Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

16 November 2016*

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EU) No 1215/2012 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Scope — First subparagraph of Article 24(1) — Exclusive jurisdiction in matters relating to rights in rem in immovable property — Article 7(1)(a) — Special jurisdiction in matters relating to a contract — Action seeking the avoidance of a contract of gift of immovable property and the removal of an entry in the land register evidencing a right of ownership)

In Case C-417/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna, Austria), made by decision of 23 July 2015, received at the Court on 29 July 2015, in the proceedings

**Wolfgang Schmidt**

v

**Christiane Schmidt,**

THE COURT (Second Chamber),

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

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— Mr Schmidt, by C. Beck, Rechtsanwalt,

— Ms Schmidt, by M. Bartlmä, Rechtsanwalt,

— the Austrian Government, by G. Eberhard, acting as Agent,

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

— the European Commission, by G. von Rintelen and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 July 2016,

* Language of the case: German.

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 24(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

2 The request has been made in proceedings between Wolfgang Schmidt and Christiane Schmidt, concerning the avoidance of a contract of gift in respect of immovable property in Austria.

## Legal context

### *EU law*

3 Recitals 15, 16 and 34 of Regulation No 1215/2012 are worded as follows:

‘(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. …

(16) In addition to the defendant’s domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. …

…

(34) Continuity between the … Convention [of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36)], [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)] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the … Convention [of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters] and of the Regulations replacing it.’

4 In Chapter I of Regulation No 1215/2012, entitled ‘Scope and Definitions’, Article 1(1) and (2)(a) provides:

‘1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. …

2. This Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage’.

5 Section 2 of Chapter II of that regulation is entitled ‘Special jurisdiction’. Article 7 therein states that:

‘A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

…’

6 Article 8(4) of the same regulation, also located in that section, provides that:

‘A person domiciled in a Member State may also be sued:

…

(4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.’

7 Article 24 of Regulation No 1215/2012, located in Section 6 of Chapter II thereof, entitled ‘Exclusive jurisdiction’, states:

‘The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(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.

…’

*Austrian law*

8 The relevant provisions of national law are contained in the Allgemeines Bürgerliches Gesetzbuch (Austrian Civil Code; ‘the ABGB’) and the Grundbuchsgesetz (Law on land registration; ‘the GBG’).

9 Paragraph 380 of the ABGB is worded as follows:

‘Ownership cannot be acquired without title and a legal means of acquisition.’

10 Paragraph 425 of the ABGB provides:

‘Mere title does not confer ownership. Ownership and all real rights can in principle be acquired only by way of legal delivery and receipt, except where provided for in law.’

11 Under Paragraph 431 of the ABGB:

‘For the transfer of ownership in immovable property the act of acquisition must be entered in the corresponding public registers. This form of entry is known as “incorporation” (registration).’

12 Paragraph 444 of the ABGB states that:

‘Ownership may be lost by the owner’s will, by law and by judicial decision. Nonetheless, ownership in relation to immovable property is only extinguished by removal from the public registers.’

13 Paragraph 8 of the GBG distinguishes the entries in the land register as follows:

‘The following entries may be made in the land register:

1. Incorporations (entries of absolute acquisitions of rights or removals of such entries — registrations or de-registrations) which immediately effect the acquisition, transfer, limitation or loss of private law rights or

2. Advance notices (entries of conditional acquisitions of rights or removals of such entries — pre-registration) which effect the acquisition, transfer, limitation or loss of private law rights only subject to the satisfaction of the conditions of their validity or

3. Simple notices.’

14 Under Paragraph 9 of the GBG, an entry in the land register can be made only of real rights and burdens, rights of resale or pre-emption, and leases.

15 Paragraph 61 of the GBG concerning the entry of disputes on the land register is worded as follows:

‘(1) Any person whose private law rights appear to have been adversely affected by an entry in the land register, who brings an action on the ground of the invalidity of an entry in the land register and claims that the land register should be returned to its previous state, can request that an entry of notice of legal action be made in the land register either at the time that the action is brought or later. The notice of legal action can be applied for both before the court of first instance and the land registry.

(2) A notice of legal action makes the judgment on the action also fully enforceable against persons who acquire private law rights after the time when the request for the entry of a notice of legal action in the land register was received by the Grundbuchsgericht (Land register court).’

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

16 Mr Schmidt, domiciled in Austria, was the owner of immovable property in Vienna (Austria). By a notarial act of 14 November 2013, concluded in Vienna, he gifted the land to his daughter, Ms Schmidt, who has been entered in the land register as the owner of that immovable property from that date. At the time of the contract of gift, Ms Schmidt lived in Germany, where she continues to live.

17 It is apparent from the information in the documents before the Court that, following a psychiatric report which revealed the existence of serious issues dating back to May 2013, Mr Schmidt was placed under guardianship by a decision of 17 November 2014.

18 By an action brought before the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna, Austria) on 24 March 2015, Mr Schmidt, represented by his guardian, sought the avoidance of the contract of gift of 14 November 2013 and, accordingly, the removal of the entry in the land register of Ms Schmidt’s ownership of the immovable property on the ground that the entry was not valid. At the request of the applicant in the main proceedings, the application for registration of the action for the removal of an entry in the land register was granted, pursuant to Paragraph 61(1) of the GBG, by an order of 25 March 2015.

19 Ms Schmidt claimed that the referring court lacked jurisdiction to hear and determine the action in the main proceedings, on the ground that Article 24(1) of Regulation No 1215/2012 did not grant that court jurisdiction since the action did not concern a right *in rem* in immovable property within the meaning of that provision.

20 The Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) has doubts concerning the interpretation of Article 24(1) of Regulation No 1215/2012, referring, on the one hand, to the order of the Court of 5 April 2001, *Gaillard* (C-518/99, EU:C:2001:209), in which the application of the rule of exclusive jurisdiction in matters relating to rights *in rem* in immovable property was rejected as regards an action for rescission of a contract of sale relating to immovable property and, on the other hand, the judgment of 3 April 2014, *Weber* (C-438/12, EU:C:2014:212), according to which an action seeking a declaration of invalidity of the exercise of a right of pre-emption attaching to immovable property falls within that exclusive jurisdiction.

21 The referring court makes clear that a judgment upholding the action for removal of an entry in the land register, made on the basis of Article 61(1) of the GBG, is enforceable both against Ms Schmidt and, due to the notice of legal action in the land register, against third parties who, over the course of the proceedings, have acquired rights *in rem* over the immovable property concerned.

22 In those circumstances, the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does a proceeding concerning the avoidance of a contract of gift on the ground of the donor's incapacity to contract and the registration of the removal of an entry evidencing the donee's right of ownership fall within the scope of Article 24(1) of Regulation No 1215/2012 which provides for exclusive jurisdiction over rights *in rem* in immovable property?'

## The question referred for a preliminary ruling

23 By its question, the referring court asks, in essence, whether the first subparagraph of Article 24(1) of Regulation No 1215/2012 must be interpreted as meaning that an action seeking the avoidance of a contract of gift of immovable property on the ground of the donor's incapacity to contract and the removal from the land register of notices evidencing the donee's right of ownership constitutes an action 'in matters relating to rights *in rem* in immovable property' within the meaning of that provision.

24 At the outset, it must be stated that such an action comes within the material scope of Regulation No 1215/2012.

25 While Article 1(2)(a) of that regulation excludes from its scope, inter alia, the status or legal capacity of natural persons, the fact remains that, as was noted, in essence, by the Advocate General in points 27 to 31 of her Opinion, the determination of the donor's capacity to contract does not constitute, in a context such as that at issue in the main proceedings, the main subject matter of that action, which relates to the legal validity of a gift, but is rather a preliminary issue to be addressed.

26 It follows from the wording of the first subparagraph of Article 24(1) of Regulation No 1215/2012 that the courts of the Member State in which the property is situated (*forum rei sitae*) have exclusive jurisdiction to hear and determine actions in matters relating to rights *in rem* in immovable property. Since that provision essentially reproduces the content of the first subparagraph of Article 22(1) of Regulation No 44/2001, it must be noted that, in so far as Regulation No 1215/2012 replaces Regulation No 44/2001, the Court's interpretation of the provisions of the latter regulation also

applies to Regulation No 1215/2012, whenever the provisions of the two instruments of EU law may be regarded as equivalent (see, by analogy, judgment of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 22 and the case-law cited).

27 The Court has held with regard to Article 22(1) of Regulation No 44/2001 that, in order to ensure that the rights and obligations arising out of that regulation for the Member 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 matters relating to rights *in rem* in immovable property' (judgments of 3 April 2014, *Weber*, C-438/12, EU:C:2014:212, paragraph 40, and of 17 December 2015, *Komu and Others*, C-605/14, EU:C:2015:833, paragraph 23).

28 Similarly, it is settled case-law of the Court in relation to Regulation No 44/2001 that, in so far as they introduce an exception to the general rules of jurisdiction set out by that regulation and, in particular, to the rule set out in Article 2(1) of that regulation, according to which, subject to the provision of that regulation, persons domiciled in a Member State shall be sued in its courts, the provisions of Article 22(1) of Regulation No 44/2001 must not be given an interpretation broader than is required by their objective. Those 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 (judgment of 17 December 2015, *Komu and Others*, C-605/14, EU:C:2015:833, paragraph 24).

29 As regards the objective pursued by the provisions cited above, it is clear from both the Jenard 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 the first subparagraph of Article 22(1) of Regulation No 44/2001 that 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 (judgment of 17 December 2015, *Komu and Others*, C-605/14, EU:C:2015:833, paragraph 25).

30 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 that convention or of that regulation respectively 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 (judgment of 17 December 2015, *Komu and Others*, C-605/14, EU:C:2015:833, paragraph 26 and the case-law cited).

31 It is important to note that, according to the settled case-law of the Court, the difference between a right *in rem* and a right *in personam* lies in the fact that the former, existing in corporeal property, has effect *erga omnes*, whereas the latter can be claimed only against the debtor (judgment of 17 December 2015, *Komu and Others*, C-605/14, EU:C:2015:833, paragraph 27 and the case-law cited).

32 In the present case, it is apparent from the order for reference that, in Austrian civil law, a finding of invalidity of a contract of gift on the ground of the donor's incapacity to contract produces effects *ex tunc*, leading to the return of the property subsequently acquired. In relation to contracts of which the subject matter is immovable property, that return of the property is reflected in the removal of all notices in the land register relating to the right of ownership of the person listed as the owner therein.

33 In so far as the action brought by Mr Schmidt seeks, first, the avoidance of the contract of gift on the ground of his incapacity to contract and, second, the removal from the land register of the entry relating to his daughter's right of ownership, it is necessary to assess the nature of that action according to each of those requests.

34 As regards, in the first place, the request for the avoidance of the contract of gift of immovable property, it is clear from the decision to refer that the request is based on the alleged invalidity of the contract on the ground of the incapacity to contract of the applicant in the main proceedings. However, it is settled case-law that it is not sufficient that the action concerns a right *in rem* in immovable property or that the action have a link with immovable property in order to attract the jurisdiction of the court of the Member State in which the property is situated. On the contrary, the action must be based on a right *in rem* and not on a right *in personam* (see, to that effect, order of 5 April 2001, *Gaillard*, C-518/99, EU:C:2001:209, paragraph 16).

35 That interpretation is, moreover, corroborated by the Schlosser Report on the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice (OJ 1979 C 59, p. 71, paragraphs 170 to 172) which explains that, as regards mixed actions based on a right *in personam* and seeking to obtain a right *in rem*, there are numerous factors which support the view that such actions are predominantly actions *in personam* and, accordingly, that the rule of exclusive jurisdiction in relation to immovable property does not apply (see, by analogy, order of 5 April 2001, *Gaillard*, C-518/99, EU:C:2001:209, paragraph 21).

36 As was noted by the Advocate General in point 40 of her Opinion, the fact that the contract for which a declaration of invalidity is sought concerns immovable property is irrelevant to the issue of its validity, the immovable nature of the subject matter of the contract being only of marginal significance in that context (see, by analogy, judgment of 18 May 2006, ČEZ, C-343/04, EU:C:2006:330, paragraph 34).

37 It should also be added that such an interpretation does not undermine the requirement of the sound administration of justice which, as is apparent from paragraph 29 above, underpins Article 24(1) of Regulation No 1215/2012, in so far as, by ruling on the request for the avoidance of a contract of gift on the ground of the donor's incapacity to contract, the court before which the dispute is brought is not required to carry out investigations strictly related to the immovable property concerned so as to justify an application of the rule of exclusive jurisdiction provided for in that article.

38 However, as the Advocate General noted in point 50 of her Opinion, and as the Czech Government submitted in its written observations, the referring court may establish jurisdiction for the request for the avoidance of a contract of gift of immovable property on the basis of Article 7(1)(a) of Regulation No 1215/2012.

39 Under that provision, matters relating to a contract may be assessed in the courts of the place of performance of the obligation in question, namely the obligation corresponding to the contractual right on which the claimant's action is based (see, to that effect, judgment of 6 October 1976, *De Bloos*, 14/76, EU:C:1976:134, paragraphs 10 to 14). In the present case, the action in the main proceedings is based on the alleged invalidity of the contractual obligation consisting of the conveyance of ownership of the immovable property, which, provided that the contract is valid, must be, and which was initially, performed in Austria.

40 As regards, in the second place, the request for removal from the land register of the donee's right of ownership, that request is based on the invalidity of the conveyance of ownership and, therefore, on the right *in rem* relied on by the applicant in the main proceedings in the immovable property concerned.

41 Such an application, seeking the enforcement of powers arising from a right *in rem*, falls under the exclusive jurisdiction of the courts of the Member State in which the property is situated, pursuant to the first subparagraph of Article 24(1) of Regulation No 1215/2012.

42 In light of that exclusive jurisdiction of the courts of the Member State in which the property is situated in relation to the request for removal from the land register of the donor's right to ownership, that court, moreover, as was stated by the Advocate General in points 51 to 58 of her Opinion, also has jurisdiction on the basis of a connection between claims, pursuant to Article 8(4) of Regulation No 1215/2012, to hear and determine the request for the avoidance of a contract of gift of immovable property, those two claims being brought against the same defendant and capable, as is clear from the information in the documents before the Court, of being joined.

43 In light of all the foregoing considerations, the answer to the question referred must be as follows:

— The provisions of Regulation No 1215/2012 must be interpreted as meaning that an action seeking the avoidance of a gift of immovable property on the ground of the donor's incapacity to contract does not fall within the exclusive jurisdiction of the courts of the Member State in which the property is situated, provided for under Article 24(1) of that regulation, but within the special jurisdiction provided for under Article 7(1)(a) of that regulation.

— An action seeking the removal from the land register of notices evidencing the donee's right of ownership falls within the exclusive jurisdiction provided for under Article 24(1) of the same regulation.

## Costs

44 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 (Second Chamber) hereby rules:

**The provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that an action seeking the avoidance of a gift of immovable property on the ground of the donor's incapacity to contract does not fall within the exclusive jurisdiction of the courts of the Member State in which the property is situated, provided for under Article 24(1) of Regulation No 1215/2012, but within the special jurisdiction provided for under Article 7(1)(a) of that regulation.**

**An action seeking the removal from the land register of notices evidencing the donee's right of ownership falls within the exclusive jurisdiction provided for under Article 24(1) of the same regulation.**

[Signatures]