

UZUCAPION IN CONJUNCTION WITH THE PARTIAL ABSOLUTE NULLITY OF THE TITLE OF PROPERTY

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Abstract

Our objectives are to present a case study of a piece of land owned in adverse possession, with the surface of 200 sqm situated in Bucharest, although occupied for more than 28 years, which was the subject of a trial for adverse possession, this trial was lost on the merits, appeal and second appeal. Parallel with the promotion of the extraordinary way of attack of the revision, it promoted in the court a case for the absolute partial nullity of the title of property issue on the name of another person, a year before this title of property was obtained, this person sold the land to her son during the process of adverse possession performance. This case study shows that, by the partial absolute nullity of the title of property, the first owner runs the risk to lose 200 sqm of the title of property, all the subsequent documents being under nullity, not valid anymore. The research method used was the study of some passed judicial resolutions, of a title of property and some sales-purchase contract. The results of the research led us to the conclusion that the court in Romania was correct when it allowed that the City Hall send the file to the court, the administrative file which was at the base of issuing the title of property according to Law no. 18/1991. The results of the study show that in this case irregularities were done as far as the issuance of the title of property is concerned, considering that there were no proofs before 1989 for the given title of property. Our study implications are done in the sense of a more attentive check of the authorities in order to issue the title of property and their validity.

Keywords: *adverse possession, title of property, sales-purchase contract, absolute nullity, subsequent document.*

JEL Classification: K11

1. Introduction

We set out to present a case study on usucapion³ in general, on the old code of civil procedure and the old Civil Code, after a period of thirty years, and on the New Code of civil procedure after a period of twelve years, in some of the situations leading to the invalidity of the title of illegally granted title for the usurped building⁴.

2. Uzucapion and partial absolute nullity of the title of property

An usurper of a 200-square-meter plot of land in Bucharest promoted court action for usucapion, occupying the land for over 38 years, enclosing it with a fence and cultivating it. In 1993, however, one person appeared to own the land, although it had no evidence in this regard. In 1994, another person appeared at the gate on the same door, saying that she was the owner of the same land. They did not disturb his possession, the land, as I showed, being surrounded by a fence, and the key to the gate was only usurped. In 2005, this usurer in Bucharest, from sector 2, promoted an action for usucapion. On this occasion, the defendant, that is to say the second owner, attached the property tile by which the first person from whom he bought the land became the owner in Bucharest of a land of 15,000 sqm from which the usurper in question had 200 sqm and the first contract of sale - purchase between the first owner and the defendant in question. The defendant did

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⁴ See Adriana Moțatu, Ileana Constantinescu, *Studii de caz. Drept penal, drept civil, drept comercial*, Milena Press, Bucharest, 2009, p. 15; Adriana Moțatu, Ileana Constantinescu, *Studii de caz. Drept penal, drept civil*, Milena Press, Bucharest, 2017, (published on CD); p. 20; Adriana Moțatu, Ileana Constantinescu, *Quelques propositions en vue d'une harmonisation rapide de la législation au cadre de l'Union européenne*, in vol. *The overarching issues of the European Space*, Milena Press, Bucharest, 2015, p. 444-449.

not show that the day after this usucapion action was promoted, he sold the land to his son. Expertise was made and later it was from another cause with usucapion object on the same land of 15,000 sqm in Bucharest, sector 2, for another area of 600 sqm, that the defendant sold during the trial the land to his son. Thus, the usurper of the 200 square meters became aware that the day after he filed the action, the defendant sold his son's land and demanded that his application be made. The applicant lost ground because the court did not take any action to see how the title was obtained under Law no. 18/1991. The same thing happened both on appeal and on appeal, each time gaining the defendant due to the precarious detention of the land given in use by the town hall of sector 2.

Then, the landlord of the 200 sqm made a request to review the judgment from the appeal and, in parallel, he promoted an action in the Bucharest Court for the partial nullity of the title issued by law 18/1991 to the first owner of the land from which he had used 200 square meters and also the proof that he had sold the land in 1993, so one year before obtaining the title of property, issued in 1994. By completing the application, the applicant also requested the partial absolute nullity of the two sale-purchase contracts by which the first owner he sold illegally, before having the title of property of the second, and the second owner sold all illegally, during the process with the usurping of the 200 square meters to his son the land, the sales being illegal, in fraud of the law, all the acts being hit. of partial absolute nullity for the surface of 200 sqm of the usucapant, that is, within the limit of the capacity its procedural assets. As evidence, in addition to the documents was requested an address for sending the administrative file that was the basis for issuing the title of property. The request was made to the Prefecture of the Municipality of Bucharest, which sent the address to the City Hall of the Municipality of Bucharest. She replied that the administrative file is at the City Hall of Sector 2, which in turn replied that an address must be made to be sent to the City Hall of Dobroești, which has the administrative file. In reality, however, it also follows from the National Archives that the person whose title of property was issued for 15,000 square meters in sector 2 of Bucharest had no right to this area neither in Bucharest nor in Dobroești, as it was not included in the agricultural register of Bucharest from sector 2. So the title of property was issued in fraud of the law and all subsequent acts are struck by invalidity.

3. Uzucapion and junction of possessions by artificial real estate accession

In this case study on usucapion, another situation is when a deceased parent in 2014 had bought a land in 1984 in Bucharest, in sector 2. He continuously owned the land, publicly and under the name of owner, paying taxes and taxes and actually living in the building. After the father's death, the son promoted an action in court invoking the provisions of art. 1846, 1847, 1890 of the Civil Code, articles 488-492 of the Civil Code, article 21 of the Decree no. 167/1958, articles 109 and 111 of the Code of Civil Procedure and sued the defendants, including the one from which his father bought the land.

The court, respectively the Bucharest Court, admitted that the Municipality of Bucharest, respectively the defendant has a passive procedural quality regarding the artificial real estate accession, but not the usucapion. The applicant, therefore, made at the next term a request to bring in the case, as defendants regarding the usucapion, of S.C. XYr S.A., the Municipality of Bucharest and the Romanian State through the Ministry of Finance, as well as a request to modify the object of the action. However, the plaintiff did not insist on changing the object of the application in the time limit and the court allowed the exception of the lack of passive procedural quality of the defendants introduced in the case. Based on the administered evidence, namely the written test, the testimonial test, the test with topographic technical expertise and real estate technical expertise, the court held that the land building has a surface area of 240 sqm and that the legal institution of the 30-year land use is applied, respectively the existence a useful possession, not vitiated, that is, a continuous possession, undisturbed, public and unequivocal and the exercise of this possession for 30 years. Therefore, the plaintiff and its authors have held continuous possession of the land since 1984 and up to the present. The court also noted that in 2010 the applicant's father won by an irrevocable decision at the Bucharest Court of Appeal a trial started in 2006, in which a sale-

purchase contract concluded on this land was canceled, the court considering that the applicant has an interest in ascertaining the absolute nullity and that the seller did not present a valid title at the conclusion of the sale-purchase contract, these supporting the undisturbed character of the possession.

The court's conclusion was that the plaintiff acquired through the effect of the long-term acquisition prescription the ownership right on the 240 square meters land located in Bucharest, sector 2. Regarding artificial real estate accession, the court held that Law no. 71/2011 contains two transitional legal rules, respectively Articles 57 and 58, namely that the provisions of the Civil Code of 2009 regarding the natural accession on animals apply to the situations born after its entry into force in all cases where the artificial real estate accession implies the exercise of an option right by the owner of the building, the effects of the accession they are governed by the law in force at the beginning of the work. So, the accession being subject to the law in force at the time of production or the committing of the circumstance or the fact that attracts the incidence of the accession, and in case of continuous facts, the law in force at the beginning date is interested, in this case it is the year of the possession of the land, respectively 1984. According to Article 482 of the Civil Code, the land is considered the main thing and the property over it gives the right and all that unites as an accessory with it in a natural or artificial way, the property of the land comprising in itself the property of its surface and its sub-surface, as it provides Article 489 of the Civil Code. The constructions being such an accessory, the owner of the land acquires through the accession, as a result of exercising the attributes of his absolute right and the property of the constructions located on that land. According to article 492 of the Civil Code "any construction, plantation or thing done on the ground or above the earth are presumed to be done by the owner of that land, at his expense and that are his, until proven otherwise".

So, in this case, considering that the usucapion has the effect of retroactively acquiring the right of ownership of the applicant, from the date of the possession of the land, respectively from 1984, regarding the construction, the rules of accession as a legal extension of the law become incident. the owner of the work, considered mainly on everything that unites as an accessory to this, an extension justified by the exclusive and absolute character of the property right.

In these conditions it is obvious that the plaintiff in this case won, by acquiring through the effect of the artificial real estate accession the ownership right on the constructions identified on the land, according to the topographic expert report and the real estate forensic expert report prepared by experts.

4. Conclusions

The two situations in our case study on usucapion show, on the one hand, that the Romanian authorities have to make more careful checks in order to issue the titles of property so that they are really valid and not to be attacked or subsequently attacked in courts, and, on the other hand, we observe the different way of solving by the courts in Romania two situations of usucapion from the 1980s, so based on the old codes.

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