

IN THE SUPREME COURT OF SIERRA LEONE

CORAM:

The Hon. Mr. Justice E. Livesey Luke C.J. - Presiding

The Hon. Mr. Justice C.A. Harding - J.S.C.

The Hon. Mrs. Justice A.V.A. Awunor-Renner - J.S.C.

The Hon. Mr. Justice S. Beccles Davies - J.S.C.

The Hon. Mr. Justice Constant S. Davies - J.A.

SC. CIV APP. 3/81

Madam Ballu Yillah - Appellant

And

Mohamed Hedjazi - Respondent

George Gelaga-King, Esq. for the Appellant

Berthan Macauley, (Jr.) Esq. for the Respondent

JUDGMENT DELIVERED THIS 12TH DAY OF JULY, 1983

Beccles Davies, J.S.C.:-

This appeal concerns land at Signal Hill Road Wilberforce in the Western Area. The respondent was the plaintiff in the High Court whilst the appellant was the defendant.

The respondent had issued a writ in the High Court claiming "possession of all that piece or parcel of land situate and being off Signal Hill Road, Wilberforce and for an injunction restraining the defendant or her servant or agents from trespassing on the said land." The land is described as being bounded on the North-East by property of Isaac John Bright 235 feet; on the South-East by property of Isaac John Bright 245 feet; on the South-East by property of Mrs. Renner Sharaff 225 feet; on the North-North-West by property of M.S. Mustapha 96.3 feet and 227.5 feet respectively.

The defence filed on behalf of the appellant had averred inter alia that the land described by the respondent in his statement of claim was "not the piece and parcel of land owned" and in her possession; and further that the land owned by her had been in her full free and undisturbed possession since 1963 on the death of her father one Saidu Yilla. The defence described the

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land as being at Pipe Line Road, Wilberforce and bounded on the North by private property 110.58 feet and 89.36 feet respectively; on the South 242.5 feet, 96.5 feet, and 83.3 feet respectively; on the East 184.15 feet and 115.02 feet respectively; and on the West 36.49 feet. That was the state of the pleadings when the matter went to trial.

The respondent gave evidence at the trial. He told the Court that he had bought the land at a public auction in 1955. The land had been sold in consequence of an order of the then Supreme Court (now High Court) empowering the Official Administrator (now Administrator and Registrar-General) to do so. He had been the highest bidder and it was knocked down to him at the price of five hundred pounds. A deed of conveyance of the land had been executed in his favour, by the Official Administrator. The deed of conveyance was put in evidence by him. It revealed that the land had formed part of the estate of William J. Powells. He explained how he had inspected the land in 1970 and had found some shacks on it which he had learnt on enquiry, had been erected by the appellant.

The appellant also gave evidence. She stated that she was living at 7, Pipe Line, Wilberforce. She was the daughter of Saidu Yillah who died in 1963. She had been born at 7, Pipe Line and had lived there throughout her childhood. 7, Pipe Line stood in a compound which had belonged to her late father and presently to her. There were over ten houses in the compound - seven of which were built by her father, her late brother and herself; and the rest by her children. In 1968 she had engaged the services of a surveyor to survey the land. A plan was prepared which was incorporated in a Statutory Declaration. The Statutory Declaration was registered.

At the conclusion of the appellant's evidence, her counsel applied for an amendment to her defence. The amendment was for the inclusion of an additional paragraph to the defence.

The application was granted. The new paragraph read -

"4. Alternatively, the Defendant says that the plaintiff's claim is barred and his title, if any which is denied was extinguished prior to this action by virtue of the provisions of the Limitation Act 1961".

The appellant then called a witness Yayah Fofana who said he had been living at 7, Pipe Line, Lower Signal Hill since 1947. He was present when the land was handed over to the appellant by the tribal Headman after the death of the appellant's father - Saidu Yilliah.

At the close of the evidence at the trial, the appellant's defence was that (i) the land alleged by the respondent to be his was not the same land as that described by the appellant in her defence; and (ii) alternatively, the respondent's claim was statute barred.

The appellant did not adduce evidence at the trial in support of her contention that the land referred to by the respondent in his statement of claim and that referred to by her in her defence were two different lands.

The matter however seemed at the end of the day to have rested on the Limitation Act 1961.

I shall now refer to the provisions of the Limitation Act 1961 which are germane to the instant case. They are sections 5(3), 6(1), 11(1) and 15. Section 5(3) is in these terms:-

"5(3) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims to that person....."

Section 6(1) then provides -

"Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance."

Section 11(1) states -

"No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereinafter in this section referred to as "adverse possession") and where under the provisions of this Act any right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land."

Finally Section 16 enacts -

"Subject to the provisions of section 8 of this Act at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished."

Section 8 referred to above relates to settled land and land held on trust.

The appellant has therefore asserted that the respondent had been dispossessed of the land and that she and her father had been in adverse possession for a period of at least 12 years before

action was brought by the respondent and that his title to the land had been consequently extinguished.

I shall now state the law on the point. The following statement of the law appears in Halsbury's Laws of England 4th Edition at paragraph 769 -

"An owner of land may cease to be in possession of it by reason of dispossession or discontinuance of possession. Dispossession occurs where a person comes in and puts another out of possession; discontinuance of possession occurs where the person in possession goes out and another person takes possession, and that possession must be continuous and exclusive.

The true test whether a rightful owner has been dispossessed or not is whether an action for possession of the land will lie at his suit against some other person.

The rightful owner is not dispossessed so long as he has all the enjoyment of the property that is possible, or leaves it unoccupied pending the materialisation of some future use which he has in mind.

Where land is not capable of use and enjoyment, there can be no dispossession by mere absence of use and enjoyment, but where the owner has no future use for the land in mind and merely leaves it derelict, possession taken by a trespasser may be adverse even though the owner suffers no inconvenience. To constitute dispossession, acts must have been done which were inconsistent with the enjoyment of the soil

by the person entitled for the purposes for which he had a right to use it, and with the intention of establishing dominion and not merely with the intention of using the land until prevented from doing so....."

The claimant to possession under the Statute of Limitations must prove (i) dispossession of the true owner or (ii) discontinuance of possession by the true owner.

The appellant tendered in evidence rate demand notes and receipts for the period 1942-72. They were in respect of 12 Pipe Line, Wilberforce; 8 Pipe Line, Wilberforce; 7 Pipe Line Smart Farm; 8 Pump Line, Murray Town; and 8a Pump Line, Wilberforce respectively. In the instant case there was no evidence linking those demand notes and receipts with houses on the disputed land. The mere production of a receipt or demand note is not enough. Evidence should be led to connect those demand notes and receipt with the property to which they relate. Such evidence was crucial to the success of the appellant's case since the respondent had said when he bought the land in 1955 there were no buildings on it. There was consequently no evidence as to when the appellant's father went on the land in dispute if at all he did so.

I now turn to ascertain whether the respondent was dispossessed by the appellant or went out of possession of the land. In the High Court, the appellant had told the trial judge -

"I know one Saidu Yillah. He is now dead.

He died about 13 years ago. He was my

father..... When my father died and I remained

the only surviving child I took possession

of the property and claimed it to be mine.....

In 1968 after my father's death I got a surveyor to survey the land and prepare plan. He was called Baxter. After he had prepared the plan a Statutory Declaration was prepared in respect of the land....."

The appellant's only witness Yayah Fofana had told the judge -

"I know one Saidu Yillah. He is now dead....

He died in 1963..... After his death the tribal headman in the area handed over his property to Ballu Yillah....."

When cross-examined he had replied -

"I was present when the property was handed over to defendant in 1963. What I am saying is the truth."

Yayah Fofana was a declarant to the Statutory Declaration referred to by the respondent. He and one Brima Fofana had declared in paragraph 9 thereof -

"That some years prior to his death, the late Saidu Yillah in our presence and in the presence of several other inhabitants of the village gave the said piece or parcel of land by way of gift to the First Declarant (Ballu Yillah) herein in consequence of valuable services rendered to him during his lifetime."

It is evident from the above quoted pieces of evidence that while the appellant deposed in one breath that she had been put in possession of the land by her father before his death in 1963, in the next breath she was saying that it was after her father's death that she took possession of the land and claimed it as hers, being the only surviving child. Her witness said that it was after her (the appellant's) father's death, that the tribal

headman in the area put her in possession of the land. Previous to his evidence this same witness had declared in the Statutory Declaration - Exh. 'E' - that the appellant's father had put her in possession "some years prior to his death." On the other hand the appellant had declared in Exh. 'E' that it was "in or about the year 1963" that she was put in possession of the land. In my opinion therefore, the evidence of the appellant and her witness was clearly unreliable as to when she took possession of the land.

In order to succeed under the Statute of Limitations a claimant must prove either that he or someone through whom he claims has dispossessed the true owner or that the true owner has discontinued possession of the same for a continuous period of at least 12 years. The real test whether a rightful owner has been dispossessed or not is whether he could institute an action for possession against some other person. There is no dispossession of the rightful owner as long as he has all the enjoyment of the land that he could possibly have or does not occupy it pending the fruition of some project for which he intends to utilise it. If land is not capable of use and enjoyment, mere absence of use and enjoyment of it by the rightful owner would not amount to dispossession. Where however an owner has no future use for his land and merely abandons it, if a trespasser takes possession of it such possession may be adverse to the owner. In order that there might be dispossession therefore, the acts of the trespasser on the land must be inconsistent with the use and enjoyment of it that was available to or intended by the rightful owner. Finally the trespasser must not have intended to use the land temporarily, but to exercise the right of possession over it.

The judgments in *Leigh v Jack* 49 L.J.Q.B. 220 indicate guide-lines in determining the issue of dispossession -
Cockburn C.J. at page 222 of the report -

"I am of opinion that a person does not necessarily discontinue possession of land because he does not actually use it by himself or by his agent. The question is one of fact to be settled by the circumstances of each case."

Bramwell L.J. in dealing with the issue in his judgment said *inter alia* -

"This is, however a question of fact, and a fact which is difficult to establish against an owner of land.... I do not think he is wrong, for it is necessary that the defendant should shew dispossession or discontinuance of possession; acts of trespass by the defendant are not enough, he must go further"

Cotton L.J. in agreeing with Cockburn C.J., and Bramwell L.J. said -

"As to the question of the Statute of Limitations. I am unable to discover any facts which can be said to amount to dispossession of the plaintiff by the acts of the defendant: I do not think that the plaintiff can be said to have discontinued possession. It is not necessary that an owner should actually be in possession in person, for though absent he may still in the eye of the law be in possession. He does not discontinue possession because he does not actually use or personally enjoy property, the nature of which

prevents there being such use or enjoyment in the absence of the owner. It is in every case necessary to look at the nature of the property the acts of the defendant did not oust the plaintiff, so also the plaintiff has not himself discontinued possession....."

More recently Lord Denning M.R. has restated the position in these words .. in Wallis Cayton Bay Holiday Camp Ltd. v. Shell-Mex and B.P. 1974 3 All E.R. 575 at 580; 1974 3 W.L.R. 387 at 392 -

"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 possession....."

When the true owner of land intends to use it for a particular purpose in the future, but meanwhile has no immediate use for it, and so leaves it unoccupied, he does not lose his title to it simply because some other person enters on it and uses it for some temporary purpose, like stacking materials or for some seasonal purpose, like growing vegetables, not even if this temporary or seasonal purpose continues year after year for 12 years or more: see Leigh v Jack, Williams Brothers Direct Supply Stores Ltd. v. Raftery, Techbild Ltd. v Chamberlain. The reason is not because the user does not amount

to actual possession. The line between acts of user and acts of possession is too fine for words. The reason behind the decision is because it does not lie in the trespasser's mouth to assert that he used the land of his own wrong as a trespasser. Rather his user is to be to the licence or permission of the true owner. By using the land knowing that it does not belong to him; he impliedly assumes that the owner will permit it; and the owner, by not turning him off, impliedly gives permission."

On the basis of the principles set out above, let us assume for the purposes of this appeal that the appellant was in adverse possession; the question then arises 'for what period was she adverse possession'?

There is no evidence that the appellant's father had dispossessed the respondent or that he was in adverse possession of the land prior to 1963, if he went on the land at all. Since the evidence as to when the appellant's father went on the land is unreliable, and also since it is uncertain when the appellant actually went on the land, this Court cannot add the period of the father's alleged prior possession to hers. According to the evidence, the earliest possible time when the appellant went on the land was "1963" and "in or about the year 1963". The plan showing the buildings on the land is dated 1967.

The writ of summons commencing the proceedings in this matter, was issued on 4th July 1974. Taking the earliest possible date in 1963 - 1st January 1963, then the appellant was not in adverse possession of the land for the prescribed statutory period of 12 years, whether she went there in 1963 or 1967. I agree with the trial judge that the appellant was not in adverse possession of the land for 12 years to enable her to avail herself of the Limitation Act. The appeal therefore fails.

(Sgd.) Hon. Mr. Justice S. Beccles Davies, J.S.

I agree (Sgd.) Hon. Mr. Justice E. Livesey Luke, C.J.

I agree (Sgd.) Hon. Mr. Justice C.A. Harding, J.S.C.

I agree (Sgd.) Hon. Mrs. Justice A.V.A. Awunor-Renner, J.S.C.

I agree (Sgd.) Hon. Mr. Justice Constant S. Davies, J.A.