

[SMITH, C.J. AND TYSER, ACTING J.]

SMITH, C.J.

COSTANDINO KAKOYANI,

Plaintiff,

&
TYSER,
ACTING J.
1897

v.

HAVA SELIM AND MEIREM SELIM, AS HEIRS OF

THEIR DECEASED BROTHER REJEB SELIM, Defendants.

July 17

EXECUTION—"JUDGMENT DEBTOR"—HOUSE ACCOMMODATION—JOINT DEBTORS—
ACCOMMODATION REQUIRED BY ONE DEBTOR ONLY—"THE CIVIL PROCEDURE
AMENDMENT LAW, 1885," SECTION 48.

The heirs of a deceased person, against whom judgment has been recovered for a debt due by the deceased, are judgment debtors within the meaning of Section 48 of "The Civil Procedure Amendment Law, 1885."

SEMBLE: that where application is made for the sale of the house of joint debtors which is incapable of division, and which is not the sole residence of all but of some of the debtors only, house accommodation must be left or provided for those of the debtors residing in the house.

APPEAL of the Plaintiff from the order of the District Court of Paphos.

Economides for the Appellant.

Salih Effendi for the Respondents.

The facts and arguments sufficiently appear from the judgment.

Judgment: This is an appeal from the order of the District Court of Paphos, dismissing the Plaintiff's application for an order directing the sale of a house in execution of a judgment.

Sept. 18

The facts appear to be, that the deceased, Rejeb Selim, was indebted to the Plaintiff to the amount of £7 10s. due on a promissory note.

After the death of the deceased, the Plaintiff brought an action against the two Defendants as heirs of the deceased, and on the 1st October, 1895, obtained judgment for £7 10s. and interest.

On the 27th December, 1895, an application was made to one of the Judges of the District Court of Paphos for an order for the sale of the house.

It was then alleged that the house was registered in the name of the deceased, and an objection was raised by the Defendants that they were not the only heirs, and that the house was not registered in the names of the heirs. On this latter ground the application was dismissed.

The house, which consists of one room only, appears to have been registered in the names of the heirs on the 28th January, 1897, and on

SMITH, C.J. the 27th February an application for its sale was again made by the
 & Plaintiff to a Judge of the District Court. The Defendants objected to
 TYSER, the order on the ground that the house was the sole place of abode of
 ACTING J. one of the Defendants, Hava, and on being satisfied of this, the Judge
 COSTANDINO dismissed the Plaintiff's application. From this decision the Plaintiff
 KAKROYANNI v. appealed to the District Court, which confirmed the decision of the
 HAVA SELIM Judge, and from this order of the District Court this appeal has, by
 AND leave, been made.
 MEHREM
 SELIM

The question to be decided depends upon the construction to be placed upon Section 48 of the Civil Procedure Amendment Law, 1885, which runs as follows: "The immoveable property of a judgment debtor, which may be sold in execution, shall include all property standing registered in his name in the books of the Land Registry Office, and all other immoveable property in respect of which it shall be proved that he has by law a right to be registered as the owner. Provided always that where the property to be sold consists in whole or in part of a house or houses there shall be left to or provided for the debtor such house accommodation as shall, in the opinion of the Court, be absolutely necessary for the debtor and his family."

It is contended for the Appellant, that the Defendants being the heirs of Rejeb Selim, who was in his lifetime the debtor of the Plaintiff, are not judgment debtors within the meaning of this section, that the debt is now due from the estate of the deceased, and that the Defendants, merely representing the estate, are not judgment debtors as contemplated by the law.

The intention of Section 48 is, in the first place, to define what immoveable property of a judgment debtor may be sold in satisfaction of a judgment debt, and, secondly, to provide that if a house or houses are amongst such property, then that sufficient house accommodation is to be left or provided for the debtor and his family.

In our opinion, the debtor mentioned in the proviso to the section for whom such accommodation is to be left or provided, is the judgment debtor mentioned in the first part of the section. The questions to be decided therefore are:

1st. Are the Defendants judgment debtors?

2nd. Is there immoveable property belonging to them which is capable of being sold in execution?

And 3rd, is there amongst such property a house, and is it necessary that house accommodation should be left or provided for the debtors or either of them?

The term " judgment debtor " is defined in Section 1 to be a person against whom any judgment ordering the payment of money is made.

In the present case the Defendants are the only persons against whom such a judgment has been made. If, therefore, the Defendants are not the judgment debtors, no judgment debtor exists and the application under Section 48 of the Law of 1885, must fail. We are of opinion, however, that the Defendants are judgment debtors.

It is true that under Section 1611 of the Mejlle the debt of the deceased is to be satisfied out of his inheritance, but under Section 1642 the heir is spoken of as the Defendant and it is the heir, who, in the event of a judgment in favour of the claimant, is condemned to pay.

The Defendants, therefore, are judgment debtors and are entitled to the benefit of the proviso.

Secondly: Is the house sought to be sold registered in the name of the Defendants or property to which they are entitled to be registered as owners?

It was admitted in the Court below that there are two other persons entitled to shares in the house - that is to say, two other heirs. The house, therefore, is not registered exclusively in the names of the Defendants nor are they entitled to be registered as sole owners.

The other two heirs are not Defendants to this action, and no judgment against them exists, therefore it is clear that the application must fail as regards their shares in the house. As the application is to sell the whole house, this alone is a sufficient ground for affirming the judgment of the Court below.

It becomes unnecessary to consider, therefore, whether the Defendants are entitled to the protection contained in the proviso of Section 48.

But we have no doubt that the order applied for was rightly dismissed on the ground that, if the order had been made, it would have deprived the Defendant, Hava, of the house accommodation which is necessary for her.

Appeal dismissed.

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