CASES

DECIDED BY THE

SUPREME COURT OF CYPRUS

ON APPEAL

FROM THE DISTRICT COURTS

AND BY THE ASSIZE COURTS.

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

HUTCHINSON, C.J. & MIDDLETON, J. 1899

Nov. 7

MICHAIL LISSANDRI TAKOUSSI, *Plaintiff,*

v.

ANTONI LISSANDRI AND OTHERS, AS HEIRS OF LISSANDRI BELELE, DECEASED, *Defendants.*

PANAYI LISSANDRI, *Plaintiff,*

v.

MICHAIL AND OTHERS, AS HEIRS OF LISSANDRI BELELE, DECEASED, *Defendants.*

IMMOVEABLE PROPERTY — ARAZI-MIRIE — SALE OF, UNACCOMPANIED BY REGISTRATION—PURCHASE MONEY PAID—DEATH OF VENDOR—CLAIM BY VENDEE OF THE RETURN OF THE PURCHASE MONEY—DEBT—DOCUMENT OF SALE, TERMS OF—INTENTION OF PARTIES TO REGISTER—TEST OF INTENTION—ILLEGAL TRANSACTION—LAND CODE, ART. 36.

L. in 1889 *and* 1890, *executed two documents purporting to sell certain lands to A. and M. for* £50 10*s. and* £46 *respectively, covenanting therein to transfer legally the lands to A. and M. The purchase money was paid in each case, and in the case of A., possession was taken of the lands. L. died in* 1894, *without making any legal transfer either to A. or M., and the lands devolved on L.'s heirs by inheritance. In actions brought by A. and M. for the return of the purchase monies as debts due by the estate of L. to them:—*

HELD: *that A. and M. were not entitled to recover from L.'s heirs the purchase monies paid by them to L. as debts due by them as L.'s heirs, inasmuch as the evidence did not shew that there was any real intention on the part of the vendor and the vendees to perfect the sales by registration and the Court declined to give effect to transactions entered into for the purpose of evading the law as to the registration of land, and to impose obligations on the heirs of L. as the result of such transactions.*

HUTCHINSON, C.J. & MIDDLETON, J.

MICHAIL LISSANDRI AND ANOTHER v. ANTONI LISSANDRI AND OTHERS.

Nov. 18

APPEAL from the District Court of Famagusta.

Economides for the Appellants.

Pascal Constantinides for the Respondents.

The facts and arguments sufficiently appear from the judgment.

Judgment: The claims in these two actions were made respectively by two sons of the deceased Lissandri to recover from his heirs purchase monies alleged to have been paid by the sons in their father's lifetime for certain properties purporting to have been sold to them by the deceased, in pursuance of two documents signed by him, which properties have now devolved on the Defendants by the law of inheritance. In both actions the District Court gave judgment for the Plaintiffs, but as the two female children only of the deceased disputed the claims, the appeal in both cases was made by them alone and the facts being almost identical, the Advocates on both sides agreed that the cases should be argued together.

The claim in Michail's action was for £46 10s., and that in Panayi's for £50 10s., and all the properties included in the two alleged sales consisted of Arazi-mirié.

We have carefully read through the notes of the evidence in both cases and see no reason to doubt, that the finding of the District Court implied in their judgments for the Plaintiffs, that the money claimed was paid, was correct.

The documents in question run as follows:

Document of sale.

[Recital of properties sold with boundaries and prices.]

I, the undersigned, Lissandri H. Antoni, of Lefkoniko, declare by the present official document of sale that I have to-day of my own pleasure and free will, sold my property described on the back hereof. 11 pieces, 19 donums, to my son Michail for £46, which I have received from him in cash, on condition that none of my heirs after my death will disturb him.

I am bound to legally transfer these lands to Michail through the authorities at any time he may call upon me.

In the event of my dying before legally transferring the lands, my other sons to be bound, if they attempt to take a share in those pieces, to pay him (Michail) in the first instance the £46, and the lands to be then divided in equal shares.

In witness whereof I deliver this to him in the presence of the following witnesses:

Lefkoniko,

27th January, 1890.

Document of sale.

[Recital of properties sold with boundaries and prices.]

I, the undersigned, of Lefkoniko, declare by the present official *agreement that I have to-day of my own pleasure and free will, sold my* above mentioned property (lands) pieces 8, donums 16, to my son Panayi for £50 10s., which I have received from him in cash to the last farthing in the presence of the following respectable witnesses.

I, Lissandri H. Antoni, the vendor, am bound to legally transfer the said lands to the said Panayi, the purchaser, through the authorities after 4 months from to-day, *i.e.*, up to the 20th January, 1890, next.

In the event of my receding from this agreement, I bind myself to pay at once the £50 10s. to Panayi, the purchaser, without any difficulty: my other sons shall also have to pay the same sum to Panayi if I die within the interval of the 4 months without having legally transferred the same.

In witness whereof I deliver the present document to my son.

Lefkoniko,
20th September, 1889.

For the Appellants it was contended that the Plaintiff's claims were *excluded by the decisions of the Supreme Court relative to such documents*, more especially by the cases of Constanti Hadji Antoni *v.* Kyriako H. Antoni, p. 66, Vol. IV., C.L.R.; Theodulo Zenobio *v.* Meirem Osman, p. 175, Vol. II., C.L.R.: Georghi H. Petri, &c., *v.* Kypriano H. Petri, &c., p. 187, Vol. II., C.L.R., and that no debt had arisen from the vendor to the purchasers for which the former's heirs were liable.

For the Respondents their Advocate submitted that the cases before us were to be distinguished from those already decided by the Supreme Court, that both parties really intended to carry out the transfer by registration in the manner required by law, and, therefore, that debts had been created for which the vendor's heirs were liable to the purchasers.

We have, therefore, to consider whether, in cases where no legal transfer has taken place previous to the death of the vendor, monies which have been actually paid in virtue of such documents, as those set out, constitute debts recoverable from the heirs of the vendor.

The principle hitherto acted on by the Supreme Court, and which we not only adhere to, but consider ourselves bound by, is, that it will not lend itself to the enforcement of agreements entered into manifestly with the object of evading the law as to the transfer of land.

In our opinion, the nature and intention of the document as evidenced by its terms, and the conduct and action of the parties thereto before and after its execution, are the proper tests to ascertain if it was the intention of the parties to evade the law, or whether a legally enforceable obligation has arisen thereunder. Were these documents then intended as *bonâ fide* agreements preliminary to a legal transfer of the land in question in the immediate contemplation of all parties, or were they merely drawn up without any intention on either side to enforce the law as to the transfer of Arazi-mirié, but to give possession of the land in the hope that it would not be disturbed by the heirs through the fear of having to refund the purchase monies ?

The evidence in Michail's case goes to shew that in 1884, some attempt was made by the endorsement of certain kochans to secure the debt that Michail's father then owed him. An examination, however, of these kochans shews that they represent property entirely different from the property set out in the document subsequently made. Assuming, moreover, that the properties were the same, the fact that a private document was subsequently made would, in our opinion, go to shew, that the parties had abandoned the attempt to carry out a legal transfer, and had adopted the old and familiar practice of the πωλητήριον ἔγγραφον in lieu of that authorised by law.

This document was made in 1890, and after declaring that the vendor has sold " *to-day* " and covenanting for quiet enjoyment by the vendee, the vendor binds himself to transfer legally when called on to do so, and stipulates that, if he dies before the legal transfer, his other sons shall be bound to repay the purchase money if they interfere with the land. Possession of the lands apparently had been given long before to the purchaser, and the purchase money paid, and the vendor did not die till 1894; and there is no evidence that between 1890 and 1894, any call was made upon him to register, or that the parties ever intended that anything further should be done in the matter. We are not aware that there is anything in the Ottoman Law or Laws of Cyprus which enacts that, except in Ordinances and Rules, words importing the masculine gender include the female, and the use of the words ' other sons ' in the document would, in our opinion, exclude the daughters, and thus release the Appellants from any obligation under the document. Putting this aside, however, in our opinion, the parties intended that the document in question should operate in lieu of a title-deed, and the object of the clause at the end was to impose an obligation on the heirs to uphold a transaction which the law does not recognize. This the Courts have always declined to enforce, and we see no reason now to depart from that rule.

The terms of the document given to Panayi were slightly different. The vendor, however, recites an actual sale in 1889, but binds himself to transfer legally in 4 months from the date of it, but in case of δυστροπία on his part, he agrees to repay the purchase money himself. The latter clause of the document is immaterial as the event provided for in it did not happen. There is no evidence in this case that up to the time of the vendor's death in 1894, any attempt was made on either side to perfect the alleged sale by a legal transfer, or that either party called on the other to do so, and the purchase money was apparently paid or taken to be paid at or before the time when the document was drawn up, but there is no evidence of possession of the lands by the purchaser. Can it possibly be said that in this case there was any intention shewn by the parties that any further steps should be taken after the πωλητήριον ἔγγραφον was drawn up? We think not, nor do we think that in this case any obligation is imposed on the heirs of the vendor to repay the purchase money. The purchaser was apparently content with his bargain during the lifetime of the vendor, and if he had possession, it was apparently undisturbed by the δυστροπία of the vendor in his lifetime, which, according to the construction of the document itself, was all that he bargained for, and all that this Court has ever held a purchaser to be entitled to under such circumstances.

In holding this as regards these two particular cases, we do not, of course, intend to include the case of the vendor's death during the negotiation for a sale where the purchase money has been paid and both parties are endeavouring to carry out the law as regards registration, and not to evade it. Such cases are, we believe, contemplated by Article 36 of the Land Code.

For these reasons we are of opinion that the Appellants are not bound to repay to the Respondents their shares of the purchase monies in either case, but as the male Defendants have appeared and admitted their liability, the judgment of the District Court will be varied by entering judgment thereon for the Appellants with costs and that the Plaintiffs recover from the property which each of the male Defendants inherited from his father one-fifth of the sums claimed in the writs of summons, with costs.

The costs of the appeals must be borne by the Plaintiffs in both actions.

Appeal allowed. Judgment of the District Court varied.