ORDER OF THE COURT (Sixth Chamber)
5 April 2001 *

In Case C-518/99,

REFERENCE to the Court pursuant to Article 5(1) of the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters by the Cour d'appel de Bruxelles (Belgium) for a preliminary ruling in the proceedings pending before that court between

Richard Gaillard

and

Alaya Chekili,

on the interpretation of Article 16(1) of the Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 — see p. 77 for the amended

* Language of the case: French.

text) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1),

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen (Rapporteur) and N. Colneric, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

after considering the written observations submitted under Article 20 of the Statute of the Court of Justice of the EC:

— on behalf of Mr Gaillard, by C. Dabin-Serlez, avocat,

— on behalf of Mr Chekili, by L. Defalque and B. Lombart, avocats,

— on behalf of the German Government, by R. Wagner, acting as Agent,

— on behalf of the Spanish Government, by M. López-Monís Gallego, acting as Agent,

— on behalf of the United Kingdom Government, by R. Magrill, of the Treasury Solicitor's Department, acting as Agent,

— on behalf of the Commission of the European Communities, by J.L. Iglesias Buhigues and X. Lewis, acting as Agents,

the national court having been informed that the Court proposes to give its decision by reasoned order pursuant to Article 104(3) of its Rules of Procedure,

the persons referred to in Article 20 of the Statute of the Court of Justice of the EC having been invited to submit any observations they may have on that proposal,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By judgment of 22 December 1999, received at the Court on 31 December 1999, the Cour d'appel de Bruxelles, Belgium, referred to the Court for a preliminary ruling pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters a question on the interpretation of Article 16(1) of that Convention (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 — see p. 77 for the amended text) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1, hereinafter 'the Brussels Convention').

2 This question was raised in proceedings brought by Mr Gaillard against Mr Chekili concerning a contract for the sale of several immovable properties located in France.

The Brussels Convention

3 The first paragraph of Article 2 of the Brussels Convention, which is comprised in Section 1, headed 'General Provisions', of Title II, relating to 'Jurisdiction', provides:

'[S]ubject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

4 Article 16, which forms Section 5, headed 'Exclusive Jurisdiction', of Title II of the Convention, states:

'[T]he following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights *in rem* in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated;

...'

5 According to Article 12(1) of the Convention of 25 October 1982:

'[T]he 1968 Convention and the 1971 Protocol, as amended by the 1978 Convention and this Convention, shall apply only to legal proceedings instituted ... after the entry into force of this Convention in the State of origin ...'

6 The Convention of 25 October 1982 entered into force in Belgium on 1 April 1989.

The main proceedings

7 The file relating to the main proceedings shows that by a contract of sale of 4 October 1991 Mr Gaillard sold to Mr Chekili two properties and a number of plots of land situated in France for an aggregate sum of BEF 30 000 000. On the same day, the purchaser paid to the seller a deposit of 10 % of the sale price. Under the general conditions of the contract, the officially attested instrument of

sale was to be signed no later than four months after the conclusion of the contract.

8 As the officially attested instrument of sale had none the less not been executed pursuant to the contract, by summons to appear before the Tribunal de Première Instance de Bruxelles, Belgium, of 14 December 1992, Mr Gaillard brought proceedings against Mr Chekili for rescission of the contract of sale and for damages in accordance with the general conditions of the contract of sale entered into by the parties. Those conditions provide, on the one hand, that if one of the parties is in default in the performance of his contractual obligations, and is served with a formal notice which is not complied with within a period of 15 days following service, the other party may seek either specific performance of the contract or rescission of the sale, with the sums paid by way of deposit remaining with the seller where the purchaser is in default, and, on the other hand, that in cases of late payment, the purchaser must pay interest to the seller at an annual rate of 10% on the amount remaining due.

9 That court having declined jurisdiction by reason of Article 16(1) of the Brussels Convention, on the grounds that the properties that were the subject of the contract of sale were situated in France, Mr Gaillard appealed to the Cour d'Appel de Bruxelles which decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does an action for rescission of a contract for the sale of land and consequential damages amount to proceedings "which have as their object rights *in rem* of immovable property" within the meaning of Article 16 of the Convention of 27 September 1968 between the Member States of the European Economic Community on jurisdiction and the enforcement of judgments in civil and commercial matters, signed in Brussels on 27 September 1968?'

The question referred for a preliminary ruling

10 By this question, the national court asks in substance whether the action for rescission of a contract of sale relating to immovable property and for consequential damages falls within the scope of the rule on exclusive jurisdiction in proceedings having as their object rights *in rem* of immovable property laid down by Article 16(1) of the Brussels Convention.

11 Considering that, in the light of the Court's settled case-law, the answer to that question admits of no reasonable doubt, the Court informed the national court pursuant to Article 104(3) of its Rules of Procedure that it proposed to give its decision by reasoned order and invited the Member States together with the other persons referred to in Article 20 of the EC Statute of the Court of Justice to submit any observations they might have on that proposal.

12 Mr Gaillard, the German Government and the Commission made no objection to the Court's proposal to give its decision by reasoned order. However, the Spanish Government expressed a contrary view.

13 For the purpose of deciding the question referred for a preliminary ruling, it must first be observed that it follows from settled case-law that in order to ensure that the rights and obligations arising out of the Brussels Convention for the Contracting States and for individuals concerned are as equal and uniform as possible, an independent definition must be given in Community law to the phrase 'in proceedings which have as their object rights *in rem* in immovable property' within the meaning of Article 16(1) of the Convention (see, in

particular, the judgment in Case C-115/88 *Reichert and Kockler* [1990] ECR I-27, paragraph 8).

14 Next, the Court has repeatedly held that Article 16 of the Brussels Convention, being an exception to the general rule of jurisdiction set out in the first paragraph of Article 2 of the Convention, must not be given a wider interpretation than is required by its objective, given that it results in depriving the parties of the choice of forum which would otherwise be theirs and, in certain cases, results in their being brought before a court which is not that of the domicile of any of them (see the judgments in Cases 73/77 *Sanders* [1977] ECR 2383, paragraphs 17 and 18, *Reichert and Kockler,* paragraph 9, C-292/93 *Lieber* [1994] ECR I-2535, paragraph 12, and C-8/98 *Dansommer* [2000] ECR I-393, paragraph 21).

15 In those circumstances, the Court has held that Article 16(1) of the Brussels Convention must be interpreted as meaning that the exclusive jurisdiction 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 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 the protection of the powers which attach to their interest (see the judgment in *Reichert and Kockler,* paragraph 11).

16 It is also settled case-law that it is not sufficient, for Article 16(1) to apply, that a right *in rem* in immovable property be involved in the action or that the action have a link with immovable property. On the contrary, the action must be based on a right *in rem* and not on a right *in personam,* save in the case of the exception concerning tenancies of immovable property (see the judgments in C-294/92 *Webb* [1994] ECR I-1717, paragraph 14, *Lieber,* paragraph 13, and *Dansommer,* paragraph 22).

17 In this regard, it is clear from the Schlosser Report on the association 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, at p. 120, hereinafter 'the Schlosser Report') that the difference between a right *in rem* and a right *in personam* is that the former, existing in an item of property, has effect *erga omnes*, whereas the latter can only be claimed against the debtor (see the judgment in *Lieber*, paragraph 14).

18 Even if, in some circumstances, proceedings for rescission of a contract for the sale of immovable property may have some impact on the title to the property, they are none the less based on the personal right that the claimant obtains under the contract entered into between the parties and consequently may only be raised against the other party to the contract. By raising these proceedings, one party to the contract seeks to be released from his contractual obligations towards the other party, by reason of the latter's failure to perform the contract. Furthermore, the decision of the court which is to decide the case is capable of having effect only as regards the party against whom the order of rescission is made. It follows that the proceedings do not have as their object rights which relate directly to immovable property and can be raised *erga omnes*.

19 It follows that the action for rescission in the main proceedings does not constitute proceedings which have as their object rights *in rem* in immovable property within the meaning of Article 16(1) of the Brussels Convention, but is an action *in personam*.

20 The same applies to the claim for damages which seeks compensation for the harm alleged by one party to have been suffered by it as a result of the rescission of a contract for the sale of immovable property by reason of the other party to

the contract's failure to perform its contractual obligations (see also the Schlosser Report, p. 120, and the judgment in *Lieber*).

21 That interpretation is moreover confirmed by the Schlosser Report (p. 122) which states that in the case of mixed actions, such as an action for restitution of property raised by a party where the other party to the contract is not performing his obligations under the contract for sale of the property, there are numerous factors which support the view that such actions are predominantly actions *in personam* and accordingly that Article 16(1) of the Brussels Convention does not apply.

22 It follows that the answer to the question referred is that an action for rescission of a contract for the sale of land and consequential damages is not within the scope of the rules on exclusive jurisdiction in proceedings which have as their object rights *in rem* in immovable property under Article 16(1) of the Brussels Convention.

Costs

23 The costs incurred by the German, Spanish and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Cour d'appel de Bruxelles by judgment of 22 December 1999, hereby rules:

An action for rescission of a contract for the sale of land and consequential damages is not within the scope of the rules on exclusive jurisdiction in proceedings which have as their object rights *in rem* in immovable property under Article 16(1) of the Convention of 27 September 1968 between the Member States of the European Economic Community on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the Convention of 25 October 1982 on the accession of the Hellenic Republic.

Luxembourg, 5 April 2001.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber