

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,
DISTRICT COURT '2' KANESHIE, SITTING AT THE FORMER STOOL LANDS
BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'
COLLEGE, ACCRA ON 21ST NOVEMBER, 2023.

SUIT NO. A9/286/21

EMMANUEL NII OKINE

HOUSE NO. 112/15

::

PLAINTIFF

POLICE STREET, ADENTAN

ACCRA

VRS.

1. JOSHUA AYITEY OKINE

::

DEFENDANTS

2. EMMA AYELE OKINE

ALL OF HOUSE NO. A167/3

WEST KORLE GONO, ACCRA

JUDGMENT

Introduction/Background

The Plaintiff instituted this action against four Defendants on 7th July, 2021. On 25th May, 2022, the Plaintiff filed an Amended Writ of Summons to discontinue against the original

1st and 2nd Defendants who he had indicated, had vacated the house, and prayed for the following reliefs;

1. *An order for the recovery of possession of house number A16/78/3 situate at West Korle Gono, Accra;*
2. *Order to quit the said property; and*
3. *Costs including legal fee*

It is the Plaintiff's case per the accompanying Amended Statement of Claim that he is the sole beneficiary of the property numbered A. 16/78/3, located at West Korle Gono which is the subject matter of the suit. According to him, the house was acquired by his late father and same devolved on him and his siblings who are all deceased upon the death of their father. As such, he became the sole beneficiary of the property in dispute. He averred that the Defendants are his family members who were put in occupation of the house by his late brother.

According to him, the Defendants are occupying the property in dispute gratuitously and are only required to pay for utility bills and other statutory charges and to also keep the property in a tenantable state. He asserted however that the Defendants have over the years failed to perform their duties and have left the property in an untenable state. Plaintiff further added that but for his intervention, the property in dispute would have been sold on auction by the Accra Metropolitan Assembly because the Defendants failed to pay the property rates and did not have the courtesy to bring it to his knowledge after the notice was posted on the structure by the Assembly.

Plaintiff averred that the information was brought to his attention by a friend who lives in the neighbourhood and he immediately paid all the amount owed to the Assembly. He further stated that he caused his lawyer to write to the Defendants to vacate the said

property on 22nd May, 2020. However, the Defendants ignored the notice and has to this day remained in occupation of the said property despite reminders served on them. According to him, the conduct of the Defendants shows and intention not to vacate unless ordered by this Honourable Court to do so. Thus, the institution of the instant suit and the reliefs prayed for *supra*.

The Defendants defended the action by filing a Statement of Defence on the 14th of June, 2023. Defendants denied the allegations levelled against them by the Plaintiff and averred that after the death of their grandfather, their father was given one of the chamber and hall while the Plaintiff was also given the other chamber and hall of the property, the subject matter of the suit.

According to them, their father was a part owner of the property in dispute and that their parents extended their side of the house to include an additional one room which was also occupied by their deceased aunty and her children. They further added that the Plaintiff also extended his side of the house to include an additional one room. Defendants further averred that the house in dispute has been occupied by their parents before they were born and they themselves have lived in same for almost forty years. They added that their father obtained his own meter from both the electricity company and the Ghana water company which they have religiously paid for the bills for their side of the house.

Defendants stated that it is not true that the Accra Metropolitan Assembly issued a notice to auction the house. They averred that the assembly only informed them of the amount owed as property rate in 2019 which they informed the Plaintiff's son because he was in possession of Plaintiff's side of the house in order for him to contribute his quota towards the payment however, they did not hear from him again. Defendants subsequently decided to go to the assembly to pay the property rate themselves only to be informed

that the Plaintiff had already settled the bills. Defendants therefore visited the Plaintiff and informed him of their intention to pay the bills themselves however Plaintiff refused to listen to them. According to the Defendants, their father's interest in the property in dispute did not pass on to the Plaintiff upon his death because the property was shared among the siblings. As such, the Plaintiff is in no position to demand that they give vacant possession of same.

Issue

The main issue for determination by this Court is whether or not the Plaintiff is entitled to recover the property in dispute from the Defendants.

Legal Analysis/Evaluation of Evidence

It is trite that in civil cases, the general rule is that the party who in his/her pleadings or writ raises issues essential to the success of his/her case assumes the onus of proof. The one who alleges, whether a plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when such a person has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be. Proof lies upon him who affirms or alleges, not upon him who denies since, by the nature of things, he who denies a fact cannot produce any proof. See the following:

Sections 11(1) & (2), 12(2) and 14 of the Evidence Act, 1975 (NRCD 323)

Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900

GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458

Tagoe v. Accra Brewery [2016] 93 GMJ 103 S.C

Deliman Oil v. HFC Bank [2016] 92 GMJ 1 C.A.

The Plaintiff had the onus of discharging the burden of producing sufficient evidence in respect of his claims on a balance of probabilities. The Plaintiff in proving his case filed a Witness Statement on the 20th of July, 2022 which same was adopted as his evidence in chief. He testified that he is the sole beneficiary of the property numbered A. 16/78/3, located at West Korle Gono in the Greater Accra Region of Ghana which property is the subject matter of the suit. He tendered in evidence a copy of a letter from State Housing Corporation evidencing ownership of the property by his late father marked as Exhibit "A".

Plaintiff testified that the Defendants are his children and family members who were put in occupation of the house in dispute gratuitously by his late brother with his consent. According to him, the Defendants were only required to pay for utility bills and other statutory charges and to also keep the property in a tenable state. However, the Defendants failed to pay the utilities even though they continue to stay in the house. This, Plaintiff testified, caused the Accra Metropolitan Assembly to post notices on the property to sell same and use the proceeds realized to settle the amount owed but Defendants failed to inform him and it was his friend who rather informed him of the said notice.

He stated that he immediately went to the Assembly to pay all the outstanding charges and the penalty accumulated. To prove his assertion, he tendered in evidence copies of the payments made as Exhibit "B". Plaintiff added that but for the information from his friend, the notice would not have come to his attention. He subsequently caused his lawyer to write to the Defendants to vacate the property in dispute on 22nd May, 2020 but the Defendants refused to give vacant possession of the property. He stated that a final notice to quit was given to the Defendants on 29th April, 2021 but they continued to

remain in possession of the property. Plaintiff tendered in evidence copies of the letters sent to Defendants as Exhibit "C".

1st Defendant's evidence on behalf of the Defendants was that he is the son of the late Joseph Ayi Okine who was a part owner of the property in dispute. According to him, during the life time of his grandfather Ayitey Bonso, he acquired the property in dispute which consists of two separate chamber and hall. It was his testimony that upon the death of his grandfather, his father was given one of the chamber and hall while the Plaintiff was given the other. 1st Defendant further testified that his father during his lifetime together with his mother extended their side of the house by building an additional one room for his aunty who is now deceased and her children. The Plaintiff also extended his side of the house.

It was his testimony that his parents have been occupying the property in dispute for years and he himself together with his siblings have been in occupation of the property for almost forty years. According to 1st Defendant, it is not true that upon the death of his father, his interest passed on to the Plaintiff since the house was shared among the siblings. According to him, his father obtained his own meter from both the Electricity Company and the Ghana Water Company which they have continued to pay for the bills for their side of the house.

According to him, it is untrue that the Accra Metropolitan Assembly issued a notice to auction the house and that the Assembly only informed them of the amount owed as property rate in 2019. He further testified that they informed the Plaintiff's son because he was in possession of Plaintiff's side of the house in order for him to contribute towards the payment however, they did not hear from him again. 1st Defendant and his siblings therefore decided to pay the property rate themselves but upon reaching the Assembly, they were informed that the Plaintiff had already settled the bills. He stated that he went

to see the Plaintiff in his house and informed him of their intention to pay the bills but Plaintiff refused to listen and told him to meet him in court.

From the evidence adduced before this Court, the Plaintiff claims that he is the sole beneficiary of the property in dispute and traced his title to his deceased father who acquired the property. This piece of evidence in respect of ownership by Plaintiff's father was not disputed by the Defendants. In fact, the Defendants testified that during the life time of their grandfather, Ayitey Bonso, he acquired the property in dispute which consists of two separate chamber and hall. That upon the death of their grandfather, his father, the Plaintiff's sibling, was given one of the chamber and hall while the Plaintiff was given the other. Defendants' only contention is that the Plaintiff is not the sole beneficiary of the property in dispute because upon the death of their father, his interest did not pass onto the Plaintiff as the property was shared among the siblings and their father had a distinct share from the sharing. This position was also submitted forcefully by Counsel for the Defendants in his Written Submissions filed on 10th November 2023.

This was confirmed by the Plaintiff himself when he was cross examined by the Defendants. The following as happened under cross examination of the Plaintiff by the Defendants is worth reproducing:

Q. The property belongs to my father and you are saying the property belongs to only you?

A. My siblings are five and they are deceased. It belonged to all of us. I want them to leave the house because they are not paying the property rate...

Counsel for the Plaintiff in his Written Address filed on 31st August, 2023 on the other hand argued that upon the demise of the Plaintiff's father in 1966 the said property devolved to the Plaintiff and his siblings as joint tenants as that was the law at the time

of the death of Plaintiff's father. I see that the Written Address of Counsel for the Plaintiff was mainly anchored on joint tenancy. A Written Address is not an avenue to adduce fresh evidence in a matter. Counsel for Plaintiff sought to do exactly that in now 'testifying' that the Plaintiff's father died in 1966 and the property devolved on Plaintiff and his siblings as joint tenants and he further went on in making submissions on the incidents of joint tenancy.

Firstly, the date of death of Plaintiff's father which is a factual matter was stated nowhere in Plaintiff's pleadings or in his evidence and cannot spring out as a surprise in an Address. Quite apart, even Plaintiff's own Exhibit 'A' which is a letter from State Housing Corporation to Plaintiff's father, Mr. Ayitey Bonsu, informing him that he had fully settled the selling price of the property is dated 19th February 1976, implying he was alive then, and this cannot be reconciled with the 1966, which is alleged to be his death year.

I must point out that in Ghana, when parties are silent on how property should be held, the law will presume that they hold it as tenants in common. Equity as well favours tenancy in common over joint tenancy. See the case of **Ernestina Boateng v. Phyllis Serwah & Others (2021) JELR 107274 (SC)**. Joint tenancy arises whenever land or property is conveyed to two or more people without words to show that they are to take distinct and separate shares. From the evidence adduced, Defendants' deceased father during his lifetime occupied a portion of the house and extended same by building an additional room. This conduct shows that the Plaintiff and his siblings took distinct and separate shares of the property in dispute. Plaintiff did not prove that the property devolved to him and his deceased siblings as joint tenants. Assuming without admitting that the property was held by the Plaintiff and his siblings as joint tenants and as such, upon their death, their interest in the property passed to the surviving joint tenant, in this

case, the Plaintiff, the Joint tenancy was terminated during his brother's lifetime by his conduct of partitioning the property in dispute.

It is worthy of notice that joint tenancy terminates by partitioning either by the voluntary act of all the joint tenants or compulsorily by an order of the court. Where all the joint tenants agree to have the land partitioned among them, in which event, each of them becomes the sole tenant of the portion of the property allotted to them. The act of partitioning disunites the unity of possession and destroys the co-ownership forever. Therefore, instead of holding an undivided share in the whole property, each person will hold a divided share individually. See the case of **Stephen Borquaye and Another v. Seth Mettle Nunoo (2015) JELR 107671 (HC)**.

As such, even if the property devolved to the Plaintiff and his siblings as joint tenants, their conduct of sharing the house in which Plaintiff's sibling occupied a portion (one of the chamber and hall and extended same) whereas the Plaintiff himself occupied the other chamber and hall and extended same as well in the Court's opinion amount to partitioning which conduct terminated the joint tenancy. As such, each sibling became the sole tenant of the portion of the property they occupied. The property was therefore held individually by the siblings and upon the death of a sibling, his interest would not pass to the other sibling. The Plaintiff cannot therefore eject the Defendants as the latter do not occupy his portion of the property. As children of the deceased sibling of the Plaintiff, their father's interest will pass to them and not the Plaintiff because the alleged joint tenancy was terminated.

Conclusion

Having regard to the totality of the evidence adduced by the parties, this Court holds that Plaintiff having failed to prove his case to the satisfaction of this Court on the

preponderance of probabilities is not entitled to recover the portion of the property occupied by the Defendants and his entire claim fails. The action is accordingly dismissed.

Cost of GH¢ 1,000.00 is awarded for each Defendant against Plaintiff.

[SGD]
AMA ADOMAKO-KWAKYE (MS.)
(MAGISTRATE)

Legal Representation

Charles Kwaku Minkah, Esq. for Plaintiff.

William Adotei Addo, Esq. for Defendants.