced in any of the consequences that might ensue from allowing the registration in Gligori's name to subsist, and consequently to have acquiesced in the right which such registration conferred on Gligori, namely the right to convey the legal ownership of the property to another, or the liability of the property to be sold in satisfaction of Gligori's debts. The fact that the property has thus been allowed to pass into the hands of a third person is owing to the neglect of Dimitri and the plaintiff alone. Dimitri ought years ago to have taken the proper steps to protect his own title; and even when his attention must have been called to the necessity of doing so, when the interests of third persons became involved, that is to say, when Gligori died and the right to be registered as the owner of the property

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We are, therefore, of opinion that on the sale, the rights of the plaintiff to the property became extinguished by the neglect of her predecessor in title and herself; and we, therefore, proceed to consider what rights, if any, arose and became vested in her, to claim a return of the purchase money paid by her husband, from the estate of Gligori. With regard to this, it appears to us to have been established that Dimitri paid 25,000 piastres for his share in the property, and that his right to be registered as the owner of one-half of the fifth share in the chiftlik was always recognised by Gligori, the power of attorney to which we have alluded being conclusive on this point.

We have thus a property registered in the name of one of two joint purchasers, each of whom has contributed half the purchase money, sold in satisfaction of the debt of the registered owner; we find the registered owner expressly acknowledging that the other is entitled to be registered as the owner of one-half share, and we find, so far as appears from the evidence, that the heirs of the registered owner allow the property to be sold without any notice to the person who is entitled to be registered.

We are, therefore, of opinion that the defendant by allowing the sale of property which as between herself and the plaintiff, she acknowledged to be the property of the plaintiff, has rendered herself liable to repay to her half the value of such property, on the general principle that where the property of one person has been lawfully seized and sold in satisfaction of the debt of another, the former is entitled to recover the value of it from the latter.

We are, therefore, of opinion that the plaintiff in this action is entitled to recover from the defendant half the value of the property, that is, half of the price fetched at the sale. According to the evidence, the property was sold for £135, and the defendant must, therefore, be ordered to pay, in her representative capacity, £67 10s. to the plaintiff, and the judgment of the District Court must be varied by directing this sum, and not 25,000 piastres, to be paid. We are unable to discover any principle on which the sum of 25,000 piastres could be recovered. Any loss that may have been sustained by Dimitri's estate is entirely owing to his own neglect, and perhaps to that of the plaintiff.

In conclusion we may remark, that the case has occasioned us a great deal of difficulty, and we have come to the conclusions stated above with some diffidence. We have felt considerable doubt as to whether we ought not to hold that the rights of the plaintiff, were rights against the property only, and not against the defendant; that the plaintiff's only right was to claim an amendment of the registration, and that either that right still subsisted, and could be enforced under Article 13 of the Law on Forced Sales, if she were able to show any valid reasons why she had not taken proceedings to stay the sale before it was concluded; or that by not taking measures to stay the sale of the property, she must be held to have lost all rights which arose under the joint transactions between Dimitri and Gligori.

As to costs we think that each party should bear her own cost of this appeal.

*Appeal dismissed.*

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