

MIDDLE-
TON,
ACTING C.J.
&
TYSER,
ACTING J.
1898
Jan. 4

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

GEORGI SAVA,

Plaintiff,

v.

SAVA PARASKEVA,
GEORGI IOANNIDI MUMJI,

Defendants.

IMMOVABLE PROPERTY—REGISTRATION—HODJET—FIFTEEN YEARS' POSSESSION—MORTGAGE—ESTOPPEL—ACQUESCENCE.

G., the owner of a house by virtue of a Hodjet and which he had occupied for upwards of fifteen years without interruption, knowingly allowed the house to remain registered in the name of his father, *S.*, for a number of years without taking steps to get the registration amended. *S.* mortgaged the house to *M.* without the knowledge of *G.*, and *M.* advanced money on it in ignorance of *G.*'s right to be registered for the house and believing that as the house was registered in *S.*'s name it was the property of *S.*

Held: that *G.* must be taken to have acquiesced in the right which such registration conferred on his father, namely, to mortgage the property to *M.*, and that *G.* is thereby estopped from claiming that the mortgage in favour of *M.* should be set aside.

Held further: that *G.* is entitled to be registered for the house as against his father, *S.*, subject, however, to the continuance of the mortgage thereon in favour of *M.*, unless *M.* chose to release the property mortgaged on payment or otherwise.

APPEAL from the District Court of Nicosia.

Kyriakides for the Appellant.

Artemis for the Respondent Georghi Ioannidi Mumji.

Sava Paraskeva did not appear.

The facts and arguments sufficiently appear from the judgment.

Jan. 22

Judgment: The claim in this action was that the Defendant, Sava, should be restrained from interfering with a house of three rooms with a front yard, situated at Avlona, and that any registration in Defendant's name should be cancelled, and further that a mortgage deed in favour of the Defendant, Georghi Ioannidi Mumji, should be set aside, and that the house should be registered in the name of the Plaintiff.

The house in question appears to have originally belonged to Marou, the mother of the Plaintiff, who was the wife of the Defendant, Sava Paraskeva, the Plaintiff's father.

Marou seems to have given a Hodjet to the Plaintiff for the house, dated 12th Sefer, 1285, or April, 1868, and at the Yoelama in 1288, the house was registered in the name of the Defendant, Sava.

Sava mortgaged this house together with other property to the Defendant Georghi in 1891, and again in 1895.

The Plaintiff alleged that he had had uninterrupted possession of the house for twenty-five years, and the issues settled by the Court were:

1. Plaintiff to prove his title.
2. Defendant to prove that he is entitled to retain his mortgage although the Plaintiff has title to the property.

The District Court, after hearing evidence on both sides, dismissed the Plaintiff's action without giving any reason.

The Plaintiff appealed, and before us it was contended for him that he was entitled to succeed in the action, on the ground that he had proved uninterrupted possession of the house for upwards of fifteen years. For the Defendant, Georghi Mumji, it was argued that the evidence shewed that Plaintiff consented to the mortgage, and that a kochan was a better title than a Hodjet. It was admitted by the Advocate for Defendant that the Plaintiff would have been entitled to be registered, assuming he had proved fifteen years' uninterrupted possession, if there had been no subsequent registration and mortgage, but seeing that these events have occurred and considering the conduct of the Plaintiff shews that he knew of and consented to them, he is estopped now from succeeding in this action.

It is, therefore, necessary for us to decide (1), whether the Plaintiff has shewn uninterrupted possession for fifteen years, and (2), whether, if this be so, he is estopped by his conduct from disputing the registration in the name of his father, or the validity of the mortgage following on that registration.

We have carefully read through and considered the evidence, and have come to the conclusion that the Plaintiff has proved (1), that he acquired the house from his mother under a Hodjet dated previously to the Law of 28 Rejeb, 1291, and that in addition he has had an uninterrupted possession of the house as against the Defendant, Sava, his father, for upwards of fifteen years.

If, therefore, the registration and mortgage had not occurred, we should be of opinion that the Plaintiff had proved his right to be registered, and that he had, in fact, succeeded on the first issue.

As regards the second question, the Plaintiff and his father both deny that the Plaintiff knew the house was mortgaged in 1891. The evidence *contra* is that of the Defendant Georghi, who says that Plaintiff came at the time of the mortgage and told him the value of the house, and was aware of the mortgage.

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The Defendant Sava, however, denies that his son went with him, and we do not see any reason why he should go.

We are, therefore, of opinion on his evidence that it is not proved that Plaintiff knew of the house being mortgaged in 1891.

We cannot, however, believe that the Plaintiff did not know that the house was registered in his father's name. Arghyro H. Yanni says that he heard from the Plaintiff it was registered in the father's name five or six years before he gave evidence and the father says he paid the Mallieh, and that Plaintiff knew he paid as he was using the house. If the house was registered, we presume the taxes on it would be in the name of and payable by the person in whose name it was registered, and it is very improbable that the payment of them would not have brought it to the knowledge of both in whose name the house was actually registered.

The next point is, whether the Plaintiff knew at the time of the second mortgage in 1895, that the house was included in it.

The Defendant Sava says that he did not know of it. The Plaintiff, however, says that when he heard it was mortgaged he asked for a title-deed, and this appears to have been in 1896. The Defendant Georgh says that both in 1895 and in 1896, Plaintiff came to him and offered him money to take the house out of the mortgage. The Plaintiff does not appear to have been asked specifically as to his knowledge at the time of the mortgage, and it is possible that the father meant that Plaintiff heard of it in 1895, after the mortgage was executed. We do not think, therefore, that it is established that the Plaintiff did actually know that the house was included at the time of the second mortgage, but that he discovered it afterwards.

We are, therefore, of opinion that the Plaintiff at the time of the first mortgage in 1891, knew that the house was registered in his father's name, but did not know it was included in the mortgage until after the date of the second mortgage.

Is the Plaintiff, therefore, by knowingly allowing the house to remain registered in his father's name and not taking steps to obtain registration in his own name, estopped from disputing the title of the second Defendant under the mortgage?

According to the Law of 28 Rejeb, 1291, possession of Emlak without title-deed is prohibited. This we take to mean that it is obligatory on every person, who assumes to be the owner of Mulk property, to obtain registration therefor and to hold a title-deed. This is an obligation not only in the interests of the Government, but in that of the world generally that it may be known to persons dealing with such property whom they

are to recognize and consider as the legal owners of it. Here the Plaintiff has deliberately allowed his father to remain registered for this house, and thus enabled him to mortgage the same to a creditor who would naturally suppose, from the fact that the house was registered in the father's name, that he might safely take it as a security in mortgage for his debt.

If the Plaintiff had fulfilled his obligation to register, this result should not have been possible, assuming that the Land Registry Office had carried out its duty and, upon making the new registration in the name of the Plaintiff, had cancelled that in the name of his father.

Has not the Plaintiff, therefore, by his conduct induced the second Defendant to do that which he would not have done if the Plaintiff had fulfilled his legal obligation?

If so, can he question the legality of an act, which he has so sanctioned, when the doing so would prejudice the second Defendant, who has given faith to the fair inference that might be drawn from the existing registration which Plaintiff has allowed to stand?

There is nothing in the evidence to shew that the second Defendant had any knowledge that the house was claimed by the Plaintiff or that he had a Hodjet for it, until after the completion of the second mortgage in 1895, or that he was anything but a *bonâ fide* mortgagee for value.

Having regard therefore to the dictum of the Supreme Court in the case of Eleni Dimitri H. Petri v. H. Ephrosyni Hadji Gligori, Vol. II., C.L.R., p. 113, and which, in our opinion, rightly expresses the law, it appears to us that the Plaintiff having entirely acquiesced in the registration in his father's name, and knowingly allowed it to subsist for a number of years without taking the proper steps to get it amended, is estopped as against a *bonâ fide* mortgagee without notice of the Plaintiff's right to be registered as owner, from disputing the validity of the mortgage; and that, in fact, the Plaintiff must be taken to have acquiesced in any consequences that might ensue from allowing the registration to exist in his father's name, and, consequently, to have acquiesced in the right which such registration conferred on his father, namely, to mortgage the property to the second Defendant, Georghi Ioannidi Mumji.

For these reasons we are of opinion that the Defendant, Georghi Ioannidi Mumji, must succeed on the second issue.

As regards the Plaintiff's claim to have the registration in his father's name set aside, we are of opinion that he is entitled to this relief and to be registered for the house as against his father, subject, however, to

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the continuance of the mortgage thereon in favour of the Defendant Georghi Ioannidi Mumji, unless the mortgagee chooses to release the property mortgaged on payment or otherwise.

The judgment of the District Court will, therefore, be affirmed, so far as the Defendant Georghi Ioannidi Mumji is concerned, but varied to the extent of granting the relief asked for as against the Defendant Sava Paraskeva, subject to the continuance of the mortgage as aforesaid.

As regards costs, the Plaintiff must pay the costs of the Defendant Georghi Ioannidi Mumji on this appeal, and there will be no order as to costs with regard to the Defendant Sava Paraskeva.

*Appeal dismissed, as regards Defenuant Georghi Ioannidi Mumji.
Judgment varied.*