

TARAWALLI v. SESAY

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Beoku-Betts,
Ag.C.J. (Sierra Leone) and Coussey, J.A.): August 1st, 1952
(W.A.C.A. Civil App. No. 1/52)

5

[1] Land Law—adverse possession—tenancy at will—limitation of action
—time does not run where tenant at will's adverse possession not
exclusive or independent of owner: A defendant who is in possession
of property by the will of the owner cannot defeat a plaintiff's title
with a defence that the action is time-barred by his adverse possession
if he was not in exclusive and independent possession of the property
in question (page 250, lines 11-17).

10

[2] Landlord and Tenant—possession—action for possession—limitation
of action—time does not run where tenant at will's adverse possession
not exclusive or independent of owner: See [1] above.

15

[3] Limitation of Actions—land—adverse possession—tenancy at will—
time does not run where tenant at will's adverse possession not
exclusive and independent of owner: See [1] above.

The respondent brought an action against the appellant in the
Supreme Court for a declaration of title to certain property, posses-
sion of the property and an injunction to restrain the appellant
from interfering with his enjoyment of the property.

20

The respondent's wife purchased certain property and let part
of it to tenants. On her death, she devised the property to the
respondent for life. The appellant, who had lived in a portion of the
property as a guest of the respondent's wife, continued to live
there until the requisite statutory period of limitation had expired.
When the respondent instituted the present proceedings against
the appellant, the Supreme Court gave judgment for the respondent.

25

On appeal to the West African Court of Appeal, the appellant
contended that she had acquired title to the whole or part of
the property in question by exclusive possession, under the provisions
of the Limitation Act, 1833 and the Real Property Limitation Act,
1874.

30

35

FOSTER-SUTTON, P.:

40

In this case the respondent claimed a declaration of title to
premises situate at No. 20, Goderich Street, Freetown, for possession
of the premises and for an injunction against the appellant restrain-
ing her from interfering with the respondent in his enjoyment of
the premises. The case came for trial before the learned Chief

Justice who gave judgment for the respondent, and it is against that decision that the appellant has appealed.

Shortly put, the respondent's case was that the property in question was purchased many years ago by his wife from a man named Golly for the sum of £70, and that she did not obtain a conveyance of the property until 1944, some years after Golly's death, when a woman named Nancy Cole, one of the executors of the Golly estate, executed a conveyance in her favour. The respondent's wife died in 1950, and by her will left the property to him for life. He alleged that during his wife's lifetime she had tenants in a small house which formed part of the property, that she collected rents from the tenants, and that she had for many years before her death paid the rates on the whole property. The respondent also gave evidence of other acts of ownership in connection with the property.

The appellant's case was that she had intimate relations with Golly, that he built the house and gave it to her to live in, that the respondent's wife later joined her there, and that they lived together in the house until the respondent's wife died in 1950. In addition to claiming ownership of the premises through Golly, the appellant pleaded the Limitation Acts, alleging that the respondent's title, if any, had been extinguished by virtue of their provisions, and that she was in possession.

It was admitted that the appellant had lived in the upper portion of the house for the requisite statutory period, but the respondent contended that she was in the premises as a guest of his wife until the latter's death, and denied that the appellant had ever had exclusive possession to any portion of the premises.

Nancy Cole gave evidence for the appellant to the effect that when she executed the conveyance in 1944, she did not notice that it was in the name of the respondent's wife or that the deed recited that £70 had been paid to Golly by way of purchase price, and that she was under the impression that she was conveying the property to the appellant.

During the course of his judgment the learned Chief Justice made the following observations regarding Nancy Cole: "Mrs. Cole is a literate woman and, according to her evidence, she is a business-woman. Now I say at once that I put no weight on her evidence before me. I do not believe her evidence at all and she impressed me as one who was not telling the truth." He also disbelieved the evidence given by the appellant in support of her claim to owner-

ship of the property. On the other hand he accepted the respondent's case, supported, as it was, by documentary evidence.

5 The only point argued on this appeal was the question whether the appellant had acquired a title to the whole or any portion of the premises by exclusive possession, under the provisions of the Limitation Act, 1833 and the Real Property Limitation Act, 1874.

10 The appellant and the respondent's wife were children of the same father and as one of the witnesses put it—"the two sisters live together." They shared the kitchen and it was admitted before us that there was a common staircase, the only one in the premises.

15 On the facts accepted by the learned trial judge it cannot, in my view, be said that the appellant had exclusive possession of any portion of the premises in question. The appellant was in possession by the will of the respondent's wife, the owner, and her occupation was not an independent possession by her but the possession of the owner. As 20 *Halsbury's Laws of England*, 2nd ed., at 705, para. 931, puts it, the owner was "in possession though the occupier."

20 The decision in this case depended upon questions of fact which the learned trial judge resolved in favour of the respondent and, in my opinion, there was evidence upon which he could properly come to the conclusions he did. It follows, therefore, that I would dismiss this appeal, with costs to be taxed.

25 BEOKU-BETTS, Ag.C.J. (Sierra Leone) and COUSSEY, J.A. concurred.

Appeal dismissed.

30

35

40