IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2016

CORAM: ATUGUBA JSC (PRESIDING)
BENIN JSC
AKAMBA JSC
APPAU JSC
PWAMANG JSC

CIVIL APPEAL

No. J4/24/2015

11TH MAY 2016

ERNESTINA OWUSU FRIMPONG PLAINTIFF/APPELLENT

VRS

1.MR. BINEY DEFENDANTS/RESPONDENTS

2.MRS. BINEY

JUDGMENT

PWAMANG, JSC.

This case concerns a small piece of land at Elmina and was commenced in the District Magistrate Court, Elmina by a writ of summons issued on 27th October, 2005. In this judgment the plaintiff/appellant/respondent/appellant will be referred

to as “plaintiff” and the defendants/respondents/appellants/respondents as “defendants”.

The facts of the case are that the land in dispute formed part of land that was taken for the building of the SSNIT Flats at Elmina but was later surrendered to one Mrs Hannah Amissah. Before surrendering the land to Mrs Hannah Amissah, SSNIT permitted developments of portions of the land but did not make formal grants to the developers.

In year 2000 the defendants, who are husband and wife, acquired 1.36 acre of the land from Mrs Amissah and it is their case that the land in dispute formed part of their acquisition. Upon the acquisition, demarcation pillars were erected on the ground showing their boundaries. An indenture containing a site plan was executed for them by Mrs Amissah which they registered at the Lands Commission, Cape Coast in 2001. Sometime after the registration defendants constructed a perimeter wall covering their land including the disputed land. They stated that during the construction of the wall plaintiff came around to check to ensure they did not enter her land but she did not complain about the location of their wall.

In year 2001 plaintiff, who had been permitted by SSNIT to build a school named ‘Fair Weather School’ on the land, went to Mrs Amissah for a formal grant to cover the school land. When she met Mrs Amissah she requested her to add a piece of vacant land adjoining her school to her grant. Mrs Amissah told her that before she would add the adjoining land, plaintiff and the surveyor should check at the Lands Commission to be sure she had not already sold out the adjoining land. The land in dispute in this case is part of the adjoining land.

Plaintiff checked at the Lands Commission at Cape Coast and was informed that in their records the land was free and she duly informed Mrs Amissah. As a result Mrs Amissah sold the land to plaintiff and executed an indenture for her with a site plan covering both the school land and the disputed land. Plaintiff submitted her indenture to the Lands Commission for registration. While plaintiff's indenture was being registered she met 2nd defendant on the disputed land and questioned her why she was interfering with her land. 2nd defendant claimed ownership of the land and pointed to a pillar she said was the boundary of their land acquired from Mrs Amissah. Plaintiff went back to inquire from the Lands Commission and was informed that defendants' land was registered and did not include the disputed land.

Registration of plaintiff's document was completed in year 2003 by which time defendants had built their perimeter wall. Defendants also fixed a stand pipe on the disputed land. This infuriated plaintiff and she caused the part of the wall covering the land in dispute to be demolished claiming it interfered with her land.

Defendants reported the matter to the Works Department of the Komenda Edina Eguafo District Assembly (KEEA) and they tried to resolve it amicably but failed. Plaintiff therefore sued defendants and claimed for declaration of title, damages for trespass, injunction and an order for removal of stand pipe, all in respect of the disputed land. Defendants counterclaimed for similar reliefs and also pleaded the defence of estoppels against plaintiff.

It is remarkable that although the parties were not represented by lawyers, the pleadings they filed had the flavour of drafting by a professional pleader. They conducted their own cases and, as would be seen in the course of this judgment, the cross examination conducted particularly by plaintiff, a non-lawyer, bore the

forensic marks of a trained lawyer at work. If she did that unaided then it is impressive.

The trial court gave judgment in favour of defendants but on appeal, the High Court, Cape Coast reversed the decision and entered judgment for plaintiff. Defendants appealed to the Court of Appeal which allowed the appeal. Being aggrieved, plaintiff has, with leave of the Court of Appeal, filed this appeal stating three grounds of appeal which can all be subsumed under the omnibus ground of appeal namely; the judgment is against the weight of the evidence.

It is an established rule of law that an appeal is by way of re-hearing and especially where an appeal is mounted on the ground that a judgment is against the weight of the evidence led at the trial, the appellate court is required to peruse the whole record and satisfy itself that the findings and conclusion reached in the judgment appelled against can be supported by the evidence and the law applicable. If the appellate court finds that the findings cannot be supported by the evidence or that they are perverse as being inconsistent with undisputed facts or documentary evidence on the record, then it may set aside the findings of the lower court. See**; GREGORY V. TANDOH & HANSON [2010] SCGLR 971.**

In the instant case both parties are claiming title to the disputed land through a common grantor, Mrs Amissah. In that case, each party has to first and foremost prove that the disputed land formed part of land granted them by Mrs Amissah. It is only if both parties succeed in proving their respective grants that the issue of priority of the grants will arise.

Being a civil case, the law requires the parties to prove their respective cases by the preponderance of probabilities. What this means is that in order for the court to find in favour of plaintiff, she ought to introduce admissible evidence, sufficient to

convince the court that her case is more probable than the case defendants have put across, and vice versa. The court is required to weigh all the evidence led at the trial that is supportive of plaintiff's case against the evidence that supports defendant's case and make a reasoned judgment as to which party's case is more believable. See **Sections 11(4), 12(1)&(2) of the Evidence Act, 1975 (NRCD 323).**

At the trial in the District Magistrate Court, a composite plan was prepared on the orders of the court and tendered in evidence without objection by any party. It clearly showed the land in dispute and also outlines the basis of the parties' respective claims to it. From the composite plan, the plaintiff's land as indicated in her document is almost the same as her land as shown on the ground and covers the disputed land. On the other hand, defendants' land as indicated in their document does not correspond to the land they showed on the ground. The land as stated in defendant's document does not cover the disputed land but what they showed on the ground included it.

Plaintiff's evidence is that the land granted to her by Mrs Amissah included the disputed land and her document confirmed that. Defendants stated that the land Mrs Amissah granted them covered the disputed land but their document does not support that claim. Therefore, in order that the court may belief their case, defendants ought to have introduced evidence dehors their registered document which proves that Mrs Amissah in fact granted them the disputed land. So we need to examine the evidence adduced to see if it proved that Mrs Amissah granted defendant's the land as they showed the court appointed surveyor on the ground.

Mrs Amissah, who was then aged about 101 years, testified at the trial as the court's witness and confirmed that through her surveyor, the late Mr Sarkodie, she

sold land to both parties. She stated that the piece of land in dispute was first sold to the 2nd defendant and it was later that Plaintiff came to buy the land. However, she also told the court that when she was informed of this dispute she directed the government surveyor to the Lands Commission to verify as to which of the parties she sold the land. From the totality of her evidence, it is clear that she considered the records of the Lands Commission as the correct statement of her transactions in the land. For instance, when plaintiff wanted to buy the adjoining land in year 2001 she referred her to the records of the Lands Commission and said she would only deal with her if those records indicated that the land was free. The confusion in her evidence stemmed from the fact that the records of the Lands Commission were inconsistent with the part of her testimony where she said the piece of land in dispute was first sold to 2nd defendant. By those records the disputed land was never sold to defendants but rather it was sold to plaintiff. It appears to us that her testimony was in reference to the general grants she made to the parties and not the specific disputed portion as shown on the composite plan since she did not personally go on the ground to demarcate the lands for the parties.

What this means is that the evidence of the common grantor of the parties did not resolve the case one way or the other. This is understandable having regard to her age and the fact that she dealt with the land through her late surveyor. If her surveyor, the late Mr Sarkodie who physically demarcated the land on the ground were alive to testify he could have assisted the court but that was not to be. So we have to consider other pieces of evidence on the record to determine whether there is evidence that supports defendants' case that, notwithstanding their registered document, the land they were granted included the disputed land. We shall first consider defendants' own account of what happened when they went on the land

with the late Sarkodie in year 2000. We shall quote the relevant part of the testimony of 1st defendant in his evidence-in-chief;

> *"We were introduced to Mrs Hannah Amissah by her then late surveyor by name Mr. Sarkodie to purchase 1.36 acres of land. The land cost us ¢9,000,000.00. The surveyor then proceeded to mark the boundaries with pillars and prepared site plan to that indenture for us which we had valued and registered in the year 2001. The land was purchased in the year 2000."*

The effect of this testimony on oath is that the land that was granted to defendants by Mrs Amissah through her surveyor who pointed it out to them on the ground and planted boundary pillars was what is captured in the site plan in their registered document. Any doubt about this conclusion vanishes in the following cross examination of 1st defendant by plaintiff;

> *"Q. Did you check with the surveyor to make sure that the site plan he made conformed to the demarcation on the site?*
>
> *A. Yes, we did."*

The site plan referred to by 1st defendant in his evidence-in-chief and cross-examination is the one that is shown green on the composite plan and falls off the disputed land. So from defendants' own evidence, the land they were granted by Mrs Amissah did not include the disputed land.

Defendants called Mr. Kobina Asankoma Koomson as their witness and he testified as DW3. The relevant part of his evidence-in-chief is as follows;

> *"Defendants paid the price of the land about ¢9million to the said Mrs. Amissah. Defendants then took the documents to the Lands Commission and*

they were told a new layout was being prepared for the area where the land was situated. After the layout, the said Sarkodie went for a copy of the layout and gave it to one Mr. Abrefa the district surveyor to demarcate the plots on the grounds. Mr. Abrefa then said what was on the layout was alright and after several attempts to get him failed we did not contact him again."

After his evidence-in-chief, the following very revealing cross examination was conducted by plaintiff.

Q. Did you prepare a new document or it was the old one that you sent to the Lands Commission that you handed over to Mr. Abrefa.

A. It was new documents that we handed over to Mr. Abrefa.

Q. The new document which was prepared did you check with Mr Sarkodie to know whether it conformed to what was on the ground?

A. After giving the documents to Mr. Abrefa we tried getting him but to no avail until we saw him and he told us that what was on the ground was the same as it was on the documents.

Q. As a professional surveyor did you and Mr. Sarkodie do a follow up to check to know that everything on the documents was exactly what was the ground?

A. We did not do any follow up?

DW3 said new documents were prepared for defendants after the new layout was produced but the question that needs to be answered is; did these new documents cover the disputed land? He said Mr Abrefa said what was on the ground is what was in the new documents. But according to 1st defendant's evidence what was

granted to them on the ground was what was in the old documents too and did not cover the disputed land. So DW3's evidence did not suggest that the disputed land was included in the new documents and demarcated for defendants on the ground. We are not even told if Mrs Amissah signed these new documents. From DW3's testimony it was a layout that the late Sarkodie handed over to Mr. Abrefa. A layout that refers to land by itself, without a grant either in accordance with customary law or evidenced by a valid document, cannot convey an interest in the land.

Though the said new documents were not produced at the trial by defendants, their lawyer in his statement of case wants us to speculate about their effect but being a court of record we decline that invitation. For evidence led by a party at a trial to be of value to him, the evidence must prove a fact essential to the establishment of the case of that party. If evidence led does not prove any essential fact in the case of the party introducing the evidence then it is worthless to him and may even do irredeemable damage to his case. The evidence adduced by the defendants and their witnesses did not establish their claim that the disputed land was included in the grant made to them by Mrs Amissah. 1st Defendant's testimony actually points in the opposite direction of their case. Yet the Court of Appeal made the following finding in its judgment;

> *"The undisputed fact of the case is that the land in dispute was first sold to 2nd defendant by Mrs. Amissah."*

The court would not have made this finding if it had analysed critically the entire evidence on the record as it was required to do since an appeal is by way of rehearing. As has been demonstrated above, that finding cannot be supported by the evidence and same is hereby set aside.

The plaintiff's evidence as to how she acquired the disputed land was not impeached. The uncontested fact is that defendants' land that was registered at the Lands Commission did not cover the disputed land so plaintiff acquired the legal title to it when Mrs. Amissah executed documents granting it to her.

The issue that remains to be dealt with is the plea of estoppels raised by defendants in their statement of defence. Defendants claim plaintiff did not challenge them when they constructed the wall encompassing the disputed land into their larger land so even if plaintiff were the owner she ought to be prevented by the court from recovering it. This defence sounds in the nature of estoppels by acquiescence and laches.

To succeed on the defence of estoppel by acquiescence in equity, a party is required to satisfy the following conditions; (i) the person who enters another's land must have done so in honest but erroneous belief that he has a right to do so, (ii) he should have spent money developing and improving upon the land, (iii) the entry should have been known to the actual owner who should have fraudulently encouraged his development of the land by remaining silent and not drawing his attention to the error, (iv) it is otherwise unconscionable to allow the true owner to recover the land. See **Nii Boi v. Adu [1964] GLR 410 SC.**

From the import of the questions posed by plaintiff in cross examination of defendants and the witnesses it can safely be said that before she filed the suit she got to know that defendants' registered document did not correspond with the land they were claiming on the ground. Nevertheless, defendants built just a wall covering part of the land and erected a stand pipe on it. When the law talks of developing the land it means substantial development that involves the expenditure of considerable sums of money in improving upon it such as building a house to

completion. A fence wall and stand pipe certainly do not qualify as improvements to the land so as to found the equitable defence of estoppels by acquiescence.

Besides, before building the wall, 2nd defendant was confronted by plaintiff who claimed ownership of the land and by the evidence of defendant's witness, DW1, during the construction of the wall plaintiff came around and warned them that she had her boundary at the place the wall was being built. Under these circumstances plaintiff cannot be said to have fraudulently encouraged defendants by being silent. No facts have been proved on the evidence before us that make it unconscionable for plaintiff to recover the land defendants claimed title to without proof of acquisition.

Estoppel by laches arises where a party's legal right is infringed upon but for a reasonably long period he fails to protest leading the one who infringed upon the right to belief that he would never complain. In this case the plaintiff caused the offending wall to be brought down not long after it had been put up so she cannot be accused of laches. The defence of estoppels was not made out.

For the above reasons we allow the appeal against the judgment of the Court of Appeal and set same aside.

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

(SGD) YAW APPAU

JUSTICE OF THE SUPREME COURT

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