

1978 March 31

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

ANDRIANI VARTHOLOMEOU,

Appellant-Plaintiff,

v.

MARITSA KANNAOUROU,

Respondent-Defendant.

(Civil Appeal No. 4986).

5 *Contract—Infant—Disposition of immovable property by infant in 1957—Contract not void but voidable—Infant may disclaim disposition during infancy or within a reasonable time after majority—Disclaimer within 12 years after majority—Not within reasonable time—Section 11 of the Contract Law, Cap. 149 (as amended by section 2 of Law 7/56)—Position not affected by means of section 19 of the Guardianship of Infants and Prodigals Law, Cap. 277.*

10 *Guardianship of Infants and Prodigals Law, Cap. 277, section 19—Aim of—Its provisions cannot be extended to cover the case of the disposal of the property of an infant by the infant himself.*

15 *Immovable Property—Transfer of, by infant—Under the Land Transfer (Amendment) Law, Cap. 228 (repealed by Law 9/65)—Could not be considered as a not voluntary transfer because there was nothing in such Law preventing the infant from making such a declaration of transfer.*

Words and Phrases—“Voluntary” in section 2 (definition of “dealing”) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

20 The appellant-plaintiff, who was born on the 8th June, 1941, sold and transferred in the name of the respondent-defendant two fields belonging to her at a price of £130. The transfer was effected on the 1st July, 1957 at the Lands Office, where the appellant appeared and signed personally the relevant declaration forms. Prior to such transfer the fields had been put

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up for sale by public auction on three consecutive Sundays and the highest bid for both was £120.

The appellant got married on the 25th May, 1958 and thereupon attained legal majority by her marriage under the proviso to s. 11 (2) of Cap. 149. On February 26, 1970, she sued the respondent and claimed for a declaration that the sale and transfer by her to the respondent of the said fields was void and/or voidable due to her infancy; and for an order setting aside the transfer of the said fields and registering them in the name of the appellant. 5 10

The trial Court, after finding that the transaction in question was voidable and it could be avoided by appellant either during infancy or within a reasonable time thereafter, dismissed the appellant's claim on the ground that the long delay of 12 years from attaining majority was not a reasonable time. Hence the présent appeal. 15

Counsel for the appellant contended (a) that the disposition of property by an infant or by its guardian is void and not legally binding, except with the prior permission of the Court and (b) that irrespective of whether such a sale is void or voidable, the transfer of same through the Land Registration Office is void. 20

In support of the second contention counsel relied on section 19 (1) (a) and (2)* of the Guardianship of Infants and Prodigals Law, Cap. 277 and on section 2 (definition of "dealing") of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 to the effect that a dealing in relation to immovable property means the voluntary transfer of immovable property. Counsel argued that for a transfer to be valid it must be voluntary and an act of an infant cannot in law be a voluntary act. 25 30

Held, dismissing the appeal, (1) that if there is a disposition of property by an infant the latter is entitled to disclaim the disposition during infancy or within a reasonable time after attaining majority and that, accordingly, the ground of appeal that the disposition of her property by appellant was void, fails. 35

* Quoted at p. 230 *post*.

(2) That the disposition was a voidable one as made during infancy and disclaimer of same has to be done within a reasonable time after the infant attained majority; and that the lapse of more than 12 years since the disclaimer leaves no room to say that such disclaimer was done within a reasonable time.

(3) That Cap. 277 cannot affect the position of the infant himself whose capacity to contract and dispose of property should be examined in the light of the general Law. Section 19 is a provision aiming at protecting the infant from guardians irreparably interfering with the property of an infant without the Court's supervision. Such supervision cannot be extended to cover the case of the disposal of the property of an infant by the infant himself.

(4) (After dealing with the meaning of the word "voluntary" —vide p. 231 *post*) that there was nothing in the Land Transfer (Amendment) Law, Cap. 228 (repealed by Law 9/65) expressly prohibiting the acceptance of a declaration of a transfer by an infant; and that if it were to be considered that an infant may freely dispose of his property subject to the right to avoid same, the transfer of immovable property by an infant, effected under the provisions of Cap. 228, could not be considered as a not voluntary transfer, because there was nothing to prevent him from making such a declaration of transfer.

Appeal dismissed.

25 Cases referred to:

Edwards v. Carter [1893] A.C. 360; [1891–1894] All E.R. Rep. 1259 at p. 1261;

Carnell v. Harrison and Another [1916–1917] All E.R. Rep. 1827;

30 *Papadopoullou v. Polycarpou* (1968) 1 C.L.R. 352;

Carter v. Silber [1892] 2 Ch. 278;

Savoy Overseers v. Art Union of London [1896] A.C. 296;

Attorney-General v. Ellis [1895] 2 Q.B. 466 D.C.

Appeal.

35 Appeal by plaintiff against the judgment of the District Court of Nicosia (Stavrinakis and Stylianides, D.JJ.) dated the 24th April, 1971 (Action No. 1098/70) dismissing her claim for a declaration and order of the Court that the sale and transfer

by her to the defendant of two fields is void and or voidable due to plaintiff's infancy and for an order setting aside such transfer and registering the property in the name of the plaintiff.

T. Papadopoulos, for the appellant.

M. Christofides, for the respondent.

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Cur. adv. vult.

The facts sufficiently appear in the judgment.

TRIANTAFYLIDIS P.: The judgment in this appeal will be delivered by Mr. Justice A. Loizou.

A. LOIZOU J.: This is an appeal from the judgment of the Full District Court of Nicosia by which the action of the plaintiff-appellant filed on the 26th February 1970 claiming thereby

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(a) declaration and order of the Court that the sale and transfer by her to the defendant-respondent of two fields is void and/or voidable due to her infancy at the material time, and

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(b) an order of the Court setting aside the transfer of the said property in the name of the defendant-respondent and re-registration of same in the name of the plaintiff-appellant.

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The facts of the case were agreed upon by the parties and no evidence was called, except on one issue which has no bearing on this appeal. They are as follows:-

The appellant who was born on the 8th June, 1941, was the registered owner of two fields under Registration No. C 110 and C 192 in the village of Neochorio, Kythrea, which came to her, by way of gift, from her father and grandfather, respectively. These two fields were put up for sale by public auction on three consecutive Sundays. The highest bid, for both, was £120.-.

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The respondent, who is the God-mother of the appellant visited her and her mother for a purpose unconnected with these fields; she bought the said fields for £130.- in order to facilitate the appellant to acquire the other half share of a house that belonged to the appellant's sister and which she needed as her future matrimonial home.

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Both the transfer of the one-half share in the house by the sister to the appellant and the transfer of the fields in question in the name of the respondent, were effected simultaneously, all three parties being present and signing personally the relevant
5 declarations at the Lands Office on the 1st July, 1957; the purchase price of £130.- was paid by the respondent to the appellant's sister on the latter's instructions.

The appellant got married on the 25th May, 1958—thereupon attaining legal majority by her marriage in accordance
10 with the proviso to sub-section (2) of section 11 of The Contract Law, Cap. 149— and the couple resided thereafter therein. Its value at the time of the trial was estimated at £2,750.-, as prices of immovable property had by then gone up and also substantial repairs and alterations had been effected to it by the appellant,
15 to the value of £1,200.-. The value of the fields in question was agreed by the parties to be £1,500.- and no improvements were effected thereon.

The contract of sale of these fields though found by the trial Court not to be prejudicial to the appellant, as she had
20 sold her property at a reasonable price and for the purpose of raising money for the purchase of the remaining half share in a house which was of vital importance to her marriage, yet it could not be considered in Law by the trial Court as one for necessities, since the disposition of her fields and the acquisition
25 with the proceeds thereof of the one-half share in the house were two distinct transactions, the notion of necessities applying only to acquisition and not to disposition of property. The said transaction the avoidance of which was sought by the appellant was found by the trial Court to be a voidable one and
30 that it could be avoided by the plaintiff either during her infancy or within a reasonable time thereafter. It then examined what was the reasonable time within which such a contract could be avoided and referred in that respect first to the case of *Edwards v. Carter* [1893] A.C. 360, also reported in the [1891-
35 1894] All E.R. Rep., p. 1259, where Lord Herschell, L.C., at p. 1261, said:—

“ All I say is this, that he cannot maintain that the reasonable time when measured must be a longer time because he has chosen not to make himself acquainted with
40 the nature of the deed which he has executed.

Having put aside those two contentions the only question comes to be, has a reasonable time been exceeded? The learned judges in the Court below expressed their opinion that the period which elapsed, a period between four and five years, was more than a reasonable time. It is not at all necessary for your Lordships to lay down what would have been a reasonable time in this case—it is enough to say that, in my opinion, it is impossible to hold that the learned Judges in the Court below in saying that more than a reasonable time had elapsed have in any way erred.”

And Lord Watson in his short speech said:—

“..... The law gave this appellant the privilege of repudiating the obligations which had undertaken during his minority within a reasonable time after he came of age. The law laid no obligation upon him; it merely conferred upon him a privilege of which he might or might not avail himself as he chose. If he chooses to be inactive his opportunity passes away; if he chooses to be active the law comes to his assistance. In this case it humbly appears to me that the period of four years and eight months which he permitted to elapse before he took any steps in the matter cannot possibly be regarded as a reasonable time.”

It also referred to the case of *Carnell v. Harrison & another*, reported in the [1916–1917] All E.R. Rep., p. 827 where it was held that —

“Repudiation by a person of a contract entered into in his infancy must take place within a reasonable time of his coming of age; in the case of a settlement by an infant of reversionary property the infant was not entitled to wait until the falling into possession of that property before exercising the right to repudiate; in the present case the wife had allowed 18 3/4 years to elapse before purporting to repudiate; that could not be said to be a reasonable time; and, therefore, her claim must fail.”

And at p. 831, Phillimore, L.J., said:—

“..... The plaintiff in *Edwards v. Carter* did not know the facts, and yet he was not held entitled to relief. In the present case the plaintiff knew the facts and she ought

not to be held entitled to relief. After this grave lapse of time, with the children growing up, naturally being educated, and very likely told that there is some little fortune awaiting them because of the mother's settlement, to allow
5 the mother, in order to free herself from her duty to her children, to repudiate the settlement now, with no question of the husband and no question of more distant people, would, in my opinion, be very unjust and wrong."

10 The trial Court then dealt extensively with the facts of the case relating to this issue, and did not agree with the submission that on such facts and circumstances the long delay of 12 years from attaining majority was a reasonable period.

This appeal has been argued on two grounds, namely, (a) that the disposition of property by an infant or by its guardian
15 is void and not legally binding, except with the prior permission of the Court, and (b) irrespective of whether such a sale is void or voidable, the transfer of same through the Land Registration Office is void.

The incapacity of infants to contract is governed, since the
20 amendment of section 11 of the Contract Law, Cap. 149, by section 2 of Law 7/56, by "the law in force in England for the time being relating to contracts to which an infant is a party, shall apply to contracts to which a person who has not attained the age of 18 years, is a party. Provided, that a married person
25 shall not be deemed to be incompetent to contract merely because such person has not attained the age of 18 years."

Before referring to the English Law on the matter it may be stated that the case of *Anthoulla Papadopoullou v. Xenophon Polycarpou* (1968) 1 C.L.R. 352 of this Court was decided on
30 the law as it existed before the aforesaid amendment of section 11 in 1956 and cannot be of much help to us now.

In England, contracts made by infants, *i.e.* persons under 18 years of age, (the Family Law Reform Act of 1969 has no relevancy to our case) are governed by the Rules of Common
35 Law, as altered by the Infants Relief Act of 1874.

Section 2 thereof applies to all contracts made by an infant except contracts for necessities, for beneficial service and for the acquisition of some interest in property of a permanent

character. The position at Common Law also regarding contracts under which an infant takes a permanent interest in property, is not effected either by section 1 or section 2 of the said Act.

In Cheshire and Fifoot's Law of Contract ninth edition at p. 412, under the marginal note of "Recovery of property, other than money already transferred" it is stated: 5

"Cases such as *Edwards v. Carter* [1892] 2 Ch. 278, C.A., show that a disposition by an infant of any form of property, whether realty or personalty, is not finally and conclusively binding upon him. 'There is a total absolute disability in an infant that by no matter of conveyance can he dispose of his inheritance' (*Hearle v. Green Bank* [1749] 3 Atk. 695). He may wither confirm or rescind it on the attainment of his majority. If he exercises his right of rescission, his disposition, hitherto valid until avoided, now becomes retrospectively void *ab initio*. In principle this requires the restoration of the status *quo ante*—a giving back and a taking back on both sides—and it has long been understood that the infant is entitled to recover the property that he has transferred." 10 15 20

In *Carier v. Silber* [1892] 2 Ch. 278, a Court of Appeal case, reported as *Edwards v. Carter* [1893] A.C. 360, when confirmed on appeal by the House of Lords, it was held that a settlement if for the benefit of the infant, was not void but voidable and that he was bound to repudiate the settlement, if at all, within a reasonable time after his coming of age. 25

In the Court of Appeal report, it was considered on the facts, that the settlement was for the infant's benefit and therefore it was a voidable and not a void deed. 30

Kay, L.J., at p. 287, says:

"I have no doubt at all that this covenant to settle after acquired property made by the infant a short time before he came of age, being inserted in a marriage settlement which seems to have been in every respect greatly for his benefit, was one which was not a void covenant, but only voidable at his choice when he came of age. He had undoubtedly a right when he came of age to say, 'I was 35

an infant when I entered into the covenant; the covenant binds me unless I repudiate it; but I now exercise the right which I have to repudiate that covenant.' But then, within what time must he do it? Now, of course, it is absolutely impossible to lay down any exact limitation of the time within which that right of repudiation may be exercised. I do not think that the rule can be better stated than in the words of Dallas, J., in the case of *Holmes v. Blogg & Taunt*. 31, 41; he says: 'In every instance of a contract voidable only by an infant on coming of age, the infant is bound to give notice of disaffirmance of such contract in reasonable time;''".

And in Cheshire's Modern Law of Real Property, 12th Edition, page 920, it is stated:-

" An infant cannot make an irrevocable disposition of his interest, for the rule is that any disposition is voidable and can be repudiated by him during his minority or within a reasonable time after he attains full age (Co. Litt., 171 b). So the disability is not absolute. It goes no further than is necessary for the protection of the infant. It leaves him the power to act during infancy, but in order that he may have protection, it permits him to avoid the transaction when he comes of age if he finds it right and proper to do so (*Slator v. Brady* [1863] 14 Ir. C.L.R. 61)."

From the aforesaid authorities the position in Law appears to be that and if there is a disposition of property by an infant the infant is still protected in the sense that he is entitled to disclaim the disposition during infancy or within a reasonable time after attaining majority, and these principles cover the case under consideration. The ground of appeal therefore that the disposition of her property by the appellant was void, fails. Being, however, a voidable disposition as one made during infancy, it has to be examined if the disclaim of same was done within a reasonable time after she attained majority; the lapse however of more than 12 years since that occurrence leaves no room to say that the disclaimer by her of this disposition was done within a reasonable time; the trial Court has so decided and it is not necessary for us to say what other period would have been reasonable in such a case. What is certain is that in our opinion, it is impossible to hold that the trial Court in taking this view, has in any way erred.

We turn now to the next ground of law relied upon in this appeal. It has been argued that independently of whether a contract of sale of immovable property by an infant is voidable and not void, the transfer is void. This is based on a twofold argument. First, on the provision of section 19 of the Guardianship of Infants and Prodigals Law, Cap. 277 which provides that a guardian of the property of an infant shall not without an order of the Court to that effect—(a) “sell, etc. property of the infant”.

And sub-section (2) of the same section says –

“ Any disposal of the property of an infant in contravention of this section may be declared by the Court to be *null* and *void*, and upon such declaration the Court may make such order in relation thereto as may appear requisite for restoring to the infant the property so disposed of.”

The wording of this provision makes it clear that even in such a case there is a discretion in the Court to declare a disposition as *null* and *void*.

Sub-section (3) of this Law limits the discretion of the Court in making an order under sub-section (1) by requiring that it has to be shown to its satisfaction that it is necessary or advisable in the interest of an infant.

This Law cannot be considered as affecting the position of the infant himself whose capacity to contract and dispose of property should be examined in the light of the general law. Section 19 is a provision aiming at protecting the infant from guardians irreparably interfering with the property of an infant without the Court’s supervision. Such supervision, however, cannot be extended to cover the case of the disposal of the property of an infant by the infant himself.

The second leg of this ground is that independently of the legal position of the contract to sell and the situation under the Guardianship of Infants and Prodigals Law Cap. 277, the transfer of the property is still void as a transfer of immovable property is a dealing which is defined in section 2 of the Immoveable Property (Tenure, Registration and Valuation) Law, Cap. 224 in relation to immovable property means “the voluntary transfer of immovable property required by any law

in force for the time being to be carried out in the District Lands Office” and consequently a transfer in order to be valid must be voluntary and an act of an infant cannot in law be a voluntary act.

- 5 The word “voluntary” is defined in the Words and Phrases Legally Defined, 2nd Edition, Vol. 5, p. 295 by reference to the case of *Savoy Overseers v. Art Union of London* [1896] A.C. 296 and it is said “voluntary is constantly used in two different
- 10 done under compulsion; but it is used commonly among lawyers and in *Attorney-General v. Ellis* [1895] 2 Q.B. 466 D.C. per cur, at pp. 468–470—where Lord Russel when dealing with the meaning of the word “voluntary” in connection with a temporary transfer said:—
- 15 “We are, however, of opinion that in the section under consideration the word ‘voluntary’ is not used in the sense of ‘without consideration’ but in its ordinary sense of ‘freely, without compulsion’ and ‘not under any obligation’.”
- 20 It has been conceded that there was nothing in the Land Transfer (Amendment) Law, Cap. 228 expressly prohibiting the acceptance of a declaration of a transfer by an infant and if we were to consider that an infant may freely dispose of his property subject to the right to avoid same, as hereinabove set
- 25 out, the transfer of immovable property by an infant effected under the provisions of the aforesaid Law, Cap. 228 could not be considered as a not voluntary transfer, because there was nothing to prevent him from making such a declaration of transfer.
- 30 The position, however, has changed, since 1965 as under section 11 of The Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65) which came into force on the 1st January, 1967 and which repealed Cap. 228, now the Lands Office can
- 35 no longer accept the transfer of immovable property by an infant without a Court order. This subsequent amendment of Law has no bearing in the issue under consideration but it points to the direction that it has added something that did not exist. Actually this amendment strengthens our view as regards what was the legal situation prevailing prior to it.

For all the above reasons, we find that the appellant in the circumstances of this case effectively transferred her property to the respondent, there being nothing in law preventing such transfer.

The appeal is therefore, dismissed, but in the circumstances we make no order as to costs. 5

Appeal dismissed. No order as to costs.