

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

PAVLOS IOANNIDI

*Plaintiff,*

v.

EVGHENIA STEFANI AS HEIRESS AND  
 GUARDIAN OF THE ESTATE OF HER  
 HUSBAND STEFANI ANTONIOU,  
 DECEASED

*Defendant.*

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 C.J.  
 &  
 SMITH, J.  
 1892.

April 23.

EXECUTION—SALE OF ARAZI MIRIE PROPERTY FOR THE DEBT OF  
 A DECEASED POSSESSOR—ARTICLE 115, OTTOMAN LAND CODE  
 —LAW AS TO FORCED SALES 27 CHAWAL 1286.

The law of 27 Chawal 1286 has rendered Arazi Mirié lands liable to be sold in payment of the debts of the possessor in the same way as Mulk, although the law does not expressly enact that such land is to be sold after the decease of the possessor and while in the possession of the heirs.

**HELD:** That the land descends to the heirs subject to its liability to be sold for payment of the debts of their ancestor.

APPEAL from an order of the District Court of Paphos, confirming an order of a single judge of that Court.

The facts of the case sufficiently appear from the judgment of the District Court which was as follows :—

“ A judgment was obtained by Pavlos Ioannidi of Ktima against Evgenia Stefani, as guardian and heir of the estate of her deceased husband. After selling movables of the deceased under writ of seizure and sale, it has been sought to sell certain arazi mirié property of the deceased, and Hadji Kiufi Effendi, sitting as single judge of this Court, refused to grant such order of sale. The judgment creditor now appeals from this order refusing sale of arazi mirié property aforesaid.

“ In this case it is to be noted that the debtor was dead before the action originally began, and the action was begun against his widow as guardian heir, etc. ; in other words the arazi mirié lands which are now sought to be sold, had passed from the deceased's possession into the possession of his heirs before this action was commenced. The question for the Court to determine is whether the arazi mirié land may be still considered as part of the

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deceased debtor's assets for payment of debts, and liable to execution by sale in satisfaction of the debt of the deceased.

"The Court regrets that Mr. Pavlides, advocate for appellant, has been unable to refer to any specific judgment of the Supreme Court which would, of course, have settled this question.

"Under the system of the Turkish Land Law it would appear that arazi mirié lands were not absolute the property of the individual, but were given to the inhabitants, according to the Law of 7 Ramazan, 1276, by "*Tapu*." Article 115 (page 157 of French text, Ottoman Code, Vol. I.) of this same law, makes it clear that after the death of a debtor the lands *possessed* by him pass at once to the heirs, and in absence of heirs, become disposable by "*Tapu*." In the French text of the Ottoman Code at the bottom of page 157 is a footnote (which does not exist in the Greek text of the same law). This note refers to the *vente forcée des terres domaniales*, and states that the provisions of Article 115 have been totally abrogated in favour of all kinds of private creditors, [it also mentions State debts with which, however, we need not concern ourselves] and refers to the law of 27th Chaban (more properly *Chawal*) 1286 which is found at pages 270-273 of Vol. I. French text. It appears to the Court that the law of 27th Chawal, 1286, however, does not relate to *deceased* debtors but to living debtors. Moreover, the 4th article of the law of 23rd Ramazan 1286 [which was passed after the last mentioned law] which relates to *vente forcée après le décès du débiteur* would seem to imply that the sale of lands that are unencumbered by hypothec, after the death of a debtor, is prohibited. Only the creditor is restricted to satisfy his debt out of lands specifically hypothecated. The additional articles to 23 Ramazan 1286, namely, Articles 6 and 7 of 21 Ramazan 1288 (page 68 supplement to the Greek text, Ottoman Code) only speak of debts due to Government, and do not appear to refer to debts due to private individuals. The Court is, therefore, of opinion that that part of Article 115 relating to the decease of the debtor is still in force, and the arazi mirié lands referred to in this appeal cannot be sold, as they devolved on the heir at the decease of the debtor and are not assets of his estate for paying debts."

This appeal is dismissed and the appellant is ordered to pay the taxed costs thereof. Order of the single judge confirmed.

The plaintiff appealed.

*Economides* for the appellant.

The decision of the District Court is based on Article 115 of the Land Code, and the Court further says that the law of 27 Chawal 1286 only relates to the living debtors and not to cases where the debtor is dead. Article 1611 of the Mejellé shews that the debts of a deceased person are to be paid out of his estate. The question is whether arazi mirié forms part of the estate. The law of 27 Chawal 1286 repeals Article 115.

*Heracli Theofani*, son of defendant, for the respondent.

*Judgment* : We are of opinion that this appeal must be allowed. The law according to Article 115 of the Ottoman Land Code originally excepted State lands from being sold for the payment of debts, and such land passed to the heirs free from liability.

The first article of the law as to forced sales dated 27 Chawal 1286 enacts, that arazi mirié land can be sold like movables for a judgment debt without the consent of the debtor. This would appear to entirely alter the law. Upon the death of a debtor his lands pass by inheritance to his heirs, and we think they take them subject to deceased's debts. It is certain that judgment must be obtained against the heirs for the debts of their ancestors, and that they are liable for them to the extent of the inheritance that vests in them. We see no reason to doubt that arazi mirié lands form part of the inheritance, and, therefore, that they are liable to be sold to pay the debts due by the person from whom they are inherited.

*Appeal allowed.*

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