

BOVILL,
C.J.
&
SMITH, J.
April 9.

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

SOPHOCLI HADJI HARALAMBO *Plaintiff,*

v.

HADJI MICHAÏL LOIZI CAZAMIA *Defendant.*

Ex parte CONSTANDINO DRAGOMANOS.

EXECUTION—PROCEEDS OF SALE OF PROPERTY CHARGED WITH PAYMENT OF A JUDGMENT DEBT—PRIVILEGED CREDITOR—ATTACHMENT OF MONEYS IN COURT—CIVIL PROCEDURE AMENDMENT LAW, 1885—CLAUSES 13, 17, 42 AND 53.

A judgment creditor who has charged the property of his debtor which is subject to a mortgage, with the payment of the judgment debt in accordance with the provisions of Clause 13 of the Civil Procedure Amendment Law, 1885, thereby obtains no special rights over the proceeds of the sale of the mortgaged property.

APPEAL from the order of the District Court of Nicosia.

The plaintiff obtained judgment against the defendant, in execution of which, a house, which had been mortgaged to the plaintiff to secure the debt, was sold. After satisfying the plaintiff's debt a sum of £16 remained in Court, and Constandino Dragomanos applied to the Court, that this money should be paid out to him, in satisfaction of a judgment, which he had obtained against the defendant.

This application was opposed by Nicola Georgiades, who was also a judgment creditor of the defendant, on the ground that he had by the deposit of a memorandum under the provision of the Civil Procedure Amendment Law, 1885, charged the property subject to the mortgage with the payment of his judgment debt, and had thereby acquired a priority over other unsecured creditors.

The District Court dismissed the application of Constandino Dragomanos on the ground that Nicola Georgiades having charged the property with the payment of his judgment debt, the money in Court arising from the sale of the land should be devoted to discharging Nicola Georgiades' claim.

Constandino Dragomanos appealed.

Pascal Constantinides for the appellant, contended that the memorandum lodged by Nicola Georgiades gave him no lien on the moneys arising from the sale of the property,

and that, as the appellant was the first to apply, the Court should have directed the moneys to be paid out to him.

He cited *Hadji Aggeli Hadji Marko v. Omer Dai Suleiman* (*ubi sup.* p. 10).

Salih Effendi, for Nicola [Georgiades] the respondent, contended that by virtue of the memorandum lodged by the respondent, he was entitled to the moneys which arose from the sale of the property charged with the payment of the judgment debt.

Judgment: We are of opinion that this appeal should be allowed and that the order of the District Court made in this action, and directing the moneys in Court to be paid out to Nicola Georgiades, should be set aside.

The case stands in this way. In satisfaction of a judgment obtained in this action a property has been sold, and after satisfying the plaintiff's judgment, a sum of money remains in Court to the credit of this action. Constandino Dragomanos, who has money to receive from the defendant under a judgment, makes an application in this action that the money should be paid out to him. The form of his application was mistaken, his proper course being to apply for execution of his own judgment by attachment of the moneys in Court under Section 42 of the Civil Procedure Act, 1885.

However, another creditor comes in and opposes the application, on the ground that he is entitled to the moneys in Court, inasmuch as he has charged the property, in which the defendant was beneficially interested, with the payment of his judgment debt, by depositing at the Land Registry Office a copy of his judgment, together with the memorandum specified by Section 13 of the Civil Procedure Amendment Law.

The effect of this proceeding is declared to be, to render the immovable property of the judgment debtor mentioned in the memorandum, answerable for the payment of the judgment debt, to the extent of the beneficial interest of the debtor in such property. What is the beneficial interest of the debtor in the property? His interest in the present case was to have the property registered in his name, free from the mortgage, on payment to the plaintiff of the moneys due under the mortgage, and it does not

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in our opinion include his rights to any moneys arising from the sale of the property. The case quoted by Mr. Pascal Cons antinides was somewhat different, as in that case the land charged with the payment of one judgment debt was sold in satisfaction of another, and it was held in that case, that the land was not thereby freed from the payment of the debt charged upon it. The only privilege gained by the lodging of a memorandum in the case of a property already charged with the payment of a judgment debt, is pointed out by Section 17 of the law, viz. : that the person who has lodged such a memorandum may, by leave of the Court, proceed to a sale of the property in case the person who has first charged the land does not proceed to execution. The law says nothing about a person lodging a memorandum obtaining an interest in the proceeds of the sale of a property. A person depositing a memorandum, in cases where the property mentioned in the memorandum is mortgaged, obtains this advantage, that under Section 53 of the Civil Procedure Amendment Law he may pay off the mortgage and add the moneys so paid to the amount of his judgment debt, or he may tender the moneys to the mortgagee, and apply to the Court for an order for the sale of the property, or he may without payment or tender apply to the Court, after having given notice to the mortgagee for an order for the sale of the property. Nicola Georgiades might have taken any of these courses and protected himself completely. We, therefore, think that by virtue of the memorandum he lodged, he acquired no special rights over the moneys in Court and that he, like the appellant, should apply for execution by attachment of the moneys in Court.

On the application in the form it was made, we do not think that the money should have been directed to be paid out to anyone, and we shall set the order aside, and leave the appellant and respondent to their proper remedies to obtain this money. We think that the respondent was right in opposing the application in the Court below in the form in which it was made, so we shall set aside the order without costs.

Appeal allowed.