

SPAIN v. ABDULLAH MUCTARU

SUPREME COURT (Luke, J.): November 25th, 1954
(Civil Case No. 294/53)

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- [1] Estoppel—representation—acknowledgment of title—document in which person in possession acknowledges another's proprietary interest in same property—successor in title estopped from denying such interest: A document prepared and signed by a tenant in common in possession of property which acknowledges the proprietary interest of another tenant in the property estops his successor in title from denying such interest and stops time running against the person out of possession (page 388, line 30—page 389, line 13).
- [2] Evidence—burden of proof—recovery of possession of land—plaintiff must succeed on strength of own title: In an action for the recovery of possession of land, the plaintiff must rely on the strength of his own title, rather than the weakness of the defendant's, to prove that he is entitled to recover the land as against the defendant in possession (page 387, lines 1-4).
- [3] Evidence—declarations against interest—declaration against proprietary interest made ante litem motam admissible: A statement against proprietary interest made *ante litem motam* will be admissible in evidence (page 388, lines 34-38).
- [4] Land Law—recovery of possession—evidence—burden of proof—plaintiff must succeed on strength of own title: See [2] above.
- [5] Land Law—recovery of possession—evidence—document in which person in possession acknowledges another's proprietary interest in same property—successor in title estopped from denying such interest: See [1] above.
- [6] Land Law—recovery of possession—limitation of action—action not barred if plaintiff's interest kept alive by acknowledgment of title by person in possession: See [1] above.
- [7] Land Law—recovery of possession—limitation of action—action not barred if plaintiff's interest kept alive by contribution to rates and taxes: A defendant cannot invoke the Statute of Limitation to bar an action for the recovery of possession if the plaintiff, though out of possession for over 12 years, keeps his interest in the property alive by contributing towards rates and taxes (page 388, lines 25-30).
- [8] Land Law—recovery of possession—tenancy in common—one tenant in common can bring action against another: One tenant in common can institute an action for possession or ejectment against another (page 389, lines 13-19).

- [9] Land Law—tenancy in common—possession—action for recovery of possession—action not barred if interest of tenant out of possession kept alive by acknowledgment of tenant in possession: See [1] above.
- [10] Land Law—tenancy in common—possession—action for recovery of possession—one tenant in common can bring action against another: See [8] above. 5
- [11] Land Law—tenancy in common—possession—document in which tenant in possession acknowledges another's proprietary interest in same property—successor in title estopped from denying such interest: See [1] above. 10
- [12] Limitation of Actions—land—recovery of possession—action not barred if plaintiff's interest kept alive by acknowledgment of title by person in possession: See [1] above.
- [13] Limitation of Actions—land—recovery of possession—action not barred if plaintiff's interest kept alive by contribution to rates and taxes: See [7] above. 15

The plaintiff brought an action against the defendant for possession of, or damages for the use and occupation of, certain premises. 20

One Muctaru Cole, the father of the plaintiff, was described in the title deed as the fee simple owner of the premises. The plaintiff and her brother (also called Muctaru Cole) were both in possession of these premises until the plaintiff left in 1920. Although she did not return to the premises until 1944, and then only for a short time, she did pay a share of the rates and taxes. In 1951 she and her brother entered into an agreement, which referred to them as the "persons entitled to the property," with a contractor to rebuild the premises. When her brother (the defendant's father) died in 1953, he left the premises to the defendant in his will and the defendant entered into possession. 25 30

In the present action brought against the defendant for possession or damages, the plaintiff contended that she had a proprietary interest in the property, and that the agreement entered into with the contractor and signed by the defendant's father estopped the defendant from denying her title. 35

The defendant maintained that he was solely entitled to the property under his father's will and that the Muctaru Cole mentioned in the title deed was in fact his father and not his grandfather. He further maintained that even if the plaintiff had an interest in the property, any action by her to recover possession was statute-barred. 40

Cases referred to:

- (1) *Asher v. Whitlock* (1865), L.R. 1 Q.B. 1; 13 L.T. 254.
- (2) *Denn d. Burges v. Purvis* (1757), 1 Burr. 326; 97 E.R. 335.
- 5 (3) *Doe d. Gill v. Pearson* (1805), 6 East 172; 102 E.R. 1253.
- (4) *Fawke v. Miles* (1911), 27 T.L.R. 202.
- (5) *Freeman v. Cooke* (1848), 2 Exch. 654; 154 E.R. 652.
- (6) *Gery v. Redman* (1875), 1 Q.B.D. 161; 45 L.J.Q.B. 267.
- 10 (7) *Peaceable d. Uncle v. Watson* (1811), 4 Taunt. 16; 128 E.R. 232.
- (8) *Roe d. Raper v. Lonsdale* (1810), 12 East 39; 104 E.R. 16.
- (9) *Sly v. Sly* (1877), 2 P.D. 91; 41 J.P. 776.
- 15 *R.B. Marke* for the plaintiff;
Edmondson for the defendant.

LUKE, J.:

The plaintiff's claim is for possession of certain premises known as Nos. 7 and 7A Doherty Street. In her statement of claim, which
20 was filed and delivered, she stated that at all times material to this action she and her late brother Muctaru Cole, father of the defendant, were seised in fee simple, and that sometime in June 1951, having agreed between themselves to rebuild these premises, they got a Mr. During to undertake the work and entered into an
25 agreement with him. Her brother died in February 1953 and after his death his son (the defendant) entered into possession of these premises and is still in possession. The plaintiff is therefore asking for possession of these premises, or in the alternative damages for use and occupation thereof from March 1953 until possession is
30 given up at £4 a month or such portion thereof as the court shall deem she is entitled to.

The defence is a denial that the plaintiff was ever seised or at any time had any estate, right, title or interest in, to or upon the said land and hereditaments; that the property in question was
35 belonging solely to his late father Muctaru Cole (alias Muctaru Abdullah), and that the late Muctaru Cole occupied the building in his own right and not by or with the consent of the plaintiff; that the defendant took possession immediately after the death of the said Muctaru Cole under the will of the said Muctaru Cole, and that he
40 has been and is still in possession of the said hereditaments and premises.

In an action for the recovery of possession—"the plaintiff must prove that he is entitled to recover the land as against the person in possession. He recovers on the strength of his own title, not on the weakness of the defendant's": see 27 *Halsbury's Laws of England*, 2nd ed., at 807, para. 1368.

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What are the facts on which the plaintiff relies in support of her claim? She deposed in her evidence that she stayed at No. 7 Doherty Street at one time with her brother but that she left there in 1920 on account of her marriage; that at the time she stayed there the house was built with sides partly of mud and timber, and flooring and corrugated iron sheets; that after she got married she and her brother continued to be quite friendly; that Nos. 7 and 7A were recently built; and that in 1950 her brother came and told her that their father's property was deteriorating and that she should accompany him to go and inspect it. As a result of that inspection, they got a Mr. During to rebuild it, and to enable Mr. During to carry out his work they entered into an agreement with him (Exhibit A). In order that this document on which the plaintiff bases her claim may be kept in view, I shall exhibit it:

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"We the undersigned, Muctaru Cole, Kiptiatu Cole-Spaine, persons entitled to the property situate at No. 7 Doherty Street, Freetown, hereby agree and give our consent to Mr. James F. During, Contractor, dismantling the said building and erecting thereon another building of two floors at his expense including materials and cost. On the completion of the said building the said James F. During is hereby empowered to let out the same to tenants with a view to repay himself his costs and expenses in erecting the said building. Proper account is to be kept by the said James F. During.

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Dated the 13th day of June, 1951.

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[STAMP]

Witnesses:—

Sierra Leone

(sgd.) Isa M. Spaine

(sgd.) Muctaru Cole

Mohammed Bakarr

Kiptiatu Spaine

A. Mucktarr

One Shilling."

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The plaintiff continued in her evidence to state that when the house was in building the late Muctaru Cole stayed with her at No. 4 Garber Lane and went to reside at No. 7 Doherty Street sometime in 1952 during the Feast of Eid-ul-Fitri, and that his occupation was only with the consent of herself and Mr. During, the contractor of the building.

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Under cross-examination she admitted that the title deed (Exhibit C) for the property was in the name of Muctaru Cole whom she said was her father, and that the deed was produced from the custody of her brother to be handed to Mr. During. Evidence was given that the defendant's father, at the time Exhibit C was bought, could not have been in a position to purchase it. She admitted that after she left the house in 1920 to get married she returned to it in 1944 and again left it in 1944 to live with Mr. During. She also said she did not know what was the amount paid for rates and taxes, although under re-examination by her solicitor she said she gave her brother £1 as her share.

The other witness, During, gave no evidence to carry the case further so far as regards the plaintiff's title in this property other than to corroborate the plaintiff's evidence that before Muctaru Cole went to live in this house in 1952 he obtained the consent of the plaintiff and himself.

The defence is based on probate of the will of Muctaru Cole (Exhibit E) in which he devised the property in question to the defendant. He pleads that he is in possession. He produced the title deed of this house which is in the name of Muctaru Cole. Evidence was also given both by the plaintiff and the defendant's witnesses which leaves no doubt that the property in question was belonging to none other than the grandfather of the defendant, Muctaru Cole, otherwise known as Abdullah Cole.

By his plea of possession the defendant is imploring to his aid the Statue of Limitation which will bar the plaintiff's claim as not having been in possession for over 12 years. This could have been a good defence and the end of the litigation but for the evidence that she kept her interest alive by contributing £1 towards the rates and taxes. A strong corroboration of this fact is Exhibit A, a document which was prepared and signed by Muctaru Cole, the defendant's father and predecessor in title. Exhibit A is a declaration against proprietary interest which has been tendered and admitted in this action: see *Sly v. Sly* (9). Apart from this case of *Sly v. Sly* there are other cases which illustrate and establish that a testator or donor can cut down his interest by a declaration and such declaration is admissible so long as it was made by a deceased person *ante litem motam*: see *Fawke v. Miles* (4), *Peaceable d. Uncle v. Watson* (7) and *Gery v. Redman* (6). If the defendant's father were alive, he could not have set up as a defence the Statute of Limitation

against the plaintiff's interest as he would have been estopped by Exhibit A.

There is clear evidence that the defendant only came into possession after the death of his father in 1953 and under Exhibit E. Although he is in possession, yet he has not acquired a devisable interest in his own right as against the plaintiff as illustrated by the case of *Asher v. Whitlock* (1). His predecessor in title as late as 1951 acknowledged that the property in question belongs to him and the plaintiff, in other words stating that he only has a one-half share. The defendant's father having acknowledged that the plaintiff has a one-half share, he cannot now raise a defence which his father was estopped from raising, and he is therefore estopped: see the case of *Freeman v. Cooke* (5). Having found that the testator (the defendant's father) only had a one-half share, I now turn to consider the question whether one tenant in common can institute an action for possession or ejectment against another. Williams & Yates, *Law of Ejectment*, 1st ed., at 177 (1894), states he can and cites several cases, and among them are *Roe d. Roper v. Lonsdale* (8), *Denn d. Burges v. Purvis* (2) and *Doe d. Gill v. Pearson* (3).

From the evidence which has been given it is quite clear that the plaintiff is entitled to possession of the one undivided half portion of premises Nos. 7 and 7A Doherty Street. The other portion of the claim relates to damages. Evidence has been led that the defendant rents No. 7A, the outhouse, for £1 a month, and that if the large house No. 7 is rented £3 will be realised. There will be damages of £2, the one-half share, from March 1953, and costs of the action.

Judgment for the plaintiff.