MIDDLETON, ACTING C.J. & TYSER, ACTING J. 1897

Dec. 12

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

THE BISHOP OF KYRENIA, *Plaintiff,*

v.

COSTI HADJI PARASKEVA, AS TRUSTEE OF THE CHURCH OF AYIOS LOUKA, AND CONSTANTI PIPEROU. *Defendants.*

MULK, ACTION TO RECOVER—TITLE-DEED—FORM OF CLAIM—ORDER TO SET ASIDE REGISTRATION—POWER OF COURT—LAND REGISTRY OFFICE—PARTY—FORM OF JUDGMENT—LAW OF 28 REJEB, 1291, ARTICLE 1.

Article 1 of the Law of 28 Rejeb, 1291, enacts that, henceforth, the possession of Emlak without title-deed is prohibited.

It is not true as a general proposition that no one can sue in regard to Mulk unless he is registered.

Where an amendment or cancellation of registration is sought, the claim in the action should be for a declaration to the effect that the Plaintiff is entitled, as against the Defendant, to have any registration in the Defendant's name set aside or amended.

The Land Registry Official will act upon such a declaration unless he knows some good reason for refusing to do so.

The judgment in such an action may find that the Plaintiff, as against the Defendant, is the owner of the property claimed and so against the Defendant entitled to have any registration in the Defendant's name set aside, and may then proceed to adjudge that the injunction and damages sought for shall be awarded, subject to the production by the Plaintiff of a title-deed in his name for the property claimed.

The Plaintiff sued to recover certain trees and by his writ claimed damages for interference with the trees, that Defendants should be restrained for interfering with them, and that any registration in Defendant's name for them should be set aside.

The Plaintiff was not registered for the trees and the District Court dismissed his claim.

HELD (*reversing the decision of the District Court*): *that the fact that the Plaintiff was not registered was no ground for dismissing the action.*

HELD *further: that in such an action the Court had no power to order registration to be set aside or amended, the Land Registry Officer being no party to the action.*

HELD *further: that the Court would only award the injunction and damages asked for in the claim, subject to the production by the Plaintiff of a title-deed for the trees.*

APPEAL from the District Court of Kyrenia.

Loizides for the Appellant.

G. Chakalli for the Respondent, Costi Hadji Paraskeva.

Malamatenios for the Respondent, Constanti Piperou.

The facts, so far as they were material to this report, were as follows:

The Plaintiff sought to restrain the Defendants from interfering with five olive trees situated at Lapithos, which, he alleged, were the property of the Acheropiti Monastery.

Damages were also claimed as being caused by the interference complained of, and further the cancellation of any registration for the trees in the Defendants' name, should the same exist.

No objection was raised to the action being brought in the Plaintiff's name, it being admitted that the Acheropiti Monastery belongs to the See of Kyrenia, and the Plaintiff is entitled to the profits of the Monastery.

The first Defendant raised the following amongst other defences.

That the Plaintiff could not sue because he was not registered.

There was no averment or proof of any registration of the trees in the name of anyone.

Amongst other issues settled for trial, the one material to this report was as follows.

Can the action proceed without registration?

The District Court dismissed the Plaintiff's action, and against this judgment the Plaintiff appealed. On the issue as to registration, it was contended for the Appellant that the Law requiring registration of Mulk property was dated 28 Rejeb, 1291 (A.D. 1874), that the evidence shewed that the trees had been dedicated to the Monastery prior to that date, and that, therefore, registration was not required.

For the Respondents it was urged that, if there had been a gift to the Monastery it was not proved that it was made before the Law of 28 Rejeb, 1291, came into force.

The Supreme Court, after reviewing the evidence, found in favour of the Plaintiff, holding that the five olive trees were the property of the Acheropiti Monastery, and the judgment, so far as it is material to this report, was as follows.

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Judgment: It remains for us to consider the question raised by the first issue, viz.: whether the action could proceed without registration of the property in the name of the Plaintiff.

The Defendants contend that the enactment contained in Art. 1 of the Law of 28 Rejeb, 1291, is a bar to the Plaintiff proceeding in the action without the property being registered in his name.

If it is true as a general proposition that no one can sue in regard to Mulk unless he is registered, it is evident that in many cases there would be a denial of justice, as, for instance, where the Defendant is

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registered and it is not clear whether the Plaintiff has a better claim or no. The Plaintiff would be unable to prove his claim, unless he could have recourse to the Law Courts.

This cannot have been intended by the Legislature.

Moreover, the enactment in question does not deprive the unregistered owner of property of his legal rights, except in so far as it forbids the possession of Emlak without title-deed. It makes registration compulsory, but does not make it a condition precedent to his right to sue. Therefore, we must decide the first issue in favour of the Plaintiff.

As, however, the property is Mulk there is no reason why there should not be a valid registration of the property in favour of the Monastery, and we cannot give the Plaintiff the injunction he asks for, except on the condition that he obtains registration in favour of the Monastery, because, if we did so, we should, in effect, give him possession without registration, which is contrary to the provisions of the Law on which the Defendants rely.

Neither should the Court give such damages as are here claimed, except on the condition that the Plaintiff obtains registration, because, if it did so, it would enable the Plaintiff to obtain all the benefits of the land, without any obligation to comply with the Law and obtain registration.

As to the claim to set aside any registration in the name of the Defendant, if the claim means that the Court should make an order that the Register shall be amended, the Court can make no such order in this action. The Defendant cannot set aside any registration. The most he can do is to apply to the Land Registry Office to set it aside. The Land Registry Official is no party to this action, and we can make no order against him, unless there is some special enactment authorising us to do so. There is no such enactment applicable to this case.

If the claim merely seeks a declaration that the Plaintiff has proved before us a right as against the Defendant to have any registration in the Defendants' name set aside (and we think it must be so understood), we are able to make such a declaration.

The Court can further assist the Plaintiff to obtain the necessary registration by inserting in their judgment their finding in favour of the title of the Monastery to the trees in dispute. There is little doubt that the Land Registry Official will act on that finding, unless he knows some good reason for not doing so.

For the above reasons there should, in our opinion, be judgment for the Plaintiff, subject to his producing a kochan for the trees in dispute,

as against the Defendants, that they be restrained from interfering with the trees in dispute, and that they pay 16 shillings damages and costs.

Appeal allowed.

The judgment may be drawn up in the following form.

. . . . . .

Upon hearing, &c. And this Court having found on the issue raised between the parties that the (Plaintiff) is the owner of (describe property as in writ), and that the (Plaintiff) is entitled as against the (Defendant) to have any registration of the said property set aside.

THIS COURT DOTH ORDER AND ADJUDGE that, subject to the production of a kochan for the said property by the Plaintiff, the (Defendant) be restrained, &c. . . . . and do pay the sum of £ as damages, &c. . . . and the taxed costs, &c. . .