TYSER, C.J. & BERTRAM, J.
1909
April 24

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

HAJI PAPA LOIZO PITSILLO

v.

AGLAIA IANKO CRAMBE AND OTHERS.

IMMOVABLE PROPERTY—FORCED SALE—REGISTRATION—RE-REGISTRATION WITH A VIEW TO SALE—ACCRETIONS BETWEEN OLD AND NEW REGISTRATIONS —EFFECT OF VERBAL OBSERVATIONS BY PERSONS CONDUCTING SALE.

Where an order of the Court is made for the sale of immovable property, and subsequently to the order the property is re-registered for the purposes of the sale, the order of the Court is sufficient to cover a sale of the property as re-registered together with all accretions that have accrued to it in the interval, provided that such accretions are of the same nature as the rest of the property and have not altered its character.

Certain land registered as " garden," was ordered to be sold in execution of a judgment and was re-registered with a view to the sale. At the date of the new registration there were growing in the garden several trees that had not existed at the date of the original registration, and these trees were specified in the new registration.

HELD: That these trees passed by the sale.

The property passing by a sale under the order of the Court is determined by the auction bill issued in accordance with the order, and not by the verbal observations of the person conducting the sale.

An auction bill, issued in accordance with the order of the Court described the property sold as " garden " and referred to qochans in which it was described as " Mulk upon Arazi." The Mukhtar, who conducted the sale, announced that he was not selling the trees in the garden, but only the site.

HELD: Nevertheless, that the trees passed to the purchaser.

Alexandrou v. *Kakoianne* (1904) 6 C.L.R., 106, distinguished and explained.

SEMBLE: If in such a case, it were proved that the sale had proceeded upon the basis that the trees were not included, the Court on prompt application by any person interested would set the sale aside.

This was an appeal from the District Court of Famagusta.

The substantial question at issue was whether a certain forced sale of a garden site carried out under the order of the Court included the trees upon the site, or only the site itself.

On October 4th, 1902, one Georghi Aristides Crambe, a judgment creditor of Ianko Georghaki Crambe, obtained an order of the Court for the sale of certain immovable properties of his judgment debtor comprised in a Certificate of Search, No. A 5570, dated June 5th, 1902. That Certificate of Search (so far as relates to the properties here in dispute) was based upon old Yoklama registrations. These were an Arazi Mirie registration (No. 1113) of a field consisting of 5 donums, and two Emlak registrations, one (3645) of a garden of 4 donums, 600 (paces), and the other (3646) of 7 caroub trees. It was admitted or proved that the garden comprised in 3645, and the caroub trees comprised in 3646, were both upon the Arazi Mirie site comprised in 1113.

After the issue of the order for sale a local inspection was made by the Land Registry Office and as a result fresh registrations were made.

The Arazi Mirie site (No. 1113) was absorbed in a new registration No. 5734. The property comprised in 5734 was subsequently sold by auction and bought by the Plaintiff.

So also, the old Emlak registrations were cancelled. The garden registered under No. 3645 became two gardens of one donum each numbered 5736 and 5737. The 7 caroub trees under No. 3646 became 36 olive trees, 7 caroub trees and 2 wild apricot trees numbered 5775. It was admitted that these trees were not on either of the gardens, 5736 or 5737, but on that part of the Arazi Mirie site, originally numbered 1113, which was not comprised in the two gardens. They had, in fact, nothing to do with this case.

All those three numbers, 5735, 5736 and 5737, were with the other properties enumerated in the Certificate of Sale, sold in pursuance of the order of the Court, and bought by the Plaintiff.

Growing on these gardens were 17 caroub and 9 olive trees, and the principal question to be decided was whether these trees were included in the sale or not.

There was no evidence as to the date when these trees were planted, but it was assumed that at any rate some of them were planted after the date of the Yoklama registration.

The new qochans, which were issued with a view to the sale, described the nature of the property in each case as garden, and its category as " Mulk on Arazi Mirie." It appeared from the evidence of the Land Registry official that there was no other Mulk property on the garden sites except the trees in dispute. The auction bill, which was duly exhibited in the place where the sale was held described the properties simply as " κῆπος, one donum," stating the boundaries, and the registered numbers. It did not mention trees or contain the word " Mulk."

The sale was conducted by the Mukhtar. In the course of the sale the Mukhtar was asked if he was selling the site and the trees, or only the site. He said he was only selling the site. He asserted in his evidence that the Plaintiff was present and must have heard him. Similar evidence was given by other witnesses, one of whom stated that on hearing the announcement of the Mukhtar he withdrew his offer. It was stated by the Mukhtar that the price at which the gardens were knocked down to the Plaintiff (£8), was very much lower than the market value of the gardens including the trees, which he put at £27 to £28.

The Plaintiff on the other hand swore that he did not hear the Mukhtar's announcement; that he considered he was buying the trees; and that if only the site without the trees was being sold he should have expected it to be described in the auction bill as " garden site," or " field." He asserted that the site without the trees was worthless.

The Defendants (who were the heirs of the judgment debtor), proceeded to gather the fruit of the trees, and the Plaintiffs brought this action to restrain them.

The District Court gave judgment for the Defendants on two grounds.

(1.) That at the time the order for sale was made, the trees in dispute were not registered in the name of the judgment debtor; that the Judge who made the order, had consequently no power to order their sale, and that consequently they must be taken as not being included in the order.

(2.) That even if the trees are taken as included in the order they were nevertheless not sold, inasmuch as the auctioneer expressly declared that he was not selling them.

The Plaintiff appealed.

Artemis and *Michaelides* for the Appellant. The order of the Court for the sale of the properties under the old numbers included the same properties as re-registered and re-numbered, with all the accretions added between the two registrations. As the auction bill referred to the registered numbers and the qochans issued under those numbers clearly include the trees, the auctioneer had no power to sell anything else but the property specified by the qochans, and any verbal observations he made at the sale had no effect.

Chacalli and *Loizo* for the Respondent. Even assuming that the order of the Court included the trees, the case is concluded by *Alexandrou* v. *Kakoianne* (1904) 6 C.L.R., 106. In that case, certain fruit trees were ordered to be sold by the Court, and no mention was made in the order of the fruit growing on the trees. The auctioneer however stated verbally that the sale included the fruit and it was held that they accordingly passed to the purchaser.

The Court allowed the appeal.

Judgment: We do not think that the judgment of the District Court can be supported upon either of the grounds on which it is based.

With regard to the first ground the order of the Court was for the sale of the properties comprised in the Certificate of Search. The properties were re-registered for the purpose of the sale and though the registration numbers were changed the properties were the same. With regard to the accretions made since the original registration we have already decided that if such accretions are of the same nature as the rest of the property, and have not altered its character, they pass by a sale of the property under its original registration. (See *Macario Hieromonacho* v. *Haji Christodoulo* (1905) 5 C.L.R., 9. *Lefkaridi* v. *Georgiou* (1908) 8 C.L.R., 69.)

It seems to us therefore that where the Court has ordered properties to be sold and the properties are re-registered for the purpose of the sale, such accretions as would be covered by a sale under the old registration, may properly be included in the new registration, and that a sale based upon the new registration would be in accordance with the order of the Court.

With regard to the second ground of the judgment, the case of *Alexandrou* v. *Kakoianne* is not so clear as it might be. There are certain expressions in the judgment which seem to suggest that

the test of what is sold at a sale by the order of the Court is the verbal description of the property given at the time of the sale of the person conducting it.

We do not think however that the Court can have intended to lay down any such general proposition. The Court must be considered as there speaking with reference to the facts of that particular case.

On a sale of trees, which have fruit growing upon them the sale may or may not include the fruit—but there is a presumption that it does not. The Court held that " the presumption can be rebutted by a verbal statement," by the auctioneer but expressed the opinion that it if were shewn in such a case that the Court did not in fact intend the fruit to be sold, and if the proper steps were taken in time, the sale might be set aside.

The case cannot be regarded as an authority for the general proposition that if a Mukhtar who is appointed to sell property advertised in a bill of sale, without authority gives a description of the property inconsistent with the bill of sale, the subject matter of the sale is to be determined by his unauthorised observations and not by the bill of sale itself.

In such a case the property sold is determined by the bill advertising it for sale in accordance with the order of the Court.

Here the properties were described in the bill as κῆπος, and there was a reference to registration numbers in which the properties in question were given as " Mulk upon Arazi." There was no other Mulk upon the site but the trees in question. It is clear therefore that what was offered for sale by the bill included the trees.

The purchaser alleges that he intended to bid for the trees, and it is not clearly proved that he did not. If in a case of this description it were proved that the sale proceeded upon a false basis, and that the biddings were made upon the supposition that the trees were not included, and if prompt application were made by the persons interested to set aside the sale, and the qochans issued in accordance with it, the Court might give relief. In this case no such application was made. The Defendants merely trespassed upon the property and even now have not applied to set aside the Plaintiff's qochans.

The appeal must therefore be allowed with costs.

Appeal allowed.