Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

17 December 2015*

(Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Scope — Exclusive jurisdiction — Article 22(1) — Proceedings concerning rights in rem in immovable property — Concept — Action to terminate, by way of sale, the co-ownership in undivided shares of immovable property)

In Case C-605/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 22 December 2014, received at the Court on 30 December 2014, in the proceedings

Virpi Komu,

Hanna Ruotsalainen,

Ritva Komu

v

Pekka Komu,

Jelena Komu,

THE COURT (Seventh Chamber),

composed of C. Toader (Rapporteur), President of the Chamber, A. Rosas and A. Prechal, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Finnish Government, by H. Leppo, acting as Agent,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the Greek Government, by K. Georgiadis and S. Lekkou, acting as Agents,

* Language of the case: Finnish.

— the Spanish Government, by M. García-Valdecasas Dorrego, acting as Agent,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 22(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The request has been made in proceedings between co-owners of immovable property situated in Spain concerning the termination, by way of sale, of the co-ownership in undivided shares of that property.

Legal context

EU law

3 Recitals 11 and 12 of Regulation No 44/2001 read as follows:

'(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. …

(12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.'

4 In Section 1 of Chapter II of that regulation, entitled 'General provisions', Article 2(1) states:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

5 Under Article 3(1) of the regulation:

'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'

6 In Section 6 of Chapter II of the regulation, entitled 'Exclusive jurisdiction', the first paragraph of Article 22(1) states:

'The following courts shall have exclusive jurisdiction, regardless of domicile:

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.'

7 In Section 8 of Chapter II of Regulation No 44/2001, entitled 'Examination as to jurisdiction and admissibility', Article 25 states:

'Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.'

Finnish law

8 In Finland, relationships of co-ownership are governed by Law No 180/1958 on certain relationships of co-ownership (Laki eräistä yhteisomistussuhteista) ('the Law on co-ownership'), which applies both to immovable and movable property.

9 With regard to the termination of co-ownership in undivided shares, Paragraphs 9 and 11 of the Law on co-ownership state:

'9. A co-owner is entitled to receive his share of the property held in common by way of partition. The partition is to be made mutatis mutandis with the provisions of Paragraph 12(4) of the Inheritance Code.

If partition of the property is impossible or it would give rise to disproportionately high costs or would substantially reduce the value of the property the court has the power, on application by the co-owner and after the other co-owners have been summoned to give their views, to order the sale of the property in lieu of partition in order to terminate the relationship of co-ownership.

…

11. The court shall, where appropriate, appoint a person who is to have the conduct of the sale and distribute the proceeds thereof. If the property is to be sold by auction the appointee, after consultation with the co-owners, shall determine the conditions of sale to the extent that this has not been determined by the court, publicly announce the holding of the auction and conduct the auction or arrange for it to be held. The appointee shall sign the act of sale if one is drawn up.'

Spanish law

10 Article 10 of the Civil Code (Código Civil) states:

'The possession, ownership and other rights in immovable property and notices relating thereto shall be governed by the law of the place in which such property is located.'

11 According to Article 406 of the Civil Code, 'the rules concerning the partition of an inherited estate shall apply to partition between co-owners'.

12 As regards the jurisdiction of the Spanish courts, Article 52 of the Law on Civil Procedure (Ley de Enjuiciamiento Civil), entitled 'Territorial jurisdiction in special cases', states:

'1. The rules on jurisdiction established in the preceding articles shall not apply and jurisdiction shall be determined in accordance with the provisions set out in this article in the following cases:

(1) In proceedings in which actions are brought concerning immovable property, the court with jurisdiction shall be that of the place in which the property is located. When the action in rem is brought in relation to several properties or one single property located in different districts, the court with jurisdiction shall be that of any one of those districts, at the choice of the applicant.

…’

The dispute in the main proceedings and the question referred for a preliminary ruling

13 According to the order for reference, Mr Pekka Komu, Ms Jelena Komu, Ms Ritva Komu, Ms Virpi Komu and Ms Hanna Ruotsalainen are domiciled in Finland and are co-owners of a house situated in Torrevieja (Spain), the first three each with a 25% share and the other two each with a 12.5% share. In addition, Ms Ritva Komu has a right of use, registered in the Spanish Land Register, over the shares held by Ms Virpi Komu and Ms Hanna Ruotsalainen.

14 Mr Komu, Ms Ritva Komu, Ms Virpi Komu and Ms Ruotsalainen are also co-owners of an apartment situated in the same district, Mr Komu with a 50% share, Ms Ritva Komu with a 25% share and Ms Virpi Komu and Ms Ruotsalainen each with a 12.5% share. Ms Ritva Komu also has a right of use, registered in the Land Register, over the interests held by Ms Virpi Komu and Ms Ruotsalainen.

15 Wishing to realise the interests that they hold in both properties, and in the absence of agreement on the termination of the relationship of co-ownership, Ms Ritva Komu, Ms Virpi Komu and Ms Ruotsalainen brought an action before the Etelä-Savon käräjäoikeus (District Court, South Savo, Finland) for an order appointing a lawyer to sell the properties and fixing a minimum price for each of the properties.

16 On the basis that Article 22(1) of Regulation No 44/2001 confers, in proceedings which have as their object rights in rem in immovable property, exclusive jurisdiction to the courts of the Member State in which the property is situated, Mr Komu and Ms Jelena Komu claimed that the action was inadmissible and stated that any decision on the substance of the case by the Etelä-Savon käräjäoikeus (District Court, South Savo) would, on the basis of that article, not be enforceable in Spain. In addition, they submitted that the ownership of the two properties at issue in the main proceedings was encumbered by a right of use registered in the Land Register for the benefit of Ms Ritva Komu and that that circumstance was such as to hinder the sale of the two properties to a third party.

17 In its judgment of 9 October 2012, the Etelä-Savon käräjäoikeus (District Court, South Savo), having declared that it had jurisdiction to decide on the substance of the case in the main proceedings, upheld the action, appointed a person charged with selling the properties at issue by auction and with distributing the proceeds thereof between the co-owners, and fixed the minimum sale price of the properties.

18 Mr Pekka Komu and Ms Jelena Komu appealed against that judgment before the Itä-Suomen hovioikeus (Court of Appeal, Eastern Finland).

19 In its judgment of 7 May 2013, that court held that an action for termination, by way of sale, of co-ownership of immovable property constitutes proceedings which have as their object rights in rem in immovable property within the meaning of Article 22(1) of Regulation No 44/2001. Consequently, that court held that the Spanish courts had jurisdiction, set aside the judgment given at first instance and, accordingly, dismissed the action as inadmissible.

20 In an appeal brought by the applicants, the Korkein oikeus (Supreme Court), having recalled the relevant case-law of the Court on the subject, nevertheless stated that it harboured doubts as to whether an action, such as that at issue in the main proceedings, falls within the exclusive jurisdiction

of the courts of the Member State in which the immovable property at issue is situated. That court therefore decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is Article 22(1) of Regulation No 44/2001 … to be interpreted as meaning that an action by which some of the co-owners of immovable property apply for the property to be sold for the purpose of terminating the relationship of co-ownership and for an agent to be appointed to conduct the sale constitute proceedings which have as their object rights in rem in immovable property within the meaning of that provision?'

The question referred for a preliminary ruling

21 By its question, the referring court asks, in essence, whether the first paragraph of Article 22(1) of Regulation No 44/2001 must be interpreted as meaning that an action for the termination of co-ownership in undivided shares of immovable property by way of sale, by an appointed agent, constitutes proceedings 'which have as their object rights in rem in immovable property' within the meaning of that provision.

22 As a preliminary point, it must be recalled that, under the first paragraph of Article 22(1) of Regulation No 44/2001, the courts of the Member State in which the property is situated (forum rei sitae) have exclusive jurisdiction in proceedings which have as their object rights in rem in immovable property.

23 In its case-law on Article 16(1)(a) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36) ('the Brussels Convention'), which is also relevant for the interpretation of Article 22(1) of Regulation No 44/2001, the Court has already held that, in order to ensure that the rights and obligations arising out of that convention for the Contracting States and for the individuals concerned are as equal and as uniform as possible, an independent definition must be given in EU law to the phrase 'in proceedings which have as their object rights in rem in immovable property' (judgment in *Weber*, C-438/12, EU:C:2014:212, paragraph 40 and the case-law cited).

24 Similarly, it is settled case-law of the Court on the Brussels Convention, which can be applied to Regulation No 44/2001, that, in so far as they introduce an exception to the general rules of jurisdiction set out in that regulation and, in particular to the rule set out in Article 2(1) of that regulation, according to which, subject to the regulation, persons domiciled in a Member State shall be sued in the courts of that Member State, the provisions of Article 22(1) of Regulation No 44/2001 must not be given an interpretation broader than is required by their objective. These provisions have the effect of depriving the parties of the choice of forum which would otherwise be theirs and, in certain cases, of resulting in their being brought before a court which is not that of the domicile of any of them (see, by analogy, judgment in *ČEZ*, C-343/04, EU:C:2006:330, paragraphs 26 and 27 and the case-law cited).

25 As regards the objective pursued by the provisions cited above, according to both the Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1979 C 59, p. 1) and the settled case-law of the Court on Article 16(1)(a) of the Brussels Convention, which can be applied to the first paragraph of Article 22(1) of Regulation No 44/2001, the essential reason for conferring exclusive jurisdiction on the courts of the Contracting State in which the property is situated is that the courts of the locus rei sitae are the best placed, for reasons of proximity, to ascertain the facts satisfactorily and to apply the rules and practices which are generally those of the State in which the property is situated (see, by analogy, judgment in *Weber*, C-438/12, EU:C:2014:212, paragraph 41 and the case-law cited).

26 Furthermore, the Court has stated that the exclusive jurisdiction of the courts of the Contracting State in which the property is situated does not encompass all actions concerning rights in rem in immovable property, but only those which both come within the scope of the Brussels Convention or of Regulation No 44/2001 and are actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights in rem therein and to provide the holders of those rights with protection for the powers which attach to their interest (see, to that effect, judgment in *Weber*, C-438/12, EU:C:2014:212, paragraph 42 and the case-law cited).

27 Also, according to settled case-law of the Court, the difference between a right in rem and a right in personam is that the former, existing in corporeal property, has effect erga omnes, whereas the latter can be claimed only against the debtor (judgment in *Weber*, C-438/12, EU:C:2014:212, paragraph 43 and the case-law cited).

28 In the present case, as the Member States that submitted written observations correctly claim, an action for termination of the co-ownership of immovable property, such as that at issue in the main proceedings, constitutes proceedings which have as their object rights in rem in immovable property falling within the exclusive jurisdiction of the courts of the Member State in which the property is situated.

29 In that regard, clearly such an action, designed to bring about the transfer of a right of ownership in immovable property, concerns rights in rem which have effect erga omnes and is intended to ensure that the holders of those rights can protect the powers attached to their interest.

30 Similarly, it must be stated that the considerations of sound administration of justice which underlie the first paragraph of Article 22(1) of Regulation No 44/2001 also support such exclusive jurisdiction in the case of an action intended to terminate the co-ownership of immovable property, as that in the main proceedings.

31 The transfer of the right of ownership in the properties at issue in the main proceedings will entail the taking into account of situations of fact and law relating to the linking factor as laid down in the first paragraph of Article 22(1) of Regulation No 44/2001, namely the place where those properties are situated. The same applies, in particular, to the fact that the rights of ownership in the properties and the rights of use encumbering those rights are the subject of entries in the Spanish Land Register in accordance with Spanish law, the fact that rules governing the sale, by auction where appropriate, of those properties are those of the Member State in which they are situated, and the fact that, in the case of disagreement, the obtaining of evidence will be facilitated by proximity to the locus rei sitae. The Court has already held that disputes concerning rights in rem in immovable property, in particular, must generally be decided by applying the rules of the State in which the property is situated, and the disputes which frequently arise require checks, inquiries and expert assessments which have to be carried out there (judgment in *ČEZ*, C-343/04, EU:C:2006:330, paragraph 29 and the case-law cited).

32 That case-law can be applied to the case in the main proceedings where, unlike the case which gave rise to the judgment in *Lieber* (C-292/93, EU:C:1994:241, paragraph 21) relating to compensation for the use of a dwelling, the determination of the extent of the legal conditions relating to the termination of the relationship of co-ownership, capable of having effect erga omnes, falls within the jurisdiction of the courts of the Member State in which the properties in the main proceedings are situated, as is clear from the case-law cited in paragraph 26 above. Consequently, in a case where the rules of substantive law applicable to the case in the main proceedings would involve an assessment of whether physical partition of the properties is feasible when terminating the relationship of co-ownership, such an assessment would also be capable of giving rise to checks, by means of expert reports, which the courts of the Member State in which those properties are situated would be best placed to order.

33 Having regard to the above considerations, the answer to the question referred is that the first paragraph of Article 22(1) of Regulation No 44/2001 must be interpreted as meaning that an action for the termination of co-ownership in undivided shares of immovable property by way of sale, by an appointed agent, falls within the category of proceedings 'which have as their object rights in rem in immovable property' within the meaning of that provision.

Costs

34 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

The first paragraph of Article 22(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for the termination of co-ownership in undivided shares of immovable property by way of sale, by an appointed agent, falls within the category of proceedings 'which have as their object rights in rem in immovable property' within the meaning of that provision.

[Signatures]