

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

MACARIO HIEROMONACHO,

Plaintiff,

v.

LONGINOS HAJI CHRISTODOULO AND ANOTHER,

Defendants.

HUTCHINSON, C.J.  
&  
TYSER, J.  
1905

Dec. 27

QOCHAN—REGISTRATION—ADDITIONS AND ALTERATIONS TO BUILDINGS  
AFTER REGISTRATION—NECESSITY FOR NEW REGISTRATION.

*A gochan inaccurate in the description of the quantity of the property registered may be a good document of title to the whole property.*

*Mere additions which have become part of a building properly identified by gochan are covered by the gochan. It is not necessary to take out a new gochan or to amend the old one.*

*L. being registered for a one-roomed house and yard, added to the house a room and veranda, without making any alteration in the registration, and subsequently mortgaged the property. In the mortgage the property was described as a house and yard, and the quantity as one room.*

*The property was sold by the mortgagee and bought by the Plaintiff, and the same description was inserted in the auction bill and the Plaintiff's gochan.*

HELD: that the Plaintiff's gochan covered the new room and veranda.

This was an appeal by the Plaintiff from the judgment of the District Court of Nicosia.

The claim in the writ was to restrain the Defendants from interfering with a house alleged to belong to the Plaintiff by gochan.

The District Court dismissed the action on the ground that the house was not included in the Plaintiff's gochan.

The facts were as follows:—

By gochan dated the 15th November, 1895, the Defendant Longinos was registered as owner of a property described as follows:—

Kind (jins), dwelling house and yard; quantity, one room; boundaries, Yanni Haji Christoghli \* \* \* Street, etc.

This description followed that in the Field Record which was made in 1887.<sup>(1)</sup>

Some time after the making of the Field Record, Longinos built another room and a veranda at the end of his yard furthest from the old room. The room and veranda were within the boundaries set out in the gochan and fronted the boundary street, and the only access to the old room was through the veranda. The new buildings were not attached to the old one.

There was no new registration for the new buildings, and no alteration made in the description contained in the Field Record to denote the additions made, nor were they mentioned in the plaintiff's gochan.

In February, 1899, after the erection of the new buildings, Longinos mortgaged the property comprised in the registration of 1895. The mortgagee obtained judgment against him for the amount of the

<sup>(1)</sup> The Field Record is the record of a Yoqlama commenced in 1884, and completed in 1892. Qochans are issued on this record without any further local inspection.

HUTCHIN-  
SON, C.J.  
&  
TYSER, J.

MACARIO  
HIEROMO-  
NACHO  
v.  
LONGINOS  
HAJI CHRI-  
STODOULO

mortgage debt, and the mortgaged property was sold in execution and bought by the Plaintiff.

The auction bill described the property in the same way and with the same boundaries as the registration of 1895, and the registration in the name of the Plaintiff gives the same description and the same boundaries as were given in that registration.

The question raised was whether the Plaintiff's qochan included the new buildings so that the Plaintiff could prevent the Defendant from making use of them.

*G. Chacalli* for the Appellant.

Qochan for house and yard includes subsequent building on yard; and transfer of registered yard would transfer building with it.

Registration of site of building is sufficient.

He cited *Diamantos Haji Nicola v. Georgios Mozera*, C.L.R. v, 35.

*M. Svasly* for the Respondent.

No evidence of intention to include the new room. New room and veranda are not included in qochan or mortgage. New room and veranda are a separate house.

1906

Jan. 6

*Judgment:* CHIEF JUSTICE: The Defendants contend that neither the mortgage nor the sale nor the registration in the Plaintiff's name included the new buildings.

If it were a question only of what the parties intended, one could not have any reasonable doubt that both the mortgagor and the mortgagee when the mortgage was made intended that the new buildings should be included in it. But the point is whether the registration of the house covers the new buildings which, having been added after the date of the registration, are of course not mentioned in it.

The Law is that the possession of emlak without a qochan is unlawful. Therefore if a man having a qochan for a field only, builds a house on the field, the qochan will probably not cover the house. Or if he has a qochan for one house and afterwards builds another, separate from and in addition to the first house, but within the boundaries given by the qochan, the qochan will probably not cover the new house. But how is it where, having a qochan for a house, he builds an addition to the house, such as a stable or a kitchen or an extra room? or where he pulls down and rebuilds the house, wholly or partially?

In the case of *Diamantos Haji Nicola v. Georgios Mozera*, reported in C.L.R. v, 35, the registered owner of a house, which was described in his qochan as consisting of five rooms, had altered some of the rooms and added some new rooms, so that at the date when the question as to the sufficiency of the registration arose the house consisted of eight rooms; and the Court held that the registration for a house covered the house as it existed at the time when the question arose, although the description as to the number of rooms had become inaccurate. I understand from the Land Registry Officers that they have in some cases acted on the principle on which that judgment proceeded, and that when a question comes before them as to whether a qochan covers buildings which have been erected since the registration (either in addition to or in substitution for those described in the qochan), they hold that where the new buildings

are only an addition to and so have become part of the building described in the gochan, they are covered by the gochan.

In my opinion that is good sense and good law. The registration of a house covers the house as it exists for the time being, with any alterations or additions that have been made; and where the registration states the number of rooms of which the house consists, that statement is, unless a contrary intention appears, merely descriptive; and an inaccuracy in the description is immaterial, provided the property is clearly identified.

Applying the above rule to this case I find as a fact that the new building is substantially an addition to the old; the old building cannot be approached except through the new; and the old and the new together form one house and are covered by the Plaintiff's gochan.

The judgment of the District Court should therefore be set aside and judgment given restraining the Defendants from interfering with the house; and the Defendants must pay the Plaintiff's costs in the District Court and of this appeal.

TYSER, J.: It was contended by the Defendant that the new room and the veranda, as they did not exist at the date of his registration, were not included in that registration; that they were not included in the mortgage because the mortgage was based on that registration; and consequently that the Plaintiff who took only the mortgaged property was not owner of the new building and veranda, and that the new building and veranda still belonged to the Defendant.

It was also contended that the Plaintiff was only registered for a house with one room and therefore could not assert his right to more.

It was also contended that the new building was not an addition to the old house, but a separate house and that therefore there were two houses in the yard and as the Plaintiff was only registered for one he had not and could not assert any rights over the other.

As to the last point I am clearly of opinion that the new building was a mere addition to the old one. It is not necessary that an addition to a house should be attached to the house. Here the old house could only be approached by passing through the new building. They were necessarily one house, and there is no evidence of any intention that they should be two houses or of any user or grant of a right of way at the time of the sale which would enable the owner of the old house to use it as a separate building from the new one. There was no necessity for a registration in respect of two houses.

Nor is it any answer to the Plaintiff's claim, that in his registration his house is described as consisting of one room. If the house for which he is registered really consists of two rooms, a mis-statement in the gochan as to the quantity of rooms does not, for reasons given hereafter, affect the registration which is for the whole house and not for a part of it.

Now it seems clear that the Defendant meant to mortgage and the mortgagee meant to take as security all the Defendant's house and yard inside the boundaries mentioned in the Defendant's gochan.

It is also clear that, if the Defendant's registration would cover both the old and the new buildings, the mortgagee took both as security.

HUTCHIN-  
SON, C.J.  
&  
TYSER, J.

MACARIO  
HIEROMO-  
NACHO  
D.  
LONGINOS  
HAJI CHRIS-  
TODOULO

HUTCHIN-  
SON, C.J.  
&  
TYSER, J.  
—  
MACARIO  
HERROMO-  
NACHO  
v.  
LONGINOS  
HAJI CHRIS-  
TODOULO  
—

If the mortgagee took both buildings as security then the Plaintiff who bought all that was mortgaged is entitled to both.

The only question is whether the Defendant's original registration for the house consisting of one room and the yard, will include additions made to the house after the date of registration.

There is nothing in the Law of 28 Rejeb 1291 or any other Law bearing directly on this question.

We must consider the practice and the object of the Law to see what was the intention of the Legislature with regard to the necessity of registration when changes are made in a property.

The object of the Law of 28 Rejeb 1291 was to transfer to the Land Registry Office the duty of carrying through transactions in mulk immovable properties and of registering titles for such properties, which duties had formerly been effected through the instrumentality of the Qadi's Court.

The only case in which an i'lam was necessary under the new law was the case of gifts and bequests.

The object of the description in the registration was to identify the property of the person registered.

If the person's property was identified by boundaries and a statement of the kind (jins) of the property, there would be sufficient description in the registration for identification.

A mis-statement as to quantities in the registration of land under the tapu law was never considered to render the registration ineffectual for any of the property if the land is sufficiently identified by boundaries.

In my opinion a mere mis-statement as to the quantity of rooms in a house would equally be without effect, provided that the property was clearly defined as a house and the boundaries were given.

As to alterations to a house subsequent to registration, it cannot be necessary or required by the law that every trivial alteration however small should involve a rectification of the register. It would be most burdensome to owners and of no practical benefit. It has never been contended that it would be necessary to amend the registration of a house if one room fell down or in some way the rooms became less in number.

As to additions, there is no reason why a house should be different to other property.

If a property is registered as a garden it is not necessary to alter the register if more trees are planted. The new trees equally with the old will come under the registration.

If a room were pulled down and re-built, or if two old rooms were knocked into one and one new room added, the old registration would describe correctly the altered house, and no one would suggest that it was necessary to alter the registration.

Yet in both these cases property not existing at the time of the registration would be covered by the registration.

Considering the object of the law and the practice observed in carrying out the law I am of opinion that the true rule is as follows:—

1. If the property is properly identified by statement of its kind and the number of objects of that kind and its boundaries, inaccuracy as to

the quantity of one or all of those objects does not prevent the registration being good for the property so identified, whether the quantity described is greater or less than the true quantity of such object.

2. If the quantity of the property is increased or diminished by alterations subsequent to the registration, as long as the property is the same as the property registered as regards kind and number of things of that kind, and the boundaries are not altered, the registration is sufficient to cover the additions and alterations, unless such additions and alterations are separately registered.

Applying these rules to the present case, the Defendant's original registration was good for the whole house, the mortgagee took the whole house as security, and the Plaintiff purchased the whole house.

Consequently the Plaintiff is entitled to succeed.

Although as I have stated above the registration may be sufficient although the statement as to the quantity of the property is inaccurate, I do not wish it to be supposed that in my opinion the statement of the quantity is immaterial. The law requires that statement to be made, and it should so far as it is reasonably possible be made accurately. But I do not think it reasonable or practicable to require that the owner of property should be put to the expense of local inspection and an amendment of the registration every time he makes an alteration in his property. It is not from a business point of view possible or practicable.

Nevertheless where a transfer is made and the property transferred is registered in the terms of an old registration, although the property has been increased or diminished since the old registration was made, there is always some risk to the transferee.

Moreover I do not wish to suggest that in suitable cases the Land Registry Office or Courts may not insist on the rectification of the statement as to quantity in the registration.

*Appeal allowed.*

HUTCHIN-  
SON, C.J.  
&  
TYSER, J.

MACARIO  
HIEROMO-  
NACHO

vs.  
LONGINOS  
HAJI CHRIS-  
TODOULO