

1979 May 7

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

TAKIS HADJIANTONI,

Appellant-Plaintiff,

v.

MICHAEL MATSIS,

Respondent-Defendant.

(Civil Appeal No. 5712).

Immovable Property—Transfer—Law applicable—Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65) sections 2(1) (definition of “transfer”) 5(1)(2), 9 and 16—Contract for sale of land concluded in 1973—Land and appropriate District Lands Office under Turkish occupation—Claim for balance due under contract—As kind of transfer that was within contemplation of parties in 1973 and which was governed by Law 9/65 (supra) cannot be effected obligation of purchaser to pay balance has not arisen—Provisions of the Transfer of Immovable Property (Temporary Provisions) Law, 1975 (Law 55/75) not a complete substitute to transfer agreed by the parties. 5 10

Contract—Reciprocal promises—Performance—Contract for sale of land which subsequently came under Turkish occupation—Seller not able and therefore not ready to perform his side of the contract by effecting transfer of land under Law 9/65 (supra)—Purchaser not bound to pay balance due under contract—Section 51 of the Contract Law, Cap. 149. 15

On July 3, 1973 the parties to this appeal entered into a written agreement by virtue of which the appellant-plaintiff agreed to sell to the respondent-defendant a piece of land situated in Kyrenia District, in the vicinity of Klepini village, at the agreed price of £ 7,160. An amount of £ 500.- was paid by the purchaser at the time of the signing of the contract and the balance of £ 6,600 was to be paid within two years. The agreement further provided that the transfer would be effected in the name of the purchaser or of any other person to be nominated by the 20 25

purchaser, when the money due by virtue of the agreement was fully paid off.

5 Following the Turkish invasion of Cyprus on the 20th July, 1974 and the further advance of the invading forces on the 14th August 1974 the district of Kyrenia, including the land subject-matter of the above agreement, were occupied. The appellant, as well as all the Greek inhabitants of Klepini village, fled to the south to areas under the control of the Government of the Republic and the areas under the Turkish occupation are ever since inaccessible to both the appellant and the respondent and to all other Greek Cypriots.

10 On November 18, 1976 the appellant sued the respondent for the balance due under the above agreement. The trial Court dismissed his claim having held that the respondent was not bound to perform his obligation of payment of the balance of the purchase price and therefore he was not guilty of breach of contract, as, on account of supervening events, the appellant could not perform, though due to no fault of his, the obligation to transfer the ownership of the said property which had sold to the respondent.

15 A D.L.O. officer testified before the trial Court that no registration of transfer of any immovable property situated in Kyrenia district could be effected after the Turkish occupation of Kyrenia town, as the relevant Books and Registers of the Lands Office from which proof of the ownership of the said property could be ascertained, were in the occupied area and beyond the reach of the Lands Office.

20 Upon appeal by the seller the question for determination was whether in Law there could be a transfer of the subject property free of any charge, encumbrance or prohibition which must be the kind of transfer that was within the contemplation of the parties in 1973 when the agreement was concluded, that is to say a "transfer" governed by the Law in force at the time, namely The Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65).

25 Section 9 of Law 9/65 (*supra*) provides that a declaration of transfer (a) may be made before the proper officer of the District Lands Office of the district in which the immovable property is situate or before the proper officer of any other District Lands

Office but such declaration may be made at the risk of the transferee "as to the immovable property which is to be transferred thereby not being still registered in the name of the transferor on the date and at the time such transfer is made, or as to such immovable property being then subject to any encumbrance or as to the transferor being then prohibited from dealing with his property". 5

Held, (after stating the Law relating to transfers of immovable property—vide pp. 264–5 post).

(1) That the trial Court very rightly rejected appellant's contention that the provisions of the Transfer of Immovable Property (Temporary Provisions) Law, 1975 (Law 55/75) were a complete substitute to the transfer agreed by the parties (pp. 265–6 post). 10

(2) That a purchaser for value of immovable property who had agreed to pay the balance of the purchase price and in return get a clear title, cannot be considered as being under an obligation in Law to consent to receive a lesser title in return for his money, than the one he agreed to receive; that as no transfer, as agreed, could be effected, the obligation of the respondent to pay the balance has not arisen; and that though the transfer in question admittedly was not made expressly a condition precedent to the payment, yet the wording of the contract of sale made it clear that the two acts were concurrent or at least that the transfer could be effected, as agreed between the parties in 1973, and would follow such payment as a matter of course. 15
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(3) That it was a contract consisting of reciprocal promises to be sumultaneously performed, that is to say the two acts amount on concurrent conditions and the respective promises were dependent on each other; that in such a case under section 51 of the Contract Law, Cap. 149, no promisor need perform his promise unless the promisee is ready and willing and able in Law to perform his reciprocal promise; that the appellant in this case was not able and therefore not ready at the time, to perform his side of the contract; and that, accordingly, the appeal must be dismissed. 30
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Appeal dismissed.

Cases referred to:

Theodorou v. Hadjiantoni, 1961 C.L.R. 203;

Socratous v. Mezou (1975) 1 C.L.R. 62;

Spanou v. Savva (1965) 1 C.L.R. 36.

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Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Michaelides, D.J.) dated the 31st March, 1977, (Action No. 5282/76) whereby his claim for
5 £ 6,660.- balance of sale price of a piece of land was dismissed.

A. Efstychiou, for the appellant.

M. Photiou for *K. Michaelides*, for the respondent.

10 A. LOIZOU J. gave the following judgment of the Court. This is an appeal by the plaintiff against the judgment of the Full Court of Nicosia dismissing his action for £ 6,660.- balance of sale price of a piece of land, or alternatively, damages for breach of contract.

15 The part of the judgment challenged is that by which it was found that the defendant was not bound to perform his obligation of payment of the balance of the purchase price and therefore was not guilty of breach of contract, as on account of supervening events the plaintiff could not perform, though due to no fault of his, the obligation to transfer the ownership of the property he had sold to the defendant by virtue of a contract of sale,
20 dated the 3rd July, 1973 (*exhibit 1*).

The facts of the case, as found by the trial Court and which are not in dispute, are these:

25 The appellant and the respondent entered into a written agreement of sale of immovable property, namely, a piece of land situated in Kyrenia district, in the vicinity of Klepini village, locality Moutari Trypimeno, Plot 47, S/P XIII/42 of 13 donums and one evlek in extent, at the agreed price of £ 7,160.- An amount of £ 500.- was paid by the purchaser at the time of the signing of the contract (*exhibit 1*) and the balance of £6,600.-
30 was to be paid within two years, with interest at 3 per cent per annum.

35 It was one of the terms of this agreement that the transfer would be made in the name of, the purchaser, or in any other person or persons nominated by the purchaser, when the money due by virtue of the said agreement was fully paid off and all the expenses of transfer would be borne by the purchaser.

On the 20th July, 1974, Turkey invaded Cyprus and the town

and the district of Kyrenia were occupied. On the 14th August, 1974, the invading forces advanced further and occupied a much bigger part of the Republic. The appellant, as well as all the Greek inhabitants of Klepini and Kythrea villages fled to the South, to areas under the control of the Government and the areas under the Turkish occupation are ever since inaccessible to both the appellant and the respondent as to all other Greek Cypriots.

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On the 18th November, 1976, the appellant filed this action in the District Court of Nicosia, claiming the balance due to him by virtue of the agreement of the 3rd July, 1973, or alternatively, damages for breach of contract.

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The respondent denied the claim, contended that the land in question was within the occupied area, and that the plaintiff could not transfer and register the land in the name of the purchaser in accordance with the provisions of the said contract. A further contention that the contract in question had been frustrated or had become void was examined by the trial Court which found that the contract had not been frustrated or had become void and, therefore, the counterclaim of the respondent was dismissed.

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The question for determination in this appeal is whether in Law there could be a transfer of the subject property free of any charge, encumbrance or prohibition which must be, as decided by the trial Court, the kind of transfer that was within the contemplation of the parties in 1973, when the agreement in question was concluded, that is to say, a "transfer" governed by the Law in force at the time, namely the Immovable Property (Transfer and Mortgage) Law, 1965 (Law No. 9 of 1965).

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Under section 5, sub-sections 1 and 2 of the said Law, no transfer of any immovable property is valid unless made in accordance with the provisions of the aforesaid Law and no attempt to transfer any immovable property otherwise than in accordance with the provisions of the said Law "shall be effectual to create, vary, transfer, extinguish, or in any way affect any right or interest in any immovable property". Furthermore, under its section 2(1), "transfer" with its grammatical variations and cognate expressions, means "(a) in relation to any immovable property the passing of the title to such im-

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movable property from one person to another. (b) .. by the voluntary act of such persons". This is the Law relating to transfers of immovable property, which really means a transfer of ownership.

5 A transfer is affected thereunder by the transferor and transferee making a declaration before the appropriate District Lands Office. Under section 9 of the Law, however, a declaration of transfer may be accepted before any other District Lands Office
10 than the district in which the immovable property is situated, but such declaration is made at the risk of the transferee "as to the immovable property which is to be transferred thereby not being still registered in the name of the transferor on the date and at the time such declaration is made; or as to such immovable property being then subject to any encumbrance or
15 as to the transferor being then prohibited from dealing with his property".

The registration of the transfer is effected under section 16(2) of the Law by the registration of the name of the transferee as
20 owner of the transferred immovable, and a certificate of ownership is issued thereupon to the transferee. This is only done, however, if the immovable property, subject of the transfer is free from any attachment or charge.

A D.L.O. Officer testified before the trial Court that no registration of transfer of any immovable property situated in
25 Kyrenia district could be effected after the Turkish occupation of Kyrenia town, as the relevant Books and Registers of the Lands Office from which proof of the ownership of the said property could be ascertained, were in the occupied area and beyond the reach of the Lands Office.

30 It had been argued that the provisions of the Transfer of Immovable Property (Temporary Provisions) Law 1975 (Law No. 55 of 1975) were a complete substitute to the transfer agreed by the parties and that in complying with this Law the appellant would be performing his obligation to transfer, under the contract of sale in question.
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The trial Court rejected this contention, and in our opinion, very rightly so. This was a Law intended to offer a facility to the parties, who on their own volition were themselves willing to make use of it and take the risks that same entailed for their

own convenience as in no way a registration made under the said Law would give a clear title to the transferee.

A purchaser for value of immovable property who had agreed to pay the balance of the purchase price and in return get a clear title, cannot be considered as being under an obligation in Law to consent to receive a lesser title in return for his money, than the one he agreed to receive. As no transfer, as agreed, could be effected, the obligation of the respondent to pay the balance has not arisen. The transfer, in question, admittedly was not made expressly a condition precedent to the payment, yet the wording of term 3 of the contract of sale (*exhibit 1*), makes it clear that the two acts are concurrent or at least that the transfer could be effected, as agreed between the parties in 1973, and would follow such payment as a matter of course.

It was a contract consisting of reciprocal promises to be simultaneously performed, that is to say the two acts amount to concurrent conditions and the respective promises were dependent to each other. In such a case under section 51 of the Contract Law, Cap. 149, no promisor need perform his promise unless the promisee is ready and willing and able in Law to perform his reciprocal promise. The appellant in this case was not able and therefore not ready at the time, to perform his side of the contract.

Learned counsel for the appellant has referred us to a number of authorities regarding the nature of title deeds such as the cases of *Theodorou v. Hadjiantoni*, 1961 C.L.R., p. 203, *Socratous v. Mezou* (1975) 1 C.L.R., p. 62; but these decisions have no bearing to the case under consideration. They turn on the nature of a title deed, the prescriptive rights, the rectification of omissions or mistakes and other provisions of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

The case of *Spanou v. Savva* (1965) 1 C.L.R., p. 36, turned on whether the law which governed the transfer of registration therein was the one in force before or after the enactment of the Immovable etc. Law, Cap. 224, and does not come into play at all, as we are not concerned here with that aspect of the law.

For all the above reasons, we dismiss the appeal with costs.

Appeal dismissed with costs.