Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

3 April 2014*

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 22(1) — Exclusive jurisdiction — Disputes in proceedings which have as their object rights in rem in immovable property — Nature of the right of pre-emption — Article 27(1) — Lis pendens — Concept of proceedings involving the same cause of action and between the same parties — Relationship between Articles 22(1) and 27(1) — Article 28(1) — Related actions — Criteria for assessing whether to stay proceedings)

In Case C-438/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht München (Germany), made by decision of 16 February 2012, received at the Court on 2 October 2012, in the proceedings

Irmengard Weber

v

Mechthilde Weber,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 9 October 2013,

after considering the observations submitted on behalf of:

— Irmengard Weber, by A. Seitz, Rechtsanwalt,

— Mechthilde Weber, by A. Kloyer, Rechtsanwalt, F. Calmetta, avvocato, and H. Prütting,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the United Kingdom Government, by J. Beeko, acting as Agent, and M. Gray, Barrister,

— the Swiss Government, by D. Klingele, acting as Agent,

* Language of the case: German.

— the European Commission, by W. Bogensberger and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 January 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 22(1), 27 and 28 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 Ms Irmengard Weber ('Ms I. Weber') and her sister Ms Mechthilde Weber ('Ms M. Weber') in which Ms I. Weber seeks an order that her sister consent to the entry on the Land Register of Ms I. Weber as the owner.

Legal context

EU law

3 Recital 2 in the preamble to Regulation No 44/2001 states:

'Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.'

4 Recital 15 in the preamble to that regulation reads as follows:

'In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There should be a clear and effective mechanism for resolving cases of *lis pendens* and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation, that time should be defined autonomously.'

5 Recital 16 in the preamble to that regulation states:

'Mutual trust in the administration of justice in the [European Union] justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.'

6 Article 22(1) of Regulation No 44/2001, in Section 6 of Chapter II thereof, relating to exclusive jurisdiction, provides:

'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 Article 25 of Regulation No 44/2001, in Section 8 of Chapter II thereof, entitled 'Examination as to jurisdiction and admissibility', provides:

'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.'

8 Article 27 of that regulation, in Section 9 of Chapter II thereof, entitled '*Lis pendens* – related actions' provides:

'1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.'

9 Article 28 of that regulation, governing related actions, provides:

'1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

…

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'

10 Article 34 of Regulation No 44/2001 provides:

'A decision shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;

4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.'

11 Article 35 of Regulation No 44/2001 provides:

'1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.'

German law

12 Paragraph 1094(1) of the Civil Code (Bürgerliches Gesetzbuch, 'the BGB') lays down the requirement governing the existence of a right of pre-emption over immovable property, as follows:

'A property may be burdened in such a way that the person in whose favour it is burdened has a right of pre-emption as against the owner.'

13 Paragraphs 463 and 464 of the BGB lay down rules relating to the exercise of the right of pre-emption over a property.

14 Paragraph 463 of the BGB is worded as follows:

'A person who has a pre-emption right in respect of an object can exercise the right as soon as the person burdened by the right has concluded a contract with a third party for the purchase of the object.'

15 Under Paragraph 464 of the BGB:

'(1) Exercise of the right of pre-emption takes place by a declaration made to the person burdened by the right. The declaration is not subject to any formal requirements laid down in the contract of purchase.

(2) On the exercise of the right of pre-emption, the sale shall be concluded between the person entitled and the person burdened by the right on the terms which the person burdened by the right agreed with the third party.'

16 Paragraph 873(1) of the BGB, relating to the conditions governing the transfer of ownership in a property, provides:

'The transfer of ownership of a property … requires the agreement of the holder of the right and the other party concerning the change of rights and that that change of rights be registered at the Land Register unless provided otherwise by law.'

17 Article 19 of the Regulation on the Land Register (Grundbuchordnung) provides:

'Registration shall occur when the person whose title is affected by it gives consent.'

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

18 Ms I. Weber and Ms M. Weber, two sisters who are 82 and 78 years old respectively, are co-owners to the extent of six tenths and four tenths of a property in Munich (Germany).

19 On the basis of a notarised act of 20 December 1971, a right *in rem* of pre-emption over the four-tenths share belonging to Ms M. Weber was entered in the Land Register in favour of Ms I. Weber.

20 By a notorial contract of 28 October 2009, Ms M. Weber sold her four-tenths share to Z. GbR, a company incorporated under German law, of which one of the directors is her son, Mr Calmetta, a lawyer established in Milan (Italy). According to one of the clauses in that contract, Ms M. Weber, as the seller, reserved a right of withdrawal valid until 28 March 2010 and subject to certain conditions.

21 Being informed by the notary who had drawn up the contract in Munich, Ms I. Weber exercised her right of pre-emption over that share of the property by letter of 18 December 2009.

22 On 25 February 2010, by a contract concluded before that notary, Ms I. Weber and Ms M. Weber once more expressly recognised the effective exercise of the right of pre-emption by Ms I. Weber and agreed that the property should be transferred to her for the same price as that agreed in the contract for sale signed between Ms M. Weber and Z. GbR. However, the two parties asked the notary not to carry out the procedures for the registration of the transfer of property in the Land Register in accordance with Paragraph 873(1) of the BGB until Ms M. Weber had made a written declaration before the same notary that she had not exercised her right of withdrawal or that she had waived that right arising from the contract concluded with Z. GbR within the period laid down, which expired on 28 March 2010. On 2 March, Ms I. Weber paid the agreed purchase price of EUR 4 million.

23 By letter of 15 March 2010, Ms M. Weber declared that she had exercised her right of withdrawal, with respect to Ms I. Weber, in accordance with the contract concluded on 28 October 2009.

24 By an application of 29 March 2010, Z. GbR brought an action against Ms I. Weber and Ms M. Weber, before the Tribunale ordinario di Milano (District Court, Milan), seeking a declaration that the exercise of the right of pre-emption by Ms I. Weber was ineffective and invalid, and that the contract concluded between Ms M. Weber and that company was valid.

25 On 15 July 2010, Ms I. Weber brought proceedings against Ms M. Weber before the Landgericht München I (Regional Court, Munich I) (Germany), seeking an order that Ms M. Weber register the transfer of ownership of the four-tenths share with the Land Register. In support of her application, Ms I. Weber argues, in particular, that by reason of the exercise of the right of pre-emption, the right of withdrawal agreed between Z. GbR and Ms M. Weber did not form part of the contractual provisions that were applicable to her.

26 Basing itself on Article 27(1) of Regulation No 44/2001 and, in the alternative, on Article 28(1) and (3) thereof, the Landgericht München I decided to stay the proceedings, having regard to the proceedings already brought before the Tribunale ordinario di Milano. Ms I. Weber appealed against that decision before the Oberlandesgericht München (Higher Regional Court, Munich) (Germany).

27 Taking the view that, in principle, the conditions laid down by Article 27(1) of that regulation or, at the very least, those laid down in Article 28(1) and (3) thereof had been fulfilled, the Oberlandesgericht München decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Does the scope of Article 27 of [Regulation No 44/2001] extend also to cases in which two parties in one action each have the role of defendant because both parties have been sued by a third party, and in the other action have the roles of applicant and defendant? In such a situation are there proceedings “between the same parties”, or must the different claims raised by the applicant against the two defendants in the first action be examined separately, so that there cannot be taken to be proceedings “between the same parties”?

2. Are there proceedings involving "the same cause of action" within the meaning of Article 27 of Regulation No 44/2001 if the claims and arguments in the two actions are indeed different, but

   (a) the same preliminary issue has to be answered in order to decide both actions, or

   (b) in one action, by a claim in the alternative, a declaration is sought as to a legal relationship which features in the other action as a preliminary issue?

3. Are there proceedings which have as their object a right *in rem* in immovable property within the meaning of Article 22(1) of Regulation No 44/2001 if a declaration is sought that the defendant did not validly exercise a right *in rem* of pre-emption over land situated in Germany which indisputably exists in German law?

4. Is the court second seised, when making its decision under Article 27(1) of Regulation No 44/2001, and hence before the question of jurisdiction is decided by the court first seised, obliged to ascertain whether the court first seised lacks jurisdiction because of Article 22(1) of Regulation No 44/2001, because such lack of jurisdiction of the court first seised would, under Article 35(1) of Regulation No 44/2001, lead to a judgment of the court first seised not being recognised? Is Article 27(1) of Regulation No 44/2001 not applicable for the court second seised if the court second seised comes to the conclusion that the court first seised lacks jurisdiction because of Article 22(1) of Regulation No 44/2001?

5. Is the court second seised, when making its decision under Article 27(1) of Regulation No 44/2001, and hence before the question of jurisdiction is decided by the court first seised, obliged to examine the complaint of one party that the other party acted in abuse of process by bringing proceedings before the court first seised? Is Article 27(1) of Regulation No 44/2001 not applicable for the court second seised if the court second seised comes to the conclusion that the bringing of proceedings before the court first seised was an abuse of process?

6. Does the application of Article 28(1) of Regulation No 44/2001 presuppose that the court second seised has previously decided that Article 27(1) of Regulation No 44/2001 does not apply in the specific case?

7. May account be taken in the exercise of the discretion allowed by Article 28(1) of Regulation No 44/2001:

   (a) of the fact that the court first seised is situated in a Member State in which proceedings statistically last considerably longer than in the Member State in which the court second seised is situated,

   (b) of the fact that, in the assessment of the court second seised, the law of the Member State in which the court second seised is situated is applicable,

   (c) of the age of one of the parties,

   (d) of the prospects of success of the action before the court first seised?

8. In the interpretation and application of Articles 27 and 28 of Regulation No 44/2001, in addition to the aim of avoiding irreconcilable or contradictory judgments, must the second applicant's entitlement to justice be taken into account?'

The application to reopen the oral procedure

28 By act of 11 February 2014, received at the Court Registry on 21 February 2014, following the Opinion of the Advocate General delivered on 30 January 2014, Ms M. Weber applied for the reopening of the oral procedure on the ground that that opinion contained errors of fact and law.

29 The Court may, at the request of the parties, order the reopening of the oral procedure in accordance with Article 83 of its Rules of Procedure if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see, to that effect, Case C-470/12 *Pohotovost'* [2014] ECR, paragraph 21 and the case-law cited).

30 However, that is not the situation in the present case. The Court considers, in effect, that it has all the information necessary to give a ruling. As to the Advocate General's Opinion, since the Court is not bound by it, it is not necessary to re-open the oral procedure each time the Advocate General raises a point with which the parties to the main proceedings disagree.

31 In those circumstances, after hearing the Advocate General, there is no need to grant the request to re-open the oral procedure.

The questions referred for a preliminary ruling

The third question

32 By that question, which it is appropriate to examine first of all, the referring court asks essentially whether Article 22(1) of Regulation No 44/2001 must be interpreted as meaning that 'proceedings which have as their object rights *in rem* in immovable property' referred to by that provision, cover an action, such as that brought in the main proceedings before the courts of another Member State, seeking a declaration that the exercise of a right of pre-emption attaching to that property and which produces effects with regard to all the parties is invalid.

Admissibility

33 Ms M. Weber has pleaded that that question is inadmissible, arguing that it concerns a point which does not play any role in the procedure pending before the German court second seised, even if, it may be relevant in the proceedings pending before the Italian court first seised. In that connection, she argues in particular that the court second seised is not authorised to examine the jurisdiction of the court first seised. Therefore, that question is irrelevant for the purpose of the decision to stay proceedings that the referring court may make in accordance with Articles 27 and 28 of Regulation No 44/2001.

34 In that regard, it should be recalled that, in accordance with settled case-law, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, inter alia, Case C-332/11 *ProRail* [2013] ECR, paragraph 30 and the case-law cited).

35 Thus, the Court may reject a reference for a preliminary ruling submitted by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual and legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, inter alia, Case C-413/12 *Asociación de Consumidores Independientes de Castilla y León* [2013] ECR, paragraph 26 and the case-law cited).

36 That is not the situation in this case.

37 It is clear from the information provided by the national court that it may be led to examine the question of the validity of the exercise by Ms I. Weber of a right of pre-emption over a property, which is the subject-matter of another dispute pending before an Italian court. Thus, the interpretation by the Court of Article 22(1) of Regulation No 44/2001 will enable the referring court to know whether the dispute before it falls within the category of 'proceedings which have as their object rights *in rem* in immovable property' and to give a ruling on it.

38 In those circumstances, the third question must be regarded as admissible.

Substance

39 As is clear from Article 22(1) of Regulation No 44/2001, the courts of the Member State where the property is situated (*forum rei sitae*) have exclusive jurisdiction in proceedings which have as their object rights *in rem* in immovable property.

40 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 applicable for the interpretation of Article 22(1), the Court has already observed that, in order to ensure that the rights and obligations arising out of the 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' (see, to that effect case C-115/88 *Reichert and Kockler* [1990] ECR I-27, paragraph 8 and the case-law cited).

41 In that regard, it is necessary to take into consideration the fact 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 (*Reichert and Kockler*, paragraph 10).

42 The Court has already had the occasion to rule that Article 16 of the Brussels Convention and, accordingly, Article 22(1) of Regulation No 44/2001, must be interpreted as meaning 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 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 (Case C-386/12 *Schneider* [2013] ECR, paragraph 21 and the case-law cited).

43 Similarly, under reference to 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 59/71, p. 166), the Court has held 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 be claimed only against the debtor (see order in Case C-518/99 *Gaillard* [2001] ECR I-2771, paragraph 17).

44 Regarding the present case, as the Advocate General observed in point 31 of his Opinion, and as the referring court, Ms I. Weber, the German Government and the European Commission submit, an action seeking a declaration that a right *in rem* in immovable property situated in Germany has not been validly exercised, such as that brought before the Italian court by Z. GbR, falls within the category of proceedings which have as their object right *in rem* in immovable property, within the meaning of Article 22(1) of Regulation No 44/2001.

45 As is apparent from the file before the Court, a right of pre-emption, such as that provided for by Paragraph 1094 of the BGB, which attaches to immovable property and which is registered with the Land Register, produces its effects not only with respect to the debtor, but guarantees the right of the holder of that right to transfer the property also vis-à-vis third parties, so that, if a contract for sale is concluded between a third party and the owner of the property burdened, the proper exercise of that right of pre-emption has the consequence that the sale is without effect with respect to the holder of that right, and the sale is deemed to be concluded between the holder of that right and the owner of the property on the same conditions as those agreed between the latter and the third party.

46 It follows that, where the third party purchaser challenges the validity of the exercise of the right of pre-emption in an action such as that before the Tribunale ordinario di Milano, that action will seek essentially to determine whether the exercise of the right of pre-emption has enabled, for the benefit of its holder, the right to the transfer of the ownership of the immovable property subject to the dispute to be respected. In such a case, as is clear from paragraph 166 of the Schlosser Report, referred to in paragraph 43 of the present judgment, the dispute concerns proceedings which have as their object a right *in rem* in immovable property and fall within the exclusive jurisdiction of the *forum rei sitae*.

47 In the light of the foregoing considerations, the answer to the third question is that Article 22(1) of Regulation No 44/2001 must be interpreted as meaning that there falls with the category of 'proceedings which have as their object rights *in rem* in immovable property' an action such as that brought in the present case before the courts of another Member State, seeking a declaration of invalidity of the exercise of a right of pre-emption attaching to that property and which produces effects with respect to all parties.

The fourth question

48 By that question, which it is appropriate to examine second, the referring court asks essentially whether Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that, before staying proceedings in accordance with that provision, the court second seised is required to examine whether, by reason of the failure to have regard to the exclusive jurisdiction laid down in Article 22(1) thereof, a judgment on the substance by the court first seised will not be recognised in the other Member States, in accordance with Article 35(1) of that regulation.

49 It is clear from the wording of Article 27 of Regulation No 44/2001 that, in a situation of *lis pendens*, any court other than the court first seised must of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established and, where that jurisdiction is established, it must decline jurisdiction in favour of that court.

50 Called on to rule on the question whether the provision of the Brussels Convention corresponding to Article 27 of Regulation No 44/2001, namely Article 21 thereof, authorises or requires the court second seised to examine the jurisdiction of the court first seised, the Court has held, without

prejudice to the case where the court other than the court first seised has exclusive jurisdiction under the Brussels Convention and in particular under Article 16 thereof, that Article 21 concerning *lis pendens* must be interpreted as meaning that, where the jurisdiction of the court first seised is contested, the court other than the court first seised may, if it does not decline jurisdiction, only stay the proceedings and may not itself examine the jurisdiction of the court first seised (see Case C-351/89 *Overseas Union Insurance and Others* [1991] ECR I-3317, paragraphs 20 and 26).

51 It follows that, in the absence of any claim that the court other than the court first seised had exclusive jurisdiction in the main proceedings, the Court has simply declined to prejudge the interpretation of Article 21 of the Brussels Convention in the hypothetical situation which it specifically excluded from its judgment (Case C-116/02 *Gasser* [2003] ECR I-14693, paragraph 45, and Case C-1/13 *Cartier parfums — lunettes and Axa Corporate Solutions Assurances* [2014] ECR, paragraph 26).

52 Having subsequently been asked about the relationship between Article 21 of the Brussels Convention and Article 17 thereof, relating to exclusive jurisdiction pursuant to a jurisdiction clause, which corresponds to Article 23 of Regulation No 44/2001, it is true that the Court held in *Gasser* that the fact that the jurisdiction of the court other than the court first seised is assessed under Article 17 of that Convention cannot call in question the application of the procedural rule contained in Article 21 of the Convention, which is based clearly and solely on the chronological order in which the courts involved are seised.

53 However, as stated in paragraph 47 of the present judgment, and unlike the situation in case which gave rise to the judgment in *Gasser*, in the present case exclusive jurisdiction has been established in favour of the court second seised pursuant to Article 22(1) of Regulation No 44/2001, which is in Section 6 of Chapter II thereof.

54 According to Article 35(1) of that regulation, a judgment is not to be recognised in another Member State if it conflicts with Section 6 of Chapter II of that regulation, relating to exclusive jurisdiction.

55 It follows that, in a situation such as that at issue in the main proceedings, if the court first seised gives a judgment which fails to take account of Article 22(1) of Regulation No 44/2001, that judgment cannot be recognised in the Member State in which the court second seised is situated.

56 In those circumstances, the court second seised is no longer entitled to stay its proceedings or to decline jurisdiction, and it must give a ruling on the substance of the action before it in order to comply with the rule on exclusive jurisdiction.

57 Any other interpretation would run counter to the objectives which underlie the general scheme of Regulation No 44/2001, such as the harmonious administration of justice by avoiding negative conflicts of jurisdiction, the free movement of judgments in civil and commercial matters, in particular the recognition of those judgments.

58 Thus, as the Advocate General also observed in point 41 of his Opinion, the fact that, in accordance with Article 27 of Regulation No 44/2001 the court second seised, which has exclusive jurisdiction under Article 22(1) thereof, must stay its proceedings until the jurisdiction of the court first seised is established and, where that jurisdiction is established, must decline jurisdiction in favour of the latter, does not correspond to the requirement of the sound administration of justice.

59 Furthermore, the objective referred to in Article 27 of that regulation, namely to avoid the non-recognition of a decision on account of its incompatibility with a judgment given between the same parties in the specific context in which the court second seised has exclusive jurisdiction under Article 22(1) of that regulation, would be undermined.

60 In the light of all of the foregoing considerations, the answer to the fourth question is that Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that, before staying its proceedings in accordance with that provision, the court second seised must examine whether, by reason of a failure to take into consideration the exclusive jurisdiction laid down in Article 22(1) of that regulation, a decision on the substance by the court first seised will be recognised by other Member States in accordance with Article 35(1) of that regulation.

The first, second and fifth to eighth questions

61 As regards the first, second and fifth to eighth questions, those concern, on the one hand, the scope of Article 27 of Regulation No 44/2001 and the information that the court second seised is required to take into consideration, where, in a situation of *lis pendens*, it decides to stay its proceedings, and, on the other hand, the relationship between Articles 27 and 28 of that regulation and the criteria which the court second seised may take into account in exercising its power of discretion in the context of related actions.

62 As the Advocate General essentially observed in point 20 of his Opinion, the court second seised, which has exclusive jurisdiction pursuant to Article 22(1) of Regulation No 44/2001, cannot be required to examine whether the substantive criteria for *lis pendens* are met as regards a dispute in respect of which it was seised second.

63 Such an examination would have no purpose since the court second seised is authorised to take into consideration, in its decision given in accordance with Article 27 of Regulation No 44/2001, the fact that any judgment of the court first seised will not be recognised in the other Member States in accordance with Article 35(1) of that regulation, by reason of a failure to take into consideration the exclusive jurisdiction laid down in Article 22(1).

64 Accordingly, the question as to the information to be taken into consideration by the court second seised in order to give judgment in a situation of *lis pendens*, no longer arises.

65 The same is true as regards the questions relating to the relationship between Articles 27 and 28 of Regulation No 44/2001 and the criteria which the court second seised may take into account in exercising its power of discretion in the context of related actions. Where the court second seised has exclusive jurisdiction, as in the case in the main proceedings, the provisions of Articles 27 and 28 of that regulation cannot alter the position.

66 In the light of the foregoing, it must be held that, in light of the answer given to the third and fourth questions, there is no need to answer the first, second and fifth to eighth questions.

Costs

67 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 (Third Chamber) hereby rules:

1. **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 there falls within the category of proceedings which have as their object 'rights *in rem* in immovable property' within the meaning of that provision an**

action such as that brought in the present case before the courts of another Member State, seeking a declaration of invalidity of the exercise of a right of pre-emption attaching to that property and which produces effects with respect to all the parties.

2. **Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that, before staying its proceedings in accordance with that provision, the court second seised is required to examine whether, by reason of a failure to take into consideration the exclusive jurisdiction laid down in Article 22(1) thereof, the decision of the court first seised will be recognised in the other Member States in accordance with Article 35(1) of that regulation.**

[Signatures]