

**JUDGMENT OF THE COURT (Fifth Chamber)**  
**10 January 1990 \***

In Case C-115/88

REFERENCE to the Court 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 by the cour d'appel (Court of Appeal), Aix-en-Provence, for a preliminary ruling in the proceedings pending before it between

**Mario P. A. Reichert, Hans-Heinz Reichert and Ingeborg Kockler,**

and

**Dresdner Bank AG,**

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.

**THE COURT (Fifth Chamber)**

composed of: Sir Gordon Slynn, President of Chamber, M. Zuleeg, R. Joliet, J. C. Moitinho de Almeida and F. Grévisse, judges,

Advocate General: J. Mischo

Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

Dresdner Bank AG, by Mr Jestaedt,

the French Government, by Régis de Gouttes, assisted by Géraud de Bergues, acting as Agents,

\* Language of the case: French.

the German Government, by C. Böhmer, acting as Agent,

the United Kingdom, by J. A. Gensmantel, of the Treasury Solicitor's Department, assisted by M. C. L. Carpenter, of the Lord Chancellor's Department, acting as Agents,

the Italian Government, by O. Fiumara, avvocato dello Stato, acting as Agent, and

the Commission of the European Communities, by Georgios Kremlis, a member of its Legal Department, assisted by G. Cherubini, an Italian official on detachment with the Commission under the arrangements for exchanges with national officials, acting as Agents,

having regard to the Report for the Hearing and further to the hearing on 7 November 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 November 1989,

gives the following

### Judgment

- 1 By judgment dated 18 November 1987 which was received at the Court on 11 April 1988, the cour d'appel, Aix-en-Provence, 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 (hereinafter referred to as 'the Convention') a question on the interpretation of Article 16(1) of that Convention.
- 2 That question was raised during the course of proceedings between Mr and Mrs Reichert and their son, Mario Peter Antonio Reichert, on the one hand, and Dresdner Bank AG on the other hand.

- 3 Mr and Mrs Reichert, who reside in the Federal Republic of Germany, are the owners of immovable property in the commune of Antibes, Alpes-Maritimes, France, the legal ownership of which they donated to their son, Mario Reichert, by a notarial instrument executed at Creutzwald, Moselle, France. That donation was challenged by Dresdner Bank AG, a creditor of Mr and Mrs Reichert, in the tribunal de grande instance (Regional Court), Grasse, in whose judicial district the property in issue lies, on the basis of Article 1167 of the French civil code under which creditors may 'challenge in their own name transactions entered into by their debtors in fraud of their rights' by a procedure known as the '*action paulienne*'.
- 4 By a judgment of 20 February 1987 the tribunal de grande instance, Grasse, held that it had jurisdiction (which the Reicherts denied) on the basis of Article 16(1) of the Convention, under which 'in proceedings which have as their object rights *in rem* in immovable property . . . the courts of the Contracting State in which the property is situated' have exclusive jurisdiction, regardless of domicile.
- 5 The Reicherts appealed against the ruling on jurisdiction to the cour d'appel, Aix-en-Provence, which decided to stay the proceedings and seek a preliminary ruling from the Court on whether  
  
'by providing that the courts of the Contracting State in which the property is situated are to have exclusive jurisdiction in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, it was the intention of the Brussels Convention to lay down a rule of jurisdiction without any reference whatever to the classification of actions as personal, real or mixed actions, taking account only of the substantive legal issue, namely the nature of the rights concerned, and whether the rule of jurisdiction thus laid down entitles a creditor who contests transactions entered into by his debtor in fraud of his rights — in this case a donation of rights *in rem* in immovable property — to bring his action before the courts of the Contracting State in which the property is situated'.
- 6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case in the main proceedings, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 7 It is clear from the actual wording of the national court's question and from the grounds set out in its judgment that it seeks to determine whether Article 16(1) of the Convention covers a case in which a creditor applies, by means of an action available under national law, in the present case the *action paulienne* in French law, to have a donation of immovable property set aside on the ground that it was made by his debtor in fraud of his rights.
- 8 First of all, it is evident that in order to ensure that the rights and obligations arising out of the Convention for the Contracting States and for individuals concerned are as equal and as 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', as has been done by the Court, with regard to other grounds of exclusive jurisdiction laid down in Article 16, in its judgment of 14 December 1977 in Case 73/77 *Sanders v Van der Putte* [1977] ECR 2383 — concept of 'tenancies of immovable property', Article 16(1) — and in its judgment of 15 November 1983 in Case 288/82 *Duijnste v Goderbauer* [1983] ECR 3663 — concept of 'proceedings concerned with the registration or validity of patents', Article 16(4).
- 9 Secondly, as the Court has already held, Article 16 must not be given a wider interpretation than is required by its objective, since 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 any of them (judgment of 14 December 1977 in *Sanders v Van der Putte*, cited above).
- 10 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 (judgments of 14 December 1977 in *Sanders v Van der Putte*, cited above, and of 15 January 1985 in Case 241/83 *Rösler v Rottwinkel* [1985] ECR 99).
- 11 In those circumstances, Article 16(1) 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.

- 12 The *action paulienne*, however, is based on the creditor's personal claim against the debtor and seeks to protect whatever security he may have over the debtor's estate. If successful, its effect is to render the transaction whereby the debtor has effected a disposition in fraud of the creditor's rights ineffective as against the creditor alone. The hearing of such an action, moreover, does not involve the assessment of facts or the application of rules and practices of the *locus rei sitae* in such a way as to justify conferring jurisdiction on a court of the State in which the property is situated.
- 13 Finally, although in certain Member States the rules governing the public registration of rights in immovable property require public notice to be given of legal actions seeking to have transactions affecting such rights avoided or declared ineffective as against third parties and of judgments given in such actions, that fact alone is not enough to justify conferring exclusive jurisdiction on the courts of the Contracting State in which the property affected by those rights is situated. Such rules of national law are based on the need to afford legal protection to the interests of third parties, and such protection can be ensured, if need be, by public notice in the form and at the place prescribed by the law of the Contracting State in which the property is situated.
- 14 Consequently, such an action, brought by a creditor against a contract of sale of immovable property entered into, or a donation thereof made, by his debtor, does not come within the scope of Article 16(1).
- 15 The answer to the national court's question must therefore be that an action whereby a creditor seeks to have a disposition of a right *in rem* in immovable property rendered ineffective as against him on the ground that it was made in fraud of his rights by his debtor does not come within the scope of Article 16(1) of the Convention.

## Costs

16 The costs incurred by the Governments of the French Republic, the Federal Republic of Germany, the United Kingdom, the Italian Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the cour d'appel, Aix-en-Provence, by judgment of 18 November 1987, hereby rules:

An action whereby a creditor seeks to have a disposition of a right *in rem* in immovable property rendered ineffective as against him on the ground that it was made in fraud of his rights by his debtor does not come within the scope of Article 16(1) of the Convention.

Slynn

Zuleeg

Joliet

Moitinho de Almeida

Grévisse

Delivered in open court in Luxembourg on 10 January 1990.

J.-G. Giraud

G. Slynn

Registrar

President of the Fifth Chamber