

SUPREME COURT OF NIGERIA
THURSDAY 2ND MAY, 1996. SC. 179/1990
CORAM:- S. M. A. BELGORE, A. B. WALI,
M. E. OGUNDARE, E. O. OGWUEGBU, Y. O. ADIO, JJSC

MADAM RIANATU SHITTU PLAINTIFF/APPELLANT

AND

1. ALHAJI Y.O. EGBEYEMI DEFENDANTS/
RESPONDENTS

APPEALS - *Concurrent findings fact - Made by the two lower courts - When supreme Court will not interfere.*

LAND LAW - *Possession - Whether there is sufficient evidence to support the finding - That the defendants were in prior possession.*

LAND LAW - *Trespass - Things to be determined in a claim for trespass - Include exclusive possession and best right of possession.*

LAND LAW *trespass - Better title - Where not proved by the plaintiff - claims were rightly dismissed by the lower courts.*

FACTS

The plaintiff/appellant bought the piece of land in dispute sometime in 1975; went into possession and commenced building operations on the land. Some people came to the land and demolished the building. The plaintiff then filed an action against the defendants/respondents before the Ibadan High Court claiming N 10,000.00 as general damages for trespass and perpetual injunction.

The trial court found that the defendants who succeeded one Sumelu Egbeyemi have a prior possession of the land in dispute and then dismissed tilt plaintiffs claim. His appeal to the Court of Appeal was dismissed. Bring dissatisfied, plaintiff has further appealed to the Supreme Court raising seven questions which amounted to attacks on the trial judge's findings of fact and affirmed by the court below.

ISSUE FOR DETERMINATION

Whether the plaintiff proved her case.

HELD (Unanimously dismissing the appeal per lead judgment of **OGUNDARE JSC**)

Concurrent findings of fact

1. The attitude of this Court to concurring findings of the two Courts below has been stated in a long line of cases. In a most recent case, this Court once again reiterated that unless there are weighty reasons for so doing, this Court will not interfere with the concurring findings of fact made by the Court below. Nothing has been advanced by the Plaintiffs before us to make me interfere with the weighty findings of facts made by the learned m Judge in this case and affirmed by the Court of Appeal. (p. 1309 C)

Were the defendants in prior possession ?

2. That late Egbeyemi was in prior possession of the land in dispute is borne out by the fact that two of the co-ordinates of the plan annexed to the deed of conveyance to him are to be found on the plan tendered by the Plaintiff in these proceedings. Egbeyemi's plan was made in 1957 whilst Plaintiff to plan was made in 1980. There is copious evidence to support all the findings made by the learned trial Judge. I also affirm them. (p. 1309 D)

Things to be determined in a claim for trespass

3. Now, the law is that the claim for trespass to land is not dependent on a claim for declaration of title - to this extent I agree with the learned counsel for the Plaintiff, Mr. Abimbolu but what is to be determined in the claim for trespass are whether (a) the Plaintiff has established his actual exclusive possession of the land or the right to possession and (b) the defendants trespassed on it. Plaintiff need not prove that his possession is lawful since actual possession is what is required of him to prove. The actual possession is good against the whole world except the true owner or one that can show a better right of possession. (p. 1309 E)

Trespass - Better title

4. In the case on hand, the defendants through late Egbeyemi were in possession at the time the Plaintiff came on the land. For her to succeed in her claims she must prove better title than the defendants. This she failed woefully to do. She has thus failed to prove the first element of what was required of her to establish. Equally so, there is no scintilla of evidence adduced by her on which the 2nd and 3rd Defendants could be said to have entered the land in dispute and demolished or did any damage to it. There is no scintilla of evidence either, that the 1st Defendant did any damage on the land other than going on it to paste the Court order in Suit No. 1/315/76. On the facts, therefore, the Plaintiff failed woefully to prove her case. I am satisfied that the claims were rightly dismissed by the learned

trial Judge and that dismissal was rightly affirmed by the Court below.
(p. 1309 G)

NOTABLE POINTS OF INTEREST

ADIO JSC

1. Degrees of control that amounts to possession

The sort and degree of control that amounts to possession varies with the nature of the thing possessed. However, it should be a visible or external sign that can be rewarded as indicating control. Surveying of land by land surveyor and demarcation of its boundaries by stout wooden pegs had been held to be sufficient act of possession. So also was laying out the land and causing the layout to be approved by the appropriate authority.
(p. 1312 A)

2. When a trespasser goes into occupation

The finding of the learned trial Judge, which the court below rightly affirmed that the respondents' predecessor was already in possession of the land before the appellant purported to take possession of it. The appellant could not in law, by entering the land turn the respondents' predecessor who was in possession, to be a trespasser because a mere trespasser who goes into occupation cannot by the very act of trespass and without acquiescence give himself possession against the person he has ousted.
(p. 1312 C)

REPRESENTATION

O. Abimbolu, Esq. - For the Appellants

Respondent absent and not represented - For the Respondents

CASES REFERRED TO

Olugbode v. Sangodeyi (1996) 4 KLR 618

Bamgboye v. Olusoga (1996) 4 KLR 655

Amakor v. Obiefuna (1974) 3 SC. 67

Akingbade v. Akinosho (1864) 1 All NLR 154

Okechukwu v. Okafor (1961) 1 All NLR 685 690

Ekwere v. Iyiegbu (1972) 6 S.C. 116 at 138

Umesie v. Onuaguluchi (1995) 12 KLR 2166

Akingbade v. Alimosho (1964) 1 All N.L.R. 154

Nwosu v. Otunola (1974) 4 S.C. 21

STATUTE REFERRED TO

Evidence Act Cap. 112 LFN s. 46

LEAD JUDGMENT BY OGUNDARE JSC

Sometime in 1957 one Sumelu Egbeyemi, now deceased, bought a piece or parcel of land lying and situate at Apata village near the University of Ibadan in Ibadan from the Obadina family. The land was said to be part of a larger piece of land belonging to that family. Title was conveyed to the said Egbeyemi by the family by a deed of conveyance made on the 21st day of December 1957 and registered at the Ibadan Lands Registry. Sumelu Egbeyemi took possession of the land and exercised acts of ownership on it by planting seasonal and cash crops and clearing the same. He laid it out into plots and the layout plan was approved in 1960 by the Ibadan Town Planning Authority. He remained in undisturbed possession of the land until his death on 29th day of June 1975. On 19th November 1979, letters of administration for the purpose of administering his estate were granted to Alhaji Y.O. Egbeyemi and Safuratu A. Egbeyemi.

On 20th November 1974 the Odunfa family sold a piece of land 200 feet by 200 feet to Alhaji L.A. Adeniran and Mr. T.A. Adeniran. The sale was evidenced by a Memorandum of Agreement. Immediately after the purchase the said L.A. Adeniran and T.A. Adeniran (hereinafter are referred to as the Adeniran brothers) laid the land out into plots and sold the plots to various purchasers including Madam Rianatu Shittu the plaintiff/appellant in the present proceedings. Madam Shittu bought her own piece of land from the Adeniran brothers on 2nd June 1975 and the same was conveyed to her by the said brothers on 10th November, 1976. She went into possession, cleared the land and removed the stumps thereon. Upon her building plan being approved by the Ibadan Metropolitan Building Authority, she commenced building operations on it. At or about 20th November 1980 however, some people came to the site and demolished the building. In consequence Madam Shittu, who hereinafter is referred to as the plaintiff, sued Alhaji Y.O. Egbeyemi, Safuratu A. Egbeyemi and Adedoyin A. Egbeyemi claiming:

"(1) The sum of N10,000.00 being general damages suffered by the plaintiff when the defendants by themselves and their agents and servants trespassed on the plaintiff's land situate at Apata Kekere village near University of Ibadan sometime in November, 1980 and demolished the plaintiff's building on the said land which is in lawful possession of the plaintiff.

(2) An order for perpetual injunction restraining the defendants, their servants and/or their agents from committing further acts of trespass on the said land."

Following the death of Sumelu Egbeyemi some people trespassed on his land and in consequence of which the defendants in the present

proceedings, that is, Y.O. Egbeyemi, Safuratu A. Egbeyemi and Adedoyin A. Egbeyemi sued one Muraino Ladejo and 6 Others in the Oyo State High Court in suit No. 1/315/76; at the conclusion of which trial the learned trial Judge entered judgment in their favour in the following terms:

“(i) The land in dispute, measuring approximately 6.306 acres as per the Plan No. S.O. 295/75 of 22nd July, 1957 annexed to the conveyance executed in favour of the late Egbeyemi is the property of the plaintiffs in pursuance of the Letter of Administration of 24/6/76, Exhibit ‘A’.

(ii) The plaintiffs are, therefore, entitled to apply to the Authorities for a certificate of occupancy in pursuance of S.40 of the Land Use Decree.

(iii) The defendants, their agents, privies or anyone whatsoever claiming through them are restrained in perpetuity from further acts of trespass.

(iv) All purported sales of land by the defendants out of the land now adjudged as the property of the plaintiffs are ipso jure void and of no effect whatsoever.”

A copy of the judgment in the case was tendered in these proceedings as Exhibit 10. A copy of the said judgment was pasted on the plaintiff's building under construction on the land in dispute. Following the pasting of the said copy of the judgment, the plaintiff instituted the action leading to this appeal.

Pleadings were filed and exchanged in the proceedings leading to this appeal, the defendants subsequently filed an amended statement of defence with leave of court in which they averred:

“14. After judgment in suit No. 1/315/76 the defendants in exercise of their right of ownership pasted a copy of the enrolment of judgment in the said suit to the building under construction on the land in dispute. The defendants will at the trial found on the said judgment.

15. One Alhaji Tihamiyu Adeniran thereafter protested to the defendants and claimed ownership of the land in dispute. The defendants did not demolish the plaintiff's house as claimed or at all.

16. The defendants aver that the plaintiff is a trespasser on the land and as such she cannot maintain this action.”

The plaintiff also filed a reply to the defence. At the conclusion of the trial and after addresses by learned counsel for the parties the learned trial Judge in a well considered judgment found:

“(1) that both Odunfa and Obadina families have parcels of land in the area known as Apata Kekere in Ibadan:

(2) that in 1957 the Obadina family sold part of their land mea

asuring 6,360 acres to Sumelu Egbeyemi and that he Sumelu Egbeyemi went into possession by planting thereon and by also laying it out into building plots.

(3) that Odunfa family also sold a piece of land measuring 200 feet by 200 feet to the Adeniran brothers in 1974 but that the parcel of land so disposed off was not described at the time of sale with any particularity;

(4) that at the time of sale to the Adeniran brothers by Odunfa family in 1974 the land in dispute was in possession of late Egbeyemi;

(5) that on the evidence he was unable to find on whose area of land the land in dispute fell that is, whether it was within the land that originally belonged to the Odunfa family or on the land that was originally owned by the Obadina family;

(6) that "the effect of my inability to do so is that neither of them has been able to prove satisfactorily ownership of the land in dispute. However, I am not in any doubt that as between the parties Sumelu Egbeyemi was the first to take possession of the land in dispute."

(7) that there is no scintilla of evidence that the 2nd and 3rd defendants either by themselves or through their agents went on the land in dispute;

(8) that in respect of the 1st defendant although he went on the land in dispute with the purpose of pasting thereon copies of the enrolment of the order of the court in suit No. 1/315/76, he had nothing to do with the damage done to the building erected by the plaintiff on the land.

In the light of the above findings the learned trial Judge dismissed plaintiff's claims and, in the event that he was wrong in so dismissing the claims, he awarded N100.00 general damages against the 1st defendant for his entry on the land.

Being dissatisfied with this judgment the plaintiff appealed to the Court of Appeal Ibadan Division. The Court of Appeal affirmed the findings of the trial court and dismissed the appeal. It is against this judgment of the Court of Appeal that the plaintiff has further appealed to this court.

In accordance with the rules of this court the parties filed and exchanged their respective briefs of argument. At the hearing the plaintiff was represented by learned counsel but the defendants were absent and were not represented by counsel. On being satisfied that their counsel was served with hearing notice, the court proceeded to hear the appeal, pursuant to Order 6 rule 8(6).

Seven issues are set out in the appellant's brief as calling for determination in this appeal. They all amount, in my respectful view, to attacks on the various findings of fact made by the learned trial Judge and

affirmed by the court below.

Mr. Abimbolu learned counsel for the plaintiff/appellant addressed the court in clarification of the written arguments in the appellant's brief. The sum total of his submissions is to the effect that the onus was on the defendants to prove better title to the land in dispute and they having failed to do so, judgment ought to have been entered in plaintiff's favour. It is his submission and contention that the failure of the plaintiff to prove title to the land in dispute does not necessarily mean that her claim to damages for trespass and injunction must equally fail. He urges the court to allow the appeal and enter judgment for the plaintiff in terms of her claims. B

The attitude of this court to concurring findings of the two courts below has been stated in a long line of cases. In a most recent case, *Olugbode & Anor. v. Sangodeyi* (1996) 4 NWLR (Pt.444) 500, this court once again reiterated that unless there are weighty reasons for so doing, this court will not interfere with the concurring findings of fact made by the court below. Nothing has been advanced by the plaintiffs before us to make me interfere with the weighty findings of facts made by the learned trial Judge in this case and affirmed by the Court of Appeal. That late Egbeyemi was in prior possession of the land in dispute is borne out by the fact that two of the co-ordinates of the plan annexed to the deed of conveyance to him are to be found on the plan tendered by the plaintiff in these proceedings. Egbeyemi's plan was made in 1957 whilst plaintiff's plan was made in 1980. There is copious evidence to support all the findings made by the learned trial Judge. I also affirm them. C D E

Now, the law is that the claim for trespass to land is not dependent on a claim for declaration of title to this extent I agree with the learned counsel for the plaintiff, Mr. Abimbolu but what is to be determined in the claim for trespass are whether (a) the plaintiff has established his actual exclusive possession of the land or the right to possession and (b) the defendants trespassed on it. Plaintiff need not prove that his possession is lawful since actual possession is what is required of him to prove. The actual possession is good against the whole world except the true owner or one that can show a better right of possession. See the recent case of *Bamgboye v. Olusoga* (1996) 4 NWLR (Pt.444) 520. F G

In the case on hand, the defendants through late Egbeyemi were in possession at the time the plaintiff came on the land. For her to succeed in her claims she must prove better title than the defendants:- *Amakor v. Obiefuna* (1974) 3 S.C. 67. This she failed woefully to do. She has thus failed to prove the first element of what was required of her to establish. Equally so, there is no scintilla of evidence adduced by her on which the H

2nd and 3rd defendants could be said to have entered the land in dispute and demolished or did any damage to it. There is no scintilla of evidence either, that the 1st defendant did any damage on the land other than going on it to paste the court order in suit No. 1/315/76. On the facts, therefore, the plaintiff failed woefully to prove her case. I am satisfied that the claims were rightly dismissed by the learned trial Judge and that dismissal was rightly affirmed by the court below.

This appeal is completely devoid of any merit and I have no hesitation whatsoever in dismissing it with costs assessed at N1,000.00 in favour of the defendants.

BELGORE JSC

The clear evidence in this case is that the respondents had been in possession of the land in issue since 1957 and established therein survey beacons which the plaintiff/appellant's appointed surveyor utilized in drawing her own plan. In the late 1950s defendants/respondents were not only present on the parcel of land in dispute but also laid it out into plots which the then planning authority approved. Thus the respondents, even if they never proved title, clearly established possession several years before the appellant entered therein. She is the trespasser and the trial court rightly so found; so did the Court of Appeal in upholding that decision. *Akingbade v. Akinosho* (1964) 1 All NLR 154; *Okechukwu v. Okafor* (1961) 1 All NLR 685. 690. For the above reasons and the fuller reasons in the judgment of my learned brother Ogundare, J.S.C., I find no merit in this appeal and I dismiss it with N1,000.00 costs to the respondents against the appellant.

WALI JSC

I have had a preview of the lead judgment of my learned brother Ogundare, J.S.C. and I concur in his reasoning that the appeal has no merit.

For these same reasons which I hereby adopt, I also dismiss the appeal with N1,000.00 costs to the respondents against the appellant.

OGWUEGBU JSC

I have had the privilege of reading in draft the judgment read by my learned brother Ogundare, J.S.C I entirely agree with the judgment.

There is no doubt that Egbeyemi was in prior possession of the land in dispute from 1957 long before the Adeniran brothers purchased the

piece of land measuring 200 feet by 200 feet from the Odunfa family in 1974. The plaintiff was found by the courts below not to be in exclusive possession of the piece of land she is claiming and had no title to the same. Since the plaintiff did not prove a better title and was not in possession, her entry on the land in dispute was unlawful and amounted in law to a trespass. See *Ekwere & Ors. v. Iyiegbu & Ors.* (1972) 6 S.C. 116 at 138. B

The evidence adduced by PW.2 that the plaintiff had erected a building on the land in dispute in support of paragraph 10 of the statement of claim, the evidence that buildings had been erected on other plots sold by the Adeniran brothers and that those other buildings were occupied are not part of the plaintiff's case on the pleadings. Such evidence goes to no issue and cannot be used to invoke the application of section 46 of the Evidence Act, Cap. 112 Laws of the Federation of Nigeria 1990. C

For these reasons and for the fuller reasons in the lead judgment of my learned brother Ogundare, J.S.C. which reasons I adopt as mine, I, too, will dismiss the appeal with N1,000.00 costs to the defendants. D

ADIO JSC

I have had a preview of the judgment read by my learned brother, Ogundare, J.S.C. and I agree entirely with him that this appeal has no merit. The appellant claimed damages for trespass. Trespass is an unjustifiable interference upon a parcel of land in possession of another. See *Ogunbiyi v. Adewunmi* (1988) 5 NWLR (Pt.93) 215 at P. 221; *Umesie & Ors., v. Onuaguluchi & Ors.* N.I.L.R. 75; and (1995) 9 NWLR (Pt.421) 515. It is therefore, the duty of a plaintiff suing for damages for trespass to prove that he was in exclusive possession of the land in dispute at the time of the alleged trespass. See *Adelaja v. Fanoiki*, (1990) 2 NWLR (Pt.131) 137. E F

The evidence of the surveyor who testified as D.W.2 for the respondents was that beacons Nos. WH 6043 and WH 6044 were common to the parcel of land in the survey plan drawn at the instance of the respondent's predecessor and the survey plan drawn at the instance of the appellant. The respondent's aforesaid survey plan was drawn in 1957 whereas the survey plan drawn at the instance of the appellant was drawn many years thereafter. In fact, it was the surveyor of the appellant who met and saw the two aforesaid beacons of the respondents predecessor on the ground and made use of them for the purpose of drawing the survey plan of the appellant. There was also evidence that in the late 50s the respondents predecessor laid out the land in dispute and caused the layout plan to be G H

approved by the Town Planning Authority. The foregoing facts have their own legal significance as, in law, they completely demolished the appellant's case that she was in possession of the land in dispute when the respondents predecessor went there. The sort and degree of control that amounts to possession varies with the nature of the thing possessed. However, it should be a visible or external sign that can be regarded as indicating control. Surveying of land by land surveyor and demarcation of its boundaries by stout wooden pegs had been held to be sufficient act of possession. See *Okechukwu v. Okafor* (1961) 1 All NLR 685 at P. 690. So also was laying out the land and causing the layout to be approved by the appropriate authority. See *Akingbade v. Alimosho*, (1964) 1 All NLR 154.

The finding of the learned trial Judge, which the court below rightly affirmed, was that the respondents' predecessor was already in possession of the land before the appellant purported to take possession of it. The appellant could not in law, by entering the land turn the respondents predecessor who was in possession, to be a trespasser because a mere trespasser who goes into occupation cannot by the very act of trespass and without acquiescence give himself possession against the person he has ousted. See *Nwosu v. Otunola* (1974) 4 S.C. 21. It is for the foregoing reasons and for the fuller reasons given in the lead judgment of my learned brother, Ogundare, J.S.C., that I agree that the appeal has no merit. I accordingly dismiss it and abide by the order for costs.

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