1975
April 14
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MYROFORA NICOU SOCRATOUS
v
NICOLAS MICHAEL MEZOU

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

MYROFORA NICOU SOCRATOUS,

*Appellant-Plaintiff,*

*v.*

NICOLAS MICHAEL MEZOU,

*Respondent-Defendant.*

*(Civil Appeal No. 5094).*

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*Immovable property—Error or omission in the land register —Or in a certificate of registration—Amendment, correction or rectification—Double registration—Certificate of registration of water rights issued in 1959 on basis of untrue facts contained in a village certificate—Whether certificate of registration can be amended by the Director under the provisions of section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224—Village certificate being extra judicial, as containing merely unsworn statements based on information, incumbent on Director to hear evidence on oath from both sides—And when evidence is required to be heard by the Director concerning legal rights in land, the machinery provided under the said section 61 should not be put into motion—The remedy lies in a Civil Court with all the safeguards as to evidence on oath, admissibility of evidence and, generally the fundamental rules of the administration of justice.*

*Immovable Property—Certificate of registration—Is* prima facie *evidence of ownership—A person claiming to defeat the title of a registered owner has either to establish that the registration was effected by mistake or error—Or that, where there is room for acquisition of a prescriptive right, the holder of the certificate has lost his right over the land because it has been adversely possessed by such person—Burden of proof that registration was effected by mistake or error is on the party seeking correction or rectification.*

*Evidence—Immovable property cases—Certificates of village*

*authorities—Not evidence admissible before a Court of Law.*

The appellant-plaintiff is the owner of a piece of land at Paliomylos village which she purchased in 1963. The registration in her name covers plot 297/2 and in the title it is described as "field and garden with water from the springs found on plots 297/1 and 297/3". Plaintiff's registration was issued in the name of her predecessor-in-title on the 29th August, 1959. Plot 297/3 is registered in the name of the defendant. This registration was issued in his name on the 20th December, 1954 and in the title the property is described as "field and garden with water from the springs found on plots 261, 262 and 297/3 and on the boundary line of plots 257, 258, 270 and 271". Thus it appears that the water of the spring found in defendant's plot 297/3 is registered both in plaintiff's registration covering her said plot 297/2 and in defendant's registration of plot 297/3.

Plaintiff's main claim was for a declaration that she was entitled to a right of irrigation of her field plot 297/2 from the spring situated in plot 297/3 belonging to the defendant.

Defendant resisted plaintiff's claim and counter-claimed for an order of the Court directing amendment of the title-deed in plaintiff's name by the deletion of that part which refers to the spring in his plot 297/3.

Plaintiff alleged that ever since the partition of the properties in 1931 her predecessor and his wife have been taking water from the said spring and irrigating their lands covered by plot 297/2. And when she purchased this plot she continued exercising the same water rights. She further contended that defendant impliedly admitted the right of her predecessor to the use of the water from the spring in question.

Defendant denied that he ever admitted the right of plaintiff's predecessor and reiterated that he has been continuously and uninterruptedly the exclusive owner of plot 297/3 since 1934. He also stated that neither the plaintiff nor her predecessor ever took any water from the said spring or exercised any water right over that spring which was in his own plot. He further alleged

that the registration of right of irrigation in plaintiff's name of the water of the aforesaid spring was void, because it was issued on the basis of untrue facts and the village certificate dated August 22, 1948 is not true.

The trial Court having accepted the version of the defendant dismissed plaintiff's claim and after holding that plaintiff's predecessor was not entitled to be registered as the owner of any right regarding the water of the spring and that the registration in his name was issued to him by mistake allowed defendant's counterclaim.

The first contention of counsel for appellant-plaintiff was that the Court erroneously found, when dealing with the counter-claim of the defendant, that s. 61 (quo'ed in full in the judgment post) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 was inapplicable to the present case; and that respondent-defendant could apply to the Court and obtain the setting aside of the appellant's-plaintiff's registration *without first applying under the provisions of the said* section to the Director of the Lands and Surveys for the correction of the alleged error in the books of the Land Registry Office, concerning the registration relating to the spring in plot 297/3.

His second contention was that the trial Court misdirected itself on the onus of proof by holding that appellant's-plaintiff's registration was issued to her by mistake and thus it was not a valid one. As the only evidence came from respondent-defendant and his wife who were interested parties and this evidence could not be considered as independent, and even though no attack was made on their credibility, such evidence was wholly inadequate and the Court was wrong in its finding that the respondent-defendant discharged the burden cast upon him by law, that the registration was issued by mistake.

*Held, (1) With regard to the first contention:*

1. The trend of the recent authorities is that when evidence is required to be heard by the Director concerning legal rights in land, in order to enable him to

correct any error or omission in the Land Register or any certificate of registration, the machinery provided under s. 61 should not be put into motion, because the remedy lies in a Civil Court with all the safeguards as to evidence on oath, admissibility of evidence and, generally the fundamental rules of the administration of justice. (Statements of the Law quoted in the recent authorities ending with *Hassidoff* v. *Santi and Others* (1970) 1 C.L.R. 220 adopted).

2. In the present case, being a case of double registration, the alleged mistake is not apparent on the face of the certificate of registration; but it is alleged by the respondent that it is to be found in the certificate of the village authority which contained untrue facts. Before any correction is made by the Director, it is necessary to satisfy himself whether the facts recorded in that village certificate are correct; and whether plaintiff's predecessor-in-title was exercising a right of irrigation of his properties.

3. In the circumstances of this case, the village certificate being extra judicial as containing merely the unsworn statement of a person or persons based on information it would be incumbent on the Director to hear evidence on oath from both sides (a power which he does not possess). We, therefore, think that the machinery of s. 61 does not apply in this case and that the trial Court had jurisdiction and was empowered to entertain the question of amendment, correction or rectification of appellant's title-deed.

*Held, (II) With regard to the second contention:*

1. The certificate of registration is *prima facie* evidence of ownership. A person who claims to defeat the title or part thereof of a holder has either to establish that the registration was effected by mistake or error, or that, where there is room for acquisition of a prescriptive right, the holder of such certificate has lost his right over the land as it has been adversely possessed by such person.

2. Thus, it appears that the burden of proof that the registration was effected in the name of the plaintiff by mistake or error is on the party seeking cor-

rection or rectification, in this case on the defendant.

3. The trial Court correctly approached the question regarding the onus of proof. In the circumstances of this case we think that the evidence adduced by defendant was sufficiently reliable and of such a quality as to discharge the onus of proof cast upon him and we see no reason to disagree with the trial Court.

*Appeal dismissed.*

Cases referred to:

*Ellinas* v. *Yianni & Others*, 23 C.L.R. 22 at p. 24;

*Tsiarta and Another* v. *Yiapana and Another*, 1962 C.L.R. 198;

*Papa Loizou* v. *Themistokleous*, 22 C.L.R. 177;

*Andronikou* v. *Roussou*, 24 C.L.R. 107;

*Chrysanthou & Others* v. *Antoniades* (1969) 1 C.L.R. 622;

*Ibrahim* v. *Souleyman*, 19 C.L.R. 237;

*Hassidoff* v. *Santi & Others* (1970) 1 C.L.R. 220;

*Theodorou* v. *Hadji Antoni*, 1961 C.L.R. 203 at p. 208;

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

**Appeal.**

Appeal by plaintiff against the judgment of the District Court of Limassol (Stylianides, Ag. P.D.C. and Chrysostomis, D.J.) dated the 16th May, 1972, (Action No. 3493/70) dismissing plaintiff's action for, *inter alia*, a declaration of the Court that she is entitled to a right of irrigation of her field and garden and ordering the amendment of her title-deed by allowing defendant's counter-claim.

*L. Clerides*, for the appellant.

*P. Cacoyiannis*, for the respondent.

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court delivered by:

HADJIANASTASSIOU, J.: In this case the plaintiff appeals from the judgment of the District Court of Limassol dismissing her action No. 3493/70 claiming (a) declaration of the Court that the plaintiff is entitled to a right of irrigation of her field and garden plot 297/2, of sheet plan XXVII/50 at Paliomylos village from the spring situated in plot 297/3 belonging to the defendant; (b) an order of the Court restraining the defendant from interfering with the said spring on the days which the plaintiff was entitled to irrigate her said property; and (c) an amount of £450 damages resulting due to the non-irrigation of her trees for the years 1968, 1969 and 1970. Furthermore, the Court, in allowing the counter-claim of the defendant, ordered the amendment of the title of plaintiff by deleting therefrom that part which refers to the spring in plot 297/3, in such a way so as not to include any right of use of the water of the spring in the aforesaid plot by the plaintiff.

The plaintiff's claim was based on her right by virtue of Registration No. 2312 dated March 15, 1963. In her statement of claim she alleged that the defendant in 1968 wrongly infringed her right of the use of the water by constructing a cement water tank and taking all the water of the spring found in his garden land, plot 297/3.

On the contrary, the defendant, after resisting the claim of the plaintiff, denied in his statement of defence that either the plaintiff or her predecessor-in-title acquired any right over the spring situated in his plot 297/3. He alleged that since 1934, when he acquired his property, he has been in exclusive possession and enjoyment of the said plot and the spring found therein. He further alleged that the registration of right of irrigation in the name of the plaintiff by virtue of title-deed 2312 dated March 15, 1963, on the water of the aforesaid spring in his plot 297/3, was void, *inter alia*, because the said registration was issued on the basis of untrue facts, and the village certificate dated August 22, 1948, which (if it refers to the spring of plot 297/3 is not true; the plaintiff and her predecessor-in-title never used the water of the said spring which remained in the exclusive ownership of himself, and neither the plaintiff nor her predecessor ever, prior to the institution of this action,

raised any claim; and that the plaintiff and her predecessor did not acquire any water rights on the aforesaid spring by virtue of continuous and uninterrupted exercise of same for the full period of 30 years or for any period prior or after the 1st September, 1946.

Then the defendant by his counter-claim, claimed: An order of the Court ordering the amendment of the title-deed 2312 dated March 15, 1963 in the name of the plaintiff by the deletion of that part which refers to the spring in plot 297/3 and in such a way as not to include any right to the water of the spring in the aforesaid plot.

The facts are these :-

Michael Mezos of Ayios Demetris village was originally the sole owner and possessor of the whole plot 297 until his death on April 14, 1930, leaving as his lawful heirs, the mother of the plaintiff, the defendant, and Leonidas Mezos, the predecessor-in-title of the plaintiff, from whom she purchased his share of the properties for the sum of £50. The deceased was only registered under Registration No. 716 dated December 1, 1911 for a part of that plot. That registration did not refer to any plan in use as it was issued prior to the general survey. The registration was identified during a local inquiry that it covered plot 297/3 and plot 297/4. As we said earlier, the whole plot 297 remained in his possession and it was sub-divided into eight plots at the local inquiry which was carried out as a result of application 6443/48 filed with the D.L.O. by the defendant. The defendant applied to the D.L.O. in 1948 (application 6443/48) for the issue of title-deeds regarding his portion of plot 297, inherited from his deceased father. As a result, Registration No. 2229 dated December 20, 1954, was issued in his name, covering the aforesaid plot 297/3. The description of the property on the title-deed appears to be "field and garden with water from the springs found on plots 261, 262, and 297/3 and on the boundary line of plots 257, 258, 270 and 271". In appears also that the said registration was effected by inheritance and partition from his father, and by plantation.

The brother of the defendant, Leonidas Mezos, filed also an application A7150/48, on August 28, 1948, and attached a village certificate also in support of the said application. It appears that the trial Court was not aware of the contents of that village certificate, and although a local inquiry was carried out, nevertheless, the application was put away on July 21, 1950, as the applicant failed to produce to the District Lands Office the written consents asked for, and the payment of the required fees. However, some five years later, the brother of the defendant filed a new application 1538/55, whereby he applied for the re-examination of his properties, described in application 7150/48, and for the issue of title-deeds in his name. A new local inquiry was carried out and on August 29, 1959, Registration No. 2312 was issued, but in the presence of the village mukhtar only.

As we said earlier, the brother of the defendant sold the property covered by this registration and it was transferred in the plaintiff's name on March 15, 1963. The said registration covered plot 297/2 of sheet/plan 37/50 of locality Kalogyros, Paliomylos village, and the description of the property reads: "Field and garden with water from the springs found on plots 297/1 and 297/3". Furthermore, the title deed shows that the ownership of the property in question was registered by inheritance and partition from his father.

Although it is a long established custom of Government departments to rely on village certificates for the issue of title-deeds, nevertheless, such village certificates are not evidence admissible before a Court of law (*Nicos Mina Ellinas* v. *Athanasia Yianni and Others*, 23 C.L.R. 22 at p. 24). For reasons not appearing on record, regretfully, in spite of the fact that the mukhtar and the azas who issued those certificates on the basis of which the title-deeds *exhibits* 4 and 5 were issued in the name of the defendant and his brother, were present outside the Court, nevertheless, they were not called to give evidence, and, therefore, we share the criticism made by the trial Court because of the failure to call them as witnesses in this case.

Be that as it may, the spring in plot 297/3 during

the life time of Michael Mezos, must have had a negligible quantity of water which was used for watering greens planted by Mezos' wife, probably to such an extent as to satisfy the needs of the family. After his death, and on the occasion of the engagement of the defendant in 1933, the property was partitioned sometime in 1934 and the portion now shown on the plan as plot 297/3 was allotted to the defendant. It appears that the main source of water whereby the two sub-plots 297/2 and 297/3 were irrigated were the springs which now form part of the water works of the irrigation division. A secondary source must have been the Koshinas spring. There was a third source of water for plot 297/3, that is to say, the quantity of the spring found on that plot. At that time there were only a few trees standing on those plots.

The defendant, in 1966 constructed a concrete water tank, and with further development works, the water of the spring was increased. On the other hand, his brother Leonidas, who took plot 297/2, started also developing more land and by the end of 1954 both the defendant and his brother were cultivating about 3 evleks each, but neither the plaintiff nor her predecessor-in-title were taking any water from the said spring or exercising any water rights over it. However, the Court did not exclude the possibility that when the water of the spring flowed into the nearby ravine, on occasions Leonidas would use such water either with the knowledge of the defendant or on sufferance. In the meantime, both the owners of the respective plots planted more trees, and no doubt, this was the main reason of this litigation. But, the defendant did not know, or indeed, he was not aware until the time of this action of the issue of a title-deed in the name of his brother, because he was not notified by anyone that it was issued in his name.

It was the version for the plaintiff that in 1931 Ioannis Alexandrou (plaintiff's father) together with Leonidas Mezou, the defendant, the wife of the deceased and other persons close to the family, visited the properties of the deceased and on the spot they partitioned the said property, and that ever since, Leonidas Mezos and his wife have been taking water from the spring in question and irrigating their lands covered by plot

297/2. When the plot in question was purchased by the plaintiff, she continued exercising the same water rights even after the defendant constructed the concrete tank. The testimony of the plaintiff was to the effect that just before she purchased the property from Leonidas Mezos, in the presence of the defendant, her uncle Leonidas Mezos talked about that property and the defendant impliedly admitted the right of her uncle to the use of water from the spring in question in order to irrigate his property.

On the contrary, the defendant denied that he ever admitted the right of his brother and reiterated that he has been continuously and uninterruptedly the exclusive owner and possessor of plot 297/3 since 1934. He further stated that neither the plaintiff nor her predecessor ever took any water from the said spring or exercised any water right over that spring which was in his own plot.

The trial Court, having heard the version of the plaintiff, and the version of the defendant, and having weighed and valued the evidence before it, accepted the version of the defendant and rejected the testimony of the plaintiff and her father. Then, after dealing with section 2 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, and after quoting the case of *Christodoulos St. Tsiarta and Another* v. *Kodros Kyriacou Yiapana and Another,* 1962 C.L.R. 198, the Court came to the conclusion that neither the plaintiff nor her predecessor-in-title acquired a right for any term of years, and that they did not undisputedly and uninterruptedly use the water of the spring found in the land of the defendant for any period. Finally, the Court was of the opinion that the plaintiff's predecessor-in-title was not entitled to be registered as the owner of any right regarding the water of the spring, the subject matter of the litigation.

The first contention of counsel on behalf of the plaintiff, (as indeed was before the trial Court) was that the Court erroneously found, when dealing with the counterclaim of the defendant, that s. 61 of Cap. 224 was inapplicable to the present case; and that respondent could apply to the Court and obtain the setting aside

of the appellant's registration without first applying under the provisions of the said section to the Director of the Lands and Surveys for the correction of the alleged error in the books of the Lands Registry Office, concerning the registration relating to the spring in plot 297/3.

We think that in dealing with this contention of counsel, we must observe that although the plaintiff did not rely or plead in her statement of claim or indeed to the defence or counter-claim of the defendant with regard to the remedies provided in ss. 61 and 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, nevertheless, the trial Court heard argument and considered the question whether or not the Court could entertain the counter-claim of the defendant who claimed the amendment and/or the rectification of the plaintiff's title-deed, and said:

> "In the present case there were no records on which the director could base his decision. What is actually in dispute is whether the plaintiff is entitled to a water right and in order to resolve this dispute, evidence should be heard".

Then the Court goes on:-

> "We distinguish the present case from the cases cited by learned counsel for the plaintiff and we hold that s. 61 is inapplicable as the alleged error is not apparent in the land registry records".

No doubt, the trial Court in reaching its decision relied on judicial pronouncements, but because counsel pointed out that the Court wrongly followed those cases (not dealing directly with the issue in question) we think that it is necessary to review the authorities ourselves, but before doing so, we consider it necessary to read s. 61 which gives power to the Director to correct any error or omission in the Land Register or in any certificate of registration:

> "61.(1) The Director may correct any error or omission in the Land Register or in any book of the District Lands Office, or in any certificate of registration, and every such Register, book or certificate of registration so corrected shall have the

like validity and effect as if such error or omission had not been made.

(2) No amendment shall be made under the provisions of subsection (1) of this section, unless thirty days' previous notice is given by the Director to any person who might be affected thereby, and any person may, within the period of thirty days from the date of the giving of such notice, lodge an objection with the Director who shall thereupon investigate the same and give notice of his decision thereon to the objector."

What is the purpose of this section appears in the case of *Lambris Haralambous Papa Loizou* v. *Kornelia Themistokleous*, 22 C.L.R. 177. The appellant originally applied to the Director of Land Registration and Surveys to determine the boundaries of his land under the provisions of s. 56 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, and the Director fixed the boundaries according to the plan. The respondent did not appeal against the Director's decision, nor did he apply under s. 59 of the Law for the rectification of any title-deed on the ground of an alleged error in the Land Registry records. The appellant then brought an action in the District Court claiming an injunction restraining the respondent from interfering with his land, and the respondent filed a counter-claim for an order directing the registration of the land in dispute in his name and the amendment of any previous registration on the ground that he had acquired it by prescription and that the L.R.O. had, by mistake, failed to include it in his registration. The Magistrate found that the respondent did not possess the land in dispute for the full prescriptive period and gave judgment in the appellant's favour. The President of the District Court, on appeal reversed the Magistrate's decision on the ground that there was a mistake in the Land Registry plan and he ordered rectification of the respective registration.

"*Held*: (1) that, when a mistake in the Land Registry records or plans was alleged, the combined effect of sections 75 and 59 of the Immovable Property (Tenure, Registration and Valuation) Law,

Cap. 231, was that the matter should, in the first instance, be referred to the Director of Land Registration and Surveys for his decision; and that, unless and until the Director decided one way or the other, the matter could not be pursued before the District Court, and then only by way of appeal under the provisions of section 75;

(2) that neither the Magistrate nor the President of the District Court, on appeal, was empowered to entertain the question of mistake in the Land Registry records unless the matter was brought before the Court by way of appeal from the Director's decision."

Zekia, J., as he then was, delivering the judgment of the Court of Appeal, said at p. 180 :-

"The amendment or cancellation of a title-deed on the ground that the property or part thereof, covered by such title-deed, has been acquired on account of undisputed possession by somebody else than the title holder normally assumes that there is no mistake or error, at any rate originally, in the registration and in the records of the L.R.O. When, however, a mistake in the survey or other records of the Land Registry is contended the combined effect of sections 75 and 59 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, is that such cases in the first instance should be referred to the Director of the Land Registry and his decision should be sought. Unless and until the Director decides one way or the other the matter cannot be pursued before a Court of Law, and then only under section 75 just quoted. In this case there was an application to the L.R.O. for fixing of boundaries and the L.R.O. clerk fixed the boundaries according to the plan. The Director was not told and was not required to make any rectification or cancellation of title-deed on the ground of an alleged error or mistake in his books. The case was brought to the Court and it was fought almost on one issue, namely, whether the defendant was entitled to the disputed land by virtue of possessing the same for a prescriptive period. In our view, neither the trial

Court nor the President of the District Court, sitting as an appellate court, was entitled to go into the issue of mistake in the Land Registry books unless the matter was brought before them on appeal from the decision of the Director. The object of the said Law touching this point, seems to be two-fold: (a) The Land Registry Authorities should have the opportunity to examine the case and, if satisfied that there is a mistake in their records, to make the necessary correction; after giving of course notice to the party whose interests are affected. (b) To avoid unnecessary litigation in minor disputes."

In *Chryssoulla Yiannakou Andronikou* v. *Dora Nikou Roussou,* 24 C.L.R. 107, a case of trespass, the appellant-defendant and the plaintiff-respondent were owners of two adjoining houses. The rights of the appellant over part of the roof of the respondent constituted the subject matter of the action. The door of the upstairs room of the house of the appellant opens onto the roof in question and from that door the appellant admittedly has the right to step onto the said roof and walk along part of it to a W.C. which is built at the edge of the said roof.

The respondent attempted to put a water spout on the part of the roof in question with a view to conduct the rain water falling on that roof of her house down into her yard. The appellant prevented her from doing so and went further and erected iron rails on that part of the roof in such a way as to render inaccessible to the respondent part of the roof in question.

The plaintiff-respondent had asked for (a) an order or injunction restraining the defendant from interfering in any way with her house and (b) prayed the Court to direct her (the defendant) to remove all buildings and structures placed on the roof of his house.

The apellant-defendant on the other hand claimed absolute ownership of the part of the roof in dispute by virtue of a consent order made on the 16th April, 1936, (in Action No. 236/35) where the parties in that action were the predecessors-in-title of the present litigants. The title-deeds of the appellant as well as of the respondent have been produced before the Court both of

which were issued after the judgment referred to above and both have reference to the said judgment describing the right of the appellant along the part of the roof in dispute as a right of way to the W.C. owned by her. The title-deed of the appellant, however, did not include part of the roof in dispute as part of his property although it was issued much later after the consent order and notwithstanding that it had on the face of it reference to that order.

The appellant counterclaimed for the part of the roof as his own property by virtue of the consent order and sought the inclusion of that portion of the roof into her title-deed. The learned judge refused to do so and referred to a previous decision of this Court that when an error or mistake is alleged in the books of the Land Registry the only way to proceed with the correction of such alleged mistake is to comply with sections 59 and 75 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, and the appellant having failed to do so he was precluded from seeking the correction of the title-deed on the ground of mistake by way of a counter-claim.

On appeal, affirming the judgment of the lower Court, it was held that the trial Court was right in holding that the appellant was precluded by s. 59 and s. 75 of Cap. 231 from seeking the correction of her title-deed by way of counter-claim.

In *Melpomeni Panayiotou Chrysanthou & Others* v. *Neoclis Antoniades* (1969) 1 C.L.R. 622, a piece of land in the village of Pissouri, under plot 193 belonged originally to the plaintiff and one Chrysanthou. In 1944, the plaintiff and Chrysanthou agreed to divide this plot between themselves. They agreed orally as to the division and, on their application a Land Registry clerk went on the spot and carried out a local inquiry. At the local inquiry both co-owners showed the clerk where they wanted the two plots to be. Subsequently, title-deeds were issued to the plaintiff and Chrysanthou; Chrysanthou being alloted plot 193/1 and the plaintiff 193/2.

The plaintiff, however, contended in his statement of claim that the Land Registry clerk, acting under a "wrong impession or misconception", included the dis-

puted two strips of land in plot 193/1 and, consequently, these strips were included in the title-deed issued in the name of Chrysanthou as aforesaid, whereas they should have been included in the abovementioned plot 192/2 and form part of the plaintiff's title deed No. 21100.

The learned trial judge, after hearing argument held that in the circumstances and facts set out in the pleadings, the "wrong impression or misconception" of the Land Registry clerk did not come within the class or category of errors or omission referred to in s. 61 and s. 80 of Cap. 224, which called for remedy or correction as contemplated under the said sections. He further held that "it is within the exclusive jurisdiction of this Court to decide upon the question of ownership in respect of the property claimed by both sides, and any decision in respect thereof has to be based on the production of evidence and certainly the Director of the District Lands Office cannot and is not entitled to hear such evidence".

The Court of Appeal, after finding itself in agreement with the conclusions of the learned trial judge, held :-

"(1) This is not a case where what is actually in dispute is where the physical boundary should run on the land according to the official survey plan; and where the Director has in his possession both the survey plan and the title-deed; and he is, thus, in a position through his officers to investigate the matter and correct a probable error. The present case is not actually a boundary dispute but a dispute as to whether the delineation in the official survey plan is correct or not, having regard to the agreement made between the parties in 1944; and it will not be possible for the Director to decide this matter unless he hears the evidence on oath of the parties concerned and this he has no power to do (*Papa Loizou* v. *Themistokleous* (1957) 22 C.L.R. 177, distinguished).

(2) In the present case the alleged 'error' is not apparent from the Land Registry records. It would perhaps, be so if the parties had actually filed in 1944 with the Land Registry Office a plan to scale showing exactly the boundary line where they wished it to be; but that, according to counsel, has not been

done. If the Director had in his records such a plan to scale, then that would be a case where by comparing the plan agreed upon and signed by the parties with the official survey plan, he would be in a position to detect the alleged error (*Andronikou* v. *Rousou* (1959) 24 C.L.R. 107, distinguished).

(3) We are of the view that the present dispute between the parties is within the principle laid down in *Chakkarto* v. *The Attorney-General*, 1961 C.L.R. 231. It should be added that the case of *Sherife Moustafa Moulla Ibrahim* v. *Mehmed Salih Souleyman* (1953) 19 C.L.R. 237, at p. 239 lends support to the view we are taking in the present case."

In *Sherife Moustafa Moulla Ibrahim* v. *Mehmed Salih Souleyman*, 19 C.L.R. 237, considerable evidence was adduced that certain land claimed by the plaintiff-respondent as property part of plot 30 of the survey plan, had in error been registered as part of plot 29(1), *i.e.* as part of the defendant's land. The trial Court found for the plaintiff probably on the ground of prescriptive right. The defendant appealed and the Court consisting of Hallinan C.J. and Zekia, J., had this to say at p. 239 :-

"In our view, the circumstances of the present case are not such a dispute as to boundaries of registered land under section 56 as to preclude the Court from adjudicating thereon in the first instance. We consider that the kind of dispute to which section 56 applies is one in which the boundary is described in the title-deed or delineated on a plan, and the dispute is as to where the physical boundary should actually run on the land so as to conform with the deed or the plan. It does not apply where there is a dispute as to whether the description in a deed or delineation in a plan is correct or not.

The trial Court, therefore, had jurisdiction to deal with what we consider the main issue in this case, namely, as to whether there has been a mistake in the registration."

In a recent case of *Abraham Hassidoff* v. *Paul Antoine-Aristide Santi and Others* (1970) 1 C.L.R. 220, a case

of double registration, the Court of Appeal reiterated once again the principle regarding the question of an error or omission in the Land Register.

Josephides, J., delivering the judgment of the Court of Appeal, and after posing the question whether in the circumstances of this case the provisions of s. 61 of Cap. 224 are applicable, said at pp. 236 - 237 :-

"This being a case concerning legal rights in land, it is obviously a case in which the parties affected should be given full opportunity of vindicating their legal rights in a Court of law in an action for a declaratory judgment as to title or otherwise, with all the safeguards as to proof and admissibility of legal evidence: See *Chakarto* v. *The Attorney-General,* 1961 C.L.R. 231; and *Chrysanthou & Others* v. *Antoniades,* (1969) 12 J.S.C. 1511. The circumstances of this case are such that we do not think that it would be safe to let it be decided on the basis of a comparison made by District Lands Officers (a) of the department's files based on a rough sketch of 1906 and the boundaries at the time, prior to the existence of an official survey plan to scale, and (b) partly on the unsworn evidence received by the District Lands Office clerk from a person in the absence of the interested parties (we shall consider the question raised under (b) later in this judgment). The circumstances are such that we are of the view that this case does not fall within the ambit of an 'error' in the Land Register as envisaged in section 61 of Cap. 224.

We would also observe that in a case of double registration, as in the present case, before any rectification is decided upon by the Director, he must satisfy himself as to who is in possession; and, where a long time has elapsed since the alleged error and the one party has not been in possession of registered land for more than ten years prior to the 1st September, 1946, then he should decline to act under the provisions of section 61 and he should let the interested parties vindicate their legal rights in the Courts."

Finally Josephides, J., summed up on these words at pp. 239 - 240 :-

"*To sum up*, we are of the view that the provisions of section 61 are inapplicable in the present case for the following reasons :

(a) The intervening period between the alleged error (in 1919) and its detection (in 1965) is so long as to admit of the probability of a prescriptive right having been acquired prior to the 1st September, 1946, when Cap. 224 came into operation; considering, especially, that the District Lands Office in the meantime carried out two local enquiries (in July 1936 and September 1954) and, after finding the strip in dispute in the undisputed possession of Mr. Hassidoff's predecessors-in-title (Symeonides' brother), and of Mr. Kokias and Mr. Hassidoff himself, issued certificates of ownership accordingly in the name of Mr. Hassidoff in 1937, 1954 and 1955. We do not think that it was the intention of the legislature in enacting section 61 to make it applicable to such cases;

(b) nor was it the intention of the legislature to empower the Director to carry out the kind of complicated investigation which he did in the present case, having to examine and consider a considerable number of departmental files covering a period of some 60 years, in the absence of an official survey plan to scale when the original registration was made in 1905.

We hold the view that in the circumstances of this case the registration standing in the name of Mr. Hassidoff (and his predecessors-in-title) for such a long period should not be disturbed by putting into motion the machinery provided under section 61. If the lawful heirs of Paul Marco Santi claim the disputed portion to belong to them, by succession or otherwise, on the basis of the registration of 1905, their remedy lies in a civil action before the District Court with all the safeguards as to evidence on oath, admissibility of evidence and, generally, the fundamental rules of the administration of justice, and not under the provisions of section 61."

Having reviewed those cases, it seems to us that the trend of the recent authorities is that when evidence is required to be heard by the director concerning legal rights in land, in order to enable him to correct any error or omission in the Land Register or any certificate of registration, the machinery provided under s. 61 should not be put into motion, because the remedy lies in a Civil Court with all the safeguards as to evidence on oath, admissibility of evidence and, generally the fundamental rules of the administration of justice. This Court has no doubt that both on principle and authority the statements quoted from recent authorities are correct, and respectfully agree and adopt them.

In the present case, being a case of double registration, the alleged mistake is not apparent on the face of the certificate of registration of the appellant; but it is alleged by the respondent that it is to be found in the certificate of the village authority, which contained untrue facts recorded by the mukhtar or azas through information regarding the rights of the use of the water from the spring which is in the plot of land of the respondent. In our view, before any correction is made by the Director, it is necessary to satisfy himself whether the facts recorded in that village certificate are correct; and whether the predecessor-in-title of the appellant was exercising a right of irrigation on his properties. In the circumstances of this case, once the certificate, being extra judicial, as containing merely the unsworn statement of a person or persons based on information would make it incumbent on the Director to hear evidence on oath from both sides (a power which he does not possess), we think that, the machinery of s. 61 does not apply in this case.

For the reasons we have advanced, we find ourselves in agreement with the trial Court that in the circumstances of this case, the Court had jurisdiction and was empowered to entertain the question of amendment, correction or rectification of the appellant's title-deed under the counter-claim, and we would, therefore, dismiss this contention of counsel.

The next question to be decided in this appeal is whether the trial Court misdirected itself on the onus

of proof, by holding that appellant's registration was issued to her by mistake, and thus not a valid one.

On this question, it is said on behalf of the appellant that the evidence adduced on behalf of the respondent (husband and wife) was wholly inadequate to support the finding of the counter-claim justifying the setting aside of the registration regarding the use of water rights. This, it is said, should not be understood as an attack on the credibility of the two witnesses, but only to point out that once their evidence (being interested parties) could not be considered as independent evidence, the Court was wrong in its finding that the respondent discharged the burden cast upon him by law, that the registration was issued by the Land Registry by mistake.

It is said that the certificate of registration is *prima facie* evidence of ownership. A person who claims to defeat the title or part thereof of a holder has either to establish that the registration was effected in the name of the holder by mistake or error, or that, where there is room for acquisition of a prescriptive right, the holder of such certificate has lost his right over the land as it has been adversely possessed by such person. (*Thomas Antoni Theodorou* v. *Christos Theori Hadji Antoni*, 1961 C.L.R. 203 at p. 208 per Zekia, J.). Thus, it appears that the burden of proof that the registration was effected in the name of the plaintiff by mistake or error is on the party (the defendant) seeking correction or rectification, and quite rightly, in our view, the trial Court approached the question regarding the onus of proof, and said at p. 62 :-

> "The onus of proof that the registration was issued by mistake lies on the defendant. The plaintiff and her predecessor had no right whatsoever as the one set out in her registration. The registration was issued on the erroneous representations. The defendant discharged the burden cast on him by the law. We are of the view and so hold that the part of this registration which refers to the spring in plot 297/3 is not valid."

See also *Aradipioti* v. *Kyriakou and Others* (1971) 1 C.L.R. 381, at p. 386, regarding the question of village certificates.

Having read carefully the record, we find ourselves in agreement with the trial Court that the testimony of the witnesses in support of the claim of the plaintiff was rightly rejected, because their evidence must have appeared to be unreliable. We are further satisfied that the evidence of the defendant and his wife was given in a forthright way unperturbed by cross-examination, and the Court would, no doubt, have been most disposed to believe them. In the circumstances of this case, we think that their evidence was sufficiently reliable and of such a quality as to discharge the onus of proof cast upon the defendant to show that the registration of the plaintiff was issued by mistake, and we see no reason to disagree with the Court.

Appeal, therefore, dismissed with costs.

*Appeal dismissed with costs.*