

1986 November 25

[A. LOIZOU, SAVVIDES, PIKIS, JJ]

GEORGHIOS AVGOUSTI SAVVAS & OTHERS,

Appellants-Plaintiffs,

v.

PANAYIOTIS NICOLAOU ATHANASSIOU & OTHERS.

*Respondents-Defendants.**(Civil Appeal No 6905).*

5 *Immovable property—Land held in undivided shares—Partition of—Registration of property so partitioned, application for—The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224—Section 34—Co-owners—Time*
 10 *at which their identity should be established—Transfer of co-owner's interest after submission of application for partition—Transferee's consent to partition not necessary—Land turned into building sites—Demand by Director of Lands and Surveys that before implementaion of re-*
 15 *gistration of property as partitioned the Certificate of Approval should be produced—Such demand nothing more than a requirement of compliance with the provisions of the Streets and Buildings Regulation Law, Cap. 96 and the proper and accurate registration of the divided plots.*

The co-owners of two plots of land secured under the provisions of the Streets and Buildings Regulation Law, Cap. 96 a permit for their division into separate lots. They also, filled on application with the D.L.O. for the
 20 *issue of new titles in accordance with the partition and division of the properties. The Director of Lands and Surveys thought that it was necessary. before implementing the partition, to have the certificate of approval for the division in respect of which the division permit had been*
 25 *granted. The said certificate was given on 26.2.82, but in the meantime some of the said co-owners had trans-*

ferred their interest or part thereof to certain other persons.

The Director then, though the appellants refused to give their consent to the partition, proceeded with the registration of the property so partitioned and, as a result, the appellants filed an appeal under s. 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. 5

The trial Judge dismissed the appeal, holding that the material time for deciding who are the co-owners for the purposes of s. 34* of Cap. 224 is the time when the land has been partitioned and when application for the registration of the property as partitioned is made and that, though the Director had discretion in the matter, there was no reason to interfere with its exercise in this case. 10 15

Hence the present appeal.

Held, dismissing the appeal: (1) On the true construction of s. 34 of Cap. 224, the material time at which the identity of the co-owners must be established is the time when the application to partition the subject property which had been partitioned by the co-owners is made to the Director. The transferees of undivided shares in a partitioned property take subject to the partition effected as evidenced by the application for the same and the particulars recorded thereon. 20 25

(2) The consent of the successors-in-title was not necessary for the purposes of s. 34. The demand for the certificate of approval was nothing more than a requirement for compliance with Cap. 96 and the proper and accurate registrations of the divided plots, which had been turned into building sites, and not a prerequisite to effecting the partition already applied for under s. 34. 30

Appeal dismissed with costs.

Appeal.

Appeal by applicants against the judgment of the District Court of Limassol (Artemis, S.D.J.) dated the 21st 35

* Quoted in so far as relevant at p. 806.

February, 1985 (Appl. No. 63/83) whereby their appeal against the decision of the Director of Lands and Surveys under section 80 the Immovable Property (Registration and Valuation) Law, Cap. 224 was dismissed.

5 *C. Melas with Chr. Christoforou*, for the appellants.

E. Theodoulou, for the respondents 1-9.

10 A. LOIZOU J. gave the following judgment of the Court. This is an appeal from the judgment of a Judge of the District Court of Limassol by which he dismissed the appeal against the decision of the Director of Lands and Surveys taken under s. 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (hereinafter to be referred to as the Law).

15 The facts relevant to the issues raised are briefly these. All the co-owners of properties under Registrations No. 9604 plots 154 and 155/1 and No. 9605 plot 156/1 Sheet/Plan 54/51 in Ayios Athanassios, in the District of Limassol, had purchased the properties in question which were registered in undivided shares as follows:

20 Reg. No. 9604: Field 3 donums 3 evleks

 32/60 shares Stavriini K. Stavrinou

 14/60 shares Panayiotis N. Athanassiou

 7/60 shares Kyriakos Stylianou

 7/60 shares Panayiotis Ch. Parlas.

25 Reg. No. 9605: Field 2 donums 1 evlek 1000 sq. feet.

 2/4 shares Andreas Vasiliou Chilimindris

 1/4 share Georghios K. Moysis

 1/4 share Panayiotis Ch. Parlas.

30 Having secured on the 1st November, 1980 a division permit from the appropriate authority under the Streets and Buildings Regulation Law Cap. 96, the aforesaid co-

owners proceeded with the division of the plots in question into separate lots.

On the 8th December, 1980, a local inquiry was carried out by a Lands Officer in the presence of three of the co-owners, when the boundary marks of the building sites into which they were divided were constructed and the appropriate forms were duly filled in for the purpose of the registration of the division in question, making it known that there had been an agreement between the co-owners to that effect. By application by and with written consent of all co-owners, they asked to have new titles issued in accordance with the said partition and division.

Before their registration and the issue of the relevant new titles, it was essential to have due compliance with the division permit and to have a certificate of approval which was finally issued on the 26th February, 1982. As, however, some time had elapsed until then, the co-owners proceeded with the transfer of their respective undivided shares as follows:

(a) Co-owner K. Stylianos gifted his interest in Reg. No. 9604 to his wife Loukia Kyriakou.

(b) Co-owner Andreas Vassiliou transferred the 1/2 share of his interest in Reg. No. 9605 to Theoclis Kyriakou and Katina Moysi, (in equal shares) and kept the other half share, himself.

(c) Co-owner Panayiotis Charalambous transferred his interest in Reg. No. 9605 to Andreas A. Kyza and Nicos Ch. Pantelides in equal shares.

(d) Co-owner St. Constantinou gifted her interest (32/60 shares) in Reg. No. 9604 to her four children Georghios, Constantinos, Marios and Savvas A. Savva in equal shares (1/4 each).

The Director then, though the appellants refused to give their consent to the partition, proceeded with the registration of the property so partitioned.

The learned Senior District Judge who heard the appeal posed the following two questions for answer:

- 5 “(a) What is the material time for the purposes of s. 34 as to who are the co-owners? Is it the time of the decision to partition and the application for that purpose or any other time and, in particular, the time prior to the implementation of the partition, and,
- 10 (b) if the answer to the above question is that the material time is the time of the decision and the application, has the Director exercised correctly his discretion under the powers given to him by s. 34 or not in deciding to implement the partition?”

His decision on the first question was as follows:

15 “Having carefully considered the first question, I consider the provisions of s. 34 to be quite clear. No other interpretation can be given to it except that, when the section mentions co-owners, the material period to decide who the co-owners are is the time when the land has been partitioned and when application for the registration of the property as partitioned is made. It is, therefore, clear that in the instant case all the co-owners had decided upon the partition and had applied for its implementation. 20 Any other interpretation would lead to the absurd result that there would never be any certainty in the matter if each time the owners changed, each decision and application to partition should be cancelled. Besides, this might have incurred in each case a lot of costs and expenses which thus might be rendered useless as made in vain.” 25 30

35 The first ground argued in this appeal was that s. 34 of the Law was wrongly interpreted by the learned Senior District Judge who heard this appeal, in that the co-owners who could apply for a partition of an immovable property held in undivided shares were those at the time of the filing with the D.L.O. of such application and not the co-owners who ultimately became by virtue of transfer and who were so holding a share at the time the partition was to be effected by the Lands Office.

Section 34 in so far as relevant reads as follows:

“Where any immovable property held in undivided shares has been partitioned by the co-owners the Director may, on application for the registration of the property so partitioned, direct registration of the property to be effected in accordance with the terms of the partition if they do not contravene the provisions of section 27 of this law.” 5

On the true construction of this section, we have no difficulty in agreeing with the learned trial Judge that the material time at which the identity of the co-owners must be established is the time when the application to partition the subject property which had been partitioned by the co-owners is made to the Director. The wording of the very application for partition submitted is indicative also of the circumstances under which the co-owners applied for such partition and gave their written consent thereon. One, if not the only one of the impediments for not effecting such a partition and for not directing registration of the property to be effected in accordance with the terms of the partition is, if same, contravenes the provisions of s. 27 of the Law which is not applicable in our case. The transferees of such undivided shares in a partitioned property, take subject to the partition effected as evidenced by the application for same and the particulars recorded thereon including the consents of their predecessors-in-title. 10 15 20 25

The second ground argued on behalf of the appellants was that whereas the learned trial Judge correctly, as it is claimed, found that the Director of the Lands Office has a discretion whether to implement an agreement for partition or not, yet, he did not think it fit to interfere with it. 30

In our view, the consent of the successors-in-title was not necessary to be asked for the purposes of s. 34 of the Law, as the Director of the Lands Office had already been moved by the original application of the then co-owners to proceed with the partition. Moreover, the demand by the Director of being supplied with the certificate 35

of approval for the building sites which were divided by virtue of a division permit issued under s. 3 of the Streets and Buildings Regulations Law Cap. 96, is nothing more than a requirement for compliance with that particular Law
5 and the proper and accurate registration of the divided plots, once they had, in the meantime, been turned into building sites, and not as a pre-requisite to effecting the partition already applied for under s. 34 of the Law.

10 For all the above reasons, this appeal is dismissed with costs.

Appeal dismissed with costs.