FIL-PRIM'AWLA TAL-QORTI CIVILI

IMHALLEF
ONOR. GEOFFREY VALENZIA B.A., LL.D.

Seduta ta' nhar l-Erbgha, 27 ta' Gunju, 2001.

Numru 80

Citaz. Nru. 1737/97GV

Doc. 104-01

John Zammit, Victoria Zammit u Paul Zammit, u b'digriet tat-28 ta' April 1999, l-atti tal-kawza gew trasferiti f'isem John Zammit.

vs

Charles u Anna Mallia

Il-Qorti,

PRELIMINARI

Rat l-att tac-citazzjoni li permezz taghha gie premess illi b'kuntratt tas-17 ta' Lulju, 1976, Joseph Zammit, illum mejjet, kien ta' b'cens temporanju ghall-wiehed u ghoxrin sena il-fond "Rosalino" Joe Borg Street, B'Kara, lil Carmel maghruf bhala sive Lino Mercieca, liema kuntratt kien gie redatt quddiem in-nutar Pellegrini u kopja tieghu jinsab hawn anness bhala Dok. A.

Premess illi sussegwentement, l-imsemmi Carmelo Mercieca, ikkonceda l-imsemmi cens favur il-konvenut din id-darba b'kuntratt tas-16 ta' Mejju, 1981, liema kuntratt din id-darba die redatt quddiem in-nutar Gatt, liema kuntratt qed jigi esebit bhala Dok. B.

Premess illi l-atturi huma l-eredi ta' l-imsemmi Joseph Zammit u huwa konsegwement il-propjetarju tal-fond imsemmi.

Premess illi c-cens illum skada u per konsegwenza l-konvenuti issa qed

jokkupaw il-fond *de quo* minghajr ebda titolu validu fil-Ligi.

Ghaldaqstant l-atturi talbu lil din il-Qorti:

1. Prevja li tiddikjara li l-konvenuti qeghdin jokkupaw l-imsemmi fond bla ebda titolu validu fil-ligi, tikkundannhom jizgumbraw l-imsemmi fond fi zmien qasir u perentorju.

Rat id-dikjarazzjoni tal-atturi a fol. 3 tal-process;

Rat in-nota ta' l-eccezzjonijiet tal-konvenuti a fol. 19 tal-process fejn eccepew:

1. Illi huma ghandhom titolu validu fil-ligi u ghalhekk it-talbiet attrici ghandhom jigu michuda bl-ispejjez kontra taghhom;

2, Illi qabel xejn l-atturi jridu jippruvaw it-titolu legali taghhom fuq il-fond in kwistjoni;

3. Illi s-sid tal-fond *de quo* kien irrikonoxxa lill eccipjenti u anke ppromettilhom kirja tal-fond *de quo*;

4. Salvi eccezzjonijiet ulterjuri.

Rat id-digriet a fol. 27;

Rat l-atti kollha tal-kawza u d-dokumenti ezibiti;

Semghet ix-xhieda bil-gurament;

TALBA

L-atturi qed jitolbu li din il-Qorti, prevja li tiddikjara li l-konvenuti qeghdin

jokkupaw il-fond Rosalino, Joe Borg Street, B'Kara minghajr titolu validu fil-ligi, tikkundannhom jizgumbraw l-imsemmi fond.

ECCEZZJONIJIET

Il-konvenuti eccepew, li huma ghandhom titolu validu fil-ligi; li l-atturi jridu jippruvaw it-titolu legali taghhom fuq il-fond in kwistjoni; li s-sid tal-fond *de quo* kien irrikonoxxa lill-eccipjenti u anke pprometta kirja tal-fond *de quo*.

FATTI

Illi bhala fatti l-partijiet jaqblu li kienet saret koncessjoni enfitewtika minn Joseph Zammit, li tieghu l-atturi huma l-eredi, lill Carmelo Mercieca fis-17 ta' Lulju, 1976 ghal 21 sena skond dok. A a fol. 5. Imbaghad dan Mercieca kkonceda s-subutile dominju temporanju lill Charles Mallia, il-konvenut, b'kuntratt tas-16 ta' Mejju, 1981 Dok. B a fol. 9 ghal perjodu li kien fadal mill-koncessjoni originali ta' 21 sena, liema perjodu skada fis-17 ta' Lulju, 1997. Meta skada dan iz-zmien l-atturi talbu l-izgumbrament tal-konvenuti.

KONSIDERAZZJONIJIET

Dwar l-ewwel eccezzjoni tal-konvenuti jirrizulta mill-provi li l-konvenuti huma ulied il-mejtin Joseph u Victoria Zammit u li dan il-fond kien propjeta' taghhom.

Dwar it-tieni eccezzjoni, il-konvenuti qed jissottomettu li huma bhala subenfitewta ghandhom titolu validu fil-ligi billi f'gheluq ic-cens dan kellu jigi konvertit f'kera a termini ta' l-artikolu 12(2a) tal-Kap 158; inoltre s-sid tal-fond kien irrikonoxxihom u anke pprometta li kien ser jikrilhom il-post

meta jaghlaq ic-cens, u kien ghalhekk li huma ghamlu l-kuntratt.

Illi skond l-artikolu 12 tal-Att XX111 tal-1979:

12. (1) *Notwithstanding anything contained in the Civil Code or in any other enactment the following provisions of this article shall have effect with respect to all contracts of temporary emphyteusis made at any time.*

(2) *Where a dwelling-house has been granted on temporary emphyteusis -*

*(*a) *for a period not exceeding thirty years, if the contract was made before 2lst June, 1979, or*

*(*b) *for any period, if the contract is made on or after the date aforesaid,and on the expiration of any such emphyteusis the emphyteuta is a citizen of Malta and occupies the house as his ordinary residence, the emphyteuta shall be entitled to continue in occupation of the house under a lease from the directus dominus .*

Illi l-konvenuti kienu subenfitewta temporanji ghal perjodu li kien fadal mill-kuntratt originali. Illi huma kienu hadu l-post b'kuntratt datat 16 ta' Mejju, 1981 ghal perjodu li ma jeccediex it-tletin sena u ghalhekk huma koperti taht is-subartikolu 2a.

Illi b'din il-ligi pero' l-konvenuti ghandhom biss dawk il-jeddijiet moghtija lil enfitewta jew subenfitewta bis-subartikolu 2a tal art. 12 kif limitati pero' bis-subartikolu 8 ta' l-istess artikolu u l-kazijiet fejn persuna illi meta taghlaq il-koncessjoni enfitewtika, f'kaz li jkun sar kuntratt wara l-21 ta' Gunju, 1979, bhal f'dan il-kaz, tista' tigi protetta, huma dawk specifikati fis-subartikolu 8 (a) jew (b).

(8) *Where, in the case of an emphyteusis mentioned in paragraph (a) of sub-article (2) of this article and expiring after the 2lst June, 1979, the emphyteuta or the tenant occupying the house as his ordinary residence on the expiration of the emphyteusis is a person different from the person occupying the house as his ordinary residence on 21st June, 1979, the provisions of sub-article (2) or (3) of this article, as the case may be, shall apply only -*

(a) *if -*

(i) *the person occupying the house on the date aforesaid continued in occupation of the house as his ordinary residence until his death; and*

(ii) *the person occupying the house as his ordinary residence on the expiration of the emphyteusis resided with the emphyteuta at the time of his death and had then all the other qualifications to be treated as a tenant for the purposes of this article; or*

(b) *if -*

(i) *the person occupying the house as his ordinary residence on the date aforesaid derived the title under which he so occupied the house from the emphyteuta occupying the house as his ordinary residence on the expiration of the emphyteusis or, if the emphyteuta from whom the said title was derived dies before the expiration of the emphyteusis, from the emphyteuta whose heir occupies the house as his ordinary residence on the expiration of the emphyteusis; and*

(ii) *until the expiration of the emphyteusis, no person other than the person aforesaid and the said emphyteuta, or his heir, and members of their family living with them, occupied the house in any manner whatsoever; and*

(iii) *not later than 30th September, 1979, notice is given in writing to the Housing Authority of the title under which the house is occupied on 21st June, 1979, stating the nature of that title, the expected duration thereof and the name of the person occupying the house under that title.*

Fil-kaz in ezami l-konvenuti ma jikkwalifikawx taht dawn is-subartikoli (a) u (b) u ghalhekk huma esklusi mill-protezzjoni tal-ligi billi ma japplikawx ghalihom (Ara sentenzi App Inf. Zerafa vs Fenech 23.6.1996 u Kost Siracusa vs P.M. 16.11.1989).

Dwar l-eccezzjoni l-ohra tal-konvenuti li kien hemm xi promessa ta' kirja minn Joseph Zammit, il-Qorti tirrileva li ma saret l-ebda prova f'dan is-sens, apparti li fil-kuntratt Dok B ma jissemma xejn minn dan imma jissemma biss li Joseph Zammit kien qed jaccetta lill konvenut bhala subdirettarju kif soggett ghac-cens annwu u temporanju … u ghal pattijiet stipulati fil-kuntratt subenfitewtiku, u oltre dana ma gie stipulat xejn aktar.

Dwar is-sottomissjoni tal-konvenuti kontenuta fin-nota taghhom rigwardanti kif inhi mposta l-azzjoni ta' l-atturi, il-Qorti tirrileva li l-azzjoni taghhom hija bazata fuq il-kawzali li l-konvenuti qed jokkupaw il-fond bla titolu billi wara li ghalaq ic-cens, il-konvenuti ma baqalhomx titolu. Fic-citazzjoni mhux qed jigi esklus b'mod assolut li l-konvenuti qatt kellhom titolu (ara sentenza App Inf. Formosa vs Vella 3/12/99). Inoltre ma nghatat l-ebda eccezzjoni dwar kompetenza ta' din il-Qorti (Ara App Inf. Attard vs Attard 28/10/94) jew nullita' tac-citazzjoni kif proposta.

DECIZJONI

Ghal dawn il-motivi l-Qorti tiddecidi prevja li tichad l-eccezzjonijiet tal-konvenuti tilqa' t-talbiet attrici u tiddikjara li l-konvenuti qeghdin jokkupaw l-fond Rosalino, Joe Borg Street, B'Kara minghajr titolu validu fil-ligi, tikkundannhom jizgumbraw l-imsemmi fond zmien tliet xhur millum.

Bl-ispejjez kontra l-konvenuti.

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Frankie Mercieca
DEPUTAT REGISTRATUR