IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA – AD. 2016

CORAM: ATUGUBA, JSC. [PRESIDING]

ANSAH, JSC.

BAFFOE - BONNIE, JSC.

BENIN, JSC.

PWAMANG, JSC.

CIVIL APPEAL.

NO.J4/2/2015.

10TH MARCH 2016

1. **PROF. STEPHEN ADEI-** **PLAINTIFFS/RESPONDENTS/**
2. **MRS. GEORGINA ADEI** **APPELLANTS**

VRS

1. **GRACE ROBERTSON -** **DEFENDANTS/APPELLANTS/**
2. **SEMPE STOOL** **RESPONDENTS**

J U D G M E N T

PWAMANG, JSC.

The plaintiffs/respondents/appellants, hereafter referred to as plaintiffs, in 1979 purchased a parcel of land at Sowutuom in Accra from the Abola Piam (Tunma We) family of Accra. The purchase was covered by a deed of conveyance which plaintiffs registered at the Land Registry as No.2447/1985.

In 1985 plaintiffs acquired another parcel of land adjacent to their land from Madam Abena Asi, a grantee of the Abola Piam (Tunma We) family. This second grant is covered by two documents registered as Nos. 507/1986 and 508/1986. Plaintiffs went into possession of the lands, built a two-room house thereon and placed a caretaker in it.

Much later, the 1st defendant/appellant/respondent, hereafter referred to as 1st defendant started making adverse claims to the land plaintiffs acquired from Madam Abena Asi. In 2004, plaintiffs wall on the disputed portion of the land was pulled down and they attributed it to 1st defendant but she denied being responsible. Plaintiffs therefore sued in the High Court, Accra claiming against 1st defendant declaration of title, damages for trespass, special damages, perpetual injunction and recovery of possession.

1st Defendant in her amended statement of defence, claimed that her mother acquired the land in dispute from both Abola Piam

family and Sempe Stool. Sempe Stool later joined the case and counterclaimed among other reliefs for a declaration that they are the allodial owners of Sowutuom lands and not the Abola Piam family. Defendant further contended that plaintiffs grant from Madam Abena Asi was fraudulent as there was no person called Madam Abena Asi from whom plaintiff acquired the land covered by document No. 508/1986.

In his judgment, the trial High Court judge held that Abola Piam family are the allodial owners of Sowutuom lands. He also held that defendants were not able to prove the fraud alleged against plaintiffs in respect of the land purchased from Madam Asi. The High Court rejected 1st defendant's claim that her mother ever acquired the land in dispute from Abola Piam Family. The High Court therefore entered judgment for plaintiffs on all their reliefs except for special damages.

Defendants appealed to the Court of Appeal against the judgment of the High Court. The Court of Appeal upheld the finding of the High Court that Abola Piam Family is the allodial owners of Sowutuom lands . They also agreed with the trial court that defendant could not prove any title to the land through Abola Piam family. In their judgment the Court of Appeal affirmed the finding of the trial High Court that defendant failed to prove that plaintiff's acquisition of the land from Madam Abena Asi was fraudulent but stated as follows at pages 444 to 445 of the record:

"The judge also said the fact that Madam Asi was not called by respondents to testify for them does not necessarily impute fraud in the transaction. We do not fault him for that conclusion, yet the fact still stands that the respondent could not lead any further positive and credible evidence to establish or prove that they purchased land from Madam Abena Asi. That issue has not been proven to our satisfaction that indeed the respondent purchased that land from Madam Abena Asi. Except repeating same on oath in the trial, no further evidence was led to establish that assertion. The respondent is therefore not entitled to declaration of title to those two plots with Land Registry No. 507/1986 and 508/1986 allegedly bought from Madam Abena Asi."

Being dissatisfied, the plaintiffs have filed this appeal to the Supreme Court and have stated two grounds of appeal as follows;

i. The learned Justices of the Court of Appeal misdirected themselves on the law and occasioned a grave miscarriage of justice when they held in the face of overwhelming evidence to the contrary, that Appellants' failure to call Madam Asi as a witness implied that they had not established their title to the land in dispute.

ii. The learned Justices of the Court of Appeal erred in law and occasioned a grave miscarriage of justice when they held that even where plaintiff is already in possession and both parties seek declaration of title to land and are

unable to establish title, then the plaintiff's claim is deemed to have been dismissed.

iii. Further grounds of appeal will be filed on receipt of the Record of Appeal.

No additional grounds of Appeal have been filed.

We shall consider the grounds of appeal together.

The issue which falls to be determined in this appeal is whether or not plaintiffs adduced sufficient evidence at the trial for a finding to be made in their favour to the effect that Madam Abena Asi acquired the land in dispute from Abola Piam Family and later sold it to plaintiffs. At page 57 of the record 2nd plaintiff, who testified for plaintiffs said as follows on oath in her evidence-in-chief:

> "Apart from this land my husband and I have three other plots registered in the same area. We acquired the land in dispute about 1982/85. We got this land from Madam Asi who bought the plot at the same time as we were buying our first plot in the area. Madam Asi acquired the land from the Abola Piam Tunma We. We have registered document on the land. I wish to tender in evidence."

The documents from Madam Asi which are registered were tendered as Exhibits 'B' and 'C' to be found at pages 335 and 338 of the record of appeal. We like to draw attention to the oath of proof of execution contained in Madam Asi's deed of transfer to plaintiffs at page 339 of the record. It reads as follows:

"I E B. Addo of Accra make oath and say that on the 28th day of August 1985, I was present and saw Madam Abena Asi duly execute the instrument now produced to me and marked 'A' and that the said Madam Abena Asi can read and write.

Sworn at Accra this 28th day of

January 1986

Before me DEPONENT (SGN)

REGISTRAR OF LANDS"

Now let us consider the evidence proffered by the defendant who stated in her pleadings that Madam Abena Asi does not exist. This is what defendant stated in her evidence-in-chief at page 220 of the record concerning Madam Abena Asi:

"The plaintiffs say they bought the land from one Mad. Asi. I have never heard of that name in the area."

That is all defendant's evidence about Madam Abena Asi.

From the pleadings it was the defendant who alleged that Madam Abena Esi does not exist so the burden of proof was on her. She offered to prove the negative i.e. the non-existence of Madam Asi but she did not proffer a scintilla of evidence in proof of her averment. On the other hand, plaintiffs tendered documentary evidence in proof of the acquisition of the land from Madam Abena Asi with an oath of proof which confirmed her existence at the time of execution of the title deed.

In this appeal before us, the defendants in their statement of case, have referred to the cross examination of 2nd plaintiff by lawyer for defendants in which she said she did not personally meet Madam Abena Asi. That answer did not absolve defendants from discharging the burden on them to prove their averment that Madam Abena Asi does not exist. Plaintiffs tendered documentary proof that Madam Abena Asi acquired the land from Abola Piam family and sold it to plaintiffs.

In our judgment, there is sufficient evidence on the record to support the finding by the High Court that plaintiffs acquired the land in dispute from Madam Abena Asi who acquired it from Abola Piam We. The contrary finding by the Court of Appeal is perverse having regard to documentary evidence on the record and we set same aside and restore the finding of the High Court.

Where a trial court that heard the evidence has made findings based on the evidence and come to a conclusion in a case, an appellate court ought not to disturb those findings except there is no evidence on the record to support the findings or the reasons for the findings are unsatisfactory. An appellate court may also reverse findings of a lower court where they are based on a wrong proposition of law or a rule of evidence or the findings are inconsistent with documentary evidence in the record. See the cases **ACHORO AND ANOR V. AKANFELA [1996-97] SCGLR 209; KOGLEX LTD (NO.2) V. FIELD [2000] SCGLR 175; and GREGORY V. TANDOH & HANSON [2010] SCGLR 971.**

In the face of the documentary evidence tendered by plaintiffs, we are at a loss as to the kind of evidence the Court of Appeal required plaintiffs to produce to prove that they acquired the land from Madam Abena Asi. If the Court of Appeal was expecting plaintiff to produce Madam Abena Asi in flesh and blood simply because defendant alleged that she does not exist, that would be setting a bad precedent. That would mean that when one acquires land and a document is duly executed and registered, you still need to keep track of your grantor in case of a dispute. What would be the essence of land documentation if what defendants contended were accepted?

The law is settled that unless a document in evidence is invalid on ground of breach of a statute or has been shown not to be authentic, a court of law would consider it favourably in preference to inconsistent oral testimony. See the cases of **Yorkwa v. Duah [1992 - 93] 1 GBR 278** and **Agyei Osae v Adjeifio [2007 – 2008] SCGLR 499 at 502/503**. In this case the authenticity of Exhibits 'B' and 'C' was not successfully impeached and the title deeds have been duly registered under the land registry laws of Ghana. Since the Court of Appeal upheld the finding that Abola Piam family are the allodial owners of the land and Madam Asi's document traced it root of title from Abola Piam family, the court ought to have given effect to the documents tendered by plaintiffs.

For the above reasons we set aside the judgment of the Court of Appeal dated 18th July, 2013 and restore the whole judgment of the High Court dated 8th July, 2011.

But before we are done, defendant filed an objection to the appeal stating the Notice of Appeal in this court was filed out of time. The record shows that the Court of Appeal judgment was given on 18th July 2013 and the appeal to the Supreme Court was filed on 17th October, 2013, that is certainly within three months as provided in **Rule 8(1) (b) of the Supreme Court Rules, 1996. (C.I.16)** as amended. The objection is dismissed as misconceived.

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) **P. BAFFOE - BONNIE**

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

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PRINCE FREDERICK NII – ASHIE NEEQUAYE FOR THE 1ST DEFENDANT/APPELLANT/RESPONDENT.