

[SMITH, C.J. AND MIDDLETON, J.]
 CHRISTODULO GEORGI KOUMI
 AND OTHERS
 v.
 HADJI SOPHOCLE HADJI CHRISTOFI
Plaintiffs,
Defendant.

SMITH, C.J.
 &
 MIDDLE-
 TON, J.
 1894.
 April 10.

SALE OF LAND BY PUBLIC AUCTION UNDER WRIT OF EXECUTION—
 OMISSION OR IRREGULARITY AT SALE—DOUBLE REGISTRATION
 —COMPLETION OF SALE—RIGHTS OF CLAIMANT TO THE LAND
 SOLD—CIVIL PROCEDURE AMENDMENT LAW OF 1885, SECTIONS
 48, 58, 60, 61 AND 69—LAW ON FORCED SALES OF 27 CHABAN,
 1286, ARTICLE 13—OTTOMAN LAND CODE, ARTICLES 61 AND
 115—REGULATIONS REGARDING TAPU SENEDS OF 7 CHABAN,
 1276.

G. P. in the year 1278 became the registered possessor of a piece of Arazi Miriá land which some time after he sold without a legal transfer to one K. K. in the year 1289, obtained registration for this land on the ground of uninterrupted possession for upwards of ten years.

The registration in the name of G. P. remained uncanceled, but K. and his heirs had undisturbed possession of the land down to the year 1893, when it was put up for sale under a writ of execution at the suit of a creditor of G. P. and bought by S. Some of the heirs of K. were present at the sale and made some objection to it, but no application was made to the Court to stay it, and the land was registered in the name of S. The heirs of K. then brought their action against S., demanding that the sale should be set aside, and the registration in the name of S. cancelled.

HELD: That the heirs of K. were entitled to maintain this action and to have the registration in the name of S. cancelled.

HELD FURTHER: That the Civil Procedure Amendment Law of 1885 does not repeal Article 13 of the Law on Forced Sales of 27 Chaban, 1286.

HELD ALSO: That the Law on Forced Sales only contemplated the sale of property of which the debtor was the registered possessor, and that Article 13 of that law has reference only to cases in which some person has acquired a right to be registered as against a registered possessor, and that, consequently where a judgment debtor was neither rightfully registered nor entitled to be registered as the possessor of land sold by public auction under a writ of execution for his debt, a duly registered possessor of the same land would not be barred from bringing his action against a registered purchaser upon such sale for the rectification of the register.

APPEAL from the District Court of Kyrenia.

The facts and arguments sufficiently appear from the judgment.

Pascal Constantinides, for the appellants.

Templer, Q.A., for the respondent.

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Judgment: In this case the plaintiffs appeal from the judgment of the District Court of Kyrenia, dismissing their claim to restrain the defendant's interference with a piece of land 12 donums in extent, situate at a place called Panagra.

The circumstances which have led to this action are shortly as follows: The defendant purchased the property claimed by the plaintiffs on a sale by public auction, it being put up for sale in satisfaction of the debt of one Georgaki Pauli. The plaintiffs claim that they are entitled to the possession of this land: that it was the property of their deceased father Georghi Koumi, and that they had had undisputed possession of it for the past 30 years.

Georghi Koumi appears to have been registered in the year 1289 for a piece of land of 12 donums at Lapithos, bounded by Kharito, monastery, Nikola and monastery fields, the ground of his registration being ten years' uninterrupted possession, but there was evidence that he had purchased from Georgaki Pauli, the date of this purchase not being stated. If he did in fact purchase it, the sale to him was not perfected by registration, and this is, no doubt, the reason why in 1289 he procured himself to be registered on the ground of undisturbed possession.

Georgaki Pauli was in the year 1278 registered as the possessor of 13 donums of land at Myrtou, bounded by river, Kharito's field, hill and monastery field. The District Court came to the conclusion that the lands referred to in these registrations were one and the same. All the evidence in the District Court certainly pointed to that fact, and from the form of the issues agreed upon by the parties it would appear that there was no question about it. It was suggested before us that it was doubtful whether the registrations really referred to the same land, and we adjourned the hearing of the appeal in order that we might make enquiries on this point.

An enquiry has been made, and it appears that these registrations do refer to the same land, and we see no reason, therefore, to doubt that the finding of the District Court on this point was correct.

There thus appears to have been a double registration of this land, one in the name of Georghi Koumi, describing it as situate at Lapithos, and the other in the name of Georgaki Pauli, describing it as situate at Myrtou; the boundaries in the two registrations are not identical and the area is not the same.

The District Court dismissed the plaintiffs' action on the ground that they had had notice that their land was being sold, and we presume that the Court considered that, as they had not taken steps to get the sale stopped, they

cannot now maintain a claim to the possession of the land, the judgment being, we suppose, based upon Article 13 of the Law on Forced Sales of 27 Chaban, 1286.

The plaintiffs appealed against this judgment, and it was contended for them that the sale by auction was irregular, inasmuch as the property, being situate at Panagra, an auction bill should have been posted there: that this had not been done, and, consequently, the law had not been complied with, and the plaintiffs were not bound to object to the sale. It was also contended that the Civil Procedure Amendment Law of 1885 has repealed the Law on Forced Sales, and, if it has not repealed it, then, if Article 13 of that law is in force, Article 7 must be in force also, and that the provisions of this article had not been complied with, inasmuch as incorrect boundaries had been stated in the auction bill. It was also contended that, as a matter of fact, all the plaintiffs had not notice of the sale, and that for all these reasons the sale must be held to be invalid.

For the respondent it was argued that the plaintiffs ought to have objected before the sale, and with regard to the alleged irregularity in the posting of the auction bill it was stated that Panagra was not a village, and that it was not necessary to post the auction bill there.

With regard to the non-posting of the notice of sale at Panagra, Section 60 of the Civil Procedure Amendment Law, 1885, requires the notice to be posted at the town or village within which the property to be sold is situate. The registration in the name of Georgaki Pauli shows the property as situate in the village of Myrtou, and the writ of sale and the auction bill or notice of sale would, undoubtedly, follow the description in the registration. There is no mention of the locality "Panagra" in the registration, and hence, no doubt, the omission of the name of the locality in the auction bill. There is no evidence that Panagra is not within the village boundaries of Myrtou. It is alleged for the respondent that it is not a village, and we have been unable to find it mentioned in the lists of villages of the Island that have been compiled for judicial and electoral purposes. It does not, therefore, appear to us that there was any irregularity in the non-posting of the auction bill at Panagra.

The next argument addressed to us on behalf of the appellants was that the Civil Procedure Amendment Law, 1885, has repealed the Law on Forced Sales of the 27 Chaban, 1286.

The latter law is not specifically repealed, and whilst a great portion of it is replaced by similar provisions in the law of 1885, and consequently is impliedly repealed, we

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SMITH, C.J. see nothing in the law of 1885 to repeal Article 13. If this
 &
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 TON, J. of the Law on Forced Sales and how does it affect the
 present case ?
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Article 13 says, in effect, that, if a person desires to claim the property which is being sold under the provisions of the law, he must bring his action before the conclusion of the sale, but that he will not lose his right to do so if he can prove that any valid reason existed for not doing so before the conclusion of the sale.

The inference to be drawn from these words is that, if a person cannot prove that he has been prevented by any valid reason from bringing his action, he would lose the right to do so.

It is not easy to say what the meaning of this enactment is. The property of a judgment debtor that may be sold is nowhere defined, but we have come to the conclusion that the law contemplates that this property must be property of which the debtor is the registered possessor and that Article 13 has in contemplation only claims which some person may have against the property which is registered in the debtor's name.

The considerations that have led us to this conclusion are, shortly, these :—

Since the promulgation of the Land Law of 1274, the only possession of Arazi Mirié property recognised by the law is possession by a person who is registered as the possessor. The regulations regarding Tapu Seneds of 7 Chaban, 1276, clearly lay down that no person can, under any circumstances, possess Arazi Mirié without kochans. Under the Land Law the sale of Arazi Mirié for debt was not permitted, and, though no reference is made directly to this law in the Law on Forced Sales, there is no doubt that the object of the latter law was to amend Article 115 of the Land Law. As no one could, in theory, legally possess Arazi Mirié without being registered, it appears to us that, when the Law on Forced Sales authorised the sale of the Arazi Mirié of a judgment debtor for debt, it contemplated that his Arazi Mirié would be registered in his name. The law is entirely silent as to what, if any, steps are to be taken in the case where the debtor was not registered, but only had a claim to be registered as the possessor of land, and, having regard to the words of the regulations concerning Tapu Seneds we have before alluded to, it appears to us that the theory of the law was, that every person who possessed land would be registered as its possessor, and the law permitting the sale of the Arazi Mirié of a judgment debtor was framed on the assumption that the debtor would be registered.

What would be done in the case where, though the land was registered in the name of some other person, but the debtor was entitled to be registered, is not very easy to say. It would be a manifest hardship that a debtor should be in actual possession of such land, and that his judgment creditor should be unable to get it sold, and it is conceivable that in the interests of justice the Land Registry Office officials would have permitted a judgment creditor to prove the debtor's right to be registered and have then registered the property in the debtor's name so that it might be sold under the law. This is, of course, only matter of conjecture as the law is silent on the point, and whatever practice may have prevailed, we believe that it was not until 1885 that the law specifically recognised the right of a judgment creditor to sell land for which the judgment debtor had only a claim to be registered as the possessor.

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For these reasons we have come to the conclusion that the Law on Forced Sales only contemplated the sale of property of which the debtor was registered as the possessor, and that Article 13 has reference to cases in which some person has acquired a right to be registered as against a registered owner.

The most ordinary cases would, probably, be those in which a person had acquired such a right by ten years' undisturbed possession. Other instances would be those pointed to in Article 61 of the Land Law, where land to which some person had a right to Tapu had been conferred on some other person. With regard to such cases as these, it appears to us that, under Article 13 of the Law on Forced Sales, the persons having claims to acquire the legal possession of the land are bound to bring forward their claims before the conclusion of the sale of the land, or otherwise their claims would be barred.

The construction we place upon Article 13 being that which we have indicated above, we proceed to enquire how that article affects the rights of the plaintiffs in this action.

As we have already mentioned, the land was in 1278 registered in Georgaki Pauli's name and in 1289 again registered in the name of Georghi Koumi. It is clear that the law contemplates that only one registration can subsist in respect of the sole right of possession of one piece of land, and, therefore, there cannot be two valid registrations existing in respect of one piece of land. In the present case, though these two entries in the registers refer to the same piece of land, it is clear that both cannot be regarded as valid registrations.

It appears to us that had the registration, effected in 1278, been brought to light in 1289, when the registration in Georghi Koumi's name was effected, the Land Registry

SMITH, C.J. official who was satisfied that Georghi had acquired a right
 & to be registered by 10 years' possession would have cancelled
 MIDDLE- the previous registration in the name of Georgaki Pauli.
 TON, J. It, therefore, appears to us necessary to hold that the
 registration in the name of the latter was allowed to con-
 ——— tinue owing to error or inadvertence, and is, therefore, not
 CHRISTO- a valid registration of the property in the name of Georgaki
 DULO Pauli and must be treated as though it had no existence.

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Now, under Section 48 of the Civil Procedure Amend-
 ment Law, 1885, the property of a judgment debtor which
 his creditor is entitled to have sold is all property registered
 in the debtor's name or property for which the debtor is
 entitled to be registered. The Supreme Court has already
 decided that the meaning of this enactment, with regard
 to registered property, is that the property must be properly
 registered in the debtor's name. See *Yeronymos Michail
 Yemeniji v. Haralambo Andoniou and another*, C.L.R.,
 Vol. II., p. 140, and *Ali Effendi Hassan Effendi v. Hadji
 Paraskevou Sava, ex parte Hadji Eleni Papa Yanni*, Vol. II.,
 p. 58.

As we hold that the property in the present case was not
 rightly registered in the name of the debtor Georgaki Pauli,
 the property could not legally be sold at the instance of a
 judgment creditor in satisfaction of his debt.

As, in our opinion, for the reasons we have before stated,
 the plaintiffs' right to bring this action is not barred under
 Article 13 of the Law on Forced Sales, and as there is no
 other law which would deprive them of the right to main-
 tain this action, we must hold that they are entitled as
 against the defendant to the possession of the land, to be
 registered, and to have the registration in the defendant's
 name set aside.

If no registration had ever been effected in the name of
 Georghi Koumi, the registration in Georgaki Pauli's name
 would be good, and the plaintiffs' sole claim to be registered
 would have been based upon their undisturbed possession
 for more than ten years, and they would have been com-
 pelled to take steps to get the sale of the property stayed
 before the conclusion of the sale, or otherwise their claim
 to registration would have been barred.

For these reasons we are of opinion that this appeal
 must be allowed, the judgment of the District Court set
 aside, and judgment entered for the plaintiffs.

As this litigation might have been avoided by the plaintiffs
 if they had taken the trouble to apply to the Court for a
 stay of the sale and prove their claim in that application
 we shall make no order as to costs.

Appeal allowed.