IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2018

CORAM: ADINYIRA (MRS), JSC (PRESIDING)
AKOTO-BAMFO (MRS), JSC
BENIN, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/38/2018

12TH DECEMBER, 2018

KORKOR MENSAH …… PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1. ROBERT TETTEY MENSAH

2. JOHN TETTEY ASHIBOYE …… DEFENDANTS/APPELLANTS/APPELLANTS

JUDGMENT

AKOTO-BAMFO (MRS), JSC:-

On the 15th of June 2017, the Court of appeal dismissed an appeal filed by the defendant/appellant/appellant herein against the decision of the High Court entered in favour of the plaintiffs / respondents / respondents. The High Court granted all the reliefs prayed for by the plaintiff/respondent/respondent.

In dismissing the appeal, the Court of Appeal delivered itself thus:

"From the foregoing, the trial Judge properly evaluated the evidence on record and came to the right conclusion. Ground (a) also fails and it is hereby dismissed.

The entire appeal lacks merit and it is accordingly dismissed. The judgment of the High Court together with the consequential orders are hereby affirmed."

The appellants registered their protest against the decision by launching an attack against same premised on these grounds:

GROUNDS OF APPEAL

a. The judgment is against the weight of evidence
b. The Court of Appeal erred when it held that after the sharing of Nii Annan Nkpa's land amongst the 3 branches of his family, the share that went to the Respondent and her brother should so be held as tenants in common.
c. The Court of Appeal erred when it upheld the position of the trial court that upon the sharing of the land amongst the 3 various branches and or units of Nii Annan Nkpa family it ceased to be an ancestral family land and for that matter same can be divisible among individuals.
d. The Court of Appeal erred when they upheld the decision of the trial court that the other two branches of the family had divided the lands amongst individuals a fact that was not proven and supported by the evidence of the court.
e. The Court of Appeal erred when it failed to appreciate the difference between headship in patrilineal societies and inheritance in patrilineal system of inheritance.

f. The Court of Appeal erred in not properly considering the case of the Defence and thereby upheld the judgment of the trial court ordering the division of the land between only 2 members of Kweikuma Mensah branch
g. The Court of Appeal erred when it failed to appreciate the incidence of personal property against family property.
h. The Court of Appeal erred when it treated the share of land to the Kwei Kuma Mensah branch of the family as a gift to Kwei Kuma Mensah, and for that matter as his personal property to be held by his children as tenants in common.

Hereafter the parties shall simply be referred to as the plaintiff and the defendants.

The plaintiff and the defendants are the daughter and grandchildren respectively of Kwei Kumah Mensah, whose grandfather was Annang Onukpa who could be described as the patriarch of the Annang family. He was of the Ga Adangbe descent. He must have been a man of considerable means, for in his lifetime, he acquired a large tract of land measuring about 377.93 acres at Saasabi, near Oyibi on the Dodowa road.

Upon his death, his children jointly administered the land until with the passage of time they all joined their ancestors.

The 3rd generation of the family, that is the grandchildren of the Annang Nukpa, took a decision to partition the land among themselves; each of them namely Armah Kofi, Alokoto Commey and Kwei Kuma Mensah was to be allotted about 119 acres of the land. Kwei Kuma Mensah died before the partitioning, so his portion was given to his son, Robert Mensah, the brother of the plaintiff for their benefit.

It was upon the demise of Robert Mensah that the events culminating into the appeal arose; for the plaintiff alleged that when her brother died, his children (the defendants) took control of the land, managed same and disposed of portions thereof without reference to her under the pretext that their system of inheritance being patrilineal, her female status denied her the right to partake in decisions and management of the property acquired by males. When the plaintiff's appeal to traditional authorities failed to yield any fruits, she commenced an action before the High Court, claiming, inter alia, for an order that the 119.3 acres of land being her father's (Kwei Kumah Mensah) portion be shared equally between her and her late brother's (Robert Mensah) children.

She further prayed for an account of the dispositions made by them.

After a full trial, the learned Judge of the High Court, decreed inter alia that the land be shared into 2 equal parts between the plaintiff and the defendants. She further declared the plaintiff as the proper person to take control of her father's (Kwei Kumah Mensah) land after the death of her elder brother and further ordered the defendants to render an account of the lands sold by them.

The defendants' invitation to the Court of Appeal to set aside the findings and conclusions made by the trial court was declined, for the Court of Appeal rather affirmed the decision and the consequential orders made by the High Court.

Undaunted, the defendants appealed to this court. They hinged their attack on the grounds set out ante.

The thrust of their arguments under grounds (b) (c) (d) (e) (f) and (g) could be summarized as follows:

1. That the Court of Appeal committed an error when it found without any evidence on record that the 2 other families i.e. the Kofi Armah and the Commey Alokoto families shared their respective portions among their siblings.
2. That the Court of Appeal erred when it affirmed the decision of the High Court that upon the partitioning of the land in 2007, the land lost its ancestral family character.
3. That the Court of Appeal erred in affirming the decision of the High Court decreeing a partitioning of the land between the parties one of whom was a woman under a patrilineal system of inheritance, thereby destroying the family character of the land and treating the land as though it was the individually acquired property of Kwei Kuma Mensah to be distributed under the Intestate Succession Law, PNDC Act 111.

Before considering the issues raised, it is pertinent to note that even though the defendants indicated that they would file additional issues, no such issues were indeed filed.

Secondly, even though their first ground of attack was that the judgment was against the weight of the evidence adduced, no arguments were proffered under that ground.

Having regard, however, to the fact that an appeal is by way of rehearing; it is incumbent on this Court, to, nonetheless, examine, the whole record, analyse the pieces of evidence on record and to satisfy itself that the conclusions reached are amply supported by the evidence.

The High Court found and rightly so affirmed, in our view, by the Court of Appeal that when the sharing was done in 2007, each of the heads of the 3 units, was directed to share the land among their siblings and that indeed the 2 units i.e. the Kofi Armah and the Commey Alokoto families proceeded to share their respective portions among their siblings. PW1, Annang Amarh who supervised the partitioning was emphatic; and this is what transpired

"Q: I am putting it to you that apart from the Nii Annang Nukpa being divided among the 3 heads nothing was shared among individuals in the family.

A: I have said that there is precedent Tetteyfio Armah their children have shared their portion of the land Annan Armah has done same the Alokoto family has also done same so nothing stops Kweikumah family from sharing theirs"

Therefore contrary to the assertions of the learned counsel, there was ample evidence that the 2 other units shared the land among their siblings.

These, undoubtedly, are findings of fact by the trial court and concurred by the appellate court.

The principle governing appeals against concurrent findings of fact has been settled in a plethora of cases, that is the, Achoro v Akanfela line of cases 1996-97 SCGLR 209.

In Obrasiwa II v Out 1996-97 Page 618 at 624, the Court held;

" In an appeal against findings of facts to a second appellate court, like this court, where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject-matter of which is peculiarly within the bosom of the two lower courts or tribunals, this court will not interfere with the concurrent

findings of the lower courts *unless it is established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way in which the lower tribunals dealt with the facts."*

We are satisfied that the findings of fact being challenged by the appellants are amply supported by the evidence on record and do not therefore feel able to disturb same.

Learned counsel for the defendants contended that the land maintained its ancestral family character at all times, notwithstanding the partitioning of 2007 and therefore both the trial court and the court of appeal erred in the orders made that the parties should hold the land as tenants in common after the sharing.

It is not in dispute that Annang Nukpa acquired the land and that upon his demise, his children jointly held the land as family land.

When Annang Nukpa's grandchildren took the decision to share the land and proceeded to do same, the issue is whether the land still maintained its family character.

The partitioning of family property is permissible under customary law, where it is advantageous to the whole family and where the property itself is capable of being shared, the paramount consideration being the convenience of the parties to the sharing.

Upon sharing, it is obvious that there is a change in the nature of the ownership; that is from communal ownership to individual control or ownership.

Okaikor v Okyere 1956 1 WALR 275

Adablah v Kisseh 1972 1 GLR 43

Therefore contrary to the assertions of learned counsel for the defendants, we are in agreement with the trial judge that upon the sharing, the land lost its communal character with its incidence of communal ownership and control to that of individual control and management.

The attack mounted against the decision on this ground accordingly fails and grounds (b) (c) (d) (e) (f) and (g) are dismissed.

Ground h: The Court of Appeal erred when it treated the share of land to the Kwei Kuma Mensah branch of the family as a gift to Kwei Kuma Mensah, and for that matter as his personal property to be held by his children as tenants in common.

Did the court err in decreeing that the partitioned land be held by the parties as tenants in common as held both by the trial court and the Court of Appeal?

The thrust of Counsel's argument was that under the patrilineal system of inheritance, the plaintiff, a female, only has a life interest and therefore cannot hold the property as tenant in common.

The relief sought by the plaintiff was for a share of the land that went to her and the brother after the partitioning of the Nii Annang Nukpa's land among the three branches of the family in 2007.

The present state of the Law in Ghana is that where a grant of land is made to two or more persons, it is presumed to be made to them as tenants in common in equal shares unless a contrary intention is expressed in the grant.

The Nii Annang Nukpa family clearly intended that each branch shared the portion granted to them among their respective siblings. Accordingly after the sharing of Nii Annang Nukpa's land among the three branches of his family, the portion that went to the respondent and her brother was to be held by them as tenants in common.

Expatiating on the nature of a tenancy in common, B.J. da Rocha and C.H.K. Lodoh in their Book, ***"Ghana Land Law and Conveyancing"***, at page 267, paragraph 2, stated, **"Unlike joint tenants, tenants in common hold the property in undivided shares i.e. each tenant in common has a distinct share in the property which has not yet been divided among the co-tenants..."**

The learned text writers further continued;

"A tenancy in common may be determined by:

a. Partition

b. Sale; and

c. The acquisition by one tenant, whether by grant or operation of law, of the shares vested in his co-tenants".

We are therefore in agreement with the Court of Appeal on their conclusions on the issues.

In the circumstances we dismiss the appeal under this ground.

From the foregoing, we are satisfied that the appeal lacks merit and is therefore dismissed.

We accordingly affirm the decision and orders of the Court of Appeal.

V. AKOTO-BAMFO (MRS.)
(JUSTICE OF THE SUPREME COURT)

ADINYIRA (MRS), JSC:-

I agree with the conclusion and reasoning of my sister Akoto-Bamfo, JSC.

S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)

BENIN, JSC:-

I agree with the conclusion and reasoning of my sister Akoto-Bamfo, JSC.

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

APPAU, JSC:-

I agree with the conclusion and reasoning of my sister Akoto-Bamfo, JSC.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my sister Akoto-Bamfo, JSC.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

PAUL K. OPOKU FOR THE DEFENDANTS/APPELLANTS/APPELLANTS.

AWUDU BABANAWO FOR THE PLAINTIFF/RESPONDENT/RESPONDENT.