

1987 March 20

[A LOIZOU MALACHTOS STYLIANIDES JJ]

ELENI SOFOKLI SAVVA,

Appellant-Plaintiff,

v

OLGA PETROU,

Respondent-Plaintiff

(Civil Appeal No 6596)

Immovable property – Ownership in undivided shares – Partition – Meaning of – The Immovable Property (Tenure, Registration and Valuation) Law, Cap 224 – Section 29 – No partition can be effected thereunder, if it leaves undivided part of the property jointly owned – The philosophy of the Law

The appellant and the respondent are the registered co-owners in equal shares of a field of an extent of six donums, on which there are standing a carob-tree, a mulberry tree, an engine-room, a store-room, a water tank and a bore-hole

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The appellant filed an application with the DLO for the compulsory partition of the said field. As a result the Director divided the property into two equal holdings (Plots 22/10/1 and 22/10/2) and a smaller one. The latter was to remain in the joint ownership of the parties, whereas, following a draw of lots, plot 22/10/1 was allotted to the appellant and plot 22/10/2 to the respondent

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The respondent filed an appeal to the Court under s 80 of Cap 224. The main issue before the trial Court was whether the sub-judice decision was invalid as having been reached contrary to the provisions of Cap 224 and in particular section 29 of the Law. The trial Court declared the decision invalid. Hence the present appeal

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Held, dismissing the appeal (1) The provisions of sub-sections 1 and 4* of section 29 of Cap 224 should be read in conjunction with the powers of the Director under the other sub-sections of the section as well as under sections 27 and 28

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(2) No doubt no compulsory partition under section 29 can be effected, if it leaves undivided part of the property jointly owned by the co-owners. The wording of this section is clear, and it becomes clearer when sub-section (1) thereof is viewed in particular in the light of the provisions of sub-section (4)

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* Quoted at p 183 post

The whole philosophy of the law is to disunite jointly owned property and at same time to limit its parcellation below certain minimum sizes

- 5 (3) In the light of the above the partition as decided upon by the Director is not the one envisaged by s 29 inasmuch as it does not put an end to the joint ownership, leaving a small portion to be held and enjoyed in undivided share

Appeal dismissed. No order as to costs

Appeal.

- 10 Appeal by respondent against the judgment of the District Court of Paphos (Chrysostomis, P.D.C. and Papas, D.J.) dated the 8th July, 1983 (D.L.O. Appeal No. 72/80) declaring as invalid the decision of the District Lands Officer, Paphos whereby the property under Reg. No. 4825 was compulsorily partitioned
15 under the provisions of section 29 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, and was allotted to the parties after a draw of lots.

E. Efstathiou, for the appellant.

E. Komodromos, for the respondent.

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Cur adv. vult.

- 25 A. LOIZOU J. read the following judgment of the Court. The appellant and the respondent are the registered co-owners of one half share each of a field, described as garden-land, under Registration No. 4825, plot 22/10 sheet/plan 45/44 at Thremithousa Village, of an extent of six donums. There are standing on it a carob-tree, a mulberry tree, an engine-room, a store-room, a water-tank and a bore-hole.

- 30 The appellant filed an application with the D.L.O. of Paphos for the compulsory partition of the said immovable property under the provisions of section 29 of the Immovable Property (Tenure Registration and Valuation) Law, Cap. 224 (hereinafter to be referred to as the Law).

By the decision of the Director the said property was partitioned into two equal holdings and smaller one as indicated on the plan, copy of which was produced as exhibit at the trial. Each one of the larger holdings was of an extent of two donums three evleks and 400 sq ft. The one holding was given plot No 22/10/1 and has the carob-tree standing on it and the other was given plot No 22/10/2 and has the mulberry tree. Both were described as garden-land. The smaller holding which is given plot No 22/10/3, is of an extent of one evlek and 2 800 sq ft is described as a site, with two rooms, one tank and one bore hole standing on it.

Following a draw of lots, plot No 22/10/1 was allotted to the appellant whereas plot No 22/10/2 was allotted to the respondent. The smaller plot including the buildings and the bore-hole on it were to remain according to the decision of the Director of Lands and Surveys in the joint ownership of the litigants in equal shares.

As against this decision the respondent applied to the Court under section 80 of the Law and in the result the Full Court of Paphos allowed the appeal and declared as invalid the decision of the Director and ordered the respondent to pay the costs of the proceedings.

The main issue before the trial Court and indeed before us on appeal has been whether the sub judice decision was invalid as having been reached contrary to the provisions of the Law and in particular, to section 29 thereof.

The trial Court, after dealing at length with the arguments advanced on both sides, giving its approach as to the meaning and effect of partition, as used in the sense of Section 29 of the Law, came to the following conclusion.

«From all these provisions, it is apparent that the Director is given power to disunite property jointly owned but not to partition it in such a way so as to disunite part of it and leave the rest in the joint ownership of the co-owners. If a partition cannot be effected in that manner, then the Director must

issue a certificate to the effect that the property cannot be partitioned without contravening the provisions of s 2/ pursuant to the provisions of s 28

5 For all the above reasons we have come to the conclusion that the manner in which the partition of the immovable property the subject matter of this Application was effected is wrong in law as the joint ownership of this land, which constituted one plot of land is not disunited as part of the property remains in the joint ownership of the itigants In
10 facing this difficult solution the Director or his nominee even proceeded to create the said easements contrary to the provisions of s 11 of Cap 224 in his effort to comply with the provisions of s 27»

15 It has been argued on behalf of the appellant that the trial Court wrongly concluded that the decision of the Director of Lands and Surveys was not correct and that it wrongly interpreted the Law and in particular sections 27 28, 11 and 29 of the Law ,

Section 29, subsections 1, and 4, of the Law read as follows

20 «29(1) Where immovable property is held in undivided shares, it shall be lawful for the Director, on the application of any co-owner to cause a partition of the property to be made amongst the several parties entitled thereto and to register the holdings into which the property is divided in the names of the persons to whom the same are respectively allotted

25 (2)
(3)

30 (4) Where by reason of the nature of the property to be partitioned or of the number of parties interested therein or for any other reason it appears to the Director that it is not practicable to allot holdings of a value corresponding to the respective shares of the co-owners the Director may order that those co-owners who take holdings of greater value than their due shall pay to those who take holdings of less value than their due or take no holding at all, such compensation as
35 the Director may determine having regard to their respective shares and the values which he allocates to the holdings »

These provisions have to be read in conjunction with the powers of the Director under its remaining subsections, as well as those given to him by sections 27 and 28.

Section 27 delineates the general provisions relating to the division or partition of immovable property and thereunder no division or partition shall be lawful if it contravenes anyone of its provisions, and section 28, empowers the Director to sell property held in undivided shares in certain cases. 5

No doubt no compulsory partition under section 29 can be effected which leaves undivided part of the property jointly owned by the co-owners. The wording of this Section is clear and it becomes clearer when subsection (1) is viewed in particular in the light of the provisions of subsection 4, hereinabove set out, whereby by reason of the nature of the property to be partitioned or the number of the parties interested therein or for any other reason it appears to the Director that it is not practicable to allot holdings of a value corresponding to the respective shares of the co-owners, the Director may order that those co-owners, who take holdings of greater value than was due, shall pay to those who take holdings of less value than their due or take no holding at all, such compensation as the Director may determine having regard to their respective shares and the values which he allocates to the holding. 10 15 20

It is clear that the whole philosophy of the Law is to disunite jointly owned property and at the same time to limit its parcellation below certain minimum sizes, and this is achieved by the wording of the interconnection called for, of its several provisions. 25

We need not, as the trial Court did, refer to the position in England as it is clear from the wording of our Law that its purpose was to avoid fragmentation of immovable property into plots of an uneconomic size and value. 30

We may refer, however, to the definition of partition cited by the trial Court as given in the Encyclopaedia of Forms and Precedents, 4th Edition, Volume 15, at p. 843 under the heading "Meaning of Partition":- 35

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«The term 'partition' applies to the division of lands tenements, and hereditaments belonging to co-owners and the allotment among them of the parts, so as to put an end to community of ownership between some or all of them. A partition can be made of one entire parcel of land held in undivided shares whether freehold or leasehold or of several separate parcels or of parts thereof so held »

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In view of the above we have come to the conclusion that the partition as decided upon by the Director is not the one envisaged by section 29 inasmuch as it does not put an end to the joint ownership between the co-owners as it leaves a small portion to be held and in fact enjoyed in undivided shares

For all the above reasons the appeal is dismissed but in the circumstances, however, there will be no order as to costs

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Appeal dismissed
No order as to costs