

KLEOPAS PANAOU,

*Appellant-Plaintiff,*

v.

CHRYSANTHOS HAJI CHRISTOFI OF LARNACA,

*Respondent-Defendant,*

AND

1. GEORGHIA CHRYSANTHOU CHRISTOFI,

2. CHRISTALLA CHRYSANTHOU CHRISTOFI,

*Ex-parte-Respondents.*

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KLEOPAS  
PANAOU

v.

CHRYSANTHOS  
HAJI CHRISTOFI  
AND

1. GEORGHIA  
CHRYSANTHOU  
CHRISTOFI

2. CHRISTALLA  
CHRYSANTHOU  
CHRISTOFI

(Civil Appeal No. 4375)

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*Civil Procedure—Execution—Execution of judgments is always under the Court's control and supervision—Execution will not be allowed to be used for purposes of unnecessary oppression—Abuse of different modes of execution—They cannot be pursued where the circumstances point in the direction of oppression and not to the satisfaction of the judgment debt.*

The appellant sold and transferred to the respondent certain immovable property for the price of £14,200 payable by instalments within two years with interest at 9% per annum. As security for the payment of the sale price, the whole of the property so sold was mortgaged to the seller in January, 1961, together with considerable other property belonging to the purchaser on the terms embodied in the mortgage-bond dated 13.1.61. In addition the seller obtained the guarantee of a third party for the payment of the first instalment of £2,000 from another solvent person.

In September, 1961, the appellant-creditor filed an action on the aforesaid mortgage-bond against the respondent-debtor and on the 11th October, 1961, obtained judgment by default for the amount claimed and then *viz.*: £13,900 with interest and an order for the sale of the aforesaid mortgaged property. Two days later *viz.* on the 13th October, 1961, the appellant-creditor filed an application in the said action to set aside certain transfers of immovable property made in July, 1961, by the respondent-debtor to his wife and daughter as transfers made with intent to hinder or delay the creditor contrary to section 3 of the Fraudulent Transfers Avoidance

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Law, Cap. 62. At about the same time the appellant-creditor took steps to have the mortgaged property sold through the Land Registry under the aforesaid order of the Court of the 11th October, 1961.

Pending these proceedings, the appellant-creditor issued a writ of movables on the 24th January, 1962 and filed, also, an application under Part IX of the Civil Procedure Law, Cap. 6, that the debtor be examined regarding his ability to pay the aforesaid judgment debt by instalments. At the hearing of both these applications (the first under section 3 of the Fraudulent Transfers Avoidance Law, Cap. 62, and the second under the Civil Procedure Law, Cap. 6, Part IX), which had been duly opposed and were heard together, counsel for the debtor, supported by counsel for the transferees of the property (*viz.* the wife and daughter of the debtor) took the preliminary objection that in view of the pending sale of the mortgaged properties, the applications of the creditor were premature. The District Court upheld the objection and dismissed the two applications as being in the circumstances premature. On the appeal by the creditor against this dismissal, the High Court in dismissing the appeal:—

*Held*, (1) on the facts appearing in the affidavits on record, the District Court were justified in refusing to hear further the applications of the appellant-creditor in pursuance of different modes of execution, made on the footing that his judgment would not be satisfied by the sale of the mortgage-property which he was already pursuing, while the facts and circumstances of the case strongly pointed in the opposite direction.

(2) The execution of a judgment is a matter under the Court's supervision and control; and cannot be allowed to be used for purposes of unnecessary oppression as the circumstances of the present case would seem to suggest; or, indeed, for any purpose, other than the proper satisfaction of the Court's judgment, under the Court's control.

*Appeal dismissed with costs.*

### **Appeal.**

Appeal against the judgment of the District Court of Larnaca (Attalides, P.D.C. and Vassiliades, D.J.) dated the 16.4.1962 (Action No. 1101/61) dismissing an application by a mortgagee judgment-creditor to set aside under the provisions of the Fraudulent Transfers Avoidance Law,

Cap. 62 certain transfers of property made by the mortgagor-debtor, and another application for the examination of the debtor respecting his ability to pay his judgment debt by instalments.

*S. Demetriou* for the appellant.

*Mrs. C. M. Varda* for the respondents.

*Cur. adv. vult.*

WILSON P. : The judgment of the Court will be given by Mr. Justice Vassiliades.

VASSILIADES, J. : This is an appeal against an order of the District Court of Larnaca dismissing as premature, an application by a mortgagee judgment-creditor to set aside under the provisions of the Fraudulent Transfers Avoidance Law, Cap. 62, certain transfers of property made by the mortgagor-debtor, and another application for the examination of the debtor under Part IX of the Civil Procedure Law, Cap. 6, respecting the debtor's ability to pay the debt by instalments as might be ordered by the Court, both of which (applications) were heard on the same day, and were disposed of by the same order.

The appeal against that order was dismissed on the 20th November, 1962, after hearing counsel in the matter, the Court stating at the time, that the reasons for dismissing the appeal would be given later, which we now proceed to do.

Before going further into the matter, I may say at once that this appeal is decided on the facts ; and that the present judgment does not purport to settle questions of principle, upon which we heard no sufficient argument in this case.

The facts as appearing in the affidavits on record show that :—

The appellant-creditor sold and transferred to the respondent-debtor certain immovable property in the town of Larnaca for £14,200 payable within two years in various instalments, carrying interest at the rate of 9% per annum.

As security for the payment of the sale price, the whole of the property so sold, was mortgaged to the seller-creditor in January, 1961, together with considerable other property belonging to the buyer-debtor, on the terms embodied in the mortgage-bond dated 13.1.61, exhibit No. 1 on the record at p.6.

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In addition, the seller-creditor obtained the guarantee of a third party for the first instalment of £2,000 payable 3 months after the mortgage, and a further obligation for £1,000 from another solvent person.

The stipulation in the bond, about sale of the mortgage-property, reads :—

“ As security to my creditor I mortgage my property shown below which he is entitled to sell to cover all his claim.”

And the list in the bond shows the two registrations covering the property sold, plus eight other registrations of town and village property belonging to the debtor.

In April, 1961, the debtor paid £1,000 against this debt. At a later date which does not appear on the record, the debtor paid £250 against the thousand-pounds obligation of the third person, for which the creditor had apparently instituted proceedings and obtained judgment in another action.

In July, 1961, the debtor transferred to his wife, the first respondent in this appeal, a house, and to his daughter, the second respondent, another house, both of which, constituting one building were subject to an earlier mortgage for a different debt, undertaken, upon such transfer, entirely by the wife.

In September, 1961, the creditor filed an action against the debtor claiming £13,900 plus interest, as the amount then payable under the mortgage-bond, and “ the sale by auction of the mortgaged property . . . the proceeds of which to be used to cover part of the whole of the above debt.” This action was not defended, and on the 11th October, 1961, the creditor obtained on the bond Exh. 1, judgment by default, for the amount in the writ and the sale of the property, as claimed.

Two days later, on the 13th October, 1961, the creditor filed his application in the same action, under the Fraudulent Transfers Avoidance Law, (Cap. 62) to set aside the transfers made in July by the debtor to his wife and daughter, as transfers made with intent to hinder or delay the creditor, covered by sect. 3 of the statute.

Presumably at about the same time the creditor took steps under his judgment to have the mortgage-property sold through the Land Registry Office by depositing the required documents in the Lands Office, under J.38/961 in execution of the judgment.

Pending these proceedings, the creditor issued on the 24th January, 1962, a writ of movables under the same judgment. And on the 7th February, 1962, he filed an application under Part IX of the Civil Procedure Law (Cap. 6) for the examination of the debtor regarding his ability to pay the debt by instalments, under a mandatory order to be made in execution of the judgment.

At the hearing of both these applications, (the first under the Fraudulent Transfers Avoidance Law, and the second under the Civil Procedure Law) which had been duly opposed and were heard together, counsel for the debtor, supported by counsel for the transferees of the property, took the preliminary objection that in view of the pending sale of the mortgage-properties, the applications of the creditor were premature.

The District Court, after hearing counsel of all the parties concerned, upheld the objection and dismissed the applications with costs, as premature. Against this order the creditor took the present appeal, mainly on the ground that the Court wrongly decided the applications on the preliminary objection, without going into the merits.

As already stated, the appeal was decided and was dismissed by this Court with costs on the day of the hearing, upon the facts of the case. The Court take unanimously the view that on the facts appearing in the affidavits on record, the District Court were justified in refusing to hear further the applications of the appellant-creditor in pursuance of different modes of execution, made on the footing that his judgment would not be satisfied by the sale of the mortgage-property which he was already pursuing, while the facts and circumstances of the case strongly pointed in the opposite direction. The execution of a judgment is a matter under the Court's supervision and control; and cannot be allowed to be used for purposes of unnecessary oppression as the circumstances of the present case would seem to suggest; or, indeed, for any purpose, other than the proper satisfaction of the Court's judgment, under the Court's control.

*Appeal dismissed with costs.*

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