IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ADINYIRA, JSC (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
AKOTO-BAMFO, JSC

CIVIL APPEAL
NO. J4/14/2016

24TH JANUARY, 2018

VERONICA OPOKU
(SUING PER HER LAWFUL ATTORNEY
MS. DOROTHY POKU) …….. PLAINTIFF/RESPONDENT/RESPONDENT

VRS

MARY LARTEY …… DEFENDANT/APPELLANT/ APPELLANT

JUDGMENT

AKOTO-BAMFO, JSC:-

On the 5th of February 2015, the Court of Appeal, in a unanimous decision, dismissed an appeal lodged against the decision of the High Court entered in favour of the Plaintiff/Respondent/Respondent.

The defendant/appellant/appellant promptly registered her protest against the decision by filing a Notice of Appeal consisting of 6 grounds.

For the ease of reference, the parties shall, hereafter simply be referred to as plaintiff and defendant.

Briefly, the events which culminated into the present proceedings, run as follows:

Richard Peprah (deceased) was one of the plaintiff's (Veronica Opoku) children. They both resided in the U.S.A. In 1984, Richard was involved in a ghastly motor accident which left him with serious permanent injuries; (and now, this is where the divergence begins)

According to the mother, she subsequently travelled to Accra Ghana in the year 2000 and purchased the House in issue, No C48/22. Abofu, Accra from one Doris Lolonyo Hotse; the transaction was reduced into writing. She put her son in occupation and left for the USA.

When Richard subsequently died in the year 2003, she came down to Ghana only to find the defendant in occupation. Her efforts at getting her to surrender vacant possession yielded no fruits; for the defendant claimed that she was in the house at the behest of her elder sister in whom the property was vested on account of a bequest in a Will made by Richard.

She therefore issued a writ claiming against the defendant the following reliefs:

1. An order for recovery of possession of the aforesaid land together with the house numbered C48/22, Abofu, Accra, the subject matter of this suit from defendant.
2. Perpetual injunction restraining defendants the heirs, privies, assigns and all other persons claiming through defendants and whatsoever described from interfering or in anyway disturbing plaintiffs peaceful and/or quiet enjoyment of her land together with house numbered C48/22, Abofu, Accra, the subject matter of this suit.
3. General damages for trespass.

In resisting the claim, the defendant had this story to tell.

Her elder sister, Mrs. Iris Peprah, was married to Richard Peprah in 1997 after Richard's involvement in the serious motor accident in the USA. Upon receipt of his compensatory award; Richard travelled to Ghana in 1994 and purchased the house

in dispute from one, Aunty Efe; since he was unmarried at the time; the documents of title were prepared in his mother's name, ie the plaintiff.

Richard subsequently sought to change the name on the document by sending an amount of 500 US dollars through her (defendant) to Aunty Efe for the purpose. Since the defendant met the absence of Aunty Efe, she left the money with an inmate of the house. The change could however not be effected until the demise of Richard in 1983.

According to the defendant, Richard, after the purchase, lived in the house with her sister and later let it to tenants.

Richard died testate and bequeathed the house to her sister. She therefore asserted that she was in the house at the behest of her sister, the owner of the house, and therefore counter claimed for these reliefs:

a. A declaration that the disputed house numbered C48/22 Abofu, Achimota, Accra, has now devolved upon Mrs. Iris C. Peprah by virtue of a devise made by Richard Peprah (deceased) as contained in his Last Will and Testament dated 24th 2003 and admitted to Probate.
b. Perpetual injunction to restrain the plaintiff her agents, assigns, servants, workmen privies, grantees and by all claiming through under and in trust of the plaintiff from interfering in anyway whatsoever with the H/No C48/22 Abofu, Achimota Accra, in the Greater-Accra Region of the Republic of Ghana.

The learned High Court Judge set down these issues for resolution:

i. Whether or not plaintiff is the rightful owner of the disputed land?
ii. Whether or not Richard Peprah was the rightful owner of the disputed land?
iii. Whether or not defendant has any valid interest in the disputed land?
iv. Whether the plaintiff is entitled to all or any of the reliefs claimed in this case?
v. Whether or not defendant is entitled to any of the reliefs claimed in her counterclaim?
vi. Any other issue arising from the pleadings filed in this case.

In his judgment, the learned Judge, found, inter alia, that it was the plaintiff who bought the house and put her son in occupation and additionally that the Will made by Richard was not specific as to the house referred to therein since he found that Richard paid rates in respect of other houses, as per the Exhibit 5 series.

He therefore dismissed the defendant's counterclaim and entered judgment for the plaintiff.

Naturally dissatisfied, the defendant launched an attack against the decision by filing a Notice of appeal before the Court of Appeal. The defendant however suffered the same fate, the appeal was dismissed.

Undaunted, she mounted the instant appeal, the premise upon which she launched the attack is set out as follows:

1. The judgment is against the weight of evidence adduced at the trial.
2. Their Lordships misdirected themselves and erred in law when they held that the issue of resulting trust was tangential and not one of the issues for determination though the learned Trial Judge suo motu directed counsel for parties to address him on that issue because there was evidence on record that the money for purchase of the disputed property came from Plaintiff/Respondent/Respondent's son Richard Peprah.
3. Both the High Court and the Court of Appeal erred in law when they failed to consider the issue of resulting trust.
4. Their Lordships neglected their Judicial Duty when they failed to consider the address of Counsel for the Defendant/Appellant/Appellant to the effect that though Plaintiff/Respondent/Respondent pleaded that she acquired the disputed property from Doris Lolonyo Hotse, in her evidence-in-chief she said she acquired the property from Madam Efe Ampomah Mensah which meant she failed to prove her root of title.
5. Their Lordships in the Court of Appeal misdirected themselves and erred in law when they held that the Defendant in her pleadings admitted that Plaintiff bought the property the subject-matter of dispute from Madam Lolonyo Hotse and therefore there was no need for the Plaintiff/Appellant/Appellant admitted that Claim but rather put up a rival story.
6. Further grounds of appeal to be filed upon receipt of the Record.

No additional grounds were however filed.

Counsel for the defendant submitted that both the High Court and the Court of Appeal seriously failed to consider the defendant's case and that if they had, they would have entered judgment in her favour.

Arguing under the omnibus ground ie the judgment being against the weight of the evidence on record, it was contented that it would be unfair for Mrs. Iris Peprah to loose the Property when the plaintiff knew that the defendant was only a caretaker, but nonetheless proceeded against her, thus affording the bona fide owner no opportunity to be heard.

It was further submitted that the claim was Res Judicata in so far as the plaintiff did unsuccessfully challenge the Will in the USA, and that having lost in both the trial and appellate courts in the USA, the plaintiff was estopped from re-litigating on the issue in this country, for he urged that the fact of the House being the subject of the specific devise, was sufficient to raise the issue.

It was a further submission that since the plaintiff pleaded that she purchased the disputed house from Doris Lolonyo Horste but testified that her vendor was Madam Efe, the two courts erred when the High Court found that the plaintiff had discharged the burden placed on her, which finding was concurred in by the Court of Appeal.

According to him, the conflicts in the evidence of the plaintiff ought to have been resolved in the defendant's favour.

On the issue of resulting trust, it was submitted that the Court of Appeal erred in finding that the issue was tangential and that having suo motu raised it; the court ought to have made a pronouncement thereon.

In response, it was submitted, essentially relying on the concurrent findings rule as established in the Achoro v Akanfela line of cases, reported in the 1996-97 SCGLR 209 that the appellants had failed to displace the burden imposed by the rule since they failed to demonstrate the errors in the findings.

It was further contended that some of the issues raised were neither part of the proceedings in the High Court nor were they set out in the Grounds of Appeal.

A perusal of the Record shows that, in the main, the defendants simply reproduced the grounds and submissions which the two courts considered and pronounced upon.

It is generally established that an appellate court must not disturb findings of fact made by a trial Court, even if the appellate Court could have come to a different conclusion unless the findings of fact made by the trial Judge were wholly unsupported by the evidence.

In RE Okine (DECD); Dodoo and Another v Okine and Ors 2003-2004 SCGLR 582 Atuguba JSC re-echoed this principle In Re Krobo Stool (No1); Nyamekye (No1) v Opoku (2000) SC GLR 347 at 380 in these terms " It is a worn-out principle of law that findings of fact made by a trial Judge are presumed to be right and the onus is on the plaintiff-appellant to displace that presumption".

The defendant having lost before the High Court and the Court of Appeal, she is undoubtedly before this court on a 2nd attempt at derailing the decision of the High Court.

In Achoro v Akanfela supra at 214; Acquah JSC as he then was stated the rule in these terms " Now in an appeal against findings of fact 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. It must be established, eg, that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not properly been applied: see Thakur Harihar Buksh v Thakaur Umon Parshad (1886) LR 141A7; or, as pointed out in Robins v National Trust Co (1927) AC 515, that the finding is so based on erroneous proposition of the law that if that proposition be corrected, the finding disappears. In short, it must be demonstrated that the judgments of the courts below are clearly wrong: see Allen v Quebec Warehouse Co (1886) 12 App Cas 101".

Indeed there is a presumption of correctness in respect of concurrent findings of fact by courts of competent jurisdiction. Akese v Ababio 1935 2 WACA 254.

The plaintiff asserted in her statement of claim that she purchased the disputed property from Doris Lolonyo Hotse who gave her Exhibit A, the documents of title. Before the court she testified that she made the purchase through Madam Efe. Significantly the defendant averred that Richard bought the House from Aunty Efe and that he used his mother's name as the purchaser because he was not married then. That document was however not produced; the defendant pleaded though that she subsequently came upon the conveyance Exhibit A.

The averment in Paragraph 2 of the plaintiff's statement of claim that she purchased the property from Doris Lolonyo Hotse was admitted by the defendant in paragraph 14 of her defence. Before the Court the plaintiff explained that she made the purchase through Madam Efe. This explanation was accepted by the trial Judge therefore the assertion that these were conflicts in the story of the plaintiff was not borne out of the evidence since the basis of the learned Judge's acceptance of the plaintiff's explanation on the issue cannot be faulted.

In the light of the evidence placed before the court, the learned Judge rightly found that the plaintiff discharged the burden placed on her. As to whether the learned Judge wrongly allocated the burden on the defendant on the issue it is pertinent to note that the defendant, having filed a counterclaim assumed the position of the plaintiff and was therefore under a duty to discharge the burden of persuation on the issue. She only asserted in her pleadings that Richard bought the house for his benefit. When she mounted the box she only repeated those averments without any attempt at substantiating those allegations either by documentary evidence or calling persons with personal knowledge of the matters raised. Consequently, the learned Judge rightly made those findings of fact. This court has no basis for disturbing same.

Even though the issue of Resulting Trust was originally not an issue before the court; the learned Judge having raised the issue did sufficiently address same. The court of Appeal in its concurring finding dismissed the claim as well that Richard was the beneficial owner; it found that there was no evidence to support that assertion and noted that it was in consonance with our traditions and customs for a son to buy property for the benefit of the mother, even if there had been evidence that it was Richard who purchased the house.

The plaintiff commenced the action against the occupier of the disputed house, it was the defendant's statement of defence which disclosed that she was on the property as a licensee and proceeded to mount a counterclaim for a declaration that the property was owned by Mrs. Peprah by virtue of the devise in the last Will and Testament of Richard.

Since the defendant clearly demonstrated that she was contesting the case on behalf of the Mrs. Peprah, it would be extremely difficult in the face of the evidence on record for Mrs. Peprah to deny that she had notice of the proceedings.

Having gone through the record of proceedings therefore, we are satisfied that the defendant has not met the standard set in the Achoro line of cases and so has failed to rebut the presumption of correctness of the findings of the two courts.

There is no evidence that there were any errors in the findings in the face of the documentary evidence nor evidence of a misapplication of any principle of evidence. The allegations made in the notice of appeal and the submissions made thereon have therefore not been substantiated.

We are satisfied that the findings, the subject of the challenge, are amply supported by evidence on record.

We would therefore dismiss the defendant's case in its entirety.

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

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

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