1985 April 3

[TRIANTAFYLLIDES, P., SAVVIDES, PIKIS, JJ.]

IOANNIS KYRIACOU,

Appellant-Defendant,

v.

IOANNIS PETRI AND OTHERS,

Respondents-Plaintiffs.

(Civil Appeal No. 6637).

Civil Procedure—Practice—Trial in Civil Cases—Final addresses—Supplying to Court with copy of the address which had been read—Not irregular.

Findings of fact made by trial Court—Based on credibility of witnesses—Appeal—Principles applicable.

Immovable property—Adverse possession—Prescription—Period of acquisitive prescription prior to the coming into force in 1946, of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, 10 years—Registration interrupts the prescriptive period—Sections 9 and 10 of Cap. 224—Disputed property unregistered till 1960—In the possession of the respondents since 1924 and 1933, respectively—At time of enactment of Cap. 224 prescriptive period of ten years had been completed and continued to run till 1960—Respondents acquired a right to be registered as owners by prescription.

Costs—Follow the event—Unless the Court in the exercise of its discretion otherwise directs in the special circumstances of a particular case.

Civil Procedure—Practice—Immovable property—Claim for ownership by adverse possession—Counterclaim for an order restraining plaintiffs from trespassing thereon—Once plaintiffs succeeded there was no room for the counterclaim and was rightly dismissed.

These proceedings arose out of a dispute concerning a piece of land at Panayia village. The disputed piece of land was registered in the name of the appellant by purchase from one Kypriani Stavrinou in 1960 and it was part of plot 119/1. This plot though not registered was recorded in the books of the general survey, which took place between 1923-1927, as belonging to the mother of the respondents for ownership and taxation purposes; and it was registered in 1960 in the name of the said Kypriani Stavrinou upon an application which she made to the Lands Office for the registration in her name of the said plot as belonging to her.

The respondents-plaintiffs claimed ownership by adverse possession of one-half share each in respect of the said property which was registered in the name of the appellant; and the appellant-defendant counterclaimed for an order restraining the respondents from trespassing upon the said strip of land and for damages for trespass.

The trial Judge accepted the evidence adduced by plaintiffs and relying on such evidence came to the conclusion that the disputed piece of land had been in the possession of the mother of the plaintiffs and it was given to them by way of dowry to the first plaintiff in 1924, and to the second plaintiff in 1933 and that, ever since, it has been in their undisputed possession and use for cultivation and later for planting of vine trees therein; and gave judgment in favour of the plaintiffs directing that the said strip of land be registered in the names of each one of them in half share and at the same time he dismissed the counterclaim of the defendant. Hence this appeal.

Counsel for the defendant contended:

(a) That the trial Court accepted the filing of the written address of counsel for respondents-plaintiffs, which was read by him, contrary to the objection of counsel for appellant-defendant that such address was made in writing for the purpose of influencing the Court and directing its mind unfavourably against the defendant.

(b) That the trial Judge based his judgment on insufficient evidence and treated the discrepancies in such evidence as if the case was a criminal one.

(c) That the trial Judge wrongly came to the conclusion that adverse possession has been proved in the circumstances of the case.

(d) That the trial Judge wrongly awarded costs against the defendant in a case the trial of which delayed for such a long time and bearing also in mind the fact that the defendant acted in good faith and the plaintiffs have been enjoying the yield of the vine trees in question.

(e) That the counterclaim for reasonable compensation was wrongly dismissed.

Held, (1) that there is nothing irregular for an advocate to supply the Court with a copy of his address which he has put in writing; and that such course facilitates the Court to have a full transcript of the address, especially in cases where a Court stenographer is not available; and that, accordingly, contention (a) must fail.

(2) That it is the practice of an appellate Court not to interfere with the findings of fact of the trial Court which had the advantage of hearing the witnesses and watching their demeanour, unless such findings are unwarranted by the evidence properly admitted by the trial Court or the inferences drawn therefrom are not warranted by such findings whereupon the Court can draw its own conclusions; that in the present case counsel for appellant on whom the burden lay, failed to satisfy this Court that the findings of the trial Court were wrong or not warranted by the evidence accepted by him; and that accordingly contention (b) must fail.

(3) That possessory rights prior to the enactment of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, which came into force on the 1st September, 1946, were governed in the case of lands of Arazi Mirie category by Article 20 of the Ottoman Land Code and by the Immovable Property Limitation Law, 1886 (Law 4 of 1886), the period of acquisitive prescription then being ten years; that though if a person obtains registration as owner of immovable property that registration will interrupt any prescriptive period which is run-

ning against him in respect of that property at the time of his registration till 1960 the disputed property was not registered in anyone's name (see sections 9 and 10 of Cap. 224); and that since the respondents have been in the possession of the disputed property since 1924 and 1933, respectively, at the time of the enactment of Cap. 224 in 1946 the prescriptive period of 10 years had been completed and continued to run till 1960 when the property was registered for the first time as such period could not be interrupted, once there was no registration for same; and that, therefore, the findings of the trial Judge that the respondents had under the Law acquired a right to be registered as owners of this disputed property by prescription is legally founded; accordingly contention (c) must fail.

(4) That it is a rule of practice that costs follow the event and that a successful party is entitled to his costs unless the Court in the exercise of its discretion otherwise directs in the special circumstances of a particular case; that this Court is in agreement with the order made by the trial Court as to costs and there is no reason to interfere with such order; accordingly contention (d) must fail.

(5) That in the light of the result reached by the trial Court that the respondents are entitled to be registered as owners of the disputed part of plot 119/1 there was no room for the counterclaim and the trial Court had no alternative but to dismiss same; accordingly contention (e) must fail.

Appeal dismissed.

Cases referred to:

Papadopoullos v. *Stavrou* (1982) 1 C.L.R. 321;

Stylianou and Another v. *Petrou* (1984) 1 C.L.R. 362;

Kannavkia v. *Argyrou and Others,* 19 C.L.R. 186 at p. 187;

Angeli v. *Lambi and Others* (1963) 2 C.L.R. 274 at p. 280;

Charalambous v. *Ioannides* (1969) 1 C.L.R. 72 at p. 80.

Appeal.

Appeal by defendant against the judgment of the District Court of Paphos (Papas, D.J.) dated the 31st October, 1983 (Actions Nos. 114/78 and 121/78) whereby it was ordered that the disputed property be registered in the names of the plaintiffs.

E. Panayides, for the appellant.

E. Korakides, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: This is an appeal from the judgment of a Judge of the District Court of Paphos in two civil actions brought by the respondents, which were consolidated and heard together, concerning the ownership of a strip of land part of Plot 119/1 Sheet Plan 463 at the locality "Aetokremmos" of Panayia village.

The respondents, plaintiffs in Actions Nos. 114/78 and 121/78, claimed ownership by adverse possession of one-half share each in respect of the said property which was registered in the name of the appellant. The appellant, on the other hand, counterclaimed in both actions for an order restraining the respondents from trespassing upon the said strip of land and for damages for trespass.

The learned trial Judge, after he had heard five witnesses called by the respondents-plaintiffs and two witnesses called by the appellant-defendant, accepted the evidence adduced by plaintiffs and relying on such evidence, came to the conclusion that the disputed piece of land had been in the possession of the mother of the respondents and it was given to them by way of dowry to the first respondent in 1924, and to the second respondent in 1933 and that, ever since, it has been in their undisputed possession and use for cultivation and later for planting of vine trees therein. In the result, he gave judgment in favour of the respondents directing that the said strip of land be registered in the names of each one of them in half share and at the

same time he dismissed the counterclaim of the appellant.

The facts of the case are briefly as follows:

The disputed strip of land of an extent of over one donum is part of Plot 119/1 which is registered in the name of the appellant by purchase from one Kypriani Stavrinou for the sum of £5 and transferred in his name in 1960. The respondents are the owners of the adjoining property under Plot 119/2 in half share each in undivided shares. Plots 119/1 and 119/2 were originally parts of plot 119 which though not registered it was recorded in the books of the general survey, which took place between 1923-1927, as belonging to one Maria Vroullou, the mother of the respondents, for ownership and taxation purposes. In 1960 one Kypriani Stavrinou applied to the Lands Office for the registration in her name of one-half of Plot 119 as belonging to her, and the Lands Office on the basis of a certificate of the Village Authority issued a title deed under Registration 6016 dated 30.6.60 in the name of Kypriani Stavrinou in respect of that part of Plot 119 to which number 119/1 was given. The application of Kypriani Stavrinou and the local enquiry which followed such application, as well as the registration effected were never brought to the notice of the respondents. All these events took place within the knowledge of Kypriani Stavrinou who applied for the registration and the Lands Office which effected such registration. After becoming registered as owner, Kypriani Stavrinou transferred same in the name of the appellant who bought it from her for £5.-.

According to the evidence of P. W. 2, Elias Antoni, one of the witnesses whose evidence the trial Court believed, who was the Rural Constable of the village during the period 1960-1979, the disputed part was separated from the rest of Plot 119/1 by a wall erected by the appellant in 1962 or 1963 and for the construction of which he assisted the appellant. Also, that at the time, the disputed part and Plot 119/2 were a vineyard occupied and cultivated by the respondents, whereas the remaining part of Plot 119/1 was a field which was being cultivated by Kypriani Stavrinou till the time she sold it to the appellant. The appellant planted it with vine trees after he purchased same.

In rejecting the evidence of the appellant and his brother, the trial Judge had this to say:

"Regarding the evidence of D. W. 1, I find his testimony unreliable and I reject it. He stated upon being cross-examined that as he has no property in the area, P.W.3 is in a better position to know of the properties there.

I also reject the evidence of the Defendant, who impressed me unfavourably, as untruthful. It is reasonable to assume that had he known that the disputed property is included in his title he would not have waited for so many years in order to raise a claim over it. His story that he applied to the D.L.O. in 1965 is not true because if it was true, he could have proved it by evidence; also his story that he protested to Plaintiff Petrou Petri allegedly in 1962 when he allegedly saw her planting vines in the disputed property is not true because had it been true, he should have taken the proper steps to raise his claim much earlier and not after the lapse of such long period of time."

It should be noted that Kypriani Stavrinou, from whom the appellant bought the property and who could be in a better position to give evidence as to the property in dispute, was not called as a witness by the appellant and he gave no reasons for not calling her.

Counsel for the appellant has advanced the following grounds in support of this appeal:

1. That the trial Court accepted the filing of the written address of counsel for respondents-plaintiffs which was read by him, contrary to the objection of counsel for appellant-defendant that such address was made in writing for the purpose of influencing the Court and directing its mind unfavourably against the defendant.

2. The trial Judge based his judgment on insufficient evidence and treated the discrepancies in such evidence as if the case was a criminal one.

3. The trial Judge wrongly came to the conclusion that

adverse possession has been proved in the circumstances of the case.

4. The trial Judge wrongly awarded costs against the defendant in a case the trial of which delayed for such a long time and bearing also in mind the fact that the defendant acted in good faith and the plaintiffs have been enjoying the yield of the vine trees in question.

5. The counterclaim for reasonable compensation was wrongly dismissed.

We find the first ground of appeal as frivolous and without any foundation whatsoever. Counsel for appellant by this ground is making a serious insinuation against his colleague for an attempt to prejudice the Court and at the same time he is putting the impartiality of the Court into jeopardy by suggesting that the Court might be influenced to the prejudice of the appellant. There is nothing irregular for an advocate to supply the Court with a copy of his address which he has put in writing. Such course facilitates the Court to have a full transcript of the address, especially in cases where a Court stenographer is not available.

We come now to the second ground of appeal.

It is well settled that it is the practice of an appellate Court not to interfere with the findings of fact of the trial Court which had the advantage of hearing the witnesses and watching their demeanour, unless such findings are unwarranted by the evidence properly admitted by the trial Court or the inferences drawn therefrom are not warranted by such findings whereupon the Court can draw its own conclusions. (An elaborate exposition of the principle may be found in the recent decisions of this Court in *Papadopoulos* v. *Stavrou* (1982) 1 C.L.R. 321 and *Stylianou and Another* v. *Petrou* (1984) 1 C.L.R. 362).

In the present case counsel for appellant on whom the burden lay, failed to satisfy this Court that the findings of the trial Court were wrong or not warranted by the evidence accepted by him.

As to the third ground of appeal we find ourselves un-

able to accept the submission made by counsel for appellant in support of such ground.

Possessory rights prior to the enactment of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, which came into force on the 1st September, 1946, were governed in the case of lands of Arazi Mirié category by Article 20 of the Ottoman Land Code and by the Immovable Property Limitation Law, 1886 (Law 4 of 1886), the period of acquisitive prescription then being ten years.

The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 provides as follows:

Section 9: "No title to immovable property shall be acquired by any person by adverse possession as against the Crown or a registered owner."

Section 10: "Subject to the provisions of section 9 of this Law, proof of undisputed and uninterrupted adverse possession by a person, or by those under whom he claims, of immovable property for the full period of thirty years, shall entitle such person to be deemed to be the owner of such property and to have the same registered in his name:

Provided that nothing in this section contained shall affect the period of prescription with regard to any immovable property which began to be adversely possessed before the commencement of this Law, and all matters relating to prescription during such period shall continue to be governed by the provisions of the enactments repealed by this Law relating to prescription, as if this Law had not been passed:

Provided further that notwithstanding the existence of any disability operating under such enactments to extend the period of prescription such period shall not in any case exceed thirty years in all even where any such disability may continue to subsist at the expiration of thirty years."

It has been held in *Annou Haji Tofi Kannavkia* v. *Kleopatra Arghyrou and others* (1953) 19 C.L.R. 186 at p. 187 and adopted in *Eleni Angeli* v. *Savvas Lambi and*

others (1963) 2 C.L.R. 274 at p. 280 and *Agathi Charalambous etc.* v. *Ioannis K. Ioannides* (1969) 1 C.L.R. 72 at p. 80 that-

> "... if a person obtains registration as owner of immovable property that registration will interrupt any prescriptive period which is running against him in respect of that property at the time of his registration."

It is common ground in this case and it is clear from the evidence that till 1960 the disputed property was not registered in anyone's name. Registration was effected for the first time in 1960 in respect of Plot 119/1 of which the disputed property formed part, under the circumstances already explained. The disputed part at the time of such registration was separated by the rest of Plot 119/1 by a wall and it was part of the vine-yard cultivated and possessed by the respondents. The dispute about this part arose according to the evidence of P. W. 3 some time in 1979.

At the time of the enactment of Cap. 224 the prescriptive period had been completed and continued to run till 1960 when the property was registered for the first time as such period could not be interrupted, once there was no registration for same.

Therefore, the findings of the trial Judge that the respondents had under the Law acquired a right to be registered as owners this disputed property by prescription is legally founded.

As to the 4th ground of appeal, it is a rule of practice that costs follow the event and that a successful party is entitled to his costs unless the Court in the exercise of its discretion otherwise directs in the special circumstances of a particular case. We agree with the order made by the trial Court as to costs and we see no reason to interfere with such order.

We find the last ground of appeal entirely unfounded. In the light of the result reached by the trial Court that the respondents are entitled to be registered as owners of

the disputed part of Plot 119/1 there was no room for the counterclaim and the trial Court had no alternative but to dismiss same.

In the result, this appeal fails and is hereby dismissed with costs.

Appeal dismissed with costs.