

WEBB

JUDGMENT OF THE COURT  
17 May 1994 \*

In Case C-294/92,

REFERENCE to the Court, under Article 3 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 Court of Appeal, London, for a preliminary ruling in the proceedings pending before that court between

**George Lawrence Webb**

and

**Lawrence Desmond Webb**

on the interpretation of Article 16(1) of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1972 L 299, p. 32),

THE COURT,

composed of: O. Due, President, J. C. Moitinho de Almeida, M. Díez de Velasco and D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet (Rapporteur) G. C. Rodríguez Iglesias, M. Zuleeg and P. J. G. Kapteyn, Judges,

\* Language of the case: English.

Advocate General: M. Darmon,  
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- George Lawrence Webb, represented by Michael Briggs, Barrister, instructed by Bower, Cotton & Bower, Solicitors,
- Lawrence Desmond Webb, represented by Mark Blackett-Ord, Barrister, instructed by William Sturges & Co, Solicitors,
- the United Kingdom, represented by Sue Cochrane, of the Treasury Solicitor's Department, acting as Agent,
- the Commission of the European Communities, represented by Xavier Lewis and Pieter van Nuffel, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations made on behalf of George Lawrence Webb, represented by Michael Briggs and Philip Moser, Barrister, Lawrence Desmond Webb, the United Kingdom, represented by John D. Colahan, of the Treasury Solicitor's Department, acting as Agent, and David Lloyd Jones, Barrister, and the Commission at the hearing on 16 November 1993,

after hearing the Opinion of the Advocate General at the sitting on 8 February 1994,

gives the following

### Judgment

- 1 By order of 27 February 1992, received at the Court on 3 July 1992, the Court of Appeal, London, referred to the Court for a preliminary ruling under Article 3 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 (OJ 1972 L 299, p. 32, hereinafter 'the Convention') a question on the interpretation of Article 16(1) of the Convention.
- 2 The question arose in proceedings between George Lawrence Webb ('the father') and his son, Lawrence Desmond Webb ('the son') relating to immovable property situated in France.
- 3 In 1971 the father concluded an agreement for the purchase of a flat in Antibes. He raised the necessary funds in England.
- 4 The Bank of England authorizations required by United Kingdom exchange control legislation were obtained on the footing that the property would be purchased in the name of the son. The necessary funds were then transferred from the father's bank account in England to an account opened in Antibes by the son. In October 1971 the vendor conveyed legal ownership of the flat to the son.

- 5 Since then, both the father, with his wife, and the son have used the flat as a holiday home, with the father bearing the bulk of the outgoings.
- 6 On 26 March 1990 the father brought an action against the son before the High Court of Justice for a declaration that the son held the property as trustee and for an order that the son should execute such documents as should be required to vest legal ownership of the property in the father.
- 7 The son challenged the jurisdiction of the English courts. He contended that, since the action related to a right *in rem* in immovable property, the French courts had exclusive jurisdiction. On this point, he relied on Article 16(1) of the Convention, which provides that
- ‘ The following courts shall have exclusive jurisdiction, regardless of domicile:
- (1)(a) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated.’
- 8 In its judgment of 23 May 1991 the High Court found that the father’s claim was based on a fiduciary relationship between himself and the son and, further, that the father was not seeking a declaration that he was the owner, an order for possession, or rectification of the land register but an order requiring the son to execute such documents as should be necessary to convey ownership in the flat. The High Court accordingly concluded that the claim did not relate to rights *in rem* in immovable property within the meaning of Article 16(1) of the Convention and dismissed the objection of lack of jurisdiction.

- 9 On the merits, the High Court found that the son held the flat under a resulting trust. In English law, where a person finances the purchase of property in the name of another, that person is presumed, in the absence of clear intention to bestow a gift, to have retained the beneficial interest in the property and the nominal owner is presumed to be a trustee. In order to rebut that presumption, the son, relying on the presumption of advancement, contended that the flat had been a gift to him. However, that argument did not convince the High Court which deduced from the fact that the flat was used by the father that he intended to keep the property for himself.
- 10 The son appealed on the ground that the High Court was wrong to hold Article 16(1) of the Convention inapplicable. The Court of Appeal, which was in doubt as to the interpretation to be given to that provision, requested the Court of Justice to give a preliminary ruling on the following question:

‘ Whether on the true interpretation of Article 16(1) of the Brussels Convention the proceedings in the Chancery Division of the High Court of Justice, the short title and reference to the record of which is *Webb v Webb* 1990 W. No 2827, are proceedings in respect of which the courts of France have exclusive jurisdiction. ’
- 11 By its question the national court asks whether an action for a declaration that a person holds immovable property as trustee and for an order requiring that person to execute such documents as should be required to vest the legal ownership in the plaintiff constitutes an action *in rem* within the meaning of Article 16(1) of the Convention.
- 12 The son and the Commission, who consider that the test for applying Article 16(1) is the plaintiff's ultimate purpose and that by his action the father is ultimately seeking to secure ownership of the flat, contend that the main proceedings are covered by Article 16(1).

- 13 That argument cannot be accepted.
- 14 Article 16 confers exclusive jurisdiction in the matter of rights *in rem* in immovable property on the courts of the Contracting State in which the property is situated. In the light of the Court's judgment in Case C-115/88 *Reichert and Kockler* [1990] ECR I-27, where the Court had to rule on the question whether the exclusive jurisdiction prescribed by that article applied in respect of an action by a creditor to have a disposition of immovable property declared ineffective as against him on the ground that it was made in fraud of his rights by his debtor, it follows 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: 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.
- 15 The aim of the proceedings before the national court is to obtain a declaration that the son holds the flat for the exclusive benefit of the father and that in that capacity he is under a duty to execute the documents necessary to convey ownership of the flat to the father. The father does not claim that he already enjoys rights directly relating to the property which are enforceable against the whole world, but seeks only to assert rights as against the son. Consequently, his action is not an action *in rem* within the meaning of Article 16(1) of the Convention but an action *in personam*.
- 16 Nor are considerations relating to the proper administration of justice underlying Article 16(1) of the Convention applicable in this case.
- 17 As the Court has held, the conferring of exclusive jurisdiction in the matter of rights *in rem* in immovable property on the courts of the State in which the property is situated is justified because actions concerning rights *in rem* in immovable property often involve disputes frequently necessitating checks, inquiries and expert assessments which must be carried out on the spot (see the judgment in Case 73/77 *Sanders v Van der Putte* [1977] ECR 2383, at paragraph 13).

- 18 As the father and the United Kingdom rightly point out, the immovable nature of the property held in trust and its location are irrelevant to the issues to be determined in the main proceedings which would have been the same if the dispute had concerned a flat situated in the United Kingdom or a yacht.
- 19 The answer to be given to the question submitted to the Court must therefore be that an action for a declaration that a person holds immovable property as trustee and for an order requiring that person to execute such documents as should be required to vest the legal ownership in the plaintiff does not constitute an action *in rem* within the meaning of Article 16(1) of the Convention.

### Costs

- 20 The costs incurred by the United Kingdom and by the Commission of the European Communities, 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,

in answer to the question referred to it by the Court of Appeal, London, by order of 27 February 1992, hereby rules:

An action for a declaration that a person holds immovable property as trustee and for an order requiring that person to execute such documents as should be required to vest the legal ownership in the plaintiff does not constitute an action *in rem* within the meaning of Article 16(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

Due	Moitinho de Almeida	Díez de Velasco
Edward	Kakouris	Joliet
Rodríguez Iglesias	Zuleeg	Kapteyn

Delivered in open court in Luxembourg on 17 May 1994.

R. Grass  
Registrar

O. Due  
President