

1987 February 19

[A LOIZOU, DEMETRIADES, PIKIS, JJ]

- 1. KYRIAKI MICHAEL ELIA
- 2. ANDRIANI THEOCHAROUS.

*Appellants-Defendants.*

v.

KYRIACOU ALEXANDROU,

*Respondent-Plaintiff.*

*(Civil Appeal No. 6700).*

*Immovable Property—Right of way—The Immovable Property (Tenure Registration and Valuation) Law, Cap.224—Sections 11,12, and 55—Right of way recorded by virtue of judgment of a competent Court—Once this was proved it was up to the defendants—the owners of the servient plot—to satisfy the Court that the judgment was obtained unlawfully or illegally*

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The trial Court found that plaintiff/respondent's property had acquired a right of access, 4' in width over defendants/appellants' property, that such right was recognised by a judgment of a Court, that the right was recorded in the Land Registry Office and also inserted in the plaintiff's certificate of registration and that at the time the defendants were registered as owners of their said property, the above right of way was not recorded or registered in the Land Register. The trial Court concluded that the plaintiff's claim was not founded on the said judgment, but on a duly registered right of way which was recorded because it was recognised by a judgment of a competent Court as provided by sections 11,12 and 55\* of Cap. 224.

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Held, dismissing the appeal, that once the respondent proved that the right of way was recorded in the D.L.O. books by virtue of a judgment of a competent Court, it was up to the appellants to satisfy the Court that such judgment was obtained unlawfully or illegally, something that the appellants failed to do.

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*Appeal dismissed with costs*

**Appeal.**

Appeal by defendants against the judgment of the District Court of Paphos (Anastassiou, S.D.J.) dated the 11th February, 1984 (Action No. 509/78) whereby it was found that the plaintiff had a

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\* These sections are quoted at pp.54-55 post.

right of way in favour of her property under Reg. No. 3899 over the property of defendants under Reg. No.3696 situated at K. Pyrgos.

*E. Komodromos with Y. Droushiotis, for the appellants.*

*E. Efstathiou, for the respondent.*

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*Cur. adv. vult.*

A. LOIZOU J.: The judgment of the Court will be delivered by H.H. Judge Demetriades.

DEMETRIADES J.: This is an appeal against the judgment of the Senior District Judge of the District Court of Paphos, by which he found that the respondent in this appeal, who was the plaintiff in Action No.509/78 of the District Court of Paphos, had a right of way in favour of her property under Registration No.3899, plots 447/1 and 447/2 of Sheet Plan 18/36 situated at Kato Pyrgos, over the property of the appellants, the defendants in that action, under Registration No.3696, plot 440/1 of the same Sheet Plan, also situated at Kato Pyrgos and that the said right of way had been recorded in the District Lands Office (D.L.O.) books by virtue of a judgment of the District Court of Nicosia sitting at Morphou given in Action No.516/69 recognising same.

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In the 12th Edition of GALE on Easements at p.1, one reads:

«In addition to the ordinary rights of property, which are determined by the boundaries of a man's own soil, the law recognises the existence, as accessorial to these general rights, of certain other rights to be exercised over the property of a neighbour, and therefore imposing a burden upon him.»

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For these types of rights our legislator has made specific provisions in the Immovable Property (Tenure, Registration and Valuation) Law, Cap.224, section 11 of which provides:

«11.(1) No right of way or any privilege, liberty, easement, or any other right or advantage whatsoever shall be acquired over the immovable property of another except -

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(a) .....

(b) .....

(c) where the same has been recognized by a judgment of a

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competent Court; or

(d) .....

(e) .....

(f) .....

5 (g) .....

Relevant to section 11 are sections 12 and 55 of the same Law, which read:

10 «12. (1) Where any right, privilege, liberty, easement or other advantage has been acquired as in subsection (1) of section 11 of this Law in respect of any immovable property, the same shall be deemed to be attached to such property and to be included in any dealing made with such property.

15 (2) Where any such right, privilege, liberty, easement or other advantage has been abandoned by notice in writing to the District Lands Office or has not been exercised for the full period of thirty years without interruption, the same shall be deemed to have lapsed.

(3) .....

20 55. Where any land is subject to or enjoys any right, privilege, liberty, easement or other advantage as in section 12 of this Law, the same shall, on the application of any interested party, be recorded in the Land Register and in the certificate of registration relating to such land.»

25 The claim of the respondent, as it appears in her Statement of Claim, was that she, as owner of her aforesaid property, had a right of way through the property of the appellants and that her said right was recorded in the D.L.O. books by virtue of a judgment given in her favour in Action No.516/69 of the District Court of Nicosia sitting at Morphou and by which it was recognised that she 30 was entitled to such right.

By para.2 of their Statement of Defence and in answer to the above allegation of the respondent, the appellants denied that the respondent was entitled to a right of way over their property in that-

35 (a) the said right of way had no legal effect because on the da-

of the transfer of the property in their name the said easement was not recorded on their title deeds;

(b) as they were bona fide owners of their property the respondent could not claim the exercise of her alleged right of way; and 5

(c) at the time of the transfer of the property into their names the said easement was neither recorded in the D.L.O. books nor was it recorded on the title deeds of their predecessor in title.

However, in para.4 of their Statement of Defence, the appellants do admit the allegation of the respondent that their property is burdened with a right of way of a width of four (4) feet in favour of the property of the respondent. 10

The appellants by counterclaim pray for the annulment of any Court order given for a right of way in that the said order was granted unlawfully and illegally.

After hearing the plaintiff, her witnesses and the evidence of the only witness called by the defence, the trial Court had this to say:

«I was very well impressed with the evidence of the plaintiff as well as with the evidence of all her witnesses and despite the existence of some discrepancies of which I have not lost sight, yet, I believe that they told me the truth and I accept their evidence as true and correct and reliable to act upon. 20

On the contrary, the only defence witness, did not impress me favourably and I disregard his evidence. He was biased and came to Court to give evidence in an effort to help the defendants who are his relatives; he denied completely the existence of the said right of way over plot No.440/1, a fact which is not denied, (para 4 of the statement of defence) by the defendants themselves and he completely ignored that he had any knowledge of the existence of the proceedings in Action No.516/69, a case which was against his wife and his mother-in-law, something which ought to be known by him. 25  
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In the light of the above findings, I reach the following conclusions:- 35

(a) That the plaintiff and the defendants are the registered

owners of the plots as mentioned above, under Reg. Nos. 3899 and 3696 respectively.

5 (b) That plot Nos. 447/1 and 447/2 being the property of the plaintiff has acquired a right of access, 4' in width over plot No. 440/1, something which was recognised by a judgment of the District Court of Morphou in Action No. 516/69.

10 (c) That the above right of way has been recorded in the Land Registry Office and also inserted in the plaintiff's certificate of registration by virtue of Application No. A1043/77 in accordance with s.55 of Cap. 224.

15 (d) That the defendants were registered as owners of Plot No. 440/1 since 24.5.71 and that at the time of such transfer and registration, the above right of way over their said property was not registered or recorded in the Land Register.

(e) That the said right of way over the Defendants' property, plot 440/1 is all along the boundary line with plot 440/2.»

And then he made the following findings:

20 «It is clear from the whole case, that the plaintiff's claim is founded not on the above mentioned judgment, but on a duly registered right of way in the L.R.O. Register which was recorded because it was recognised by a judgment of a competent Court as provided by sections 11, 12 and 55 of Cap. 224 which I have enumerated.»

25 Considering the evidence adduced, the trial Judge rightly reached his conclusions as once the respondent proved that the right of way was recorded in the D.L.O. books by virtue of a judgment of a competent Court, that is the Nicosia District Court sitting at Morphou, recognizing same, it was up to the appellants  
30 to satisfy the Court that such judgment and the consequential recording of it in the D.L.O. books was obtained unlawfully and illegally, something that the appellants failed to prove.

As we find that there is no merit in this appeal, we dismiss it with costs in favour of the respondent.

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*Appeal dismissed  
with costs.*