1962
May 28, 29,
July 10

CHRISTODOULOS ST. TSIARTA AND ANOTHER
v.
KODROS KYRIACOU YIAPANA AND ANOTHER

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

CHRISTODOULOS ST. TSIARTA and ANOTHER,

Appellants-Defendants,

v.

KODROS KYRIACOU YIAPANA AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED KYRIAKOS HJI SAVVA YIAPANA AND ANOTHER,

Respondents-Plaintiffs.

(*Civil Appeal No.* 4352).

Immovable property—Springs, water or water courses in any privately owned land—Acquisition of rights over such springs etc., etc., by adverse possession—Thirty years user—The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, section 10—Immaterial whether such period of adverse possession begun to run before or after the coming into force of Cap. 224 (i.e. 1st September, 1946)—Section 7, proviso, paragraph (a) of Cap. 224 not intended to regulate private rights over springs, water etc., etc., in privately owned land—It only regulates rights of individuals over public rivers, lakes, streams etc., vis-a-vis the State, and not the private rights of individuals among themselves.

Springs and tanks—Not registered—Deemed to belong to the owner of the land by virtue of and on the conditions set out in section 22(2) (i) and (ii) of Cap. 224.

Practice—Delay in the hearing of cases highly undesirable—When necessary, adjournments should not be more than one or two, save in exceptional circumstances. Trial to proceed continuously until conclusion—Judgment should not be reserved for more than three months.

The plaintiffs-respondents bought a piece of land in 1907, on which a spring existed for about 50 years prior to 1907. In 1948 extensive improvements were made by the Irrigation Department as a result of which the water of the spring was increased and a cement tank was constructed. Both the spring and the tank were within the land of the plaintiffs-respondents. The land was registered in respondents' name together with another person. In 1922 the respondents and the other co-owner distributed the use of the water amongst themselves and they were exclusively and continuously using the water

according to the distribution till 1956 when the defendants-appellants interfered with the water.

Neither the spring nor the tank nor the water rights over the spring were registered in the name of any one of the parties or anyone else.

The trial Court found that the plaintiffs together with the other co-owner of the land acquired a prescriptive right over the water as they were using it for a period of over 30 years prior to 1946 (*i.e.*, from 1907 — 1946) when Cap. 224 came into force and that they were entitled to be registered as owners of the water rights in accordance with section 7 of Cap.224.

Section 7 of Cap. 224 reads :-

"All lakes, rivers, streams and natural water-courses which are not privately owned at the date of the coming into operation of this Law and the basins beds or channels thereof, and any land from which the sea or the water of any such lake, river, stream or watercourse has receded, with the exception of any such land as is privately owned at the date aforesaid, shall be vested in the Crown :

Provided that nothing in this section contained shall be construed as affecting any rights over any lake, river, stream or natural watercourse which-(a) have been exercised without interruption for the full period of thirty years before the date aforesaid.....(b).....(c)....."

It is to be noted that Cap. 224 came into operation on September 1, 1946. The High Court of Justice, though holding that the said section was inapplicable in this case affirmed the judgment of the trial Court basing their decision on section 10 and 22 respectively of Cap. 224.

The material part of section 10 is as follows : .

".....
proof of undisputed and uninterrupted adverse possession by a person, or by those under whom he claims, of immovable property for the full period of thirty years shall entitle such person to be deemed to be the owner of such property and to have the same registered in his name :

Provided that nothing in this section contained shall affect the period of prescription with regard to any immovable pro-

perty which began to be adversely possessed before the commencement of this Law, and all matters relating to prescription during such period shall continue to be governed by the provisions of the enactments repealed by this Law relating to prescription, as if this Law had not been passed :

Provided further that notwithstanding the existence of any disability operating under such enactments to extend the period of prescription such period shall not in any case exceed thirty years in all even where any such disability may continue to subsist at the expiration of thirty years".

By the definition section 2 of Cap. 224, "immovable property" includes—.....

(d) springs, wells, water and water rights whether held together with, or independently of, any land ;.....

.....

The material parts of section 22 read as follows :—

"(1) Anything growing in a wild state on any land shall be deemed to be the property of the owner of the land.

(2) The following provisions shall have effect with regard to—

(a) any grafted wild tree on any land ;

(b) any tree or vine planted on any land ;

(c) any spring found, or any watercourse or channel opened or constructed in any land ;

(d) any building or other erection or structure erected on any land ;

(e) any fixture affixed to any land or to any building or other erection or structure, that is to say—

(i) if grafted, planted, found, opened, constructed, erected or affixed before the date of the coming into operation of this Law, it shall be deemed to be the property of the owner of the land unless another person is registered as the owner thereof or, being entitled to be so registered, applies for registration within two years from the date of the coming into operation of this Law or within two years from the date on which he became so entitled ;

(ii) if grafted, planted, found, opened, constructed, erected or affixed after the date of the coming into

operation of this Law, it shall be deemed to be the property of the owner of the land, and any dealing affecting such land shall be deemed to include any such wild tree, tree, vine, spring, watercourse, channel, building, erection, structure or fixture, being the property of the owner of the land.

(3) Nothing in this section shall apply to or affect—

(a) any instrument or thing which is the subject of any hire-purchase agreement under any Law in force for the time being relating to such agreements ;

(b) any fixture affixed by a tenant to any land or building or other erection or structure for the purposes of trade or agriculture or for ornament and convenience, which the tenant has a right to sever and remove during the term or at the end of his tenancy".

Held :

1. (a) Section 7 of Cap. 224 on which the judgment was based is inapplicable in this case.

(b) The object of the legislature in enacting s.7 of Cap. 224 was to vest in the Crown on the date of the coming into operation of the Law, all lakes, rivers, streams and natural watercourses which were not privately owned on that date ; and by paragraph (a) of the proviso the legislative authority safeguarded private rights over such lakes, rivers streams etc., which had been exercised without interruption for 30 years before 1946. The object of paragraph (a) of the proviso was to regulate the rights of private individuals over public rivers, streams etc., *vis-a-vis* the State and not the private rights of individuals among themselves.

(c) In view of the express provisions of section 10 and 22 of the same Law it is apparent that section 7 was not intended to regulate private rights over springs water or natural watercourses in any privately owned land as in the present case.

2. The respondents-plaintiffs are entitled to be registered as owners of the water rights as they have exercised them without interruption for a period of over 30 years, i.e. from 1922 when the distribution of water rights was made till 1956 when appellants interfered for the first time.

3. The respondents also are deemed to be the owners : (1) of the spring which was found on the land prior to 1946, under section 22(2) (i) of Cap. 224, and (2) of the cement tank which was constructed in 1948,under s.22(2) (ii) of the same law.

Appeal dismissed.

Observations by Court regarding the undesirability of adjourning cases and hearing them piecemeal. Delays in the hearing of actions and delivery of judgment deprecated.

Appeal

Appeal against the judgment of the District Court of Nicosia (Ch. K. Pierides, D.J.) dated the 13th March, 1961 (Action No. 2453/56) whereby it was declared, *inter alia*, that plaintiffs have a right over the water of the spring and tank which are situated within their land under Reg. No. 4509 and that plaintiffs and defendant 1 were entitled to be registered as owners of the aforesaid water rights.

A. Triantafyllides for the appellant.

A. C. Indianos with *Ch. Velaris* for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

JOSEPHIDES, J. : In this case the parties dispute the ownership of a spring and a tank and the water rights in that spring. The value of the subject matter is between £100 and £200.

The trial Court declared that—

(a) each one of the two plaintiffs (respondents) had a right over the water of the spring and tank which are situated within their land under registration No. 4509 dated the 13th March, 1956, S/P XXXVIII/41, plot 960/6 at locality Milia tou Tourkou, Polystypos village, to take and use the said water for irrigation purposes for 3 days and nights each every 8 days and nights, and that defendant 1 (Stylianos Christodoulou Tsiarta) had a right over the aforesaid water for the remaining 2 days and nights every 8 days and nights ;

(b) that the plaintiffs and defendant 1 were entitled to be registered as owners of the aforesaid water rights; and

(c) that the spring and tank which are within the aforesaid land of the plaintiffs, belong to them but subject to the water rights described in paragraphs (a) and (b) above.

The trial Court further issued an injunction restraining the defendants from interfering with the aforesaid water rights, and dismissed the counter-claim of defendants 2 and 3 (appellants) who claimed that they had an *ab antiquo* right of irrigation in the above spring and water tank for 21 hours and 20 minutes every 8 days and nights.

Defendants 2 and 3 now appeal against that judgment.

The first ground taken on behalf of the appellants is that the evidence adduced on behalf of the respondents was insufficient to support the findings of fact of the trial Court.

After reading the record in this case and listening to a very complete argument of counsel for the appellants, we are unable to conclude that any of the findings of fact of the trial Court were wrong. On the contrary, it is quite apparent from the record itself that the Judge was amply justified in coming to the conclusions of fact expressed in his judgment.

The facts as found by the trial Judge were that the spring in dispute had been in existence for about 50 years before, that is, before the time when the plaintiffs (respondents) bought the land in which it is situate in 1907. Originally the spring was a small one and a small quantity of water was flowing into a natural pool nearby. In the year 1948 extensive improvements were made by the Irrigation Department, as a result of which the water of the spring was increased and a cement tank was constructed. Both the spring and the tank are within the land of the respondents, plot No. 960/6, which is registered in their names under registration No. 4509. This plot is part of the land which respondents bought in 1907 and for which they were registered under registration Nos. 702 and 705 (plot 906), together with defendant 1. Neither the appellants nor any of the other defendants, who have not appealed against the judgment of the trial Court, have any right of irrigation over the water in dispute except defendant 1 who, together with the two respondents, are the

only persons who are entitled to use and take the water of the said spring and tank for irrigation purposes. The distribution of the use of the water between the respondents and defendant 1 was made by them in the year 1922 as follows :- per 8 days and nights, 3 days and nights by each one of the respondents and the remaining 2 days and nights by defendant 1. From 1922 onwards, when the distribution of the use of the water took place, the respondents and defendant 1 have made continuous and exclusive use of their water rights until 1956 when appellants (defendants 2 and 3) interfered with the water.

After the institution of the action respondent 1 died and his estate is now represented by his son. The rights of the two original respondents, as well as those of defendant 1, are now enjoyed by their respective children.

As already stated, the land in which the spring and the tank are situated is registered in the names of the respondents. But neither the spring nor the tank nor the water rights over the spring are registered in the name of any of the parties or, indeed, in the name of any other person.

On the above facts the trial Judge held that—

> "*In accordance with the evidence which I have already* explained the plaintiffs have exercised without interruption a water right over the spring and tank, the subject matter of the present action, as from the year 1922, when the distribution of the use of the water took place between themselves and defendant No.1, until July, 1956, when, for the first time defendants Nos. 2 & 3 interfered with the said water and they used it. Thus the plaintiffs used the water together with defendant No. 1 for the full period of 34 years which is more than sufficient for them to acquire a prescriptive right. To this period of 34 years another period of 15 years i.e., as from the year 1907 when plaintiffs bought their land until the year 1922, during which plaintiffs were using the said water must be added. By this way plaintiffs were using the water for a period of more than 30 years before the 1st September, 1946 when the law came into force. (1907 until 1946 = 39 years). By this way plaintiffs acquire a prescriptive right over the water in dispute and therefore they are entitled to the registration of this right.

in their names as owners thereof together with defendant No. 1 and this in accordance with section 7 of the Law, Cap. 224".

The material part of section 7 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 reads as follows :

"All lakes, rivers, streams and natural watercourses which are not privately owned at the date of the coming into operation of this Law and the basins, beds, or channels thereof, and any land from which the sea or the water of any such lake, river, stream or watercourse has receded, with the exception of any such land as is privately owned at the date aforesaid, shall be vested in the Crown:

"Provided that nothing in this section contained shall be construed as affecting any rights over any lake, river, stream or natural watercourse which—

"(a) have been exercised without interruption for the full period of thirty years before the date aforesaid ;"

It was argued on behalf of the appellant that in calculating the thirty-year period under the provisions of section 7 of Cap. 224, no period after 1946 should be taken into consideration and that as the distribution of the water between the respondents and defendant 1 was made in 1922 only 24 years had elapsed until 1946 and the learned Judge was wrong in holding that the respondents had exercised their rights without interruption for the full period of 30 years before 1946. It was further argued on behalf of the appellant that section 10 of the same law was not applicable to the present case and that even if it were applicable the thirty-year prescriptive period could only begin to run from the date of the coming into operation of the law, that is, the 1st September, 1946, and not before, because water and water rights were not included in the definition of the term "immovable property" before the enactment of that law.

With great respect to the trial Judge, we do not think that section 7 of Cap. 224, on which his judgment is based, is applicable to the present dispute. From a perusal of that section it becomes abundantly clear that the object of the legislature was to vest in the Crown on the date of the coming

into operation of the law (1st September, 1946), all lakes, rivers, streams and natural watercourses, which were not privately owned on that date ; and by paragraph (a) of the proviso the legislative authority safeguarded private rights over such lakes, rivers, streams etc., which had been exercised without interruption for 30 years before 1946. The object of paragraph (a) of the proviso was to regulate the rights of private individuals over public rivers, streams, etc., *vis-a-vis* the State, and not the private rights of individuals among themselves. In view of the express provisions of sections 10 and 22 of the same Law, it is apparent that section 7 was not intended to regulate private rights over springs, water or watercourses in any privately owned land, as in the present case.

Section 9 of the Immovable Property Law, Cap. 224, provides that there can be no adverse possession against the Crown (now the Republic) or a registered owner. Section 10 provides that where immovable property has not been registered or is not Crown land the period of prescription should be 30 years ; and it further provides that the period of prescription with regard to any immovable property which began to be adversely possessed before the commencement of the Law shall be governed by the provisions of the enactments previously in force relating to prescription. The relevant part of section 10 reads as follows:

> "Subject to the provisions of section 9 of this Law, proof of undisputed and uninterrupted adverse possession by a person, or by those under whom he claims, of immovable property for the full period of thirty years, shall entitle such person to be deemed to be the owner of such property and to have the same registered in his name :
>
> "Provided that nothing in this section contained shall affect the period of prescription with regard to any immovable property which began to be adversely possessed before the commencement of this Law, and all matters relating to prescription during such period shall continue to be governed by the provisions of the enactments repealed by this Law relating to prescription, as if this Law had not been passed".

The definition or the expression "immovable property"

in section 2 includes "springs, wells, water and water rights whether held together with, or independently of any land".

It is well settled that the object of the above proviso to section 10 was to safeguard the rights of persons in whose favour the prescriptive period had begun to run before the date of the coming into operation of the Law. In the case of Arazi Miric land the acquisitive prescriptive period was 10 years and in the case of Mulk land 15 years.

In the present case the respondents made exclusive, undisputed and uninterrupted use of their right in the water in dispute from 1922, when the distribution of the use of the water was made, until July, 1956, when the appellants interfered for the first time with the respondents' rights. That is to say, they made use of their water rights for a period exceeding 30 years, that is, 34 years. Consequently, under the provisions of section 10 of Cap. 224, they are entitled to be deemed to be the owners of such property and to have it registered in their names. From our interpretation of section 10 it follows that we are not prepared to accept the submission of appellants' counsel that the prescriptive period in respect of water and water rights can only begin to run after 1946, and not before.

As regards the spring which is situated in respondents' plot, as it was found there before the date of the coming into operation of the Immovable Property Law, Cap. 224, *i.e.* before the 1st September, 1946, under the provisions of section 22, sub-section (2) (i), it is deemed to be the property of the respondents, who are the owners of the land, as no other person is registered as the owner of the spring, or being entitled to be so registered, applied for registration until the 31st August, 1948, or within two years from the date on which he became so entitled.

Finally, as the tank which was constructed by the Irrigation Department in 1948 is a structure which was constructed after the 1st September, 1946, under the provisions of section 22, subsection (2) (ii), of the Immovable Property Law, Cap. 224, it is deemed to be the property of the owner of the land, *i.e.* the respondents.

For all these reasons the appeal fails.

In conclusion we wish to make the following observations with regard to the delay in the hearing and determination

of this case by the District Court. The action was instituted in August, 1956, and judgment was delivered in March, 1961. From the first day of the hearing to the day of the delivery of judgment a period of 2 years and 9 1/2 months elapsed. Evidence was taken on 5 different dates (for part of the day on two or three dates) between the 26th May, 1958 and the 10th June, 1959, and the addresses were made on the 11th June, 1959, *i.e.* a period of over a year elapsed between the 1st day of hearing and the conclusion of the addresses ; and the judgment was reserved for one year and 9 months. There were also five adjournments, including two before another Judge prior to the first day of hearing before the trial Judge.

The evidence taken by the trial Judge, on the above-mentioned five dates of interrupted hearing over a period of a year, covers in all 38 typewritten pages, the addresses 3 pages and the judgment 17 pages.

It is to be regretted that the hearing of the case was done piecemeal and that the Court delayed so long in delivering its judgment. Delays in the hearing of a case are highly undesirable and are to be deprecated. It is only in very exceptional cases that a judgment should have to be reserved for more than 2 or 3 months.

A further word needs to be said with respect to adjournments. They produce justifiable dissatisfaction by litigants and their witnesses, and statistical records of this Court confirm the opinion there are far too many. If an action can proceed the first time it comes on for trial so much the better. When adjournments are necessary there should not be more than one or two. After that there should be no more adjournments except in unusual circumstances, as to which the Judge has to decide. Having made these comments it must be added these will be *very* unusual circumstances in which there may be many adjournments, but they should be few in number.

Concerning the taking of evidence in our opinion once a trial is begun it should proceed continuously day in and day out, where possible, until its conclusion.

In the result the appeal is dismissed with costs for one advocate.

Appeal dismissed