

HUTCHIN-
SON, C.J.
&
MIDDLE-
TON, J.
1900
March 26

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

DIAMANTOS HADJI NICOLA AND ANOTHER, AS
HEIRS OF HADJI NICOLA, DECEASED, *Plaintiffs,*
v.
GEORGIOS MOZERA,
NICOLA MANZOURA, *Defendants.*

IMMOVEABLE PROPERTY—HOUSE—SALE AS REGISTERED—MIS-DESCRIPTION—
INTENTION OF PARTIES TO SALE—SUFFICIENCY OF REGISTRATION.

N.'s house registered as containing five rooms but in fact containing eight rooms in a garden with certain boundaries, was purchased under a forced sale by P. in 1887, and registered in P.'s name as containing five rooms only. P. in 1892, mortgaged the same property to G. M., the house being described in the agreement of mortgage as containing eight rooms. In 1897, the Court ordered the mortgaged property to be sold, the order describing the house as containing eight rooms, but the Land Registry Office described the property in the auction bill as it had been described in the registration in N.'s name. The property was purchased by the mortgagee G. M. and registered in his name as originally described under N.'s name.

N. M. was found by G. M. to be a tenant in occupation of all eight rooms under a lease from P. for four years from April, 1897. N. M. had repaired three of the rooms which were in a ruined condition. P. or his lessee occupied the whole house without interference from N. or his heirs from 1887 till 1898, when the heirs of N. brought an action against G. M. and N. M. claiming registration in their names of three of the rooms, and an injunction to restrain further interference.

HELD (reversing the decision of the District Court): *that the evidence shewed that the intention of all persons interested was not to reserve any of the rooms, but that the sales to P. and G. M. should include the whole house containing eight rooms, and that the registration, though the description in it was inaccurate as regards the number of rooms, was sufficient to cover the whole house situate within the garden lying within the boundaries mentioned therein.*

APPEAL from the District Court of Famagusta.

Pascal Constantinides for the Appellants.

Sevasly for the Respondents.

The facts and arguments sufficiently appear from the judgment.

March 31 **Judgment:** This is an appeal of the Defendants from a judgment of the District Court of Famagusta dated the 15th of June, 1899, whereby the Defendants were restrained from interfering with three rooms at Varoshia.

The Plaintiffs' claim is for registration in their names of three rooms in Varoshia, and to restrain the Defendants from interfering with those

rooms, and to cancel or amend any registration of those rooms in the names of the Defendants. They claim as heirs of their father H. Nicola H. Demetri and of their brother Demetri H. Nicola.

The Plaintiffs' case was that their father Nicola was the owner of these rooms, and that he never sold or mortgaged them.

Nicola was the registered owner of a "house and a garden," which are described in his kochan as containing "five rooms and various trees;" the three rooms now in dispute are within the boundaries given in his kochan: but there are now, in fact, eight rooms there; and there has never been any separate registration of the three others, nor is there any evidence (except a hearsay statement of one of the Plaintiffs' witnesses, which is founded on mistaken information), to shew which are the five rooms included in the kochan and which are the three that are not included.

In December, 1887, Pavlos Charalampou was registered as the owner of the same "house and garden," described in the same way as containing "five rooms and various trees," with the same boundaries, he having bought Nicola's interest on a sale under an order of Court. In 1892, Pavlos mortgaged the property; and in 1897, it was bought by the Defendant Georgios Mozera at a sale under an order of the District Court of Famagusta. The agreement for the mortgage mentions eight rooms; and the order for sale directs the sale of "one garden with various trees, well, tank, with eight rooms and verandah;" but the Tapu Clerk, who conducted the sale, described the property in the sale bill in the same way as it was described in the old kochan, and the kochan given to the purchaser contains the same description, "house and garden" containing "five rooms and various trees."

The Defendant Nicola Manzoura is in occupation of all the eight rooms. He deposed, and his evidence is not contradicted, that he hired them for four years from Pavlos: that since April, 1897, he has been tenant of them under the other Defendant; and that after April, 1897, he repaired three of the rooms which were in a ruined condition, by raising the walls and putting on a new roof.

There is no evidence that Nicola reserved or intended to reserve any rooms, or that he or any heir of his ever occupied or interfered with or made any claim in respect of the rooms after the sale to Pavlos in 1887, until shortly before this action.

It appears, although it is not specifically asserted or proved, that Pavlos and the Defendants have occupied all the eight rooms, or so many of them as were capable of occupation, since 1887, without disturbance or claim by Nicola or his heirs until sometime in 1898, when

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the Plaintiffs for the first time asked Manzoura for rent in respect of the three rooms which had been ruinous and which he had recently repaired.

The issue settled was: "are the Plaintiffs entitled to have the three rooms in dispute registered in their own names?"

The only evidence for the Plaintiffs was that of, (1), a Tapu Clerk who prepared the auction bill at the last sale, and who proved that the kochans, on the sale to Pavlos in 1887, on the mortgage in 1893, and on the sale to Mozera in 1897, all mention only five rooms; but that, according to the agreement for mortgage by Pavlos, eight rooms were to be mortgaged; and (2), another Tapu Clerk, who made a plan after the sale to Mozera but before the issue of the kochan to him; he marks on the plan three rooms (marked with a B), which he says were not sold; and the reason he fixes on these three is apparently because he was informed by the Mukhtar that they were not included in the mortgage but were built after the mortgage, information which, according to the case of both parties, was mistaken.

The only evidence for the defence was that of Manzoura, the substance of which has been stated above.

The District Court found as follows: "We are of opinion that the three rooms in dispute were not sold to Mozera. What he bought was a house of five rooms with garden and trees. The Defendants will be restrained from interfering with the three rooms, and Plaintiffs will be registered for them."

The District Court assumed, as both the parties assumed, that Nicola, Plaintiffs' father, was the owner of the three rooms in question as well as of the five mentioned in the kochans; and they must have been of opinion either that as a matter of fact it was intended to reserve three of the rooms, on the sale to Pavlos, or else that as a matter of law, although the sale was intended to include all the eight rooms, yet the kochan given to Pavlos did not cover all the eight, and that, therefore, Nicola's heirs after his death could claim to be registered for the three rooms; and they must also have found, though we cannot see any evidence on the point, that the three rooms claimed in this action are the three which were not included in Pavlos' kochan.

If the Court meant to find as a fact that there was an intention to reserve any rooms on the sale to Pavlos, we cannot agree with that finding; there is no evidence of such an intention; on the contrary, the evidence in our judgment proves that the intention of all the persons interested was that the sales to Pavlos and Mozera should include the whole house—the whole of the eight rooms—and, as that was their

intention, we are of opinion that the kochans, although the descriptions in them are inaccurate, are sufficient to cover the whole house. The registration is not for "five rooms, portion of a house," but for a "house," which house is described as consisting of five rooms. The description was, no doubt, correct at the time it was first written: afterwards, when three rooms were added, it became incorrect; but it does not follow that because it was incorrect it no longer covered the whole house but only the original five rooms. If the new buildings were separate dwelling houses the case might be different. But they are only additional rooms to the old house, whether living rooms or outbuildings we do not know; this we see from the evidence, including the plan made in 1897, which shews all the eight rooms. Possibly the Government might have objected to their being built without the permission of the proper officer and might have required them to be pulled down if they were so built; but the Government has taken no such action, although two of the rooms were built more than twenty years ago; and we necessarily infer that the Government consented to or acquiesced in their being built. They became part of the house, with the consent or acquiescence (if that was necessary) of the Government: and all that was necessary was that the old description of the house should be corrected; and we think that the Land Registry Office ought to and would correct it if asked to do so.

We think, therefore, that the Plaintiffs have failed to prove that they are entitled to be registered as the owners of any of the rooms, and that the judgment of the District Court must be set aside and the action dismissed, and that the Plaintiffs must pay the Defendants' costs in the District Court and of this appeal.

Appeal allowed. Action dismissed.

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