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

MEHMED HAJI HASSAN DAMDELEN AND OTHERS, *Plaintiffs,*

v.

MEHMED ALI ZAIM, *Defendant,*

COSTA PAPA IANNI AND OTHERS, *Applicants.*

WRIT FOR SALE OF IMMOVEABLE PROPERTY—SHERIFF, DUTIES OF—EVIDENCE—ISSUE OF WRIT—LAW X OF 1885, SECS. 48, 58—LAW VIII OF 1894, SEC. 15—LAW IX OF 1896, SEC. 1.

The Sheriff must follow the directions of the writ of sale.

HELD: *that a direction to sell an undivided fifth of two or more properties is not an authority to sell the entirety of any of them.*

The Court must require proper evidence that immoveable property required to be sold under a writ of execution is the property of the judgment debtor.

HELD: *that on an application for a writ of sale of immoveable property in* 1899, *the Court ought not to have accepted a certificate of search dated in* 1892.

HELD: *that in an application under Sec. 58 of Law X of* 1885, *the Court may make an order, although the Defendant has not appeared, and though it is not proved that he has had notice of the application, if under the circumstances it is not necessary that he should be notified.*

APPEAL from the judgment of the District Court of Nicosia dismissing an application made on behalf of the Applicants under Sec. 58 of Law X of 1885.

The facts are as follows:

The Defendant and his four brothers inherited from their father certain immoveable property situated at Agios Vasilios, and in the old registration of the Land Registry Office they were registered as joint owners in undivided shares.

It appeared from the Field Books that between June and November, 1891, a new registration of the lands of Agios Vasilios was made, which was subsequently copied into the registration books of the Land Registry Office.

On the occasion of the new registration the Defendant and his brothers made a partition of the immoveable property above mentioned.

At the new registration the Defendant was registered as sole owner of certain immoveable property, all of which, with the exception of one lot, was included in the properties previously registered in the names of the five brothers.

In or prior to 1892 the Plaintiffs had obtained a judgment for £18 against the Defendant.

On the 26th May, 1892, the Plaintiffs, by their Advocate, applied for a certificate of search of properties registered in the Defendant's name.

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The Principal Land Registry Officer informed the Plaintiff's Advocate that the new registration was not completed; upon which the Plaintiffs' Advocate asked for a certificate of search from the old registration.

On the 17th November, 1892, the Plaintiffs obtained a certificate of search, shewing that the Defendant and his four brothers were registered as joint owners in undivided shares of the immoveable property first mentioned. This is the certificate of search referred to in the writ hereinafter mentioned as being marked A.

The Land Registry Officer made a note at the end of the certificate of search in the following terms:

" P.S. But a new registration of Agios Vasilios has been made."

On the 14th April, 1893, the Plaintiffs obtained a writ of execution requiring the Sheriff to raise the amount of the judgment debt " by sale " of the interest of the Defendant in the immoveable property herein- " after specified, that is to say, one-fifth share of that property described " under registrations No. 267 to 293 given in certificate of search hereto " attached and marked A, being the certificate above mentioned, such " property appearing by the said certificate of search to be now registered " in the names of," (here follow the names of Defendant and his four brothers), " in the old Tapu Registers."

This writ was returned to the Court by the Sheriff unexecuted.

In 1895, the Plaintiffs placed a memorandum on the Defendant's interest (stated in the memorandum to be one-fourth), in the same properties.

On the 30th December, 1899, the Plaintiffs obtained another writ in exactly the same terms as the writ of the 14th April, 1893, above mentioned.

The Land Registry Office in execution of the writ of the 30th December, 1899, proceeded to sell the entirety of the property registered in the name of the Defendant in the new registration.

The Applicants, who are also judgment creditors of the Defendant, and who in 1896 and 1900, placed a memorandum on the property registered in the Defendant's name in the new registration, obtained in 1901 a writ for sale of that property in satisfaction of their judgment, and then applied to stay the sale of four-fifths of the property which the Land Registry Office was proceeding to sell under the Plaintiffs' writ. By agreement the sale was allowed to proceed and the application was treated as one for payment to the Applicants of four-fifths of the proceeds of sale.

The District Court dismissed the application " on the ground that the " one-fifth (on which Mr. Pascal's client's memorandum was put) was

" sold, and the proceeds now in Court represent Mr. Pascal's client's " established right."

Mr. Artemis for the Applicants.

Mr. Pascal for the Plaintiffs.

The Defendant did not appear, and it was not proved that he had notice of the application.

THE CHIEF JUSTICE, after setting out the facts, gave judgment as follows:

March 14

Judgment: The writ of 1899 ought not to have been issued by the Court, because the Defendant was not then registered for the property which the writ directs to be sold, and, besides, the Court ought not to have accepted a certificate of search, dated in 1892, as proof that the Defendant was registered in respect of the property in 1899. As however it was issued, the Sheriff was entitled to act on it, if there was nothing to shew that the property, which it directs to be sold, was not the property of the Defendant. But in this case a large part of the property, of which one-fifth is directed by the writ to be sold, was registered in the names of other persons, and other part of the property was registered in the sole name of the Defendant, and a memorandum of judgment had been placed by the Applicants on that part. Under these circumstances the Sheriff ought to have applied to the Court for directions.

The Sheriff, to whom a writ is delivered for execution, must follow the directions of the writ; and a direction to sell an undivided fifth share of two properties is not an authority to sell the entirety of one of those properties; and it may even be questioned whether, in the circumstances of this case, and having regard to the memorandum which had been placed by the Applicants on the Defendant's interest, the Sheriff was justified in selling anything at all in pursuance of the writ of 1899.

In my opinion there was no power to sell under the Plaintiffs' writ anything except, perhaps, the one-fifth share which that writ directs to be sold. It is not even shown that the properties, which at the date of the sale were registered in the Defendant's name, are equivalent in value to the one-fifth share, for which he was formerly registered; but if it were shown I do not think it would make any difference. In my opinion the other four-fifths of the property sold should have been sold under the writ of the Applicants and they are entitled to the proceeds of that four-fifths.

The Defendant has not appeared; and it has not been proved that notice of this application was given to him. But I do not think it necessary in the circumstances that he should be notified.

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The order will be that the order of the District Court of the 20th December, 1902, be set aside, and, in lieu thereof, that four-fifths of the proceeds of the immoveable property of the Defendant sold under the writ of 30th December, 1899, be paid to the Applicants, the heirs of Haji Papa Ianni Marcou, in satisfaction of their judgment against the Defendant, and that the Plaintiffs pay the costs of the Applicants of the application to the District Court and of this appeal.

TYSER, J.; I agree.

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April 30

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ZEHRA KHANIM AND W. COLLET AND MEHMED SADYK (DELEGATES OF EVKAF), *Plaintiffs,*

v.

CONSTANTI DIANELLO AND MICHAEL BAKIRJIDES (TRUSTEES OF THE PHANEROMENE CHURCH), *Defendants*

VAQF—DEDICATION—BUILDINGS ERECTED ON VAQF LAND, PROPERTY IN—EXTENSION OF INHERITANCE—LAW 19 JEMAZI UL AKHIR, 1280—REPORT ON PIOUS ESTABLISHMENTS 1 JEMAZI UL EVVEL, 1284—LAW 15 ZILQADE, 1292—EMIRNAME 23 REBI-UL EVVEL, 1293

There can be a valid dedication (Vaqf) of property, although there is no Vaqfieh

Buildings erected by the Mutasarrif (a) with the consent of the Mutevelı, on ıjareteınlu land, formerly vahıdelu and converted, are the property of the Vaqf

On the extension of inheritance, the fee of three per centum must, in such a case, be paid on the value of the site and houses

The Law 15 Zilqade, 1292, does not authorize an application for the extension of inheritance of a part of a property without the consent of the Mutevelı

This was an appeal from a judgment of the District Court of Nicosia, dated 20th January, 1903

The question for decision in the action was, whether the Defendants were entitled to extension of right of inheritance in respect of an ijareteinlu vaqf site, without paying any fee in respect of the value of buildings erected by them on the site.

The facts are as follows.

The Plaintiff Zehra Khanim is the Mutevelı of Ali Ruhi Vaqf

The Plaintiffs, Collet and Mehmed Sadyk, are the Delegates of Evqaf appointed by virtue of the Annex of the 1st July, 1878, to the Convention between England and Turkey of the 4th June, 1878.

The Defendants are trustees of the Agia Phaneromene Church

The vaqf is a mulhaqa vaqf, and is possessed of certain land in Nicosia.

This land was formerly a garden with two rooms and trees on it and was at one time mevqufe property of the vahıdelu category.

(a) The Mutasarrif is a person who has a limited ownership in property, *e g.*, a holder of ijareteinlu property.