IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)
APPAU, JSC
PWAMANG, JSC
DORDZIE (MRS.), JSC
KOTEY, JSC

CIVIL APPEAL
NO. J4/02/2020

21ST OCTOBER, 2020

AGYA BOAKYE ATONSAH PREMPEH ..... PLAINTIFF/APPELLANT/APPELLANT

VRS

ERIC OFEI-KWAPONG ..... DEFENDANT/RESPONDENT/RESPONDENT

JUDGMENT

PWAMANG, JSC:-

My Lords, in this appeal the parties are disputing over the ownership of a piece of land at East Legon, Accra, with each party claiming through disputing original owner families both of which hail from Teshie. The plaintiff claims the land through Ashong Militse Family of Odaiteitsewe whereas the defendant derives his title from the Osae Family of Otinshie. The plaintiff in addition makes a case based on possession. The trial High Court held that on the evidence, the land in dispute falls within the land of Osae Family and therefore decided in favour of the defendant. The Court of Appeal upon review of

the evidence affirmed the judgment of the High Court. We are therefore here dealing with a case of concurrent findings which on the authorities we have to be slow in reversing. See **Achoro v Akanfela [1996-97] SCGLR 209, ASIBEY V GBOMITTAH & COMMANDER OSEI [2012] 2 SCGLR 800 and ACQUIE V. TIJANI [2012] SCGLR 1252**. However, the case being pressed on us by the plaintiff in this second and final appeal is that the view of the evidence taken by the High Court and affirmed by the Court of Appeal is not supported by the record. He prays us to set aside the concurrent findings and has referred to us the case of **Koglex Ltd v Field (No.2) [2000] SCGLR 175.**

My Lord**,** in the case of **Gregory v Tandoh [2010] SCGLR 971**, the Supreme Court speaking through Dotse, JSC laid down the grounds on which the court would depart from concurrent findings in the following passage at page 986 of Report;

"…….a second appellate court, like this Supreme Court can and is entitled to depart from findings of fact made by the trial court and concurred in by the first appellate court under the following circumstances:

1. Where from the record the findings of fact by the trial court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory.
2. Where the findings of fact by the trial court can be seen from the record to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record.
3. Where the findings of fact made by the trial court are consistently inconsistent with important documentary evidence on record.
4. Where the first appellate court had wrongly applied the principle of law in Achoro vrs Akanfela (already referred to supra) and other cases on the principle, the second appellate court

must feel free to interfere with the said findings of fact, in order to ensure that absolute justice is done in the case."

It is against the background of these principles that we have reviewed the evidence led in this case and considered the legal arguments of the parties. The first ground of disagreement the plaintiff has about the judgment of the Court of Appeal is their rejection of the supposed judgment plan, Exhibit "H" of the Ashong Militse Family made pursuant to the decision of the Court of Appeal in Djanie v Banga [1989-90] 1 GLR 510. The family at the trial relied heavily on that plan as constituting the extent of land it owns at Adjiringano. The reason assigned by the trial court and the Court of Appeal for the rejection is that the family did not counter claim for declaration of title to such land in Djanie v Banga and no declaration of title was granted by the court in the family's favour in that case. This finding of the Court of Appeal is supported by the record as it is not in dispute that the court in Djanie v Banga did not decree title to any land in Odai Banga, through whom the Ashong Militse Family claims the land in question. The fact that the family had that extent of land plotted in its name in the records of the Lands Commission whereas no title to the land was decreed in its favour by the court does not change the status of such a plan. Consequently, there is no ground for us to reverse the current findings of the High Court and Court of Appeal on this issue. The effect of that finding is that, since the land in dispute does not fall within that plan, relied upon by the plaintiff, he failed to prove the root of title of his grantor.

The second ground of disagreement by the plaintiff is that, even if the land does not fall within the plan of his grantor, it equally falls outside the land adjudged by the Supreme Court in favour of the Osae Family (defendant's grantor) in the case of Agyei Osae & Ors v Adjeifio & Ors [2007-2008] 1 SCGLR 499 at p 508. This contention is based on the observation that the Supreme Court in the said case adjudged the Osae Family owner of the lands of "Otinshie village, i.e their buildings, farm lands, cemetery, etc" and rejected a larger land the family claimed in a survey map tendered in the case. So, the question that arises on this ground is whether the defendant proved that the

disputed land is within Otinshie village lands as explained in the judgment of the Supreme Court referred to above.

At the trial, it emerged in evidence that at a point in time the two families settled their common boundary but the representatives of either family testified that the disputed land falls on their side of the settled boundary. The record does not indicate that this settled boundary was documented and attested to by the two families. The trial judge who heard and observed the witnesses came to the conclusion that the land falls within lands of Otinshie village, its buildings, farm lands, cemetery and their environs and therefore within Osae Family land. There is evidence on the record in support of this finding and it has been affirmed by the Court of Appeal. The plaintiff now submits that, based on the plans that are in evidence, the land falls outside a cadastral plan the Osae Family made before the Supreme Court judgment was given in the family's favour in 2007 so the family's land should be confined to that plan. The defendant on his part contends that the land is within that plan. From the judgment of the Supreme Court referred to above, the Osae Family's land was not tied to that plan so we cannot in a different case involving different parties pretend to amend that earlier judgment. In the circumstances, we find no grounds to set aside the concurrent findings of the High Court and the Court of Appeal on this issue too so we affirm that the land in dispute is within Osae Family land at Otinshie.

The final ground urged by the plaintiff is that he erected six tall pillars on the land before the defendant removed them and entered the land and that sparked this litigation. We do not consider six pillars as sufficient act of possession that can ripen into ownership against the defendant's grantor whose testimony is that the disputed land has always been within their side of the boundary with the plaintiff's grantor.

In conclusion, we have not been provided with sufficient grounds that would persuade us to disturb the concurrent findings of the two lower courts. In the result the appeal fails in its entirety and is accordingly dismissed.

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

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