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

TYSER, C.J. & BERTRAM, J. 1909 *April* 19

HAJI HARALAMBO MICHAEL AND OTHERS

v.

HAJI STILLI NIKOLI AND OTHERS.

IMMOVABLE PROPERTY—REGISTRATION—NEGLECT OF PERSON WITH PRESCRIPTIVE TITLE TO PROCURE REGISTRATION—ESTOPPEL AS AGAINST PURCHASER FOR VALUE WITHOUT NOTICE.

PRESCRIPTION—SUSPENSION OF PRESCRIPTION BY REGISTRATION OF JUDGMENT—EXECUTION—FORCED SALE—IRREGULARITY—INCOMPETENCY OF PERSON NOT INTERESTED TO IMPEACH SALE.

A person who has acquired a prescriptive claim to be registered in respect of immovable property but who delays in obtaining registration is estopped from setting up his claim as against a *bona fide* purchaser for value, who without notice of his claim, has acquired the property from the registered owner.

It is not necessary to show that while he was so delaying he was actually aware that the property was registered in the name of another person.

The running of a period of prescription with respect to immovable property is not interrupted by the registration of a judgment under the Civil Procedure Law, 1885, nor by the forced sale of the property in execution thereof so as to start a new period of prescription from the date of the lodging of the memorandum or of the sale.

Yeminiji v. *Andoniou* (1893) 2 C.L.R., 140, explained.

An irregularity in a forced sale, duly completed by registration, does not entitle a person who had no interest in the property at the date of the sale but who claims to have since acquired a prescriptive title, to impeach the sale and set aside the registration on the ground of the irregularity.

This was an appeal from the District Court of Nicosia.

The facts were as follows: On November 25th, 1887, one Paraskevou Christophi sold 9 or 10 olive trees for 1,500 piastres to the Defendant Haji Haralambo Michael and the predecessor in title of the other Plaintiffs. The sale was not registered, but it was alleged that the purchasers took possession of the trees from the time of the sale. The trees continued registered in the name of Paraskevou.

In the year 1899, one Haji Chryssi, a judgment creditor of Paraskevou had the trees sold by public auction in execution of his judgment, and himself bought them in for 3*s*. and had them registered in his name. It was alleged however that he never actually took possession of them.

The original purchasers alleged that they never heard of this public sale. Even if they had heard of it, however, they would have had no right to intervene inasmuch as they neither had a registered title, nor had they at that date acquired a right to registration by prescription.

TYSER, C.J. & BERTRAM, J.

HAJI HARALAMBO MICHAEL AND OTHERS v. HAJI STILLI NIKOLI AND OTHERS

In 1906 they are said to have heard of the sale and commenced negotiations with a view to the purchase of the trees. It was not clear when they knew that the trees were actually registered in the name of Haji Chryssi, but it seems clear that they were aware of it in January, 1907. The negotiations came to nothing and in October, 1907, the trees were sold to the Defendants. The necessary declarations with a view to registration were made on November 2nd, 1907.

It was not clear from the evidence, whether the Defendants, at the time they completed the purchase of the property, were aware that the Plaintiff's claimed to be entitled to it by prescription.

The Defendants assumed possession of the trees and the Plaintiffs brought the action to restrain them from interference and for the registration of the trees in their own name.

At the trial before the District Court the Plaintiffs claimed a prescriptive title based on continuous possession from 1887. The Defendants, on the authority of the case of *Yeminiji* v. *Andoniou* (1893) 2 C.L.R., 140, contended that even assuming that the Plaintiffs proved a continuous occupation from that date, the effect of the sale was to interrupt the prescription, and to start a fresh period of prescription from the date of the sale. To this the Plaintiffs replied by impeaching the sale, alleging that the auction bill was not posted at the village of Exsiliato (the village where the property was situated) in accordance with Sec. 33 of the Civil Procedure Law, 1885, and claimed that the registrations based on the sale should be set aside.

The District Court found:—

(1) That the auction bill of the sale was not posted at Exsiliato.

(2) That the Plaintiffs knew nothing of the sale.

(3) That the Plaintiffs have proved continuous possession from 1887 onwards, and that Haji Chryssi had never assumed possession.

On these findings, they held that the sale did not interrupt the prescription and gave judgment for the Plaintiffs.

The Defendants by leave appealed.

Artemis for the Appellants. I say the period of prescription runs from the sale. *Yeminiji* v. *Andoniou* (1893) 2 C.L.R., 140. It does not appear from the evidence that a memorandum was lodged in this case. As a matter of fact if the records of the Land Registry Office were searched it would appear that a memorandum was lodged. But I do not require to prove this. If a memorandum has the effect of interrupting a prescription, *à fortiori* an order of the Court for the sale of the property must have the same effect. This Court has declared that the effect of an order of sale is to effect a specific charge on the property from the date of the issue of the writ. *Markou* v. *Christodoulou* (1908) 8 C.L.R., 62. That is to say, it has the same effect as the lodging of a memorandum. In other words, the running of the prescription must start afresh from the date of the sale.

[BERTRAM, J.: *Yeminiji* v. *Andoniou* does not so decide. What it decides is that if a prescription is not completed at the date when the memorandum is lodged, it cannot be completed in the interval between the lodging of the memorandum and the sale under the order of the Court. The Court held that inasmuch as the lodging of the memorandum made the beneficial interest of the debtor in the property "answerable for the payment of the judgment debt," so long as it was in that condition it was not affected by the maturing of the prescription.]

Apart from this, I am a *bona fide* purchaser without notice. *Haji Petri* v. *Haji Gligori* (1892) 2 C.L.R., 108. *Sava* v. *Paraskeva* (1898) 4 C.L.R., 71.

Chryssafinis for the Respondents was not called upon to argue the question of the effect of the sale upon the prescription.

The Defendants bought with knowledge of our claim. In any case there is no evidence that we knew that the property was registered in the name of Haji Chryssi or any one else. The sale in 1899 was a nullity.

The Court allowed the appeal.

Judgment. THE CHIEF JUSTICE: In this case the Defendants bought from the registered owner. It appears that the Plaintiffs had a prescriptive title against the vendor. If they had a prescriptive title it was their duty to register. If by their neglect a *bona fide* purchaser, without notice of this right, acquires the property from the registered owner, the persons who had the prescriptive right against the vendor are barred or estopped from asserting their claim.

As a general rule, where there are no exceptional circumstances, a purchaser who buys land from a registered proprietor can rely on the title so acquired, and the title cannot be defeated by a claim based upon some title which ought to be and which is not registered, and of which he had no notice.

As to the case of *Yeminiji* v. *Andoniou* (1893) 2 C.L.R., 140. I agree with what was said by Bertram, J., in the course of the argument. The real effect of the judgment is that, after the memorandum is filed the property is still liable to be sold for the debt with which the property is charged, although the person in possession would, but for the filing of the memorandum, have acquired a prescriptive title by possession after the filing of the memorandum and before the sale was carried out.

If the property is not sold to realise that debt, or if the purchaser at the sale does not take possession, the person in possession can assert his right by prescription.

As to the judgment in the Court below, I do not think that there is sufficient evidence that there was irregularity in the sale, nor do I think that the Plaintiffs can take advantage of any irregularity so long after the event. They had no interest in the property beyond that of bare possession at the time of the sale.

TYSER, C.J. & BERTRAM, J.

HAJI HARALAMBO MICHAEL AND OTHERS v. HAJI STILLI NIKOLI AND OTHERS

Under the circumstances the case must be sent back to the District Court to find whether the Defendants had notice at or before the time when they completed the purchase, by payment of the price, of the claim of the Plaintiffs to hold the property by prescription. If the answer is in the affirmative, judgment to be entered for the Plaintiffs: if in the negative, for the Defendants. There will be no order as to the costs of the appeal, and the other costs will be in the discretion of the District Court.

BERTRAM, J.: I agree.

As to the supposed interruption of the prescription by the sale under the order of the Court, this is based upon the case of *Yeminiji* v. *Andoniou*. The true explanation of that decision was suggested in the course of the argument. That decision had reference purely to the period between the registration of the judgment and the sale in execution of it. It does not declare that the lodging of the memorandum originates a fresh period of prescription. I see nothing in the fact that a sale takes place under the order of the Court, to detract from the principle laid down in Art. 1671 of the Mejellé, which declares that for the purpose of calculating a period of prescription, in the case of a property that has been sold in the interval, the periods during which both vendor and purchaser have failed to assert their rights must be added together.

As to the question of estoppel, I agree with the Chief Justice. It is not necessary to show that the Plaintiffs knew that these trees were registered in the name of Haji Chryssi. All that need be shown is that they neglected their duty to get them registered in their own names. If the cases of *Haji-Petri* v. *Haji Gligori* and *Sava* v. *Paraskeva*, cited in the argument, are read carefully it will be found that they proceed upon this principle.

As to the suggested irregularity at the sale, I am at a loss to see what the present Plaintiffs have to do with that sale. At the date of the sale they had not acquired a prescriptive title. They had no right to interfere. They had no interest in the property which the law recognised. Such an irregularity as that alleged would not of itself make the sale a nullity, but if some person interested, such as Paraskevou herself, had intervened promptly, it might have been a reason for the Court to set the sale aside under Sec. 42 of the Civil Procedure Law, 1885.

I agree that the case must go back to the District Court to be dealt with in accordance with the principle indicated by the Chief Justice.

*Case remitted to District Court.**

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* The attention of the Court in this case was not drawn to the question of the effect of Sec. 3 of the Immovable Property Limitation Law (1886) (No. IV of 1886). See judgment of Tyser, C.J., in *Haji Ahmed* v. *Hassan* (1906) 7 C.L.R., 42. Nor was the attention of the Court drawn to the fact that Sec. 56 of the Civil Procedure Law, 1885, is not identical in terms with the section under which *Yeminiji* v. *Andoniou* was decided.