

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

PANAGI LOIZO,

Plaintiff,

PAPA CHRISTODOULO P. PHILIPPOU,

Defendant.

EX-PARTE HAJI ECONOMO IANNE.

HUTCHINSON, C.J.
&
PARKER,
ACTING J.
1904
July 16

ARAZI-MIRIE—POSSESSION FOR TEN YEARS WITHOUT REGISTRATION—ABANDONMENT OF RIGHT TO BE REGISTERED—EFFECT OF REGISTRATION OF JUDGMENT—LAW 8 OF 1894, SEC. 9.

C. was in possession of Arazi-Mirié without registration for more than 10 years before 1889; in 1889 he sold it to H., who then took possession and continued in possession without being registered. In 1897 L., having a judgment for money against C., registered the judgment and deposited a memorandum which covered this property, and in 1898 he applied for and in 1900 obtained from the Court an order for the property to be registered in C.'s name and sold in execution of L.'s judgment.

Held: that the registration of L.'s judgment did not prevent time running in favour of H., and that the registration in C.'s name was wrongful.

Appeal by the Plaintiff from an order of the District Court of Papho made on the application of Haji Economo, setting aside an order for registration of Arazi-Mirié in the name of the Defendant and for sale of it in execution of the Plaintiff's judgment against the Defendant.

For 10 years before and up to 1889 the Defendant was in possession of the land, without registration; in August, 1889, he sold it to Haji Economo, who then took possession and remained in possession, without registration, until the date of the application upon which this order was made.

In 1896 the Plaintiff obtained judgment against the Defendant for £20, and in March, 1897, he registered his judgment in the Land Registry Office and deposited a memorandum which included this and other property. In September, 1897, he applied to the Land Registry Office to have the land registered in the Defendant's name; the application was refused; in 1898 he appealed to the District Court against the refusal; and in 1900 the Court, in reliance on the Defendant's sworn statement that he had been in possession of it for about 22 years immediately before that date, ordered the land to be registered in the Defendant's name and to be sold in satisfaction of the Plaintiff's judgment.

Haji Economo then applied to the District Court for an order to exempt the land from the sale and to set aside the registration in the Defendant's name; and the District Court made the order, disbelieving the Defendant's statement as to his 22 years possession and finding that Haji Economo had had undisputed possession for more than 10 years.

HUTCHIN-
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—
PANAGI
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v.
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PHILIPPOU
—

The Plaintiff appealed.

Pascal Constantinides for the Appellant.

Artemis for Haji Economo.

Pascal relied on the case of *Yeronymos Michail v. Haralampo Andoniou*, 2 C.L.R., 145, and argued that the registration of his judgment in March, 1897, prevented time running in favour of Haji Economo; Haji Economo's possession began in August, 1889, so that his 10 years were not complete until August, 1899; "whereas" he said, "when the Appellant deposited his memorandum in 1897 the Defendant was the owner of the land, having had possession of it for more than 10 years prior to August, 1889; and the effect of the memorandum was therefore to render the land answerable for the Appellant's judgment debt."

Judgment: After stating the facts and the arguments the Court continued:

In the case of *Yeronymos v. Haralampo* the Defendant was the registered owner of the land; in other respects the circumstances were similar to those of the present case, and the decision went on the terms of Sec. 13 and 14 of Law 10 of 1885, which however were repealed by Law 8 of 1894, and do not apply to this case. In consequence of Law 9 of 1896, the Court could not order the sale of this land until it was registered in the Defendant's name; and the Plaintiff accordingly had to apply to have it so registered.

At the date when this application was first made to the Land Registry Office the Defendant had been out of possession for 8 years. Had he then a right to be registered as owner in respect of his previous possession? That depends on Art. 78 of the Land Law, which enacts that if a person has possessed and cultivated *Arazi-Mirié* for 10 years without interruption the land cannot be looked on as *Mahlul* but a new *Tapu sened* shall be given to him. In 1889 he apparently had a right under this section to have himself registered if he asked for it. But he never asked for it; on the contrary he abandoned his right and gave up possession of the land to Haji Economo. In our opinion he could not after that claim to be registered. We think therefore that the decision of the District Court was right. The judgment of the District Court should be amended by adding after the words "adjudge that" the words "subject to the production of a *kochan* for the said three-fourths by the Defendant"; in other respects it should be confirmed.

Judgment varied.