1989 July 21

(SAVVIDES, KOURRIS, BOYADJIS, JJ.)

IERA MONI AYIOU GEORGHIOU KONTOU,

Appellants-Plaintiffs,

v.

GEORGHIOS VONTITSIANOU, AS ADMINISTRATOR OF THE ESTATE OF EVRIDIKI LOIZOU, LATE OF LARNACA AND OTHERS,

Respondents-Plaintiffs.

(Civil Appeal No. 7324).

Immovable property — Religious corporation — The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, section 41 — Object, ambit and construction of the section — Effect of non submitting an application for registration within the time period prescribed therein — The powers of the Director of Lands and Surveys thereunder.

Civil Procedure — Summary dismissal of an action — The Civil Procedure Rules, Order 27 Rule 3 — When applicable.

Immovable property — Adverse possession — The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, sections 9 and 10 — All matters relating to possession which began before 1.9.46 are governed by the old Ottoman Law, but any period, that has not been completed as on 1.9.46 is interrupted as against a registered owner — The period of prescription under Ottoman Law as regards «Arazi Mirie» and «Makfs».

The appellants are a religious corporation in the sense of section 2 of Cap. 224. They filed an action claiming that they are entitled to be registered as owners of a plot of land by virtue of adverse possession, which had began ab antiquo, prior to 1930. The land in question stood registered in the joint names of the respondents.

The action was summarily dismissed under Order 27 Rule 3 of the Civil Procedure Rules on the ground that it was doomed to failure, because the plaintiffs-appellants had not complied with section 41 of Cap. 224.

Section 41 reads «(1) Any immovable property belonging or attached to a religious corporation at the date of the coming into operation of this Law which is not already registered in its name, and any immovable property which, though registered in the name of some person, is held for or on behalf of a religious corporation at that date, may be registered in the name of such corporation,

Provided that the corporation shall apply to the District Lands Office not later than eight years after that date for the property to be so registered, and where the Director so requires shall pay the fees prescribed for local inquiry

(2) After the expiration of the period mentioned in sub-section (1) of this section no claim of title to or in connection with any immovable property by and religious corporation shall be valid or shall be entertained or recognized in any Court or District Lands Office unless the corporation files together with the writ a certificate of the Director that it has applied to the District Lands Office within the period in sub-section (1) of this section mentioned for the property to be registered in its name and, where the Director so required paid the fees prescribed for local inquiry»

It was not in dispute that the appellants had not submitted an application as envisaged by section 41 within the period therein prescribed and that no certificate of the Director, as provided in subsection (2), was filed together with the action

Counsel for the appellants submitted that -

(a) Section 41 was not applicable because on 1 9 46 the land neither «belonging to» or «attached» to the appellants

(b) Section 41 does not apply to cases of claims by adverse possession, the Director of Lands and Surveys has no power to decide upon disputes emanating from adverse possession

(c) The dismissal of the action was premature The trial Court ought to have heard evidence Perhaps, the evidence that would have been accepted as credible could lead to the conclusion that the period of prescription had not been completed by 1 9 1946

Held, dismissing the appeal

(A) Per Kourris, J , Savvides J concurring

(1) This appeal turns on the construction of Section 41 of Cap 224

(2) The legislator used the words «belonged and attached to» in view of the fact that unde · the Ottoman Land, Code, Article 122,

which applied to Cyprus till 1st September, 1946, a monastery which was an ecclesiastical corporation was unable to own any arazi-mine land because the ownership of such land could always revert to the State

(3) The land in question was arazi, as it is described in the pleading as «ξηρικό χωραφι». It did not belong or attach to the appellants It is registered in the names of the respondents and there is no allegation that the latter held the property «for or on behalf of the appellants»

(4) The object of Section 41(1) was to finalize the rights or claims of ecclesiastical corporations over immovable property within a certain period

(5) The appellant's claim is that they possessed the field in question ab antiquo They ought to have applied to the Director of Lands and Surveys for its registration in their name within the time limit prescribed by section 41(1)

B) Per Boyadjis, J , Savvides, J concurring

(1) A religious Corporation is entitled, in fact it is bound, to submit an application under section 41(1) for the registration in its name of immovable property which on 1 9 46 —

(a) *though owned by the corporation or though it is attached to it* it had not, by that aforesaid date, been registered in its name, or

(b) *though registered in the name of some person, is held for or on* behalf of the religious corporation

(2) *In this case the field was never «attached to» the appellants* It was registered in the name of the respondents There is no suggestion that the latter ever held it «for or on account» of the appellants

(3) Can it be said that on 1 9 46 the land «belonged» to the appellants? The claim was based on adverse possession Section 10 of Cap 224 was invoked As it began before 1 9 46, all matters in *respect of it are governed by the old Ottoman Law The land was* arazi mine Therefore, the period of prescription was 10 years It was obviously completed before 1 9 46 Even if the land was «makf», when the period of prescription was 15 years, again the period was completed before 1 9 46 Therefore, it cannot be asserted that as on 1 9 46 the land was not «belonging to» the appellants

A careful reading of section 41(1), leaves no doubt that its main object was to cover cases where, on the date therein prescribed, the

religious corporation was asserting, on any ground whatsoever, to be the owner of the immovable property in respect of which it was entitled to immediate registration which, however, had not already been effected for some reason or other

(4) Section 41 provides that, unless the religious corporations avail themselves of its procedure within the time therein prescribed, their existing rights and claims over the immovable property in question are forfeited and lost for all practical purposes

(5) Is section 41 applicable to cases where the claim for registration is based on adverse possession? The answer is yes The power of the Director to order registration is discretionary The legislator used the word «may» The Director has no competence to adjudicate on conflicting claims But section 41 does not require him to exceed his competence If the claim for registration is based on adverse possession, the Director «may» proceed with Registration, if there are no rival claims If there are he simply issues the certificate that an application for registration was submitted in time

(6) Though the power under Order 27 Rule 3 should be exercised only in the clearest of cases, it will be exercised if there is no chance at all for the plaintiff to succeed, in as much as to allow an action, in such circumstances, to proceed to trial would be an abuse of the process of the Court

(7) The trial Court was right to rely on the appellant's pleaded version of the facts Appellant's argument as far as Order 27 Rule 3 was concerned, if accepted would render the provisions of Rule 3 nugatory In any event, if the period of description had not been completed by 1 1 46, it would have been interrupted as from 1 9 46 in virtue of section 9 of Cap 224 In such a case the land could not be held to belong to the appellants and, therefore, their claim in respect of its ownership could not possibly succeed

C) Per Savvides J There is no doubt that the discretion of the Court under O 27, r 3 to dismiss an action should be exercised cautiously and after the Court is satisfied beyond doubt that there is no reasonable cause of action

In the present case the provisions of s 41 of Cap 224, are clear and leave no room for any ambiguity or doubt for an interpretation contrary to the express provisions of enactment

Appeal dismissed with costs

Cases referred to

The Ayia Marina Church of Dhionos v Halil Agha and Another, 16 C L R 110,

Stokkos v. Solomi (1956) 21 C.L.R. 209;

Diplaros v. Nicola (1974) 1 C.L.R. 198;

Savva v. Petrou (1985) 1 C.L.R. 127;

Agapiou v. Panayiotou (1988) 1 C.L.R. 257;

The Inhabitants of the Village of Karpashia v. The Church of Dionos and Another (1971) 1 C.L.R. 411.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Larnaca (Papadopoulos, P.D.C.) dated the 17th January, 1987 (Action No. 3219/85) whereby their action against the defendants was dismissed without being heard on its merits in response to the defendants' application under Order 27, rule 3 of the Civil Procedure Rules.

G. Triantafyllides, for the appellants.

A. Markides, for the respondents.

Cur. adv. vult.

SAVVIDES, J.: The first judgment of the Court will be delivered by Mr. Justice Kourris and it will be followed by the judgment of Mr. Justice Boyadjis and myself.

KOURRIS J.: This is an appeal against the ruling of the Full District Court of Larnaca whereby the action of the appellants/plaintiffs against the respondents/defendants was dismissed without being heard on its merits under Order 27, rule 3 of the Civil Procedure Rules.

The appellants are a «religious corporation» within the meaning of Section 2 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. The appellants filed an action in the District Court of Larnaca against the respondents whereby, by the generally indorsed writ claimed a declaration of the Court that they are entitled to be registered as the owners of a field of an extent of about 14 donums in the area of Aradhippou village by virtue of adverse possession, and an order of the Court ordering the registration of the field in their name.

The respondents filed an application in the action, under Order 27, rule 3 of the Civil Procedure Rules, asking for the dismissal of

the appellants' action on the ground that it was frivolous and vexatious in that the appellants failed to comply with the provisions of Section 41(1) and (2) of Cap. 224.

It is pertinent at this stage to set out the provisions of Section 41(1) and (2) which are as follows:-

«(1) Any immovable property belonging or attached to a religious corporation at the date of the coming into operation of this Law which is not already registered in its name, and any immovable property which, though registered in the name of some person, is held for or on behalf of a religious corporation at that date, may be registered in the name of such corporation.

Provided that the corporation shall apply to the District Lands Office not later than eight years after that date for the property to be so registered, and, where the Director so requires, shall pay the fees prescribed for local inquiry.

(2) After the expiration of the period mentioned in subsection (1) of this section no claim of title to or in connection with any immovable property by any religious corporation shall be valid or shall be entertained or recognized in any Court or District Lands Office unless the corporation files together with the writ a certificate of the Director that it has applied to the District Lands Office within the period in subsection (1) of this section mentioned for the property to be registered in its name and, where the Director so required, paid the fees prescribed for local inquiry».

The Court ruled that Section 41 of Cap. 224 was applicable to the facts disclosed on the appellants' pleadings - who after the filing of the application by the respondents they filed their statement of claim - and that their failure to comply with its provisions was fatal for their claim and consequently dismissed the action.

The appellants appealed against the ruling of the Trial Court alleging that the Court went wrong that the provisions of Section 41 of Cap. 224 were applicable to the circumstances of the case and that the stage of the proceedings at which the Court reached its decision was premature.

It is not in dispute that the appellants did not apply at all to the District Lands Office under Section 41(1) of the Law for the

registration in their name of the fields and it is not in dispute that the appellants have not filed with the writ of summons the certificate of the Director of Lands and Surveys enjoined by Section 41(2) of the Law

Counsel for the applicant argued that the appellants' claim did not come under Section 41(1) of the Law because on 1st September, 1946, when the Immovable Property (Tenure, Registration and Valuation) Law, now Cap 224, was enacted the disputed field was neither «belonging to» nor «attached to» the appellants, as expressly required in Section 41(1) of the Law

He further argued that Section 41 does not apply to cases where registration of the immovable property is sought by the religious corporations on the ground of adverse possession in that the Director of Lands and Surveys has no power to decide upon an application of such nature

This appeal turns on the construction of Section 41 of Cap 224, Under Section 41(1) of the Law a religious corporation is bound to apply to the District Lands Office for the registration in its name of immovable property which at the prescribed date, i e on 1st September, 1946, either it belonged to, or attached to a religious corporation, or was held for or on behalf of a religious corporation. By the proviso the corporation ought to apply to the District Lands Office within eight years from the prescribed date for the property to be so registered The legislator used the words «belonged and attached to» in view of the fact that under the Ottoman Land Code, Article 122, which applied to Cyprus till 1st September, 1946, a monastery which was an ecclesiastical corporation was unable to own any arazi-mine land because the ownership of such land could always revert to the State An ecclesiastical corporation could not claim the ownership of it unless they produced evidence that the annexation of it to their church was recorded in the Imperial Archives at Constantinople

It appears from the judgment of *The Ayia Marina Church of Dhionos v Ibrahim Halil Agha and Another* C L R , Volume 16, page 110, that an ecclesiastical corporation was incapable of owning land but land could be held by the State for its benefit, that is to say, that land registered in the Archives And, under the Titles Registration Law, 1885, later 1907, property of a class the corporation may own could be held for them by trustees

I propose to set out a long passage from the judgment of The *Ayia Marina Church of Dhionos* (supra) from the judgment of Griffith Williams, J , at pages 120-122, which is very enlightening on the subject

«Now the land law of Cyprus is the Ottoman Land Code as varied by laws passed since the British Occupation The fundamental principle of this law seems to have been that the ownership of all land was in the state, and that the state allowed the surface of this land to become the property of individuals but to be inalienable from them without consent of the state - for which a fine or payment must be made to officers of the Government Should the owner die without heirs, the property would revert to the state and be regranted to the further profit of the state This principle of ultimate ownership of land by the State provided wisely and effectively against land getting into the dead hand of any corporation with perpetual succession, and as regards ownership of land such corporations do not seem to have been recognized In the archives at Istambul certain lands were registered as belonging to certain monasteries and other buildings, but these lands were rather reserved by the Government for the use and enjoyment of the dwellers in such buildings, than property under the ownership or at the disposition of any corporation housed in such buildings The corporation whether ecclesiastical or Mohammedan did not hold by deed and could not dispose of such property

The only article of the Land Code dealing specifically with the rights of monasteries - which may be taken to be the same for any ecclesiastical corporation - is No 122 According to Fisher's version the translation of this article is as follows

'Land attached ab antiquo to a monastery as such in the Imperial archives (Defter Khane) cannot be held by title-deed, it can neither be sold nor bought But if land after having been held ab antiquo by title-deed has afterwards passed by some means into the hands of monks, or is in fact held without titledeed, as appurtenant to a monastery the procedure as to state land shall be applied to it, and possession of it shall be given by tittle-deed as previously'

Here it is recognized that certain land which from time immemorial had been annexed to a monastery and of which the annexation had been registered in the Imperial archives could not be held by deed and could not be bought and sold That is to say, this kind of land is inalienable since it is held by the state for the use of the monastery in perpetuity Then the article goes on to deal with land held by deed (tapu) of the kind of land that can be sold and bought and to which the title is transferable, it says 'This land which was originally held by tapu has fallen into hands of monks and held without tapu as annexed to a monastery shall be treated as other state land and shall as before be made to be held by tapu ' The purpose of the latter part of this article was clearly to keep fluid the ownership of state land and prevent it passing out of the control of the state It had the same object as had the Statute of Mortmain in Plantagenet England Under the Ottoman Code a monastery or body of monks was incapable of owning land, but land could be held by the state for its benefit, that is to say that land registered in the archives, and under the Titles Registration Law, 1885 (now 1907) property of a class the corporation may own can be held for them by a trustee

But the question of whether or not an ecclesiastical corporation can own Arazi-Mine land in its own name or in the name of a trustee has already been decided for Cyprus in the case of *Sophronios Egoumenos of Kykko Monastery v The Principal Forest Officer* (C L R , Vol I p 111) In an able judgment in that case the whole position of the law as to the holding of land by or on behalf of ecclesiastical corporations is reviewed, and in it the Court gives its version of the meaning of Article 122 It is as follows

'As we understand this article, it means that the law will not recognize the annexation of any State land to a monastery, as monastery property, unless its annexation is recorded in the Imperial archives, and that where the right to possession of State lands has been granted to individuals, and any owner of it has purported to dedicate it to pious uses, the dedication is in the eye of the law inoperative, and the right to possession remains vested in the person who so puported to dedicate it, and descends to his heirs on his death Such right could not be handed over by him to any grantee, without the permission of

the competent authority (Article 36), and must either remain vested in him or his heirs or revert to the State'.

After this the judgment went on to analyse the Turkish Land Law and to show that the main object throughout is the safeguarding of the reversionary rights of the State. Hence the Court decided that ownership of Arazi-Mirie land in a monastery will not be recognized by law.

I do not think I could improve on or add to the very clear and comprehensive exposition of the law contained in that judgment, and can only say that I find myself in complete agreement with it. The position now is quite unchanged from the time when that case was decided. There is no means by which ecclesiastical corporations can hold Arazi-Mirie land save by virtue of the Ecclesiastical Properties Law, 1935, which protects the possession of ecclesiastical corporations who were in actual possession of land for ten years prior to 1891. And there is no means by which they can lawfully acquire land of this category. If a trustee owns Arazi-Mirie land he may hold it during his lifetime as trustee for the church; but on his death it passes to his descendants freed from the trust, and is not transferable to another trustee under the Immovable Property Registration and Valuation Law, 1907. The effect of section 12 of this Law (then section 12 of the Titles Registration Law, 1885) is considered at length in the *Kykko Monastery* case I have referred to.»

In the case in hand, the field claimed by the appellants is of arazi-mirie category and it did not belong or attach to them. It was and, still is registered in the joint names of the respondents and there is no allegation that it was held for or on behalf of the appellants at the prescribed date, i.e. on 1st September, 1946.

I think that the object of Section 41(1) was to finalize the rights or claims of ecclesiastical corporations over immovable property within a certain period. This is apparent from the fact that the time limit originally was five years and it was later extended to eight years by virtue of Law 8/53. Its main object was to cover cases where at the prescribed date, the religious corporation was asserting that it was entitled to be registered as the owner of the immovable property.

In the present case the appellants' claim is that they possessed the field in question ab antiquo, «or from a time, whereof the

memory of man runneth not to the contrary». And they ought to have applied to the Director of Lands and Surveys for its registration in their name within the time limit prescribed by Section 41(1).

For the above reasons I am of the view that the provisions of Section 41 of Cap. 224 are applicable to the circumstances of the present case and I am also satisfied that the stage of the proceedings at which the Trial Court reached its decision was not premature and their failure to apply to the Director of Lands and Surveys for registration of the field in their name within the time limit prescribed by Section 41(1) was fatal to their claim.

The appeal is therefore dismissed with costs against the appellants.

BOYADJIS J.: This appeal is directed against the decision of the Full District Court of Larnaca whereby the claim of the appellants-plaintiffs in the action below, against the respondents-defendants therein, was dismissed without being heard on its merits, in response to the respondents' application under 0.27, r.3, of the Civil Procedure Rules.

The salient facts are in short these: The appellants are «a religious corporation» within the meaning of section 2 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. On 12th December, 1985, the appellants filed with the District Court of Larnaca Action No. 3219/85 against the respondents. In the generally indorsed writ issued in the aforesaid action, the appellants claimed against the respondents:

(A) A declaration of the Court that they are entitled to be registered as the absolute and sole owners of a field of an extent of about 14 donums, described therein, situate within Aradippou village, by virtue of their undisputed and uninterrupted adverse possession thereof for a period exceeding fifty years, and

(B) An order of the Court ordering the registration of the aforesaid field in their name on the same aforesaid ground.

It is common ground that:

(i) The appellants did not ever apply to the District Lands Office under section 41(1) of the Law, Cap. 224, for the registration in their name of the field, the subject-matter of their aforementioned action; and

(ii) The appellants have not filed together with the writ of summons the certificate of the Director of Lands and Surveys envisaged by section 41(2) of the Law, Cap. 224.

On the 9th April, 1986, the respondents filed an application in the action, under 0.27, r.3, of the Civil Procedure Rules, praying for the dismissal of the appellants' action against them, on the ground that it is frivolous and vexatious, in as much as the appellants had admittedly failed to comply with the aforementioned provisions of sub-sections (1) and (2) of section 41 of Cap. 224. The appellants opposed the application and before it was heard, they filed with the Court's Registry their Statement of Claim on 30th April, 1986, where they alleged that —

(a) the disputed field is registered in the joint names of the defendants by virtue of registration No. 111124 dated 18th February, 1924, based on the survey map, covering 12/16 shares therein and by an old registration under No. 4664 dated 20th March, 1906, covering the remaining 4/16 shares; and

(b) from time immemorial and in any case before the year 1930, the whole of the aforesaid field was, within the knowledge of the respondents, under the undisputed and uninterrupted adverse possession of the appellants, their servants or agents until about 1978, and thereafter the appellants continued to cultivate it until the date of the filing of their statement of claim.

The hearing of the respondents' application was concluded on 17th December, 1986. By its reserved ruling delivered on 17th January, 1987, the Court ruled that section 41 of Cap. 224 was applicable to the facts disclosed on the appellants' pleadings, that their failure to comply with its provisions was fatal for their claim and, consequently, made an order dismissing the action as prayed by the respondents.

The appellants now appeal against the whole of the judgment of the trial Court on the following four grounds:

1. The ruling of the trial Court that the action was frivolous and vexatious was wrong.

2. The stage of the proceedings at which the Court reached its decision was premature.

3. The Court was wrong in ruling that the provisions of section 41 of Cap. 224 are applicable to the circumstances of the present case.

4. The Court wrongly decided to dismiss the action with costs.

In presenting his case before us, learned counsel for the appellants first dealt with grounds 1, 3 and 4 which he argued together and he then dealt with and argued ground 4 of his appeal. It is, in the circumstances, convenient to examine the aforesaid grounds in the same manner and order.

Grounds 1, 3 and 4

Counsel's arguments under these grounds center round his submission that the provisions of section 41 of Cap. 224 are not applicable to the circumstances of the present case for the following two distinct reasons:

(A) On 1st September, 1946, when the Immovable Property (Tenure, Registration and Valuation) Law, now Cap. 224, came into operation, the disputed field was neither «belonging to» nor «attached to» the appellants, as expressly required in sub-section (1) of section 41 of the Law.

(B) Section 41 does not and was never intended to apply to cases where registration of the immovable property is sought by the religious corporation on the ground of adverse possession, in as much as the Director of Lands and Surveys has no power to decide upon an application of such a nature and, therefore, no useful purpose would be served if the appellants had submitted the application envisaged by section 41(1) of the Law. The Director would have refused, counsel added, to examine such application and he would have told the appellants to apply to the Court.

We shall examine the two reasons advanced by the appellants in support of their submission that section 41 has no application to the present case, in their aforesaid order.

Reason (A) should be examined with reference to the words employed in subsection (1) of section 41 which reads as follows:

> «41(1) Any immovable property belonging or attached to a religious corporation at the date of the coming into operation of this Law which is not already registered in its name, and any immovable property which, though registered in the name of some person, is held for or on behalf of a religious corporation at that date, may be registered in the name of such corporation:

Provided that the corporation shall apply to the District Lands Office not later than eight years after that date for the property to be so registered, and, where the Director so requires, shall pay the fees prescribed for local inquiry».

From the above words of the subsection it follows that, unless the property sought to be registered in the name of the religious corporation pursuant to the application envisaged by the aforesaid subsection, consists of immovable property belonging or attached to the religious corporation of the prescribed date, the corporation is neither entitled nor bound to avail itself of the provisions of the sub-section by submitting an application to the District Lands Office for the property's registration in their name

Strange as it might seem, in their effort to avoid the operation of the above statutory provision, the appellants have argued that on the prescribed date, i.e. on 1st September, 1946, the property which they claim in the present action was not property «belonging or attached to» them. The very fact, their counsel argued, that a religious corporation submits an application under section 41(1) for the registration of immovable property in their name, on the ground of adverse possession, is tantamount to admitting that the property does not belong to them. This admission emanates tacitly but inevitably, counsel added, from the very fact of the submission by the corporation of their application in which they suggest that they have exercised over the property adverse possession for many years and is, therefore, entitled to be considered as owner thereof.

We do not agree that the submission of an application under section 41(1) gives rise to the tacit admission or innuendo suggested by learned counsel for the appellants.

Under subsection (1) of section 41 of Cap. 224, properly construed, a religious corporation is entitled, in fact it is bound to submit an application to the District Lands Office for the registration in its name of immovable property which at the prescribed date, i e. on 1st September, 1946—

(a) though owned by the corporation or though it is attached to it, it had not, by that aforesaid date, been registered in its name; or

(b) though registered in the name of some person, is held for or on behalf of the religious corporation.

In the case in hand, the field claimed by the appellants was never attached to them It was and still is registered in the joint names of the respondents but there is no suggestion that it was ever held by them for or on account of the appellants Yet, learned counsel for the respondents argued that the present case falls squarely within the subsection, since—

(i) at the prescribed date on the appellants' pleaded version, the property was owned by them, and

(ii) because by that same date it was not already registered in their name

The latter reason put forward by the respondents is admitted What is in dispute is whether it may be said that on 1st September, 1946, the property was owned by the appellants, or to be more exact, the property belonged to the appellants as required by the express words of the sub-section

Counsel for the appellants made it clear that their claim is based on section 10 of Cap 224 which reads as follows

«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 subsists at the expiration of thirty years»

Since, on the appellants' own pleaded version, the disputed field began to be adversely possessed by them before 1st September, 1946, the period of prescription and all matters

relating to prescription during the period that preceded the aforesaid date, are exclusively governed by the provisions of the Ottoman enactments which were repealed by the Law, Cap 224 This is clear from the first proviso to section 10 (supra) as interpreted and applied by this Court and by its predecessor, the High Court of Cyprus, in several cases including 1) *Christos Hji Loizou Stokkas v Christina Argyrou Solomi* (1956) 21 C L R 209, 2) *Christofis Yianni Diplaros v Fotou Nicola* (1974) 1 C L R 198, 3) *Maroula Savva v Savvas Petrou* (1985) 1 C L R 127, and 4) *Yiannakis Agapiou v Annetta Panayiotou*, (1988) 1 C L R 257 In all cases it was stressed that section 10 of Cap 224 has no retrospective effect

The Ottoman enactments repealed by the Immovable Property (Tenure Registration and Valuation) Law, Cap 224, which contain provisions relating to prescription are the Ottoman Land Code and the Civil Code, known as «Mejelle» Which of the two enactments governs the present case depends on the category of land to which the disputed property belonged under the Ottoman law It being a field, the property must belong to the category known as «arazi mine» for which the period of prescription laid down in section 20 of the Ottoman Land Code was 10 years It follows that, since by 1930 the latest, always, according to the pleaded assertion of the appellants, their adverse possession over the respondents' field had commenced and continued ever since uninterrupted and undisputed, the period of prescription was completed well before section 10 of Cap 224 came into operation Even if, however, the respondents' field belonged to the category of land known as «mulk», the period of prescription in respect thereof, set out in Art 1660 of the Mejelle, was 15 years, i e it had again been completed prior to the time when section 10 of Cap 224 came into operation

The effect of what we have stated hereinabove is that, on 1st September, 1946, the date mentioned in section 41(1) of Cap 224, the appellants had acquired a prescriptive right over the respondents' field entitling them to be registered as absolute owners thereof to the exclusion of the respondents Can, in these circumstances, be validly asserted by anyone, especially by the appellants themselves, that on the same aforesaid date, the field was not property «belonging to» them within the meaning of section 41(1) of Cap 224? We think that it cannot be so asserted A careful reading of section 41(1), leaves no doubt that its main

object was to cover cases where, on the date therein prescribed, the religious corporation was asserting, on any ground whatsoever, to be the owner of the immovable property in respect of which it was entitled to immediate registration which, however, had not already been effect for some reason or other.

We would like to add that section 41 does not create any substantive right in favour of the religious corporation nor does it provide the means or the forum for property disputes. Its purpose is towfold. First, by providing an informal and quick procedure, it affords an opportunity to religious corporations to apply for the registration in their names of immovable property in the cases and under the conditions set out therein. Secondly, it provides that, unless the religious corporations avail themselves of this procedure within the time therein prescribed, their existing rights and claims over such immovable propety are forfeited and lost for all practical purposes. Though the time period as originally prescribed was five years from the date when the Law, Cap. 224, came into operation, it was later extended to eight years by virtue of Law No. 8 of 1953. What social or other reasons motivated the legislature to enact such a provision, is not our concern. The Court's task is to construe the enactment in accordance with the established principles of interpretation and to apply it to the circumstances intended to be covered thereby.

In conclusion, having examined the first reason put forward by the appellants in support of their submission that section 41 is not applicable to the present case, namely, that the property did not belong to them at the prescribed date, we rule that such reason is unfounded and we reject it. We might add in this respect that if we were to uphold this reason and if we were to find that, on the facts as they themselves plead them, they had not, on account of their adverse possession, become the «owners» of the disputed field by the prescribed date, i.e. 1.9.1946, within the meaning of section 2* of the Law, Cap. 224, we fail to see how the appellants can ever possibly succeed in their claim for the registration of this property in their name, in view of the fact that, by operation of section 9** of Cap. 224, which has no retrospective effect, the period of

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* «2 'Owner' means the person entitled to be registered as owner of any immovable property whether he is so registered or not»

** «9 No title to immovable property shall be acquired by adverse possession as against the Republic or a registered owner»

prescription after 1 9 1946 is interrupted in respect of the disputed field as against the respondents who were at all material times and they still are the registered owners thereof The possession of the field by the appellants after 1st September, 1946, however adverse it might be does not count and does not operate so as to create a prescriptive right to the field in appellants' favour if such right had not matured and had not been created prior to that date

We shall now proceed to examine the validity of the second reason put forward by learned counsel for the appellants against the applicability of section 41 to the present case, namely, that it was never intended to apply and cannot possibly apply to cases where the religious corporation seeks registration in respect of immovable property on account of adverse possession Reliance by counsel is laid in this respect on the lack of competence on behalf of the Director of Lands and Surveys to decide on the validity of conflicting claims regarding rights in immovable property a principle which has been enunciated in the case of *The Inhabitants of the village of Karpashia, etc v The Church of Dionos and Another* (1971) 1 C L R 411 According to counsel's submission, a claim for registration of immovable property on account of adverse possession necessarily entails examination of and decision upon the validity of the conflicting claims to the property raised by the claimant on the one hand and the registered owner of such propetry on the other hand

In the *Karpashia* case (supra), the inhabitants of the village of Karpashia and Dionos lodged an appeal against the decision of the Director of Lands and Surveys, affirmed on appeal by the District Court, whereby he had acceeded to an application by the Church Committee of Ayia Marina Church submitted to him under section 41 of Cap 224, and had decided to register in the aforesaid religious corporation's name an area of land at Dionos village, despite the aforesaid inhabitants' objection who were claiming the land by virtue of prescription The Director's decision was set aside by the Supreme Court Dealing with the merits of the appeal, Triantafyllides, P (as he then was) said the following at pp 414-415

> «It is to be clearly understood from the contents of the letter of the 19th April, 1969, that respondent No 2 reached his complained of decision after examination of the conflicting claims to the property concerned of respondent No 1 and appellants No. 1 and that he decided, eventually, that respondent No 1 was entitled to such property

It has not been seriously disputed, during the hearing before us, that it is not within the competence of respondent No. 2, under section 41(1) to decide on the validity of conflicting claims regarding rights in respect of immovable property, that being so we are of the view that the parties to these proceedings should have been given full opportunity of vindicating their legal rights in a Court for example by a civil action for a declaration as to title or otherwise, with all the safeguards as to proof and admissibility of evidence (See *Hassidoff v. Santi and Others*, (1970) 1 C.L.R. 220)».

In order to avoid any possible confusion in the mind of a careful reader of the judgment in the above case we would like to add that the Director's sub judice «decision» was in any case liable to be set aside for the additional reason which had not been raised or argued before the Court, namely, that the application by the Church Committee was filed some time in early 1968 and the Director communicated his decision thereon to the parties affected thereby by letter dated 19th April, 1968, i.e. about fourteen years after the eight years' period set out in the proviso to section 41(1) of Cap. 224, had expired.

Be that as it may, it is relevant for the present submission of the appellants to note that in the *Karpashia* case (supra) the Court had remarked that under section 41(1) of Cap. 224, the Director was empowered, but not bound, to grant the Church Committee's application. We agree with this remark. This flows directly from the word «may» in the context of the phrase «any immovable property may be registered in the name of such corporation» employed in section 41(1) of the Law.

The fact that the Director of Lands and Surveys lacks the competence to adjudicate on the validity of conflicting claims regarding rights in immovable property is not a valid reason for asserting either that section 41 does not apply in cases in which the religious corporation relies on its alleged prescriptive rights to support its application to the District Lands Office for the registration of the property under section 41, or that the religious corporation is excused on the aforesaid ground from submitting its application as required thereby. Section 41 does not require the Director of Lands and Surveys or his subordinates to take any decision on the religious corporation's application in a way exceeding its competence. If, upon receiving such application, the Director is satisfied, after making reasonable enquiries, that there are no claims to the property rival to those of the applicant

corporation, he may proceed with the registration If his enquiries reveal the existence of such claims, he shall act within the limits of his competence and he may refuse to accede to the application by registering the property In either case there will be compliance with all that section 41(1) requires the religious corporation to do and the Director is bound to issue his certificate under section 41(2) certifying the fact of the timely submission of the application and nothing else The fact that the Director dismisses the application for any reason, other than it has been filed out of time, is totally irrelevant

In the circumstances, we dismiss the second reason put forward by the appellants against the applicability of section 41(1) of Cap 224 to the facts of the present case, and we rule that they should have applied to the District Lands Office not later than eight years after the 1st September, 1946, for the registration of respondents' field in their name

The failure of the appellants to submit such an application as expressly required by section 41(1), has deprived the appellants from the Director's certificate envisaged in section 41(2) of Cap 224 It is common ground that the appellants have not filed this certificate together with the writ of summons issued in the present action

The consequences of their failure to do so are expressed in the clearest terms in sub-section 2 of section 41 which reads as follows

> «41(2) After the expiration of the period mentioned in subsection (1) of this section no claim of title to or in connection with any immovable property by any religious corporation shall be valid or shall be entertained or recognized in any Court or District Lands Office unless the corporation files together with the writ a certificate of the Director that it has applied to the District Lands Office within the period in subsection (1) of this section mentioned for the property to be registered in its name and, where the Director so required, paid the fees prescribed for local inquiry
>
> Provided that nothing in this subsection contained shall apply to any immovable property which is already registered in the name of the religious corporation or which has been lawfully acquired by such corporation by transfer from a registered person after the commencement of this Law»

Under Order 27, Rule 3* of the Civil Procedure Rules the Court may order the action to be dismissed in case it is shown by the pleadings to be frivolous or vexatious or to order that any pleading be struck out on the ground that it discloses no reasonable cause of action. The power to dismiss an action summarily under the aforesaid rule is discretionary and though it should be exercised rarely and only in the clearest of cases, it will be exercised if there is no chance at all for the plaintiff to succeed, in as much as to allow an action, in such circumstances, to proceed to trial would be an abuse of the process of the Court. Appellants' learned counsel did not dispute that, if section 41 of Cap. 224 is found applicable to the present case, the action is doomed to fail. This is clear from the words «... no claim of title to or in connection with any immovable property by any religious corporation shall be valid or shall be entertained or recognized in any Court or District Lands Office unless...» employed in section 41(2) of Cap. 224 and the impossibility of the appellants to rely on their adverse possession over the respondents' field after the 1st September, 1946, in view of the provisions of section 9 of Cap. 224 to which we have earlier referred. Therefore, unless the appellants succeed on their second ground of appeal which we shall next examine, this appeal must be dismissed.

Ground No. 2

This ground of appeal refers to the appellants' allegation that the ruling of the trial Court dismissing the action was premature. Their counsel's submission on this matter is that the trial Court has wrongly evaluated their claim on the basis of the facts as pleaded by them. The Court should wait, counsel added, to hear what evidence they would adduce at the trial and then proceed to make its finding that, in the light of such evidence, they had already acquired a prescriptive right over the respondents' field entitling them to registration thereof, at the time when the Law, now Cap. 224, came into operation. Despite their pleaded allegations, counsel argued, there was always the possibility of adducing credible evidence of their adverse possession for part only of the period mentioned in their pleadings, i.e. for the period

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* *Order 27, r 3 «The Court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly as may be just»*

commencing, for instance, in 1940 or in 1945, in which case the minimum prescriptive period of ten or fifteen years would not have been completed before 1946 when section 41 of Cap. 224 came into force.

We are unable to agree with this argument for the following two distinct reasons:

First, if we were to accept it, it would render the provision of Order 27, r.3, totally nugatory. It is expressly stated in 0.27, r.3 that the power of the Court to dismiss summarily an action if it is satisfied that it is frivolous and vexatious is exercised with reference to the plaintiff's own pleadings and not to the evidence to be adduced at the trial. A party to an action is bound by its pleadings and we fail to understand the appellants' complaint that the trial Court had evaluated their claim acting on the basis of the facts as they themselves had pleaded them.

Secondly, if at the trial the appellants fail to substantiate by credible evidence that by the 1st September, 1946, when the Law, now Cap. 224, had come into operation, they had already acquired a prescriptive right over the respondents' field, having completed a period of ten or fifteen years uninterrupted adverse possession, depending on whether the field was of the category of «arasi miriè» or «mulk» respectively, again their claim in the action cannot possibly succeed, since under section 9 of Cap. 224 their adverse possession after that date is not taken into consideration in the computation of the prescriptive period.

For the above reasons ground of appeal No. 2 also fails.

In conclusion, the judgment of the trial Court is affirmed and the appeal is dismissed with costs against the appellants.

SAVVIDES J.: I had the opportunity of reading in advance both judgments just delivered by my learned brother Judges Kourris, J. and Boyadjis, J., and I agree with them that this appeal should be dismissed.

The trial Court in response to an application of the respondents for the dismissal of Civil Action No. 3219/85 brought against them by the appellants whereby appellants claimed registration in their name by virtue of uninterrupted adverse possession for a period exceeding fifty years, of a field standing registered in the name of the respondents, found that the claim was untenable in view of the provisions of section 41 of Cap. 224 and dismissed the action. In so acting the trial Court exercised the powers vested in it under

Order 27 rule 3 of the Civil Procedure Rules which provides as follows:

«The Court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous and vexatious, the Court may order the action be stayed or dismissed, or judgment to be entered accordingly as may be just.»

It is in the inherent jurisdiction of the Court to stay or dismiss actions and to strike out pleadings which are vexatious or frivolous, or in any way an abuse of the process of the Court, under which it can deal with all the cases included in Order 27, r. 3. The principal distinction between the inherent jurisdiction and that under the above Rule seems to be that when the Court is acting under its inherent jurisdiction evidence by affidavit may be received to show that a pleading is an abuse of the process of the Court; whereas under r.3 the nature of the action or the defect in pleading must appear by the pleadings or particulars (see notes in the English Annual Practice 1958 under the corresponding English Order 25, rule 4 to which reference is made in the marginal notes of our Civil Procedure Order 27, r.3.)

Under the heading «Scope of this Rule» in the relevant notes in the English Annual Practice 1958 at p. 574 we read:

«It is only in plain and obvious cases that recourse should be had to the summary process under this Rule *(Mayor, etc. of the City of London v. Homer* [1914] 111 L.T. 512 C.A.)... The powers conferred by r.4 will only be exercised where the case is beyond doubt. The Court must be satisfied that there is no reasonable cause of action or that the proceedings are frivolous as vexatious.»

There is no doubt that the discretion of the Court under 0.27, r. 3 to dismiss an action should be exercised cautiously and after the Court is satisfied beyond doubt that there is no reasonable cause of action.

In the present case the provisions of s. 41 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 that for the registration of immovable property belonging to or attached to a religious corporation at the time of the coming into

operation of the Law (1st September, 1946), which is not already registered in its name, are clear and leave no room for any ambiguity or doubt for an interpretation contrary to the express provisions of the enactment

Under the proviso to section 41(1) the corporation shall apply for such registration to the Distnct Lands Office not later than eight years after that date for the property to be so registered and under sub-section 2 of section 41 «after the expiration of the period mentioned in sub-section (1) of this section no claim of title to or in connection with any immovable property by any religious corporation shall be valid or shall be entertained or recognized in any Court or Distnct Lands Office »

Very rightly the trial Court came to the conclusion and ruled that section 41 of Cap 224 was applicable to the facts disclosed in the pleadings of the appellants and that their failure to comply with its provisions was fatal to their claim and consequently properly exercised its discretion under Order 27, r 3 dismissing the action

I need not deal with the various grounds of appeal advanced and argued by learned counsel for the appellants as they have already been dealt with by my learned brother Judge Boyadjis, in his elaborate judgment just delivered which I adopt and endorse

I also agree with the conclusion reached by my learned brother Judge Kourris, in his elaborate judgment delivered in this appeal that the object of s 41(1) was to finalize the rights or claims of ecclessiastical corporations over immovable property within a specified period originally five years and later extended to eight years by virtue of Law 8/53

It is not in dispute in the present case that the appellants never applied within the prescribed time under s 41(1) of Cap 224 for the registration in their name of the field in question nor at the time of the filing of the action were they in possession of any certificate from the Director that they had applied in time for registration, which they had to file together with the writ under the provisions of s 41(2) of Cap 224, once as in the present case registration had not already been effected in their name

In the result the appeal fails and is hereby dismissed with costs against the appellants

Appeal dismissed with costs