

SMITH, C.J.
&
MIDDLE-
TON, J.
1895.
April 5.

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

MICHAIL GAVRILIDI

Plaintiff,

v.

SAVA GEORGH I AND ANOTHER

Defendants.

IMMOVABLE PROPERTY—LAND—SALE WITHOUT REGISTRATION—
POSSESSION BY VENDEE—NON-PAYMENT OF PURCHASE MONEY
—REFUSAL BY VENDEE TO COMPLETE—RESUMPTION OF POS-
SESSION BY VENDOR—DAMAGES CLAIMED BY VENDOR AS FOR
AGREEMENT TO SELL—THE LAND TRANSFER AMENDMENT
LAW, 1890, SECTIONS 1, 2, 3 AND 4—THE SALE OF LANDS LAW,
1885.

M., in 1891, in consideration of a bond for £27, made payable to him by S. and L., delivered possession of certain lands to S. and L., who remained in possession of them for two years. No registration was effected in the names of S. and L., although M. alleged that he had frequently requested them to attend at the Land Registry Office for the purpose of obtaining a legal transfer. M. sued S. and L. on the bond in 1894, but judgment was given against him. Subsequently M. retook possession of the lands and sold them to another person for £15 9s. M. then sued S. and L. for damages for breach of contract.

HELD: That M. was not entitled to recover damages from S. and L. for breach of contract, inasmuch as the arrangement between them was not an executory contract, but purported to effect a sale by means the law does not recognise.

APPEAL from the District Court of Limassol.

Templer, Q.A., for the appellant.

Pascal Constantinides for the respondent.

The facts and arguments sufficiently appear from the judgment.

April 17. *Judgment:* The facts of this case are of a very simple nature. About the year 1891, the plaintiff purported to sell to the defendants certain immovable property in consideration of the sum of £27. The defendants took possession of the property and the plaintiff accepted a bond for £27. The defendants remained in possession of the property for two years. The plaintiff alleges that he requested the defendants to join him in taking the necessary steps to effect a registration in their names of the property he had purported to sell them, but that they declined. He sued them in the year 1894 upon the bond, but his action was dismissed. He then appears to have retaken possession of the property and caused it to be put up for sale by auction, when it realised only £15 9s. He now brings this action claiming the difference between the sum of £27 and the £15 9s. as damages, and certain interest thereon, as well as the costs of the sale by auction.

The action having been heard by a Court composed of two judges, who differed in opinion, the plaintiff's claim was dismissed.

It was argued for the appellant that, though the transaction between these parties was such that the property was not legally transferred to the defendants, inasmuch as the formalities prescribed by the law were not complied with, yet that there was an agreement, either express or implied by the plaintiff, to sell and the defendant to buy, that this agreement was a perfectly valid one, and that either party would be entitled to recover damages from the other for the breach of it.

For the respondent it was argued that this was a transaction which was invalid, and that the Supreme Court, acting in conformity with its previous decisions, would not recognise any rights as arising under it : that if the Supreme Court held the plaintiff entitled to damages, the law requiring registration would be disregarded, as persons in his position would be quite willing to enter into transactions of this nature and rely upon their right to recover damages. It was further argued that the law had provided a form in which contracts should be entered into, and reference was made to " the Land Transfer Amendment Law, 1890," and it was contended that no damages were recoverable for a breach of any agreement to sell immovable property. With regard to these last two arguments, it does not appear to us that the law has provided any form in which a person must agree to sell his immovable property to another.

The law of 1890 says in Section 1 : " From and after " the first day of October, 1890, no sale or mortgage of any " immovable property in *pursuance of any contract* shall be " registered at the Land Registry Office until the pro- " ceedings and formalities specified in Clauses 2, 3 and 4 " of this law have been had and complied with." The law here clearly implies a contract of sale pre-existing, before the parties attend at the Land Registry Office to carry out those formalities, which alone will enable the contract to be carried into effect according to law. One of these formalities is the making of statements in writing setting forth, that the owner or possessor of the property has agreed to sell, and that the other party has agreed to buy, the property for a specified consideration. When these statements have been made, the property may then be registered in the name of the purchaser on payment of the necessary fees. These statements so to be made before the Land Registry Office officials, are matters quite separate and apart from the contracts which the parties have previously entered into, and we do not know of any principle on which a party to an agreement, who breaks his agreement and declines to go

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SMITH, C.J. before the Land Registry Office official and make the written
 & declaration, should not be liable in damages to the other
 MIDDLE- party to the agreement. The agreement itself is clearly
 TON, J. not illegal: in the first place such an agreement must of
 --- necessity be entered into before the parties could make the
 MICHAEL declaration required by the law, and, further, the legislature
 GAVRILIDI has distinctly recognised it as legal, inasmuch as by the
 / Sale of Lands Law, 1885, it may be specifically enforced as
 SAVA against the vendor or his heirs provided that it has been
 GEORGI made in writing, though as against the vendee it is declared
 AND that he cannot be forced to take the property, but the
 ANOTHER. remedy of the vendor is declared to be in damages only.
 --- If such an agreement be recognised as legal when put into
 writing, we see no reason why it should be illegal if entered
 into verbally. In the latter case it cannot be made the
 subject of an action for specific performance, but it does not
 appear to us on that account to be illegal.

This was the view taken of the law by the Supreme Court in the case to which we were referred by the respondent's advocate. In *Ahmet Shefki Selim v. Mehmet Zia Sofouzadé*, heard in the Supreme Court on the 13th March, 1893, the facts appear to be that the defendant entered into an agreement to sell the plaintiff a certain share in a chiftlik for £70. He further agreed to effect the registration in the plaintiff's name in 45 days, and there was a clause in the agreement to the effect that, if either party failed to carry it out, he should pay a sum of £30 to the other. The plaintiff paid £36 in advance to the defendant. Before the expiration of the 45 days the defendant sold the share of the chiftlik to some third person for a higher price. The plaintiff then sued the defendant to recover the £36 he had paid, and also £30 by way of liquidated damages for breach of contract.

The defendant paid £36 into Court, but resisted the claim for damages. The District Court decided against him, and he appealed. On the appeal similar arguments to those advanced in the present case, viz.: as to the law having provided the form in which agreements for the sale of immovable property must be made, were adduced; but the Supreme Court confirmed the judgment of the District Court holding that the agreement itself was a valid one, and that there was nothing in the law to disentitle the plaintiff to recover the amount which the parties had agreed should be payable for a breach of it. It was inoperative, of course, to convey the right of possession in the property itself, and had not been intended by the parties themselves to have such an effect. But whilst we are of opinion that such an agreement is a valid agreement, that is to say, that where there is an executory agreement which is the initial step in the series of acts which are intended to result in the legal transfer

of the right of possession of immovable property, there is no reason why damages should not be recovered for its breach, we do not think that we should go further and hold that there is a right to recover damages in a case like the present.

In the present case there was no such executory agreement as we have referred to, but the plaintiff handed over the possession of his property to the defendants, receiving in exchange a bond for £27.

We have frequently said, and now repeat, that we will give no further effect to such transactions than we can help.

We agree that before the defendants were placed in possession of the property, and before they gave the bond for £27 to the plaintiff, the parties must have come to an agreement; but looking to the circumstances of the case, it appears to us that there is nothing to show that at the time of the agreement they intended to carry out that agreement by the means which the law requires in order that the possession of the property purported to be sold, should be vested in the defendants. The plaintiff took his bond, and the defendants took possession of the property and remained in possession for about two years. It is true that the plaintiff says that he frequently asked them to come and get the property registered in their names, and that they declined. There is no evidence as to when the plaintiff so requested the defendants, but it was doubtless after they had been put in possession, and, possibly, after he had begun to reflect that under the transaction with the defendants, he had not succeeded in divesting himself of the legal rights of possession of the property. If the plaintiff had done what he should have done, and refused to give possession of the property to the defendants until the change in the registration had been effected, he would have made himself secure, and the difficulties he has since experienced would not have arisen.

We have already held that in transactions of this nature, there is no implied contract on the part of the vendor that the purchaser shall have quiet possession of the property purported to be sold; and it follows from this that the purchaser, if he is ousted from his possession by the vendor, would have no right of action for damages. If the purchaser would have no right of action for damages when the vendor turns him out of possession, it seems to us that, on principle, the vendor has no right to claim damages when the purchaser repudiates the transaction, and the land purported to be sold is thrown back on the vendor's hands. The furthest extent that the judgments of the Supreme Court go, is that in a transaction of the nature of the one under consideration,

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it would be inequitable to allow the vendor to recover possession of the land, and at the same time retain the purchase moneys, and that, therefore, in a suit by the vendor to turn the purchaser out, we have intimated that such an order would only be made on the terms that the vendor refunded to the purchaser the amount of the purchase moneys.

Beyond this we have not gone, and we have pointed out how extremely reluctant the Courts are to assist the parties to escape from the difficulties they create for themselves by entering into transactions which they know are not sanctioned by the law.

The present case is a very ingenious attempt to induce the Courts to extend the principles on which they have acted, and by falling back on the agreement which must precede the invalid transaction into which they entered, to obtain damages when that transaction falls to the ground.

It appears to us on the facts before us, that what the parties purported to do was to effect a sale of property by a means that the law does not recognise, and we, therefore, hold, in conformity with the former decisions of the Court, that the only rights which will be recognised are the right of the purchaser to have possession of the property as against the vendor himself until the latter repays the purchase money. Here the purchase money was not paid, and the land again passed into the possession of the vendor, and we, therefore, think that he has no further rights against the purchasers, and that the judgment of the District Court was right and must be affirmed. The appeal must be dismissed with costs.

Appeal dismissed with costs.
