SMITH, C.J. & MIDDLETON, J. 1893.

March 29.

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

YERONYMOS MICHAIL YEMENIJI *Plaintiff,*

v.

HARALAMBO ANDONIOU AND AZIZE NALBANT MEHMET *Defendants.*

PRESCRIPTION—MULK PROPERTY—SALE OF BY PRIVATE AGREEMENT SUBSEQUENT TO THE LAW OF 12 REGEB 1291—UNDISTURBED OCCUPATION FOR 15 YEARS—LUNAR YEAR—CALENDAR YEAR—MEMORANDUM OF ATTACHMENT DEPOSITED IN THE LAND REGISTRY OFFICE—EFFECT OF—IMMOVABLE PROPERTY OF JUDGMENT DEBTOR—WHAT IS—THE CIVIL PROCEDURE AMENDMENT LAW, 1885, §§ 13, 48 AND 58—MEJELLE, ARTICLE 45.

Whatever originally may have been the meaning assigned by the laws of the Ottoman Empire to the term "year," the term by universal custom in Cyprus means a year containing 365 days.

Y. on the 17/29th April, 1877, purported to purchase from H. under a document of agreement a room in a house. The purchase money agreed on was paid by Y. to H. and Y. remained in undisturbed possession of the room u til the 12th October, 1892. The room always remained registered in the name of H. On the 23rd of October, 1891, A. a judgment creditor of H. lodged a memorandum in the Land Registry Office charging the said room and other property of H. with the payment of A.'s debt.

HELD: That at the time of such deposit Y. had not obtained a title by prescription and that the said room then formed part of H.'s immovable property answerable for the payment of his judgment debt, and could be sold in satisfaction thereof.

HELD FURTHER: That Y. was entitled to bring his action against H. and A. to have the said room excluded from an order of sale, and the same registered in his name notwithstanding the terms of Section 58 of the Civil Procedure Amendment Law, 1885.

APPEAL from the District Court of Limassol.

Kyriakides for the appellant.

Pascal Constantinides for the respondent Azizé.

Haralambo Andoniou did not appear.

The facts and arguments sufficiently appear from the judgment.

Judgment: This is an appeal from the judgment of the District Court of Limassol, dismissing the claim of the plaintiff to have a house exempted from an order of the Court, directing the sale of the immovable property of the defendant Haralambo Andoniou, in satisfaction of the judgment debt owing by him to the other defendant Azizé. There is also a claim that the existing registration may be amended and the house registered in the name of the plaintiff.

The facts of the case appear to be as follows. Haralambo Andoniou was the owner of a house at Omodhos, which was registered in his name. On the 17th April, 1877, he purported to sell one room to the plaintiff for the sum of £T. 16, according to the terms of the written agreement entered into, but in reality, according to the evidence of the plaintiff, for £T. 8. The larger sum being inserted in the agreement, as he says, as "security so that in case "he did not give title, it would be damages to me for "expenses I had been to in making door, etc."

The room thus agreed to be sold by Haralambo Andoniou was never registered in the plaintiff's name, but possession of it was given to him, and he has admittedly had undisturbed possession down to the time of these proceedings.

We may mention that it appears to us that the date 17th April means 17/29th April inasmuch as the plaintiff says that the 17th April was a Sunday. The 17th April, new style, was as a matter of fact a Tuesday, whilst the 17/29th April was a Sunday; and it, therefore, appears to us that the 17/29th April was the date on which the agreement for the sale of the property was entered into.

Azizé Nalbant Mehmet was a judgment creditor of Haralambo Andoniou; and on the 23rd October, 1891, in accordance with the provisions of Clause 13 of the Civil Procedure Amendment Law, 1885, she lodged a memorandum requesting that no transfer of the house, containing the room whch Haralambo had agreed or affected to sell to the plaintiff, and which still remained registered in the name of the defendant Haralambo, should be made.

The plaintiff then applied to stay the sale of the property whch had been ordered in satisfaction of the judgment obtained by Azizé against Haralambo Andoniou. The sale was stayed and this action was commenced.

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The District Court dismissed the action, deciding that as the property was registered in the name of the judgment debtor, it was liable to be sold in execution, especially as a memorandum had been lodged before the time of prescription had expired. In the note of the reasons for the judgment we find the following statement. "It is, however, stated "that the period of prescription is 15 lunar years and, "therefore, it had then elapsed. The Court, however, "are of opinion, that any property registered in name of "judgment debtor is liable in execution, unless perhaps "it be shewn that the registration was a mistake. The "only title to land recognised by law is registration; the "plaintiff having failed, or neglected to be registered, "cannot now, after property has been taken in execution, "apply to be registered as owner."

Against this judgment the plaintiff appeals, and it is contended on his behalf, that he has had undisturbed possession of the property for a period of 15 years, and is, therefore, now entitled to be registered as the owner; that the lodging of the memorandum by the defendant on the 23rd August, 1891, does not operate to prevent the period of prescription continuing to run; that if it should be considered to do so, the period of prescription was complete, as the years spoken of in the Mejellé are lunar years, and that the plaintiff has, therefore, made out his title to be registered as the owner of this room.

Mr. Pascal Constantinides for the respondent Azizé, who alone appeared, contended that this action as regarded his client was a mistaken proceeding, and that plaintiff if he were entitled to be registered as the owner of this room, should have simply made an application to stay the sale of the property ordered in favour of Azizé, under Section 58 of the Civil Procedure Amendment Law, 1885; that no title to Mulk property can be obtained by prescription; that the deposit of the memorandum by Azizé operated to defeat the prescription; that the suggestion that the years spoken of in the Mejellé are lunar years is unfounded, but that even if the time of prescription be taken to be lunar years, the time of prescription was not complete when the memorandum was lodged.

It appears to us that though the plaintiff might, after establishing his right to be registered, have proceeded as Mr. Pascal Constantinides points out, to apply in the action

of *Azizé v. Haralambo Andoniou* that the room be excepted from the order of sale, there is nothing to prevent his maintaining this action against Azizé, though it would of course be open to the Court, in considering the question of costs, to award to Azizé, any costs that might, in the opinion of the Court, have been unnecessarily occasioned by the plaintiff's proceedings. It appears to us, that in this case it was convenient that, as Azizé had obtained an order for the sale of property which the plaintiff claimed as his, the whole matter should be disposed of in this action.

We are unable to concur in the argument that no title to Mulk property can be obtained by prescription. The law as Mr. Pascal has pointed out, has provided that after the 28 Regeb 1291 immovable Mulk properties must be registered, and that henceforward the possession of such properties without registration is prohibited. This in our opinion was not intended in any way to interfere with the law, which enables a person to obtain a legal right to possess such properties by undisputed possession for 15 years, as provided by the Mejellé. The case decided by the Supreme Court *Hadji Christodoulo Hadji Yanaki v. Manoli Haralambo and another* (C.L.R., Vol. I., p. 82), to which we were referred, only decided that a sale of Mulk property, which had taken place prior to the date of the law requiring the registration of Mulk property, was valid without registration ; and is not an authority for the general proposition that no right to be registered as the owner of a Mulk property can be acquired by prescription.

With regard to the question as to whether the years mentioned in the Mejellé are lunar years, by which we presume is meant years according to the Mohammedan calendar, we would observe that even if they are to be considered as lunar years, the period of prescription was not complete on the 23rd October, 1891. The 17/29th April, 1877, corresponds to the 15th Rabi Akhir 1294 ; and the 15th Rabi Akhir 1309, which would be the term of 15 years according to the Mohammedan calendar, is equivalent to the 18th November, 1891. So that even if we were of opinion that the argument of the appellant's counsel was correct, and that the years are to be reckoned according to the Mohammedan calendar, the period of prescription was not complete by about 26 days, when the memorandum was lodged by Azizé on the 23rd October, 1891. We

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think, however, that as the question has been raised it may be convenient that we should give a decision upon it. It is the first time that the point has been taken, at all events before this Court that the term "years" in the Ottoman Law is to be construed as meaning years according to the Mohammedan calendar, and containing therefore, some 355 or 354 days.

Whatever originally may have been the meaning assigned by the laws of the Ottoman Empire to the term "years," whether it be used in the Penal Code, or the Land Code, the Commercial Code, or the Mejellé, we have no doubt that at all events in Cyprus, by universal custom, the term is construed as meaning a year according to the Gregorian or Julian calendar, and containing, therefore, 365 days.

We should, therefore, hold that the term year is not, as contended for by the appellant's counsel, a lunar year.

There remains only now for consideration the really important point in the case, viz., as to whether the plaintiff has acquired a valid title by prescription to this room.

The Civil Procedure Amendment Law, 1885, provides, that the immovable property of a judgment debtor, which may be sold in execution, shall include all property registered in his name in the books of the Land Registry Office. The Supreme Court has already decided that the meaning of this enactment is property which is rightly registered in the name of the judgment debtor. In the case of *Ali Effendi Hassan Effendi v. Hadji Paraskevou Sava, Ex pte. Hadji Eleni Papa Yanni* (ubi sup. p. 58) the plaintiff had obtained judgment against the defendant, and in execution thereof, had obtained an order for the sale of certain properties registered in his name. Eleni Papa Yanni claimed, that certain of the properties ordered to be sold, should be excluded from the order of sale, on the ground that she had had undisputed possession thereof for 10 years. Her possession, and the bona fides of her occupation were admitted, and the Court held that she was entitled to have the property she claimed excluded from the sale. That decision applies exactly to the present case, and we should feel bound to follow it, if we come to the conclusion that the plaintiff has acquired a good prescriptive title to this room. The law clearly recognises that the right to possession of State land, which is registered in the name of

another person, and, therefore, the right to be registered as its possessor, may be acquired by an undisturbed enjoyment of the property for 10 years. Supposing that a man's right to be registered as the possessor of a certain property having accrued, and the very day after it has so accrued, a memorandum affecting such property is deposited by a creditor of the person in whose name it is registered at the Land Registry Office; the person who has so acquired a title by prescription would have had no opportunity of obtaining a rectification of the existing registration, causing the property to be registered in his name; but he could not be ejected from the property, and the debtor's interest in it, though owing to circumstances it still remains registered in his name, has practically ceased. The same principles appear to us to apply to the case of Mulk, and if the plaintiff has acquired a right by prescription to be registered as the owner of this room, we should hold that he had the right to have it excluded from the sale.

We are, however, of opinion that by the lodging of the memorandum of the 23rd October, 1891, the judgment creditor Azizé has prevented the plaintiff's prescriptive right from being perfected. Section 13 of the Civil Procedure Amendment Law, 1885, which provides for the lodging of a memorandum at the Land Registry Office, states the effect of such a proceeding to be, to "render the "immovable property of the judgment debtor mentioned "in such memorandum answerable for the payment of "the judgment debt to the extent of the beneficial interest "of the judgment debtor in such property."

Section 14 provides that notwithstanding "any transfer "of the property" described in the memorandum, "which "may hereafter be made into the name of any person other "than the judgment debtor, such property may be sold "by order of a Court in satisfaction of the amount due "under the judgment," etc.

We have no doubt that the meaning and intention of this enactment is, to charge the beneficial interest of the judgment debtor, which existed at the date of the deposit of the memorandum, with the payment of the judgment debt, and to make that interest answerable for the payment of the debt. The interest of the judgment debtor at the date of the deposit of this memorandum was that he was the legal owner of this room. It appears to us that this

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interest of the defendant Haralambo was charged with the payment of the judgment debt, and that even if the plaintiff had, subsequently, by some means or other, procured a transfer of the property into his own name, under Section 14, the property would still remain liable to be sold in satisfaction of the judgment debt of the defendant Azizé.

This case affords yet one more illustration of the difficulties people bring upon themselves by their failure to comply with the law. If the plaintiff had caused the property to be registered in his name, as he should have done, the present difficulty would never have arisen. It is through his own wilful disregard of the law that he is deprived of this property, which he has enjoyed for so long a period of time

For the reasons we have given above, we are of opinion that the decision of the District Court was right, and that this appeal must be dismissed with costs.

Appeal dismissed.