

1964
Nov. 10

[VASSILIADES, TRIANTAFYLLIDES AND JOSEPHIDES, JJ.]

AFRODITI N.
VASSILIADOU
v.
CHARILAOS
ERACLI
HARIKLI

AFRODITI N. VASSILIADOU,
Appellant-Plaintiff,
v.
CHARILAOS ERACLI HARIKLI,
Respondent-Defendant.

(Civil Appeal No. 4457)

Civil Procedure—Execution—Civil Procedure Law, Cap. 6—Registration of judgment at the District Lands Office under section 53—Combined effect of sections 14 (1), 53, 57, 62, 98 and 99—Registration of judgment is execution within meaning of the Law—Therefore, an order of the Court “staying execution” prevents the judgment creditor from registering his judgment at the District Lands Office.

This appeal raises an interesting point, *i.e.* whether registration of a judgment at the District Lands Office, under the provisions of section 53 of the Civil Procedure Law, Cap. 6, is or is not execution of judgment.

The ground of appeal on which argument was heard is that “the interpretation given by the court, that the term ‘stay of execution’ without any qualification regarding the registration of the judgment bars the plaintiff from doing so, is contrary to the letter and spirit of section 53 of Cap. 6 and the spirit of the judgment in the said action”.

Held, (1) under section 14 (1) of the Civil Procedure Law, Cap. 6, it is expressly laid down that the registration of a judgment at the District Lands Office under the provisions of section 53, is a method of execution, and such registration confers on the judgment creditor the special rights laid down in sections 57, 62 and 98 of the Law.

(2) The express provisions of section 14 (1), 57, 62 and 98 make it abundantly clear that the registration of a judgment under section 53 is execution within the meaning of the Civil Procedure Law; and the consent judgment given in this case, which included a “stay of execution” in its terms, intended clearly to prevent the judgment creditor from registering his judgment at the District Lands Office under the provisions of section 53.

(3) In these circumstances it would appear that the District Lands Office erroneously accepted the registration of the judgment.

Appeal dismissed. No order as to costs.

1964
Nov. 10
—
AFRODITI N.
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Cases referred to :

Haralambo v. Cazamia (1892) 2 C.L.R. 52 ;

Philotheos v. Petri (1905) 7 C.L.R. p. 21, at p. 22.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated 26.7.63 (Action No. 1242/63) whereby it was ordered that the memo lodged by plaintiff on defendant's property on the 25.5.63 be discharged forthwith and plaintiff was further ordered to pay the amount of £20.550 mils to the defendant.

G. Ladas, for the appellant.

C. Melissas, for the respondent.

The facts sufficiently appear in the judgment of the Court.

VASSILIADES, J. : Mr. Justice Josephides will deliver the judgment of the Court in this appeal.

JOSEPHIDES, J. : This appeal raises a short but interesting point, that is to say, whether registration of a judgment at the District Lands Office, under the provisions of section 53 of the Civil Procedure Law, Cap. 6, is or is not execution of a judgment.

In the present case the plaintiff (appellant) instituted an action on the foot of three mortgage bonds claiming the recovery of the money due under the bonds and the sale of the mortgaged properties in satisfaction of the judgment debt. On the 14th May, 1963, a consent judgment was given for the sums of money due under the mortgaged bonds and the sale of the mortgaged properties, and stay of execution was by consent ordered in the following terms :

“ 5. Stay of execution till the 1.8.63 provided that if on or before that date the judgment debtor pays the sum of £1000 there will be further stay till 1.10.63 provided further that the judgment creditor may appropriate the said sum of £1000 or any part thereof to any of the aforesaid judgment debts.”

Shortly after the consent judgment, the judgment creditor (appellant) registered his judgment with the District Lands Office under the provisions of section 53 of the Civil Procedure Law, Cap. 6. On the 17th July, 1963, the judgment debtor (respondent) filed an application with the District Court praying, *inter alia*, for the rectification of the judgment by the addition of the following paragraph :

“(a) Plaintiff is not entitled to lodge a memo on the remaining of plaintiff’s property during the stay of execution.”

The learned District Judge, after hearing argument on both sides, ruled that—

“ Registering a judgment under the provisions of section 53 of the Civil Procedure Law, Cap. 6, is a mode of execution against immovables, as it is also apparent from that part of the relevant Law. Therefore, in my opinion, a general order for stay of execution without any qualification, such as the usual order ‘ plaintiff to be at liberty to lodge a memo ’, can only be construed as barring the plaintiff from proceeding with any mode of execution including the registration of the judgment under section 53. This being so the Lands Office acted erroneously in accepting the memo which therefore must be discharged forthwith ”

The ground of appeal on which argument was heard to-day is that “ the interpretation given by the Court, that the term ‘ stay of execution ’ without any qualification regarding the lodging of the memo bars plaintiff from lodging a memo, is contrary to the letter and spirit of section 53 of Cap.6 and the spirit of the judgment in the said action ”.

Mr. Ladas, who argued the case for the appellant before us very ably, submitted that the registration of a judgment under the provisions of section 53 is not execution, but a “ security ” for the payment of the judgment debt and no more, as expressly provided in that section. He further argued that such registration of judgment does not confer on the judgment creditor any positive right on the property but it simply prohibits the alienation or charging of the debtor’s property. In support of his argument he cited two cases decided by the former Supreme Court of Cyprus, namely, *Haralambo v. Cazamia* (1892) 2 C.L.R., page 52, and *Philotheos v. Petri* (1905) 7 C.L.R., page 21.

The Court in those cases decided that a judgment creditor who has charged the property of his debtor, which is subject to a *mortgage*, with the payment of his judgment

debt in accordance with section 13 of Law 10 of 1885 (now sections 53 and 57 of the Civil Procedure Law, Cap. 6), obtains thereby no special right over the proceeds of sale of the property when it is sold by the *mortgagee*. It should, however, be observed that under the provisions of section 62 of the Civil Procedure Law where two or more creditors, by registering their judgments, have charged the same *immovable property with the payment of their debts, and* one of them has sold the property in satisfaction of his debt, if upon the sale there remains a balance after satisfaction of the first debt, it shall be applied, in priority to the claims of any other creditor, in satisfaction of the debt of any other creditor who has registered his judgment. It is thus apparent that the legislature has not provided (possibly by an oversight) for a case where the property is sold by a prior mortgagee, which was the point actually decided in the two cases cited by the appellant's counsel (see especially *Philotheos v. Petri, ubi supra*, at p. 22, six lines from the bottom).

Coming now to the particular provisions of the Civil Procedure Law, Cap. 6, we are of the view that the following sections are decisive in reaching a conclusion in the present case.

Section 14 (1) expressly provides that any judgment of a Court directing payment of money may be carried into execution, *inter alia*, “(b) by sale of or making the judgment ‘a charge on immovable property’.”

Section 14 (1) reads as follows :—

“ 14 (1) Any Judgment or order of a Court directing payment of money may, subject to the provisions of this Law, be carried into execution by all or any of the following means :

- (a) by seizure and sale of movable property ;
- (b) by sale of or making the judgment a charge on immovable property ;
- (c) by sequestration of immovable property ;
- (d) by attachment of property under Part VII of this Law ; or
- (e) by imprisonment of the debtor under Part VIII of this Law.”

Under section 14 (1) it is expressly laid down that the registration of a judgment at the District Lands Office under the provisions of section 53, is a method of execution, and such registration confers on the judgment creditor the special rights laid down in sections 57, 62 and 98 of the Law.

Section 57 provides that during the time that the registration of the judgment remains in force (which, in the first instance, is a period of two years, but may be prolonged from time to time), the interest of the debtor in the property shall be *charged* with the payment of the debt due under the judgment in priority to all debts of the debtor not specifically charged upon the property before the deposit of the memorandum ; and notwithstanding any transfer or mortgage made after the registration of the judgment, the property shall, at any time while the registration remains in force, be ordered by the Court to be sold in execution of the judgment. The provisions of section 62 have already been noted in this judgment.

Moreover, sections 53 to 62, which come under the sub-heading “ Making Judgment a charge on Land ”, are contained in Part V of the Civil Procedure Law, which part has as its main heading “ Execution against Immovables ”, and this Part is subdivided into “ Execution by sale ”, “ Making Judgment a charge on Land ” and “ Registration in Debtor’s Name with a view to Execution ”.

Finally, sections 98 and 99 of the same Law (which were added to the original Law of 1885 by Law 19 of 1919) provide that notwithstanding anything contained in the Law, immovable property may be sold in execution (on application to the District Lands Office) *without* the consent of the debtor or *an order of the Judge* after one year has elapsed from the time when the judgment has been made a *charge* on the land by registration.

Even if there was any room for doubt, the express provisions of section 14 (1), 57, 62 and 98 make it abundantly clear that the registration of a judgment under section 53 is execution within the meaning of the Civil Procedure Law ; and the consent judgment given in this case, which included a “ stay of execution ” in its terms, intended clearly to prevent the judgment creditor from registering his judgment at the District Lands Office under the provisions of section 53. In these circumstances it would appear that the District Lands Office erroneously accepted the registration of the judgment.

We accordingly dismiss the appeal.

As regards costs, we are of the view that in the circumstances of this case the order for costs in the District Court should not be disturbed, but, considering the fact that the appeal raised a novel point, so far as we are aware, we make no order for costs in the appeal.

Appeal dismissed.
No order as to costs.

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