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ACTING C.J.
&
PARKER,
ACTING J.
1905
July 11

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

DIMITRI ECONOMOU, *Plaintiff,*
v.
HARALAMBO CONSTANTI AND ANOTHER, *Defendants.*
EX PARTE DIMITRI ECONOMOU.

EXECUTION AGAINST IMMOVEABLE PROPERTY—REGISTRATION OF LAND IN NAME OF JUDGMENT DEBTOR—LAWS IX. OF 1896 AND IV. OF 1898.

On an application to register land in the name of a judgment debtor, the judgment creditor is bound to be ready to pay the fees of registration when the Land Registry Office is prepared to make registration.

On failure to pay the fees the Land Registry Office may refuse to register. If the fees are subsequently paid the Court can order registration.

This was an appeal from a judgment of the District Court of Papho dismissing an application of the judgment creditor for an order directing the Principal Officer of the Land Registry Office of Papho to register certain properties in the name of the judgment debtor.

Th. Theodotou for the Appellants.

Adoni for the Land Registry Office.

The facts appeared to be as follows:

The Plaintiff having recovered judgment against the Defendants applied on the 17th March, 1904, to the Principal Officer of the Land Registry Office to register certain properties in the name of the Defendants.

On the 11th of June, 1904, notice was given to the judgment creditor that the Principal Land Registry Officer was prepared to register the properties as desired on payment of the fees shewn against each such property and that if the fees in question were not paid within three months of the date of the notice the properties might be registered on the application of another judgment creditor.

On the 14th September, 1904, the fees not having been paid, the Principal Land Registry Officer gave notice that he was unable to comply with the application of the 17th March, 1904, on the ground that three months had passed and no fees had been paid.

Upon this the applicant appealed to the President of the District Court of Papho and from him to the full Court.

The District Court refused the application on the ground that there was no refusal to register but only a refusal to receive fees and that the proper remedy was by mandamus.

Judgment: After reciting the above facts the Court continued as follows:

We differ from the view taken by the District Court of the facts of this case.

On the documents, which are the only evidence before us, it appears that the Principal Land Registry Officer delivered to the applicant on the printed form provided for that purpose a refusal to register, and the reason endorsed on that form was that three months had passed and no fees had been paid.

The District Court was of opinion that this was not a refusal to register under the act, but a refusal to receive fees.

We cannot understand this view. There is no evidence that the fees were ever tendered or refused. The only thing before the Court is a refusal to register.

The District Court draws a distinction between a refusal to register consequent upon the fulfilment of the conditions precedent laid down in Sec. 3 of Law IX. of 1896, and a refusal to come to a determination because the conditions precedent have not been fulfilled.

The only evidence in this case is that the Land Registry Officer did come to a determination not to register.

He came to that determination because the conditions on which he was entitled to come to a contrary determination were not fulfilled and was in our opinion quite right to do so.

There can be no question of a mandamus which is only granted when a public official refuses or neglects to do his duty.

Here the Land Registry Officer did his duty. If the execution creditor wishes to reverse the decision of the Land Registry Officer he is empowered by Sec. 6 of Law IX. of 1896, to apply to the District Court or a Judge thereof.

Now in this case it appears from the documents that there was evidence on which the Land Registry Officer would have effected registration if the fees had been paid.

If that evidence satisfied the Court the Court would, unless there were some reasons to the contrary, order registration to be effected, if it were shewn that the fees had since been paid, or that a tender of the fees had been made to the Land Registry Officer and the amount of the fees paid into Court.

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Such an order would not extend the time under which the property is charged under Sec. 3 of Law IV. of 1898, because that time runs from the receipt of the notice that the Land Registry Officer has refused to register.

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In this case however the Court had no evidence of the right of the judgment debtor to be registered, or that the fees had been paid and therefore rightly refused to order registration.

There was another question raised in this case as to the time within which the fees for registration should be paid.

The Land Registry Officer contended that the applicant was debarred from paying after the expiration of three months from demand or a reasonable time. The applicant seems to have contended that he might tender the fees at any time.

In our opinion the law requires the applicant to be ready to pay the fees at the time when the Land Registry Officer is ready to effect registration.

After sending in his application the applicant is bound (1) to procure that a local inspection be made of the property; (2) to adduce sufficient evidence; (3) to pay the fees. If he fails in the performance of any of these three things, the Land Registry Officer may refuse registration.

It may be that no one can complain if the Land Registry Officer gives further time for the payment of fees. As to that we express no opinion.

But in our judgment on the true construction of the Law it is not necessary. The applicant knows what is required of him when he makes his application.

If the ground of the refusal is removed by the subsequent payment, the Court can order registration, in the same way as it could order registration if sufficient evidence were not adduced before the Land Registry Officer and better evidence were subsequently produced before the Court.

There is another point as to the form in which the application to the Court should be made.

By Sec. 6 of Law IX. of 1896, the application is to be made to the District Court of the District in which the property is situated. It does not say how it is to be made.

The application should be by motion or petition but not by motion in the action in which the judgment was recovered.

The notice of motion might be in the following form:

In the District Court of Papho.

In the matter of Law IX. of 1896 and

In the matter of the refusal of the Land Registry Office of the District to register in the name of judgment debtor the properties set out in the application of of dated the day of

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Take notice that an application will be made before the Court or a Judge thereof on the day of or as soon thereafter as the said applicant or his Advocate can be heard for an order that the said properties shall be registered in the name of the said of

Dated of To the Principal Land Registry Officer of the District.

Signed of (applicant) or (advocate)

for of This notice should be served on the Principal Officer of the Land Registry Office and the application heard at the time fixed by some Judge of the District Court.

We do not say that this is the only procedure which may be adopted, but as the Act is silent as to procedure and there appear to be no rules we indicate this course for the guidance of applicants under the Act.

Appeal dismissed with costs.

The case of *Rex v. Theophani Yeorgi* reported in pages 126-127 of the original edition is no longer of any importance.