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

HUTCHINSON, C.J. & TYSER, ACTING J. 1900 Dec. 8

HAJI KALLIOPE EVAGGELI, FOR HERSELF AND AS GUARDIAN OF HER INFANT DAUGHTER, *Plaintiff*,

v.

HAJI PAVLI NICOLA, *Defendant*.

IMMOVEABLE PROPERTY—GIFT IN CONSIDERATION OF MARRIAGE—VERBAL AGREEMENT—BREACH—HEIRS' RIGHTS—DAMAGES.

P. in consideration that K. would marry his son X., promised to give a house to his son. K. married X. and the house was taken possession of by X. and K. X. died leaving an infant daughter surviving him, and P. ejected K. and her daughter and resumed possession of the property.

HELD (*reversing the decision of the District Court*) *that the Plaintiffs as heirs of X. were entitled to recover damages for the breach of the agreement.*

APPEAL from the District Court of Papho.

Artemis for the Appellant.

Pascal Constantinides for the Respondents.

The facts and arguments sufficiently appear from the judgment.

Judgment: The Plaintiff claims, for herself and as natural guardian of her infant daughter Athena H. Demetri, who is heir of the late H. Demetri H. Pavli, to restrain the Defendant from interfering with certain property which she alleges the Defendant gave to his son the said H. Demetri H. Pavli, or that he pay the value thereof; and she also claimed certain moveables. The only thing now in question is the claim to a house. The District Court made an order restraining the Defendant from interfering with the house, and it is against that order that this appeal is brought. Dec. 31

The Plaintiff was married to the Defendant's son in 1894; and on the marriage or, more probably, at the formal betrothal the Defendant agreed to give this house to his son; from the date of the marriage until the son's death in July, 1899, the son and the Plaintiff lived together in the house without interference by the Defendant; but on

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the son's death some dispute arose between the Plaintiff and the Defendant, and the Defendant turned her out of the house; whereupon she brought this action. The District Court found that "the Defendant gave the said house to his son as dowry," and said, "we consider this to be a gift within the meaning of Article 861 of the Mejellé, and as such it is irrevocable as provided by Articles 866 and 872," and "on these "grounds the Court grants the restraining order claimed as to the said "house."

It does not appear in whose name the house is registered; but it is plain that it is not registered in the name of the Plaintiff or of her late husband. It is well established by many decisions of this Court, founded (in case of Arazi-mirié) on Article 1 of the Regulations of 7th Shaban, 1276 (Ongley's translation, p. 89), and (in case of Mulk) on Article 1 of the Law concerning title-deeds for Mulk of 28th Rejeb, 1291 (Ongley's translation, p. 229), that the Court will not recognize any person as owner of Arazi-mirié or Mulk except the registered owner, and that any attempt to transfer the ownership without registration is ineffectual.

The judgment of the District Court is therefore wrong in so far as it recognizes the Plaintiff as owner of the house and orders the Defendant not to interfere with it; for the effect of the previous decisions to which we have referred is that a mere agreement to sell or give immoveable property, where the parties do not intend that the property shall be registered in accordance with the agreement, is ineffectual to transfer the ownership or the right to be registered as owner, and in this case there was no completed "gift" but only an agreement to give, which, there not having been any registration or any intention to register in pursuance of it, was ineffectual to transfer the ownership.

The Plaintiff, however, contends that if the Court holds that the Defendant is entitled to retake possession of the house he ought to be ordered to pay damages for breach of his agreement; and he relies on the case of Myrianthe Markouli *v.* Ioanni H. Markouli, C.L.R., Vol. III., p. 32, in which upon similar facts such an order was made. In reply to this the Defendant objects that in the case referred to it was proved that the marriage took place in reliance on the father's promise to give the property, that it was the consideration for the promise (to use the English Law term) and that the marriage would never have taken place if the promise had not been made; whereas in this case the Defendant's promise was voluntary and without consideration, and there is nothing to shew that the marriage took place in reliance on the promise.

The evidence of the Plaintiff on this point is that there was no contract of dowry; that the Defendant refused, saying that he was willing to give the house to his son and it was not necessary; and that he said to his son " I give you this house as dowry," in the presence and hearing of the priests who married them. Her father deposes that " I " gave my daughter lands as a dowry. No contract of dowry was entered " into between myself and Defendant. At the time of the betrothal of " my daughter to Defendant's son, he promised to give his son this " house as a dowry." There was no evidence for the defence. The District Court found that " on the day of the marriage " the Defendant gave the house to his son as dowry. We should rather say that this evidence, being uncontradicted, proves that the gift was promised on the day of the betrothal; but that is not very material. That the gift was, in fact, promised has never been denied by the Defendant: at the settlement of issues he only said that he had merely given his son the use of the house and not the ownership of it, and the issue settled on that point was, " were the immoveables given to the deceased, or only the " use of them? " At the trial his Advocate said nothing about this, but simply relied on the fact that the Defendant's son had not been registered; and before us his contention has been that there was no consideration for the Defendant's promise, and that, therefore, no damages can be recovered for the breach of it.

We agree with the District Court that it is proved that the Defendant intended to give the house absolutely to his son; and we also think that the promise was made in consideration of the marriage. Before the marriage, and in contemplation of it,—whether during the preliminary negotiations, or at the betrothal, or on the wedding day is immaterial,—the bride's father promises to give lands to her, and the bridegroom's father promises to give him a house; then the marriage takes place, and the newly married couple, with the assent of their parents, at once take possession of the lands and the house. It is hopeless to argue before us that the promises made by the parents should be regarded as voluntary and made without consideration.

Accordingly we hold that if the son had been living he would have been entitled to damages in accordance with the decision in the case of Myrianthe *v.* Ioanni Markoulli quoted above, if his father had ejected him from the house. The principle of that decision is the same as is explained in several other cases, of which Theodoulo Zenobio *v.* Meriem Osman, C.L.R., Vol. II., p. 172, is one: viz., that the Court will not allow a vendor to take a wrongful advantage of his own share in a transaction which he knows is without legal effect,—to take back the

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land and to keep the price of it. That applies equally where the purchaser is dead. The Defendant is therefore liable to pay damages to his son's heirs, and there is sufficient admission in these proceedings that the son died intestate and that the Plaintiff and her child are his heirs. There is no evidence or admission as to the value of the house; we therefore remit the case to the District Court to fix that value. The amount so ascertained must be paid by Defendant into the District Court, and that Court will then make such order as it thinks right as to the apportionment of the money between the heirs of Demetri H. Pavli.

Defendant to pay the costs of this appeal.

Appeal allowed.