

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

KATRIE IBRAHIM, AND MEIREM IBRAHIM AS
 GUARDIAN OF THEIR MINOR CHILDREN ALL HEIRS
 OF IBRAHIM BAKI, *Plaintiffs,*

v.

VASILI HAJI NICOLA AND OTHERS, *Defendants.*

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 &
 MIDDLE-
 TON, J.
 1901
 April 3

IMMOVEABLE PROPERTY—ARAZI MIRIE—MULK—SALE—PRESCRIPTION—BONA FIDE PURCHASER REGISTERED—WATER RIGHTS—REGISTRATION—THE OTTOMAN LAND CODE, ART. 43.

A. by private sale in 1884, the day and the month not proved, sold land, water rights, trees and buildings on the land to B., and B. and his heirs remained in possession till 1899. A. in 1898, having obtained registration for all the property, sold it to C., D. and E. who became registered for it.

In September, 1899, the heirs of B. sued A., C., D., E. to set aside their registration for the property in question on the ground that B. and his heirs had obtained a title to it by prescription before the transfer by A. to C., D. and E.

HELD (reversing the decision of the District Court): that as regards the land and water rights the heirs of B. were entitled to succeed on the ground that for the land they had shewn 10 years' uninterrupted possession, and that the sale of the water rights was valid without registration.

HELD further: that a prescriptive title had not been proved by the heirs of B. as regards the trees and buildings.

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.

Judgment: The claim in this action was for an order, (1), to set aside the title-deeds of the Defendants for a garden at Lithrangomi of 6 donums in extent, with running water for 20 hours every 6 days, and containing various trees; (2) to register the properties in the names of the Plaintiffs; (3) to restrain the Defendants from interfering with the properties.

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The Plaintiffs were the two widows of Ibrahim Baki suing on behalf of their children by him; and Defendants were purchasers of the garden in question from Ayishé the sister of Ibrahim.

The garden in question was said to form part of a larger garden of about 18 donums inherited by Ibrahim, Ayishé and another brother Mentesh from their father Baki. The facts as alleged by the Plaintiffs

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were that Ibrahim some 15 or 20 years ago purchased the share of Ayishé in the garden, which he and they had occupied since, and that his heirs consequently were now entitled to be registered by prescription. The Defendants alleged they had purchased the garden in good faith from Ayishé, a duly registered owner, without notice of any claim on behalf of the heirs of Ibrahim.

The issues settled were: (1) Has this property been in the possession of Ibrahim for 15 or 20 years? (2) Are the Kochans of the Defendants valid?

Upon the case coming on for hearing, the Advocate for the Defendants objected that certain of the alleged minor Plaintiffs were of age; and the Court made an order, which the Advocate for the Plaintiffs undertook to have drawn up, to amend the summons by stating that Mehmet and Akilé were suing on their own account. The summons however does not appear to have been amended although the order was drawn up.

The District Court gave judgment dismissing the Plaintiffs' claims, but without setting out any reasons.

The Plaintiffs appealed, and for them it was contended that a prescriptive title had been proved by the Plaintiffs by 15 years' possession, and that the Plaintiffs' witnesses were not cross-examined on this point; that the fact that a sale of her share of the garden to Ibrahim by Ayishé took place was shewn by the Village Judge's notes of the action brought by Ayishé to recover the balance of the purchase money from Ibrahim; that the story told by Ayishé as to her repurchase from Ibrahim was a concoction; that every one in the village, including the Defendants, must have known of the sale by Ayishé to Ibrahim, and especially one of the Defendants who it was alleged had signed a village certificate in 1895 to the effect that the garden was Ibrahim's when a creditor was seeking to sell his property for debt, and consequently that the Defendants were not *bona fide* purchasers.

For the Defendants the judgment of the District Court was supported on the ground that the Plaintiffs had not proved a prescriptive title, and that the Defendants were *bona fide* registered purchasers from Ayishé the registered owner.

In consequence of the representations of the Advocate for the Plaintiffs we have examined the copy of the Village Judge's notes and the certificates which we believe he alluded to.

The action before the Village Judge of Leonarisso was heard on the 13th December, 1888. It was a claim for £4 10s. balance of purchase money of a phrakte brought by Ayishé against Ibrahim, and was adjourned by the Village Judge to the 15th January, 1889, to enable the

parties to effect registration of the property, and upon that day, no parties appearing, the action was dismissed.

From these notes it is clear that Ayishé then stated to the Village Judge that she had sold her entire interest in this garden to her brother Ibrahim in the year 1884. Now Ayishé in her evidence says that she did bring such an action, but that the sale took place eight or nine years ago from the time she was then speaking, and that she repurchased her share the same year from Ibrahim. From this it is evident that Ayishé is not speaking the truth as regards the resale to her by Ibrahim, and a fair inference may be drawn that if she is untruthful as to this she will be equally so as to her alleged occupation of the garden after the sale to Ibrahim.

We cannot find that any of the Defendants are signatories or parties to any of the village certificates that have been laid before us.

If the evidence of Ayishé is untrue as to the Plaintiffs' occupation, the evidence given by and on behalf of the Plaintiffs seems to us to shew conclusively that from 1884 to the date of this action Ibrahim and his heirs were in occupation of Ayishé's share of the garden without interruption, and that a title to be registered for the land on the ground of prescription has been proved on behalf of the heirs of Ibrahim.

As regards the water rights we think that from Ayishé's statement before the Village Judge it may reasonably be inferred that she sold them also in 1884 to Ibrahim; and as in our opinion the sale of such rights does not require registration for their valid transfer we must hold that the title to these water rights is vested in the Plaintiffs.

As to the fruit-bearing trees, buildings and wheel-well these are Mulk, and no title by 15 years occupation has been proved by the Plaintiffs in respect of them.

The question then is whether this title by prescription to the land is to prevail as against the Defendants' title by registration, even though it was acquired by *bona fide* purchase from another registered person.

By Art. 43 of the Land Law it would seem that the principle is that unauthorized alienation of the land of another will not confer a good title and that it can be cancelled.

Here in 1898, when Ayishé purported to sell to the Defendants, a title by prescription had vested in the Plaintiffs a right to be registered for the land as owners, in fact in the eye of the law the Plaintiffs were the owners of the land.

Ayishé therefore in 1898 was selling to the Defendants that which she had no right to sell, and therefore whether the Defendants were *bona*

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HUTCHIN- *vide* purchasers or not they were buying that which Ayishé did not own
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In our opinion therefore the Plaintiffs' title to the land and water rights must prevail as against the Defendants, and the judgment of the District Court must be set aside so far as it affects these two properties. The appeal therefore will be substantially allowed, and judgment will be entered for the Plaintiffs for an injunction to restrain the Defendants from interfering with that portion of the garden which fell originally to Ayishé's share by inheritance from her father and with the water rights pertaining thereto: and for an order enabling the Land Registry Office to set aside the Defendants' Kochans so far as they apply to the land and water rights in question and to register the Plaintiffs therefor: and the Defendants must pay the Plaintiffs' costs of this action and of this appeal; the issue of the injunction and recovery of costs under this judgment to be subject to the production by the Plaintiffs of a Kochan for the properties in question.

Appeal allowed in part. Judgment of the District Court varied.