IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)
BAFFOE-BONNIE, JSC
MARFUL-SAU, JSC
DORDZIE (MRS), JSC
AMEGATCHER, JSC

CIVIL APPEAL
NO. J4/73/2018

28TH JULY, 2020

MARY LARLEY NUNOO …… PLAINTIFF/RESPONDENT/APPELLANT

VRS

MANASE ATAGLO ……. DEFENDANT/APPELLANT/RESPONDENT

JUDGMENT

DORDZIE (MRS), JSC:-

FACTS:

This matter originated from the High Court Accra where the plaintiff who is the appellant herein initiated a suit against the defendant for the following reliefs:

1. Declaration of title to all that piece of land described in the schedule to the statement of claim as follows: "All that piece of land situate lying and being at West Akweteman, Accra and bounded on the North by Charosse stores land measuring 67.7ft more or less on the East by proposed road measuring 103.3ft

more or less on the South by proposed road measuring 67,6ft more or less on the West by Charosse Stores land measuring 1001.3ft more or less and containing an approximate area of 0.158 Acre or 0.06 hectares which said piece or parcel of land is more particularly delineated."

2. Perpetual injunction restraining the defendant, his agents, assigns, successors from interfering with plaintiff's quiet enjoyment.
3. An order cancelling the defendant's title certificate
4. Recovery of possession
5. Damages for trespass

These claims are based on facts averred in plaintiff's pleadings which we will summarize as follows: The plaintiff is the owner of a track of land of which the disputed land forms part; the Asere Stool is her grantor. She has been in possession of the disputed land since 1970. As at 1974, the disputed land was registered in the name of Naa-Moko Company Limited who conveyed same to Charosse Stores. When she discovered that the land was plotted in the name of Charosse Stores at the Lands Commission she re-acquired same from Charosse Stores and had it registered in her name at the Lands Commission. Exhibit A is the registered instrument in respect of the disputed land. In 1997, she constructed a wall around the disputed land and built three stores which were not completed and travelled to the United States of America. Later it came to her attention that there had been encroachment on her land; upon her return, she was able to eject all the trespassers except the defendant who claims ownership of the plot of land in dispute. She described the acts of trespass by the defendant thus: the defendant pulled down part of her fence wall and the uncompleted store structures and built two chamber and halls on her land and rented same out to tenants.

The defendant in his response in his statement of defence denied the plaintiff's claims and maintained that he acquired the disputed plot of land from the Abola Piam family of Accra in 1997. The same year, he constructed a two-bedroom house on it and put a caretaker in it. In 1998, he moved to live in the property himself. He maintained it was in the year 1998 that the plaintiff put up the fence wall to encompass his land and put

up a block of 4 stores. The defendant pleaded the action was statute barred, he had been in undisturbed possession since 1997, if the plaintiff had any interest in the property at all such interest had been extinguished. Moreover, he has a registered title to the land, his title therefore is indefeasible.

The trial court.

At the trial the following issues were set down for trial-

1. Whether the disputed land formed part of a larger track of land originally owned by the Asere Stool or the Abola Piam family.
2. Whether or not the plaintiff constructed fence wall around the land before the defendant entered the land
3. Whether or not the defendant's land certificate was issued by mistake
4. Whether the Land Title Registry caused the defendant to conduct a search at the Lands Commission before issuing him with the land Title Certificate
5. Whether or not the plaintiff is entitled to her claims.

The trial court resolved these issues in favour of the plaintiff and gave her judgment granting all the reliefs prayed. The defendant aggrieved by the decision appealed to the Court of Appeal. The Appeal Court held that the judgment of the trial court had no reasonable support, the trial court erred in granting plaintiff's releifs; the Court of Appeal therefore overturned the decision of the High Court and gave judgment to the defendant.

The plaintiff not satisfied with the decision of the Court of Appeal brought this appeal praying this court to reverse the decision of the Court of Appeal and affirm the decision of the trial High Court.

The grounds of Appeal before this court are -

1. The judgment of the Court of Appeal is against the weight of evidence.
2. The Court of Appeal erred when it held that the land in dispute does not form part of land belonging to the Asere Stool despite the overwhelming evidence on record.

3. The Court of Appeal erred in law when it failed to uphold the appellant's overt acts of possession on the land since 1970
4. The court of Appeal erred in law when it held that the trial judge could not rely on the weakness in the case of the defendant in granting judgment to the plaintiff.

Submissions by Counsel

In arguing the above grounds of Appeal counsel for the plaintiff dwelt on the principle that an appellate court must be slow in interfering with the findings of the trial court and could only do so where the findings are not supported by the evidence and are clearly shown to be wrong. Counsel submitted firstly, that there is evidence on record showing that the subject matter of the dispute is materially the same. He referred to the site plans of both parties and pointed out that the coordinates of both plans are materially the same. Moreover, the location of the disputed land had never been in issue; both parties in their evidence agreed that the land is located at Sowutuom. The Court of Appeal however based its findings on its misconception that plaintiff's land is situate at West Akweteman, which is different from Sowutuom. This finding of the first appellate court is erroneous and not supported by the evidence.

Secondly, counsel argued that the trial judge based her rejection of the evidence of the defendant and his witness on her observation of their demeanor. The appellate court who had no chance of making those observations had no justification to disturb the findings of the trial court on the veracity of the defendant and his witness.

Counsel further submitted that though plaintiff and her witnesses led evidence to establish her root of title and acts of possession the Court of Appeal erroneously held that she failed to prove her title to the disputed property.

In response to the above submissions, counsel for the defendant argued the plaintiff failed to discharge the burden of proof of her title to the disputed land. The Court of Appeal was therefore justified in reversing the judgment of the trial High Court. Counsel further submitted that there is no evidence on record proving that the disputed land belongs to the Asere Stool, the findings of the trial court on that issue is not supported

by the evidence on record. In the supplementary statement of case filed by the defendant on 17 June 2020 upon the orders of the court that the parties address us on the legal effect of a provisional land certificate; defence counsel referred us to the case of ***Stephen Adei & another v Grace Robertson and Sempe Stool [2016] 101 GMJ 160.*** In that case, according to counsel this court held that the Abola Piam family holds the allodial title to Sowutuom lands therefore, defendant's claim of title to the disputed land is well founded.

On the issue of the provisional land certificate counsel holds the view (referring to section 24 (4) (b) of the Land Title Registration Act, 1986 (PNDCL 152),) that a provisional certificate does not confer absolute title on the holder but confirms the holder's possession. The defendant, counsel argued had been in undisturbed possession of the property since 1997 as such plaintiff's interest if any has been extinguished by the limitation Act, 1972 (NRCD 54)

The omnibus ground of appeal which is the first ground in this appeal places the obligation on this court, to review the totality of the evidence on record to ascertain whether the findings made by the trial court and the first appellate court both factual and legal on the issues joined between the parties were properly made. See the recent decision of this court in the case of ***Offei v Asamoah & Another [2017-18] 1SCLRG 417*** in which this court re-emphasized its position in ***Owusu-Domena v Amoah [2015-2016]1SCGLR 790 that*** a ground of appeal that the judgment is against the weight of evidence 'throws up the case for a fresh consideration of all the facts and law by the appellate court.'

What then was the evidence adduced before the trial court by the parties?

Plaintiff: She traced her root of title to the Asere stool and said she bought a track of land from the Asere Chief part of which is the subject matter of this litigation. She was in possession of the track of land for about 25 years before the defendant trespassed on the portion which is now in dispute. According to plaintiff, she had built a fence wall around the disputed land and constructed stores in front of it. She travelled out of the

country, when she came back, she found the defendant on her land. The defendant had pulled down one of the stores to gain access and had built a small house on the land. She confronted the defendant and made it known to him that she owns the land he had trespassed on. The defendant responded that the land had been sold to him and continued to build. As a further proof of her acts of possession, plaintiff tendered photographs of the development she made on the land before she travelled. These are exhibits 'B' and 'C' series. These photographs she said show the state of her property before the defendant intruded. When she came back to see the trespass to her land, she took pictures of it and consulted a lawyer. Plaintiff said further that she discovered from the records of the Lands Commission that Charosse Stores originally acquired the land and had registered same. She had to re-acquire the land from Charosse Stores. Charosse Stores issued her the title deed exhibit A. which is dated 24 July 2003. Plaintiff further said the defendant took her to court when she responded and started attending court the defendant 'run away' and stopped coming to court.

The mason who put up the fence wall and shops for the plaintiff testified as PW1. He gave a pictorial description of the property in dispute and said the plaintiff engaged him in 1997 to do construction work on her land. The land consisted of two plots, one has an existing building on it and the other was empty. He constructed a fence wall around the empty plot with a gate that leads to the second plot that was already developed. He constructed stores up to a level when the plaintiff travelled out of the country. They suspended work on the property during the absence of the plaintiff. Two weeks after she left, someone broke into the empty plot that had been fenced and commenced building thereon. The plaintiff came back after 3 weeks and instructed them to continue with the work on the stores. Whiles they were working the defendant brought soldiers in a truck and caused their arrest. The defendant at that point owned up to be the one who had broken in and was building on the land.

The next witness who testified on behalf of the plaintiff was William Tetteh Nettey. He said he is a nephew to the plaintiff; when plaintiff's land was demarcated for her by the Asere Stool, there was some left which he expressed the desire to buy. The plaintiff took

her to the chiefs and he was given the rest of the land plaintiff bought, it was four plots, he bought it and developed it and that is where he had lived since 1987 without any challenge from anybody. (This presupposes that William Tetteh Nettey is plaintiff's neighbor) He stressed that the land demarcated for them by the Asere Stool has signboards that bear the name Merley Tse Korle Ansah, it is a name ascribed to the Asere Stool.

Defendant: he said he acquired the disputed land from the Abola Piam family in 1997. He was given an indenture when he acquired the land. The original he maintained is missing so a photocopy of the indenture was accepted in evidence as exhibit 1. He further tendered a provisional land certificate as exhibit 2. He built on the land in 1997 and moved into it in 1998. He tendered a photograph of the house he built as exhibit 4. According to the defendant, he had built on the land before plaintiff built her wall and shops. His caretaker protested when plaintiff's workers were building the wall. He later sued the plaintiff in the Circuit Court. He denied that he pulled down plaintiff's structures. The defendant called a mason whom he alleged put up his building on the land as DW1. He was shown a picture of the house he allegedly constructed on the land for defendant. The witness denied that the house in the picture was the house he built on the land for the defendant.

Analysis of the evidence

From the evidence, the parties are ad idem on the identity of the land in dispute and both parties maintain the land is situate at Sowutuom. Exhibit A plaintiff's title document however places the location of the land the subject matter of the suit at West Akweteman. Evidence of both parties demonstrates that the area name reflected in the plaintiff's title document is not correctly stated. However, the Court of Appeal failed to ascertain the fact that no issue had been joined between the parties on the location of the property in dispute irrespective of the error on exhibit A. We have observed that the main axis on which the judgment of the Court of Appeal revolved is the erroneous conclusion it came to that the property in dispute is not the same property that plaintiff's title document describes.

It is worth commenting that in this dear country of ours especially in the city of Accra names of localities are not always accurate with names on official plans or maps of the municipalities in the city because of fast-uncontrolled developmental changes that are ongoing all over in the outskirts of the city. As a result, nomenclature covering area names in Accra vary generally. It is a notorious fact of public interest and we do take judicial notice of that. We further rely on the evidence of both parties which confirms that the disputed property is situate at Sowutuom and come to the conclusion that the property in dispute is located at Sowutuom.

This action being an action in which the plaintiff is asserting title to the disputed land, the law requires that she produced persuasive evidence establishing her root of title, her mode of acquisition and overt acts of possession. See the case of ***Mondial Veneer (GH) Ltd. V Amuah Gyebu XV [2011]1SCGLR 466***

On proof of her root of title and mode of acquisition, plaintiff's evidence is that the grant of the land was initially made to her by the Asere chiefs, she did not produce any document to support this; this presupposes that the grant from the Asere chiefs was a customary grant. The law recognizes that customary grants do not require writing. (See University of ***Cape Coast v Anthony [1977]2 GLR 2.)*** What is required of the plaintiff is oral evidence in proof of her customary grant from the Asere Stool. This she succeeded in doing through the evidence of her second witness William Tetteh Nettey. That her grant was from the Asere chiefs is confirmed by the evidence of this witness who said he shares boundary with her. He said his property, four plots of land on which he had built and occupies since 1987 without any challenge was granted him by the Asere chiefs. His property was the remnant of the portion of land the chiefs demarcated for the plaintiff. It was the plaintiff that led him to the chiefs of Asere to be granted the remnant of what they granted plaintiff. To confirm that the Asere Stool is the plaintiff's grantor PW2 testified that the land demarcated to them has the signboards of the Asere Stool on it the signboards have the inscription – 'Merle Tse Korle Ansah' which is the same as the Asere stool. Moreover, his indenture was signed by 'Asere Owosika.'

The defendant's evidence on proof of root of title on the other hand is his assertion that he bought the land from the Abola Piam family, evidence of the said transaction is a copy of an indenture, (the original of which he said is missing) and exhibit 2, the provisional land certificate. What then is the evidential value of exhibit 2 plaintiff's provisional Land certificate which he averred conferred indefeasible title on him.

Section 23 of the Land Title Registration Act, 1986 (PNDCL 152) sets out the procedure the Registrar of Lands follows in determining when to issue a provisional certificate to a claimant. Section 23 (1) provides: "***Subject to sections 13 and 22, a person who claims to be a proprietor of land or an interest in land situated in a registration district shall apply, setting forth that claim, in the manner and within the period specified in the notice given under section 11."***

Section 23 (3) & (4) spell out the next steps of the Registrar of Lands when he receives an application of claim the subsections state as follows- ***(3) The land registrar shall, after the expiry of the notice given under section 11 of this Act, proceed to examine the title of a person who has made a claim to a land or an interest in land under subsection (1) or is deemed to have made that claim under subsection (2) of this section, and may for that purpose examine an instrument relating to that interest.***

(4) If as a result of the examination the land registrar is satisfied that, (a) a person claiming to be a proprietor of land has a good title to the land referred to in the claim and that another person has not acquired a title inconsistent with that of the claimant of the land under a law or has acquired proprietorship of that land by prescription, the land registrar shall record that person as the proprietor with absolute title of the land and declare the title to be absolute."

The defendant's evidence on how he came by the provisional certificate as captured on page 60 of the record is that when he received the indenture exhibit 1 from the Abola Piam family, he took it to the Lands Commission to acquire land certificate. Land

Commission caused a publication to be made in the "Spectator" he tendered the publication as exhibit 3; that fulfils the requirement under section 11 of the Act. Prior to issuing a certificate or a provisional certificate the above quoted sections require that the registrar examines the title of the applicant and satisfies himself that the claimant has good title to the land and there are no other title acquired which is inconsistent to the applicant's title. This can be achieved by the registrar examining the records of the Land Registry.

From the recitals in exhibit A it is clear that as far back as 1974 the records of the Lands Commission has the disputed land forming part of lands that had already been registered. The details of these are as follows: a) A Deed of Conveyance dated 27th October 1974 made between Emmanuel Adjaayi Tagoe, Okai Lartey and Alfred Awuley to Naa-Moko Company Ltd. Stamped as N0 AC 9038/74 and registered as N0 3003/1974. b) A Deed of Conveyance dated 26 of May 1975 made between Naa-Moko Company Ltd and Charosse Stores Stamped as N0 AC 4100/75 and registered as N01958/1975.

If indeed the registrar had examined his records at the Lands Registry as required by section 23 (3) of the Act, he would have discovered the registration of interests in the land the defendant was claiming and seeking to register. By our understanding of the provisions of section 23 of the Act, it is after the registrar satisfies himself that there are no registered titles which are inconsistent with the title of the claimant that he can consider declaring the claimant as the absolute owner of the land or consider the provisions of section 23 (4) (b) as in the case of the defendant.

Section 23 (4) (b) Provides: ***"a person claiming to be a proprietor of land he is in possession of, or has a right to possession or right of or in occupation of, the land referred to in the claim, but does not have a sufficiently good title to be recorded under paragraph (a) as the proprietor with absolute title, the land registrar may, with the consent of the applicant, instead of rejecting the application, record that person as proprietor with provisional title of the land, and, if the land registrar does so, shall also record***

(i) the date on which the possession or occupation of that person began or is deemed to have begun,

(ii) the particulars of an instrument or any other evidence under or by virtue of which a right or an interest in the land adverse to or in derogation of the interest of that person might exist, or

(iii) a qualification which affects the title;

By the provision of section 23 (4) (b) therefore, for the registrar to consider issuing a provisional certificate, the applicant must (i) be in possession, or has the right to possession (ii) be in occupation or have the right to occupation.

The defendant's own evidence on record, which confirms plaintiff's evidence, is that since 1997 when the defendant alleged to have acquired the land, both parties have been in possession. The photographs of the property since the dispute arose, that is the exhibit B and C series confirm this. The defendant instituted suit N0 CC555/98 in the Circuit Court against the plaintiff in October 1998, praying for an order for plaintiff to vacate the disputed land. A suit the defendant never prosecuted. That is a further confirmation that the defendant had not been in exclusive possession since he entered the land. Plaintiff has at all material times asserted her possessory right.

From the narrations so far, it is clear that the registrar of lands would not have issued the provisional certificate if he had investigated and complied with the provisions of section 23 of the Land Title Registration Act. The indenture which was the instrument that formed the basis for the issuance of the provisional certificate was lodged in the Land Registry in June 1999; the lands register already had registration of the same land details of which we have already quoted. The Provisional Certificate was issued on 6 October 2009. The registrar of lands had ample time to do the investigation statutorily required of him but he failed to do so. The issuance of the provisional certificate was wrong. The trial court therefore, cannot be faulted in its decision that the provisional

certificate was issued by mistake. Section 122 of the Land Title Registration Act gives power to the court to order the rectification of the Land register on grounds of fraud or mistake. We do hereby affirm the decision of the trial court that the provisional certificate exhibit 2 was issued by mistake; it is null and void and ought to be cancelled. This court in the case of ***Awuku v Tetteh [2011]1SCGLR*** held that a land certificate found to be null and void should be cancelled and the Land Title Register could do so suo motu.

As per the records of the Lands Registry disclosed in the recitals in exhibit A it has never been part of the records of the Lands Registry that the Abola Piam family owns the area in dispute. However, counsel for the defendant in his supplementary statement of case referred us to the decision of this court in Adei & another v Robertson & and another (cited supra) in which there is a holding that the Sowutuom lands are owned by the Abola Piam family. There is no doubt that there are conflicting decisions emanating from the courts on ownership of land in various communities in the municipalities in Greater Accra making land litigation very murky. In this case, for example the trial court relied on a High Court decision in the case of John Ekuban v Kojo Frimpong Suit N0 FAL/300/11 (unreported) to hold that Sowutuom lands belong to the Asere Stool. In the Stephen Adei & another v Robertson & another case, it can be observed that the Sempe Stool also contended ownership over Sowutuom Lands. We have commented earlier on the issue of nomenclature for areas in the Greater Accra municipality. What may be described as Sowutuom may not be Sowutuom at all in official records. It may be Akweteman as we have seen in this case. It is a situation which the Lands Commission must help the courts to address in order to reduce the multiplicity of land cases in the court and the confusion that emerges in the areas affected by the conflicting decisions of the courts. This court's decision in the Adei v Robertson case was based on the evidence placed before it that the appellants produced documentary evidence that they acquired the disputed plot from Madam Abena Esi who acquired it from Abola Piam We. In the documentary evidence before us, the Land Registry Record does not ascribe ownership of the area within which the disputed land falls to the Abola Piam family. We would therefore in this case confine

ourselves to the evidence before us on who made a valid grant of the particular plot of land in issue in this case.

From our analysis of the evidence above, the evidence of PW1 on the plaintiff's acts of possession gave a vivid description of these acts, he said, as at the time the defendant entered the land, there was a wall around it with a gate that opens to an adjoining building belonging to the plaintiff. Shops were under construction in front of the property at the time defendant entered. Exhibit C series are pictures of the property confirming plaintiff's evidence on her acts of possession and defendants acts of trespass. Exhibits C, C1 and C5 show a completely walled property. Exhibit C shows the existing stores the plaintiff spoke about. Exhibit C2 and C6 show the portions of the fence wall the defendant broke down to gain access. It is clear from the evidence that at the time the defendant chose to accept an offer of sale of the property plaintiff was in active possession. The plaintiff's existing house which has a gate that opens to the disputed property adds up to the plaintiff's evidence of long possession. The activities on the land are clear indication to any prospective purchaser that the land is encumbered.

The defendant admitted in his evidence that he took no steps to conduct a search before purchasing the land. There was ample evidence of possession on the land at the time of defendant's acquisition. It had been well established by a number of decided cases that where a purchaser of land had the opportunity of seeing evidence of possession no matter how slight on any part of the land he intended to purchase but he fails to investigate the authority behind the adverse possession he is fixed with notice of the adverse possessor. See the case of ***Western Hardwood Enterprises Ltd v West African Enterprises Ltd [1998-1999] SCGLR 105***

In the case of ***Brown v Quarshiegah [2003-2004]2 SCGLR 930 at page 957 this*** court per Professor Kludze JSC put it bluntly this way ***"Procuring a lease and a subsequent land certificate in circumstances when the plaintiff, on the evidence, knew or ought to have known that the land had been previously granted to a prior incumbrance, is tantamount to fraud"***

The defendant was nothing but an intruder. In such a circumstance, the onus lies on the defendant to establish a right to possession of the land in dispute. The defendant has failed to establish such right; his entry to plaintiff's land is therefore wrongful. This court's decision in ***Barko v Mustapha [1964] GLR* 78** referred with approval. The defendant's behavior is similar to the behavior of the defendants in the Barko v Mustapha case. In that case, the plaintiff had been in possession of the grandmother's farm and had cultivated same for some years without any disturbance from the children of her grandmother who are the rightful owners. The defendants who were distant relatives entered the farm destroyed the plaintiff's crops and started fresh farms on portions the land plaintiff had long been cultivating. The Court per Van Lare JSC held: "***To dismiss the plaintiff's claim in such circumstances and enter judgment for defendants would amount to allowing an intruder to eject an occupant so that the intruder may change place with the occupant. Nothing would be more chaotic were the law to permit such a state of affairs."***

The defendant's defence in this whole action is hinged on his provisional land certificate and his presence on the land. The provisional certificate we have clearly stated was illegally issued therefore null and void. Evidence has also firmly established his presence on the land to be that of an intruder and trespasser.

The plaintiff had been able to establish her root of title and mode of acquisition of the disputed property; she customarily acquired the land from the Asere Stool subsequently when she got to know that the land was registered in the name of Charosse stores she re-acquired the property from Charosse stores. The evidence of this is exhibit A. She has also adduced sufficient evidence to establish her overt acts of possession since 1997. On the balance of probabilities, therefore the plaintiff ought to succeed in her claims.

Section 10 of the Limitation Act

The defendant by paragraph 10 of his statement of defence pleaded thus "Defendant says in further answer to paragraph 7 and 8 of the statement of claim that having been in undisturbed possession of the disputed land since August 1997 granted without

admitting that the plaintiff has any interest in the land the said interest has been extinguished by the Limitation Act (1972) NRCD 54"

Section 10(1) & (6) of the Limitation Act read "A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom the first mentioned claims to that person.

6) On the expiration of the period fixed by this Act for a person to bring an action to recover land, the title of that person to the land is extinguished."

The above provisions in effect mean that a person in adverse possession of land for over 12 years acquired a possessory title in the said land and the right of the original owner in that land would become extinguished.

The question however is can it be said that the defendant was in adverse possession therefore had acquired possessory title and section 10 of the Limitation Act would avail him?

This plea cannot avail the defendant for two reasons.

Firstly, he has no adverse possession of the land. This issue was effectively addressed by this court in the case of ***Djin v Musah Baako [2007-2008] SCGLR 686.*** The provisions of Section 10 of the Limitation Act (1972) NRCD 54 are similar to the English Statutes of Limitation. This court per Atuguba JSC in considering the circumstances that operate to bar the title of an owner of land under the Limitation Act made reference to the English case of Wallis's Holiday Camp v Shell-Mex & B P Ltd. [1975] 1 QB 94 at 103 The position taken by Lord Denning in that case as quoted by Atuguba JSC in the Djin v Musah Baako case aptly represents our view on this issue and we would reproduce the said quote as stated at page 697 of the report.

"Wallis's state their claim on actual possession for 12 years. They farmed the land as their own for 10 years and used it as their own for another two years.

They say that Shell-Mex ought to have brought an action for possession during those 12 years: and not having done so, Shell-Mex are barred; and Wallis's have a possessory title under the Limitation Act 1939. There is a fundamental error in that argument. Possession by itself is not enough to give a title. It must be adverse possession. The true owner must have discontinued possession or have been dispossessed and another must have taken it adversely to him. There must be something in the nature of an ouster of the true owner by the wrongful possessor."

The plaintiff in this case is the true owner and is still in full possession of the property. The learned judge went on at page 701 to state the general position of the law on this issue by quoting Ormrod LJ's view in the Wallis's Holiday Camp v Shell-Mex & B P Ltd. Case thus ***"The overall impression by the authorities is that the courts have always been reluctant to allow an encroacher or squatter to acquire a good title to land against the true owner, and have interpreted the word 'possession' in this context very narrowly"***

The second reason why the defendant cannot rely on section 10 of the Limitation decree is that there is a pending case in the Circuit Court in which plaintiff is contending her title to the land in dispute with the defendant. Time cannot start running against her so long as that suit is pending and had not been determined.

It is part of the defendant's own evidence per exhibit 5 that he instituted a suit against the plaintiff in the Circuit Court. The record has it, page 38 to 41 of the proceedings, that, the defendant sued the plaintiff in the Circuit Court in 1998 praying the court to order the plaintiff to vacate his land. He applied for interim injunction which the court granted restraining both parties from developing the land. This order was made on the 30 November 1998. The defendant flouted the order and completed the structure he was raising on the land. Plaintiff said she was defending the suit but the defendant stopped coming to court. In his evidence in chief page 61 of the record defendant said the case he instituted in the Circuit Court is still pending.

The defendant had constructive notice of the plaintiff's ownership of the land. Yet he forcibly entered, commenced developing it and turned around to sue plaintiff, in 1998, a suit plaintiff was contending he abandoned prosecuting. However he told the trial court on April 3rd 2014 that the said suit is still pending. This conduct of the defendant points to only one thing a fraudulent behavior. It is absurd for defendant to turn round to plead that plaintiff's action is statute barred and her title to the land is extinguished. By his own evidence, the plaintiff is contending her title to the land in the pending Circuit Court suit. The present suit was commenced by the plaintiff in November 2011 obviously, because the defendant had abandoned prosecuting the earlier suit. Time could not possibly start running against plaintiff so long as the Circuit Court suit continues pending. A plea of limitation under section 10 of the Limitation Act cannot operate against the plaintiff in these circumstances. The defendant would then be benefiting from his own wrong.

From the foregoing, the appeal succeeds on all the grounds. The judgment of the Court of Appeal is hereby set aside. The Judgment of the High Court is affirmed.

A. M. A. DORDZIE (MRS)
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

S. K. MARFUL-SAU
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