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CHRISTOFIS YIANNI DIPLAROS

v.

PHOTOU NICOLA

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

CHRISTOFIS YIANNI DIPLAROS,

Appellant - Defendant,

v.

PHOTOU NICOLA,

Respondent - Plaintiff.

(Civil Appeal No. 4866).

Immovable property—Arazi mirie category—Adverse possession—Commencing in 1935 through purchase and payment of contract price—Prescription—Prescriptive period regarding arazi mirie lands—Ten years—Article 20 of the Ottoman Land Code—Period completed and title acquired by prescription some time in 1945—Good title —Law applicable is that in force prior to the coming into operation on September 1, 1946, of the Immovable Property (Tenure, Registration and Valuation) Law, now Cap. 224—Cf. herebelow.

Co-owners—Immovable property held in undivided shares—Co-owners in the present case not co-heirs but strangers —There can be, therefore, possession by one co-owner adverse to the other not in possession—Inference of consent not applicable.

Adverse possession—What constitutes adverse possession—Possession animo domini*—Acquisition of ownership by prescription through adverse possession—This is also possible in law in the case of co-owners (not co-heirs) where the one of them may acquire good title by prescription over the share of another co-owner not in possession.*

Adverse possession—Gift of immovable property not perfected by registration—Adverse possession by the donee for the full period of prescription—It will operate as to supply the defect of want of registration and give good title to the donee.

Limitation of actions—Limitation of Actions Law, Cap. 15, section 5—Six years period of limitation from accrual of the cause of action—Land adversely held through

purchase under a contract concluded in 1935—Accrual of (new) cause of action in 1968, when the registered owner started interfering with and disputing the proprietary right of the purchaser acquired by prescription sometime in 1945.

This was a dispute between the two co-owners in undivided shares of certain fields regarding the claim put forward by the one of them (the respondent lady) to the effect that as from September 14, 1945 (or thereabouts) she had acquired title of ownership over the registered share of the other (the appellant) by prescription through adverse possession for the full period of ten years prescribed by Article 20 of the Ottoman Land Code, in force at the time. This claim of the respondent was upheld by the trial Court as well as by the Supreme Court on appeal. On the facts as found by the trial Court (such findings left undisturbed on appeal), the question of title in this case is governed by the law in force prior to September 1, 1946, when the Immovable Property (Tenure, Registration and Valuation) Law, now Cap. 224, came into operation, repealing *inter alia,* the Ottoman Land Code; with the result that (a) The subject properties being lands of the *arazi - mirié* category, the appropriate period of prescription was under Article 20 of the Ottoman Land Code, then in force, ten years; (b) such period of prescription runs against owners (or co-owners) of Land irrespective of whether they are registered or not. (*Note:* Under the new statute, Cap. 224, *supra,* section 8, no period of prescription runs against registered owners (or co-owners)).

The rather peculiar facts of this case may be briefly stated as follows:-

Some time in the year 1932 and 1933, the appellant together with the father of the respondent lady became the duly registered co-owners in the undivided shares of ¼ and ¾, respectively, of certain lands of the *arazi mirié* category. (*Note:* This category along with certain other categories of immovable property has been abolished on September 1, 1946, when the new statute, now Cap. 224, came into operation *(supra)).*

Now, within the period 1933 - 1935 (no actual date is given) the father gave as dowry to his daughter (the respondent) his aforesaid registered 3/4 shares in the lands in

question, apparently without registering same into her name. But whatever the position might have been regarding the gift of these 3/4 shares, a fact beyond question is that on the death of her father in the year 1941, the respondent, being his sole heir, became automatically the legal owner by inheritance of the aforementioned 3/4 shares registered in the name of her deceased father as aforesaid; becoming thus entitled to be registered as such.

On the other hand, by a contract in writing dated September 14, 1935, the same lady (the respondent) agreed to buy from the appellant his aforesaid registered 1/4 share in the lands in question for the sum of £16 payable within a week from the date of the signing of the contract. The purchase price was duly paid as agreed; but for reasons not clearly explained the appellant vendor failed to register his share in question in the name of the lady (respondent-purchaser). Be that as it may, the respondent took possession of all the lands covered by the aforesaid 1/4 and 3/4 shares as from the date of the signing of the aforementioned contract *viz.* September 14, 1935 (*supra*); and ever since until the year 1968 she was in the continuous and undisputed possession *animo domini* of all these lands, cultivating and enjoying same exclusively.

In the year 1968, the respondent lady started taking steps with a view of obtaining registration in her name of the aforesaid 1/4 share (then still registered in the name of the appellant-vendor) on the basis of her uninterrupted and undisputed adverse possession of the lands in question, such possession *animo domini* commencing, as we have seen, on September 14, 1935 (or thereabouts) and completed ten years thereafter as explained hereabove. The appellant objected then to such registration and from that time started claiming rights of co-ownership over the undivided aforesaid lands, basing himself on his title-deeds regarding his said 1/4 share therein. As a result of such objection and claims on the part of the appellant, the respondent lady instituted an action in the District Court of Nicosia against him claiming in substance a declaration of the Court that she acquired title over the said 1/4 share of the defendant (appellant) by adverse possession as aforesaid and that, therefore, she is entitled to be registered accordingly.

The trial Court, having heard eight witnesses in support

of the plaintiff's claim, accepted their uncontradicted evidence and made its finding to the effect that she, the plaintiff, since the date of the signing of the aforementioned contract of sale on September 14, 1935 (*supra*) till the year 1968 was in uninterrupted and undisputed possession *animo domini* of the lands in question, cultivating and enjoying same exclusively. Furthermore, the trial Court found that the purchase price of £16 was duly paid as agreed and proceeded to give judgment for the plaintiff, holding that, the disputed lands being *arazi mirié,* the ten years appropriate period of prescription under Article 20 of the Ottoman Land Code, then in force, had been completed by September 1945 and, consequently, that the plaintiff had acquired title over the said registered 1/4 share of the defendant before the coming into operation of the new statute, now Cap. 224 *i.e.* before September 1, 1946 (*supra*); which means that the provision in section 8 of the new statute to the effect that acquisitive prescription does not run against registered owners (or co-owners) has no application in the instant case.

From that judgment the defendant took the present appeal which was argued by counsel for the appellant on two main grounds, that is to say:-

First ground: The respondent being a co-owner of the disputed lands cannot have a possession thereof adverse to another co-owner not in possession such as the appellant.

Second ground: The action is statute-barred in view of section 5 of the Limitation of Actions Law, Cap. 15, as it was instituted more than six years after the aforementioned contract of sale was concluded between the parties on September 14, 1935, and presented to the Lands Office under section 26 of Cap. 224, on October 7, 1946.

The Court dismissing the appeal on all grounds:-

Held, I: *As to the first ground (supra):*

(1) *Per Triantafyllides, P.:*

(A) The fact that the respondent was during the material period a co-owner of the said lands holding the aforementioned 3/4 shares, given

to her by her father, did not, in my opinion, prevent the possession of the 1/4 share of the appellant from being adverse to the latter.

(B) Certain dicta in cases such as *Chakarto* v. *Liono,* 20 C.L.R. 113, Part I and *Angeli* v. *Lambi and Others* (1963) 2 C.L.R. 274, regarding inferences of consent in cases of possession by co-heirs are not applicable in the particular circumstances of the present case. The appellant and the respondent are not co-heirs nor does there exist any other ground justifying the inference of possession by the respondent with the consent of the appellant as a co-owner; and it should not be lost sight of that the respondent took possession of the 1/4 share of the appellant in the lands in question *animo domini,* on the strength of a contract for the sale of his shares to her.

(2) *Per Hadjianastassiou, J.:*

As to the argument that a co-owner cannot have adverse possession against another co-owner, I think that the case of *Chakarto* (*supra*) covers the facts of this case, because the respondent and the appellant are not co-heirs; the two co-owners here are strangers. Once, therefore, the respondent was cultivating all the portions of the disputed lands exclusively, such possession in my view is adverse to the other co-owner, the appellant.

Held, II : *As to the second ground (supra):*

(1) *Per Triantafyllides, P.:*

(A) Surely, the cause of action did not accrue, for the purpose of the completion of the period of limitation, immediately upon the signing of the said contract of sale between the parties on September 14, 1935 (*supra*); nor upon the presentation of this contract on October 7, 1946, to the Lands Office under section 26 of the new statute, now Cap. 224 (*supra*); such presentation was made in relation to the provisions of sections 24 and 25 of the said statute, for a

purpose altogether irrelevant to the running of the period of limitation

(B) In my view, the cause of action in the present case accrued much later, in 1968, when the appellant started disputing the proprietary rights of the respondent in the lands in question.

(C) As pointed out in *Barton* v. *North Staffordshire Railway Company,* 38 Ch. D. 458, at p. 463: "It is an elementary principle that time does not begin to run until there is a complete cause of action"; and in *Welch* v. *Bank of England and Others* [1955] Ch. D. 508, Harman J. after referring to the *Barton* case (*supra*) held that time did not begin to run until there was a "categorical refusal" to recognize the plaintiff's rights. In the present case there was a categorical refusal of respondent's rights on the part of the appellant, completing thus a cause of action, when the appellant disputed such rights in the year 1968.

(D) It is correct that the respondent applied in 1946 to the Lands Office for the registration in her name of the properties concerned and that such registrations were not effected as the necessary consents were not produced; assuming (because there is no actual evidence to that effect), that the appellant refused then his consent to the registrations, this fact might have entitled the respondent to sue the appellant for a declaration in respect of her rights, but it certainly cannot be treated as preventing the respondent from suing the appellant, as she has done, when a fresh cause of action accrued in 1968 as aforesaid.

(2) *Per Hadjianastassiou, J.:*

I agree that in the present case the cause of action has accrued in 1968 when the appellant started interfering with or disputing the prescriptive rights of the respondent; consequently the claim of the respondent is not statute-barred.

Appeal dismissed with costs.

Per Hadjianastassiou, J.

It was held that possession for the period of prescription under a gift of immovable property not perfected by registration does not operate to supply the defect of want of registration so as to give good title to the donee unless such possession is maintained adversely to the donor, and is of such a nature as to exclude the donor continuously and substantially from the enjoyment of the property (see *Morphia Mourmouri* v. *Michael HajiIanni,* 7 C.L.R. 94, adopted and followed in *Charalambous* v. *Ioannides* (1969) 2 C.L.R. 72).

Cases referred to:

Chakarto v. *Liono,* 20 C.L.R., Part I, 113;

Angeli v. *Lambi and Others* (1963) 2 C.L.R. 274;

Barton v. *North Staffordshire Railway Company,* 38 Ch. D. 458, at p. 463;

Welch v. *Bank of England and Others* [1955] Ch. D. 508;

Morphia HajiIanni Mourmouri v. *Michael HajiIanni,* 7 C.L.R. 94;

Charalambous v. *Ioannides* (1969) 2 C.L.R. 72;

Bridges v. *Mees* [1957] 2 All E.R. 577;

Anna Soteriou v. *The Heirs of Despina HadjiPaschali,* 1962 C.L.R. 280, at p. 282;

Rodothea PapaGeorghiou v. *Antonis Savva Ch. Komodromou* (1963) 2 C.L.R. 221, at p. 236;

Thomas Theodorou v. *Christos HadjiAntoni,* 1961 C.L.R. 203, at p. 208;

Christos Stokkas v. *Christina Solomi* (1956) 21 C.L.R. 209, at p. 210;

Aradipioti v. *Kyriakou and Others* (1971) 1 C.L.R. 381.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Ioannou, Ag. D.J.) dated the

6th December, 1969, (Action No. 411/69) whereby it was adjudged and declared that the plaintiff was entitled to be registered as owner of the one-fourth share of certain lands situated at Paleometocho village under Registration Nos. 15559, 15560, 15622, 15626 and 15629.

L. Clerides, for the appellant.

Ch. Velaris, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES, P.: The first judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU, J.: This is an appeal by the defendant from the judgment of the District Court of Nicosia, dated December 6, 1969, in which it was adjudged and declared that the plaintiff was entitled to be registered as owner of the one-fourth share of the lands situated at Paleometocho village under Registration Nos. 15559, 15560, 15622, 15626 and 15629 because of continuous undisputed adverse possession of the disputed property for a period of over 35 years, and to other consequential relief.

The appellant in the notice of appeal raised these two grounds:- (a) The Hon. Court erroneously found that respondent was entitled to the reliefs claimed because he completed the period of prescription provided under the Law prior to the coming into operation of Cap. 224; (b) The Hon. Court erroneously found that the respondent's claim was not statute-barred.

On the material before us, the salient facts are these:- The plaintiff, Photou Nicola and Eleni Nicola HjiLoizi are sisters and the daughters of Nicola HjiLoizi of Paleometocho (now deceased since the year 1941). Eleni, who got married to Chistofi Yianni Diplarou (the defendant) died intestate in the year 1930, leaving the only heirs to her immovable property her father and her husband.

The disputed immovable property of the deceased Eleni is described in the statement of claim as follows:-

(a) In the locality of "Kokkinadi" a field of 1 donum

and 1 evlek, plot No. 222 of sheet/plan 21/58, and registration No. 15559.

(b) In the locality of "Kantarka tou Ofkou" a field of 2 donums, Plot No. 717, sheet/plan 21/50, registration No. 15560.

(c) In the locality "Arkaki tou Chalountra" or "Mavrokampos", a field of 1 donum and 1 evlek, plot No. 1424 and sheet/plan 29/8 registration No. 15622.

(d) In the locality of "Laxin Makrin" a field of 2 donums and 1 evlek, plot 446 sheet/plan 29/15, registration No. 15626.

(e) In the locality "Kafkalin tis Aghias" a field of 1 donum and 3 evleks, plot 437, sheet/plan 21/58, registration No. 15629.

In the year 1932, both the father and the husband of the deceased applied in writing to the District Lands Office in Nicosia, under Application No. 2865/32 for the registration of the properties in question. According to the clerk of the Lands Office, registration of some of those lands was effected by inheritance, on May 30, 1932, and with regard to the rest on November 11, 1933, in the joint names of the father and husband, in undivided shares, *i.e.* three-fourths to the first and one-fourth to the second.

Sometime later on, (no actual date is given) the father gave to the plaintiff as dowry his hereditary share of three-fourths of the undivided shares of the properties in question, and on September 13, 1935, the plaintiff by a contract in writing (*exhibit* 1) agreed to purchase from the defendant all his share in the immovable properties of his deceased wife Eleni Nicola, for the sum of £16 payable by the purchaser within a week from the date of the signing of the contract. Although there was no date fixed for the transfer and registration of the properties purchased, a clause was inserted under which the party who would be in breach of the contract of sale was bound to pay an amount of £5 as compensation.

It appears that after the payment of the purchase price, the defendant transferred and registered into the

name of the plaintiff some of his shares of the fields purchased, but he failed to do so regarding the disputed properties. However, the plaintiff took possession of all lands purchased as from the date of the contract of sale, and having paid the purchase price, her possession, in my view, becomes adverse to that of the vendor as from the date of having paid the purchase price in 1935.

On October 7, 1946, the plaintiff, who remained in possession and was still cultivating both the lands given to her by her father, (who died in 1941) and the ones purchased from the defendant, applied to the District Lands Office under an application in writing No. 2699/46 for the registration of certain properties within the village of Paleometocho, because of adverse possession of the disputed lands. Although this file was not made available to the trial Court, it appears that registration was not effected because no written consent was filed by the vendor. Be that as it may, in accordance with the provisions of s. 26 of the Immovable Property (Tenure, etc.) Law Cap. 224, which came into force on 1st September, 1946, the D.L.O. made this endorsement on the written contract of sale, *exhibit* 1 :- "Presented to the L.R.O. on the 7th October, 1946 and recorded under serial No. 655/46". It is to be observed that the only purpose of such endorsement is that in accordance with the aforesaid section, it "shall be conclusive evidence that the contract had been so presented", and in my view, had nothing to do with the point raised by counsel for the appellant that the cause of action accrued to the respondent as from the date of endorsement of the contract of sale.

In accordance with the evidence and the finding of the trial Court, in the year 1968, the plaintiff (since the defendant failed to transfer and register the disputed lands) applied to the village authorities for a certificate with the purpose of producing it to the D.L.O. as evidence of the fact that she was in possession of the disputed lands, but the mukhtar refused to sign such a certificate, the reason being that the lands were registered in the name of the defendant. The trial Court in its finding, concludes that "it is from that time that the defendant started claiming rights arising from the undivided lands, basing himself on his title deeds and as

a result of such a claim the present action was instituted".

Although the plaintiff in support of her claim adduced evidence, in order to show that since the signing of the contract of sale she remained in possession and cultivated the disputed lands continuously, undisputedly and adversely for a period of 35 years, and that she was entitled to be registered, nevertheless, the defendant failed to adduce rebutting or other evidence in support of his allegations in the statement of his defence. Admittedly in paragraph 2(d) he alleged that "there was no concluded agreement between the parties as plaintiff failed to provide the agreed consideration in accordance with the offer to treat which passed between the parties....."; then follows sub-paragraph (f) that "plaintiff never asserted exclusive ownership and/or possession of the said properties to the exclusion of the defendant"; and in (g) he alleges that "he had in his uninterrupted possession *animo domini* since the year 1933 all the above properties jointly with the plaintiff, and that he was cultivating and enjoying same during the said period with the plaintiff"; and alternatively, he alleged that "always during the said period he pressed plaintiff to agree to a division of the said properties, but plaintiff refused...".

The trial Court, having heard eight witnesses in support of the claims of the plaintiff, accepted their uncontradicted evidence and made its findings of fact that the plaintiff, since the date of the signing of the contract of sale of the 14th September, 1935, till the year 1968, was in continuous uninterrupted possession *animo domini* of the disputed lands and was cultivating and enjoying same exclusively. Furthermore, the Court accepted that the purchase price of £16 was paid to the plaintiff in accordance with the contract of sale. Thus, it appears from the evidence, in my view, that actual adverse possession over the disputed lands which are of *arazi mirie* category has been proved by the plaintiff by positive evidence of a nature that ousted the appellant from possession. See *Aradipioti* v. *Kyriakou and Others* (1971) 1 C.L.R. 381, also *Charalambous* v. *Ioannides* (1969) 1 C.L.R. 72.

Although the said findings of the trial Court have not been challenged, counsel on behalf of the appellant has argued regarding ground (a) of the appeal that the respondent did not complete the period of prescription required under the law, prior to the coming into operation of the Immovable Property (Tenure etc.) Law, Cap. 224.

Regarding the question of possession, as far as acquisition of ownership by prescription is concerned, I propose reviewing some of the authorities and I deal first with the case of *Enver Mehmet Chakarto* v. *Hussein Izzet Liono*, 20 C.L.R., Part I, 113. This is a case in which one co-owner claimed adverse possession against another co-owner, and the headnote reads :-

> "The defendant-respondent was in possession of the land in dispute for about 9 years prior to 1943 without any registered title. In that year he bought a 4/20th share thereby becoming part owner with other persons who were not in possession and who were strangers to the respondent.
>
> Prior to 1946 when the Immovable Property (Tenure, Registration and Valuation) Law came into operation, the land was *'arazi mirie'*; the period of prescription as contained in Article 20 of the Ottoman Land Code was 10 years. The respondent therefore required one year's possession after becoming co-owner in 1943 to complete 10 years possession."

Hallinan, C.J. delivering the judgment of the High Court, after dealing with the period of prescription for lands of *arazi* and *mulk* as provided in Articles 20 and 23 of the Ottoman Land Code, in dismissing the appeal, said at p. 116 :-

> "In his Commentary on the Ottoman Land Code, Jemaleddin, at p. 190, when discussing Article 23 says that if brothers are co-owners of land by inheritance and one only is in possession, such possession will not be deemed adverse as against the brothers who are not in possession because the brother in possession is presumed to be there with their consent. From Article 23 and Jemaleddin's

Commentary it can reasonably be inferred that where two co-owners have not derived their title from the former owner by inheritance but each are purchasers and strangers, the consent of the co-owner out of possession cannot be presumed, and therefore the possession of the co-owner who is cultivating the land is adverse to the other co-owner.

For these reasons we consider that the respondent's possession, even when he became a co-owner in 1943, continued to be adverse to the title of the appellant."

Then I turn to the case of *Christos HajiLoizi Stokkas* v. *Christina Argyrou Solomi of Nikitas* (1956) 21 C.L.R. 209. In this case, the plaintiff claimed possession of certain land as owner. The land had not been registered and was not crown land. Hallinan C.J. in dismissing the appeal said at p. 210:-

"Counsel for the appellant submits that on a true interpretation of this proviso the period of prescription for unregistered land, which started to run but was not complete before the Immovable Property Law came into operation, is still 30 years, and the effect of the proviso is that any period that had run before the Law came into operation should count towards and be included in the 30 years period; and that, apart from the number of years prescribed by section 9, all other matters dealing with prescription should be dealt with under the provisions of the Ottoman Law. We are unable to accept this interpretation. If the legislature had intended that where the period of prescription which had started to run in a case of unregistered land before the Law came into operation should be 30 years, then the proviso would have been cast in quite a different form. In our view, the determination of the trial Court was correct. Where land is unregistered land and the period of prescription had started to run before the Law, Cap. 231, came into force, all matters relating to prescription in such a case are governed by the old Law, including the period of prescription itself."

In *Thomas Antoni Theodorou* v. *Christos Theori Hadji*

Antoni, 1961 C.L.R. 203, Zekia, J., delivering the majority judgment of the Supreme Court, said at pp. 207 and 208 :-

> "The trial Court declined to uphold the submission of the appellant's advocate that possession since 1942 on the part of the respondent, in view of sections 9 and 10 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, could not create a right over the disputed portion in respondent's favour. The learned judge referred to a number of cases and held that possession since 1942 plus the de facto boundary were adequate grounds to defeat the title of the appellant in respect of the disputed portion and entitle the respondent to the registration in his name for that portion.
>
> I have no doubt that section 9 of the Immovable Property (Tenure etc.) Law (Cap. 224) is unaffected by *section 10 and acquisitive prescription over* a land cannot run against a registered owner since the enactment of the said law, 1st September, 1946. The prescriptive period in respect of *Arazi Mirie* (fields as a rule) was 10 years prior to 1946 before the repeal of the Ottoman Land Code. In a number of cases the Supreme Court held that persons cultivating uninterruptedly lands of *arazi mirie* category for 10 years prior to 1946 were entitled to obtain registration in their name of the land so cultivated even after 1946, but the 1st September, 1946 is the material date prior to which the prescriptive period had to be completed where the rights of registered owners were concerned."

In *Anna Soteriou* v. *The Heirs of Despina K. Hji Paschali*, 1962 C.L.R. 280, Zekia J., dealing with the possession of *mulk* property, said at p. 282 :-

> "We have indicated during the hearing that the word 'possession' in the Land Code implies, as far as acquisition by prescription is concerned, acts of ownership in some form or other on the part of the person who asserts adverse possession. In this particular case the evidence adduced was slender and unsatisfactory and the trial judge could not find

otherwise than what he did. The disputed area, it was stated, was covered by a reed plantation. It is not clear who had planted it or whether appellant had exercised any act of ownership over it. There must be positive evidence as to the acts of ownership which amount to possession which the nature of the land admits."

In *Rodothea PapaGeorghiou* v. *Antonis Savva Charalambous* (1963) 2 C.L.R. 221, the Court found that the disputed portion of land was cultivated by the defendant's mother at least as far back as 1915 till 1938 or 1939, when the defendant's mother gave the field to the defendant as dowry, and from that date the disputed portion of land was cultivated by the defendant herself until the day of the action (in 1961). Zekia, J., as he then was, in delivering the majority Judgment of the Court, had this to say at p. 236 :-

> "It is clear from the old and new law relating to the transfer of immovable property that registration in one way or the other was necessary for the validity of the transfer.
>
> In this case the mother, the predecessor-in-title of the appellant was not, as far as the evidence goes, the registered owner in respect of the disputed portion of land and when she made a gift of the land possessed by her including the disputed portion as dowry to her daughter, the appellant, in 1938 or 1939, that gift not having been made in accordance with the Law, could not be considered to be a transfer in the legal sense of the word."

And, at p. 237 he said :-

> "I am of the opinion, therefore, that whatever possessory rights were vested in the mother of the appellant in respect of disputed land those rights did not pass to the daughter either by virtue of the agreement of dowry in 1938 or 1939 or on the strength of the transfer in 1955 which transfer did not include the disputed land."

In *Eleni Angeli* v. *Savvas Lambi and Others* (1963) 2 C.L.R. 274, Wilson, P. delivering the unanimous judgment of the Supreme Court, said at p. 280 :-

"Concerning this I concur with the trial judge that the adverse possession of the plaintiff's father until partition in 1928 as against his brothers, who were co-owners of land by inheritance, but with only the plaintiff's father in possession, will not be deemed adverse against the brothers not in possession because the brother in possession is presumed to be there with their consent: *Chakarto* v. *Liono*, 20 C.L.R. 113, and *Paourou* v. *Paourou*, (Civil Appeal No. 4355, dated 19.6.62 unreported)."

Later on he said:-

"The period of prescription began to run from the date of partition in 1928. In 1930, in consequence of a General Registration under the provisions of the Law, titles were issued to the 9 heirs of Lambis including plaintiff's father who died 9 years later, *i.e.* in 1939, without completing the period of prescription. The plaintiff, who was one of six heirs of her father, could not by herself have acquired title to the water by prescription since that time, as she was only entitled to the one-sixth of her father's share and not to the whole, and she was co-owner together with 5 other heirs. It, therefore, follows that with the death of the plaintiff's father in 1939 there was interruption in the prescriptive period and the plaintiff's claim cannot succeed."

I think that I ought to reiterate that in the light of the authorities, once the properties began to be adversely possessed (according to the finding of the trial Court in the year 1935) the law applicable with regard to the period of prescription and all matters relating to prescription during such period are governed by the provisions of the law in force prior to the coming into operation (on September 1, 1946) of the Immovable Property (Tenure etc.) Law. I would, however, make this observation, that the definition of "adverse possession" is substantially the same under both enactments, with the only difference that in the definition of adverse possession in s. 2 of Cap. 224, implied consent of the person entitled to possession has been added. In the old law, however, the Immovable Property Limitation

Law, 1886, s. 1 defines adverse possession as possession by some person not entitled to possession, where the express consent or permission of the person so entitled has not been given or obtained for such possession.

With this in mind, I propose considering the further argument of counsel that the prescriptive period in favour of the plaintiff did not begin to run in 1935, but only in 1941 when the father of the respondent died. But with respect to the argument of counsel, I am unable to accept his submission, because it was held that possession for the period of prescription under a gift of immovable property not perfected by registration does not operate to supply the defect of want of registration so as to give a good title to the donee unless such possession is maintained adversely to the donor, and is of such a nature as to exclude the donor continuously and substantially from the enjoyment of the property. (*Morphia HajiIanni Mourmouri* v. *Michael HajiIanni*, 7 C.L.R. 94. Adopted and followed in *Charalambous* v. *Ioannides* (*supra*) (1969) 2 C.L.R. 72).

These words, in my opinion, apply to the facts of the present case, because there is ample evidence before the trial court that since 1935 the plaintiff was exclusively and adversely cultivating both the share of the lands gifted to her by her father as well as the share purchased from the appellant. Cf. *Bridges* v. *Mees* [1957] 2 All E.R. 577 regarding the question of acquisition by purchaser of title by adverse possession.

Of course, I would be inclined to agree with counsel that when the father of the respondent made her a gift of his share of the land registered in his name, as dowry in 1933 or 1935 (no actual date given) that gift not having been made in accordance with the law, could not be considered to be a transfer in the legal sense, and consequently, the two periods of possession cannot be added up but certainly, it is clear from the evidence that it makes no difference in this case, because once the respondent, having completed from 1935 to the 1st September, 1946, a full period of 10 years adverse possession of her own, she is entitled to become the registered owner of all the shares, *i.e.* her father's and those of the appellant (defendant); and it is also an

adequate ground to defeat the title of the latter regarding the disputed portion.

Now, as to the next argument that a co-owner cannot have an adverse possession against another co-owner, I think that the case of *Chakarto* (*supra*) covers the facts of this case, because the respondent did not derive her title from the same owner by inheritance as the appellant, and secondly, the two co-owners are strangers. Once, therefore, the respondent was cultivating all the portions of the lands exclusively, such possession in my view, is adverse to the other co-owner, the appellant.

Having reached the conclusion that when the respondent became a co-owner in 1935, she continued possessing the land adversely against the appellant, and that she has completed the 10 years period of prescription laid down by the law in force prior to the coming into operation on September 1, 1946, of the Immovable Property (Tenure etc.) Law, I would dismiss the first ground of the appeal and affirm the judgment of the learned judge on this point.

Now, reverting to the second ground argued in the appeal, that the respondent's claim was statute barred, I find myself in agreement with the learned judge that the cause of action has accrued in the circumstances of this case in 1968 when the appellant started interfering or disputing the prescriptive rights of the respondent, and, therefore, the claim of the respondent does not fall within the provisions of s. 5 of the Limitation of Actions Law Cap. 15, and it is not statute barred.

For the reasons I have tried to advance, and in the circumstances of this case, I would dismiss the appeal, with costs in favour of the respondent.

TRIANTAFYLLIDES, P.: In this case I have had the benefit of reading in advance the judgment just delivered by my learned brother Mr. Justice Hadjianastassiou and I do agree with him that this appeal fails and should be dismissed accordingly.

In the light of the review of the relevant case-law which has been usefully made in his judgment I can formulate as follows my reasons for my conclusion as regards the outcome of this appeal:-

As has been conceded, during argument, by learned counsel for the appellant, the period of prescription in the present instance was ten years, in view of the nature of the properties concerned (*arazi mirie*), and in accordance with the legal provisions applicable (those in force before the coming into operation on the 1st September, 1946, of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224); and in this respect I agree with the opinion expressed in the judgment of Hadjianastassiou, J. that the trial Court has correctly held that such period was duly completed before the 1st September, 1946, notwithstanding the existence of registrations in the name of the appellant. On the basis of all the material before the Court there can be, really, no doubt that the respondent did, during such period, possess adversely the 1/4 shares of the appellant in each one of the properties in question.

The fact that the respondent was, during the material period, a co-owner of the said properties, in the sense that she had been given, by her father, the remaining 3/4 shares therein, by way of dowry or gift, did not, in my opinion, prevent the possession by her of the 1/4 shares of the appellant from being adverse, because the dicta in cases such as *Chakarto* v. *Liono,* 20 C.L.R. Part 1, 113, and *Angeli* v. *Lambi and Others* (1963) 2 C.L.R. 274, regarding inference of consent in case of possession by co-owners, are not applicable in the particular circumstances of the present case: The appellant and the respondent were not co-heirs nor did there exist any other ground justifying the inference of possession by the respondent with the consent of the appellant as a co-owner; and it should not be lost sight of that the respondent took possession of the shares of the appellant *animo domini,* on the strength of a contract for the sale of his shares to her.

In my view the issues raised, by way of argument in the course of this appeal, concerning the validity of the title acquired by the respondent in respect of the 3/4 shares in the properties in question—which were given to her, as aforesaid, by her father, who died in 1941—are not actually relevant to the outcome of this appeal, because the respondent became, in any event, entitled to the said shares by inheritance, upon the death

of her father, whose sole heir she indisputably is, without the appellant having in any way any entitlement in the matter.

There remains to deal with, next, the contention that the action of the respondent ought to have been dismissed under section 5 of the Limitation of Actions Law, Cap. 15, as it was filed more than six years after the aforementioned contract of sale, which was concluded between the parties on the 14th September, 1935, and was presented to the Lands Office, under section 26 of Cap. 224, on the 7th October, 1946. As regards the latter date, I do not think that it can be connected in any way with the matter of the period of limitation, because the presentation of the contract to the Lands Office was made in relation to the provisions of sections 24 and 25 of Cap. 224, concerning the rights of co-owners, and, therefore, for a purpose altogether irrelevant to the running of any period of limitation. As regards the former date, I do not agree—(and in this respect I share fully the view of the trial Court)—that a cause of action accrued, for the purpose of the computation of the period of limitation, immediately upon the conclusion of the contract of sale; such cause of action accrued much later, in 1968, when the appellant started disputing the rights of the respondent in the properties.

As pointed out in *Barton* v. *North Staffordshire Railway Company,* 38 Ch. D. 458, by Kay, J. (at p. 463): "It is an elementary principle that time does not begin to run until there is a complete cause of action"; and in *Welch* v. *Bank of England and Others* [1955] Ch. D. 508, Harman, J., after referring to the decision in the *Barton* case (*supra*), held that time did not begin to run until there was a "categorical refusal" to recognize the plaintiff's rights. In the present case there was a categorical refusal of respondent's rights on the part of the appellant, completing thus a cause of action, when the appellant disputed such rights in 1968.

It is correct that it appears in evidence that the respondent applied in 1946 to the Lands Office for registrations in her name of the properties concerned and that such registrations did not take place as the neces-

sary consents were not produced; assuming—(because there is no actual evidence to that effect)—that the appellant refused then to consent to the registrations, this fact might have entitled the respondent to have sued for a declaration in respect of her rights, but it certainly cannot be treated as preventing the respondent from suing the appellant, as she has done, when a fresh cause of action accrued in 1968, as aforesaid.

I agree, therefore, that this appeal fails and should be dismissed accordingly, with costs against appellant.

STAVRINIDES, J.: I agree that by September 1, 1946, the respondent had acquired a title to the subject properties by adverse possession and think it unnecessary to add anything to the judgments just delivered.

Appeal dismissed with costs.