

The Court: District Court Bratislava II
File mark: 10C/16/2020
Court file identification number: 1220200917
Date of the decision: 04. 03. 2020
Name and surname of the judge, JUDr. Olga Niznanska
Higher Court Office:
ECLI: ECLI:SK:OSBA2:2020:1220200917.1

Resolution

District Court Bratislava II in Bratislava in the legal case of the claimant: Z.. W. X., Q.. XX.XX.XXXX, K. X T. U., against the defendant: Slovak Republic – Slovak Land Fund, Búdkova 36 in Bratislava, ID No: 17335345, for injunctive relief, as follows

d e c i d e d :

The Court dismisses the application for interim measures.

r e a s o n i n g :

1. By an application for an interim injunction served together with the application on the merits on 24.2.2020, the claimant requested the court to prohibit the respondent from legally disposing of, selling or legally encumbering, pending the conclusion of the court proceedings for the determination of the property in the inheritance of the deceased deceased's heiress, J. X., née A., née A., née A., née A. X.X.XXXX, deceased XX.XX.XXXX, real estate in reg. "E", in k.ú. R. U., at:

LV no. XXXX, parc. no.XXX, permanent grassland with an area of 126 m2, share ?

LV no. XXXX, parc. no.XXX/X, arable land with an area of 5593 m2,
share ? LV no. XXXX, parc. no. XXX, arable land with an area of 3167
m2, share ?

LV no. XXXX, parc. no. XXX/X, arable land with an area of 6190 m2, in its entirety

LV no. XXXX, parc. no. XXX/X, arable land with an area of 5248 m2, in its
entirety LV no. XXXX, parc. no. XXX, permanent grassland, with an area of
35 m2, share 1/6 in k.ú. N. on: LV no. XXXX, parc. no. XXX, permanent
grassland with an area of 598 m2, share 1/6 in k.ú. T. on: LV no. XXXX, parc.
no. XXX/X, arable land with an area of 4007 m2, share ?.

2. The plea in law in the main proceedings was based on the fact that the Register of Renewed Land Records (hereinafter referred to as the ROEP) had revealed assets of the deceased which had not been dealt with in the succession proceedings under Case No D 31/73.

3. Furthermore, it is also the compensation of the purchase price of 9.755,59 € for the sale of the land on the LV no XXXX, parc. no XXXX/XX, with an area of 308 m2, other area, in the share of ? in R. U. from the Purchase Agreement No. XXXXX/XXXXXX-R.-X..XX, where the testator is listed under No. XX, the seller was the defendant and the buyer was NDS, a.s.

4. Furthermore, it concerns the compensation of rent 123,045 €/year, for the lease of the land on LV no. XXXX, parc. no.XXX with an area of 3167 m2, arable land, in the share of ? in R. U., from Lease Agreement No. XXXXX/XXXX-R.-R..XX, where the testator is listed in the nominal annex on page XX, the lessor is the defendant and the lessee is NDS, a.s.

5. The plaintiff stated in his complaint that he had asked the local court for a supplemental hearing on the property. The proceeding was filed under Case No. 38D 409/2018. The proceedings were stayed. The appeal against the order was dismissed. The succession file contains all the necessary documents and documentary evidence, which the plaintiff will produce if necessary. There are several heirs of the testatrix, but each of them has the right to bring such a declaratory action on his own behalf. The defendant operates on the ground that these are confiscations, which is not true. The respondent has stated that he will also file a petition for rectification of the particulars in the ROEP and he has also prepared a list of names of the persons concerned. In this way, he obtained the termination of dozens of inheritance proceedings at a time when the ROEP was in force as a public document, had not been amended and the LVs issued on the basis of it had not been annulled either. The list of persons presented by the defendant does not relate to the confiscation of property and, therefore, the inheritance proceedings should not have been discontinued. The ROEP was created between 2008 and 2015. The trustee was listed as the owner because she appeared in the Land Register without any mention of confiscation. The defendant has no evidence of confiscation. He filed an incomplete list of persons in the succession proceedings, without a front page to prove that it was not a list of confiscated persons. It is probably a list of persons displaced to Hungary, but the testatrix was not displaced and lived and died in R.O.U.
6. The petitioner and at the same time the plaintiff justified the application for an interim measure by the fact that the defendant in other similar cases, in which he obtained the termination of the inheritance proceedings, subsequently sold the disputed real estate to NDS, a.s., which is building a motorway bypass on it. The defendant is the administrator of the land of the so-called undisclosed owners and is gradually selling it. This also happened with the land of the testatrix, parcel no. XXXX/XX, the purchase price of which the plaintiff claims as inheritance.
7. A photocopy of the Lease Agreement (with illegible date of conclusion and signatures of the parties) concluded between the defendant and NDS, a.s., with specification of the leased land and its unknown owners and a photocopy of the Contract on transfer of ownership (with illegible date of conclusion and signatures of the parties) concluded between the defendant and NDS, a.s., also with specification of the land and its unknown owners, were attached to the application on the merits of the case and to the application for an interim measure.
8. The Court has examined the content of this documentary evidence on file and has also attached the file under Case No. 38D/409/2018, and concludes that the application for interim relief cannot be granted.
9. Pursuant to Article 324(1) of the Code of Civil Litigation Procedure, the court may order an urgent measure before the commencement of the proceedings, during the proceedings and at the end of the proceedings.
10. According to Section 325(1) of the C.C.L.P., an urgent measure may be ordered by the court if it is necessary to remedy the situation immediately or if there is a fear that the execution will be jeopardised.
11. Pursuant to Article 325(2)(c), (d) of the Code of Civil Litigation Procedure, an urgent measure may order a party, in particular, not to dispose of certain things or rights; to do something, to refrain from something or to bear something.
12. Pursuant to Article 326(1) of the Code of Civil Litigation Procedure, the application for an interim measure shall contain, in addition to the particulars of the application pursuant to Article 132, a description of the decisive facts justifying the need for an urgent adjustment of the situation or the fear that enforcement will be jeopardised, a description of the facts plausibly attesting to the validity and the duration of the claim to be protected, and it must be clear from the application what interim measure the applicant seeks.

13. Pursuant to Article 326(2) of the C.C.L.P., the petitioner must attach to the petition the documents relied on.
14. From the attached inheritance file under file no. 38D/409/2018, the court found that the testator's inheritance proceedings were discontinued by order dated 7.11.2019, inter alia, because the testator was not identified therein as the owner of the disputed land, when on the LV for the parcels in reg. "E" does not identify her in detail. The inheritance proceedings were to be held in respect of land which had been confiscated in the past and its owners relocated, which had been communicated to the Judicial Commissioner by the defendant, who had at the same time announced that he would initiate the rectification of the REOP.
15. The applicant for an interim measure has not yet proved to the court by any legally relevant documentary evidence his standing, which was also challenged in the succession proceedings. In particular, he has not shown that there is a legal relationship between him and the defendant which requires an urgent adjustment of the situation, which is also one of the essential prerequisites for the grant of an interim measure. Nor has he demonstrated the urgency and necessity of such an interim measure, since he only became aware of the allegedly newly discovered assets from the ROEP and only almost 50 years after the death of the testatrix, whose assets he has no documents to file, since he has the burden of proof in the dispute. The plaintiff has also failed to prove his allegation that the defendant initiated the sale or lease of the disputed land after similar inheritance proceedings (including his own) were discontinued.
16. In order for an interim measure to be ordered, the applicant for the interim measure must prove that there is a legal relationship between the parties to the dispute which requires temporary or, subject to other conditions, permanent adjustment, that such adjustment is strictly necessary and that the adjustment ordered will not create an irreversible relationship. The applicant did not fulfil the above conditions and the court therefore dismissed the application for interim measures as unfounded.

Instruction:

The order may be appealed against within 15 days from the date of delivery of the order to the court against whose order it is directed.

An appeal may be lodged by the party against whom the decision was made.

An appeal against the reasoning of the decision alone is not admissible.

In addition to the general elements of the application, the appeal shall state which decision it is directed against, the extent to which it is contested, the grounds on which the decision is held to be wrong (grounds of appeal) and what the appellant seeks to have set out (grounds of appeal).

The appellant may extend the scope of the challenge only until the expiry of the time-limit for lodging an appeal.