No. 64 of 1947.

In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

NII ABOSSEY OAKAI II and KORKOI ABOSSEY (Defendants) - - - - - - *Appellants*

AND

NII AKIYAI II, Manche of Akumajay (Plaintiff) *Respondent.*

Case for the Respondent

RECORD.

1. This is an Appeal from the Judgment of the West African Court of Appeal dated the 15th day of June, 1946, confirming a judgment of a single Judge of the Supreme Court of the Gold Coast (sitting with an Assessor, who concurred with him) dated the 27th September, 1945, in favour of the Respondent in which the latter claimed a declaration that he was the Mantse of Akumajay and as such the owner of certain land situate at Accra known as Obete Kpakpo land. p. 51. p. 42.

2. The Plaintiff (the present Respondent) claimed that the land in dispute was the property of his Stool, whereas the Defendants (the present Appellants) contended that it is the property of the Na Adawude family, which they allege is the Stool family (hereinafter called " the family "). It is not in dispute that the land, which is 1·28 square miles in area and delineated in a plan in evidence (Exhibit 3) contains a fair-sized township known as Abossey Okai, which was formely farm land with only a few houses on it, but is now covered with hundreds of houses. It is also not in dispute that the emblem of the Akumajay stool is a vulture and that the words " Obete Kpakpo " mean " The Vulture's Pool."

3. There is a tradition, which the learned trial judge found proved, that since the time of Ayikai I, who founded the Akumajay quarter of Accra towards the end of the seventeenth century, there was no occupant of the Akumajay stool until 1914 when the present Respondent was enstooled as Ayikai II at the age of sixteen. The Respondent abdicated in 1925 and went to Nigeria where he remained until 1940 when he was again put on the stool. p. 43, l. 34.

p. 117. 4. On the 9th December, 1940, one Nii Akrong, who was and was expressed to be the head of the Abossey Okai family, and fifteen other members of the family signed and published the following public notice :—

> In the issues of November 28 and December 2, 1940, there appeared a Notice signed by Nathaniel Tagoe, who styles himself as Headman of Obinte Kpakpo village and Head of late Abossey Okai's family, and that lands known as Obinte Kpakpo lands are family lands of the late Nii Abossey Okai of Accra.
>
> The Public is hereby informed that we the undersigned principal members of the said Abossey Okai's family, declare positively that the publication by Nathaniel Tagoe referred to above touching Obete Kpakpo lands is untrue and unfounded, and we hereby affirm that Obete Kpakpo land is a property attached to the Stool of Akumajay Mantse. That the late Nii Abossey Okai was, prior to his death, a member of the Akumajay Stool and had been " Caretaker."
>
> The public is hereby further informed that the said Nathaniel Tagoe has never been appointed " Headman " of Obinte Kpakpoe Village neither has he been " Head " of Abossey Okai's family.

5. On the 6th February, 1941, the Respondent brought

THE PRESENT SUIT

which was originally instituted in the Ga Mantse's Tribunal, but was
p. 5. transferred by order of the Provincial Commissioner dated 28th August, 1943, to the Eastern Province Divisional Court, Accra, of the Supreme Court of the Gold Coast. The original Defendants were Korkoi Abossey
p. 11. and Nathaniel Tagoe, but on the death of the latter Nii Abossey Okai II was substituted in his place. On the 20th day of October, 1944, one
p. 14. Sarah Addo applied to be added as a Co-defendant and on the 28th October, 1944, the Court ordered that she should be so joined, as she claimed the land in dispute in competition with both the other parties. Subsequently
p. 38, l. 41. the Court ordered her name to be removed from the array of parties and excluded from consideration any evidence which could not have been adduced if she had not been a party.

p. 7. 6. In his Statement of Claim dated the 9th June 1944, the Respondent set up his title as the Mantse of the Akumajay Division of Accra and
p. 8. to represent the Stool and people of Akumajay. The Respondent further pleaded that the land in dispute was first occupied by his ancestors about 200 years previously on their immigration to Accra from Ayawaso ; that it had since been in the occupation and undisturbed possession of the said Akumajay Stool ; that Nii Abose Okai I, an elder of the Akumajay Stool and through whom the Defendants claimed, was in his lifetime a caretaker of the properties of the Stool and people and as such caretaker had the control of the land in dispute ; that Nii Abose Okai I had in his lifetime declared himself to be a Caretaker of the said land for the Stool and never at any time laid claim to it in his individual capacity ; and that the Defendants (the present Appellants) were therefore estopped from averring that the land in question was the individual property of

the said Nii Abose Okai I. The Plaintiff (Respondent) therefore claimed a declaration that the land in dispute was the property of the Akumajay Stool.

7. By their Defence dated the 30th June 1944 the Defendants (Appellants) denied all the material allegations in the Statement of Claim and pleaded specially that the land in dispute was the property of the Na Adawude Family, a distinct branch of the Akumajay Stool Family, of which the present Head was the first Defendant Nii Abose Okai II and was not the property of the Akumajay Stool. They alleged that the land in dispute belonged originally to the Obutu Stool, which granted it by way of gift to the said Na Adawude grand-daughter of the then Mantse of Obutu upon her marriage with Nii Ayikai I, the then Mantse of Akumajay, that the Defendants were the direct descendants of Na Adawude and they and their predecessors in title had been in undisturbed possession and occupation of the land in dispute for about 250 years, and that they had dwelling-houses and farms thereon. p. 8. p. 9.

8. After recording evidence both oral and documentary, the learned trial judge gave judgment for the Respondent (Plaintiff) making the declaration sought. In the course of his judgment he said :—

" The evidence as to occupation taken together with that of tradition would, I think, have been sufficient to establish the family's title, but for the evidence which it is submitted by the plaintiff shows clearly that prominent members of the family have repeatedly made it clear that they have occupied the land as caretakers on behalf of the stool, and not as owners. This submission I find to have been fully substantiated. p. 44, ll. 18–41.

" Kru Tei and R. C. Abossey, son and nephew respectively of the late Abossey Okai, gave evidence in this case in support of the plaintiff's claim that the land belongs to the Stool.

" The Plaintiff gave evidence to the effect that in 1921 Abossey Okai in the presence of the Elders showed him the boundaries of Obete-Kpakpo. Korkoe Abossey was present. This was confirmed by Okorli Mensah who stated that Abossey Okai told the Mantse that the land belonged to the Stool. This evidence has not been questioned. Abossey Okai was at the time head of the family.

" In 1922 the plaintiff posted on the land a public notice stating that the land belonged to the Stool. There was no opposition.

" In 1940 a similar notice was posted on the land at the instance of the plaintiff on his return from Nigeria. This led to the first open assertion of ownership on behalf of the family, the publication of a notice to that effect by Nathaniel Targoe who signed it as head of the family.

" A further notice was published later in 1940 by Nii Akrong who also claimed to be head of the family and by other members of the family repudiating in its name the claim to ownership."

9. Dealing with documentary evidence, the learned Trial Judge said :—

p. 44, ll. 42–49.

> " A number of documents have been produced relating to the land, which were executed by the head for the time being of the family as caretaker for the Stool. In one form or another every senior member of the family seems of late years to have subscribed to a statement in writing that the land belongs to the Stool. Various attempts have been made by the defence in the course of the case to explain away this uncomfortable fact, but in my opinion they have failed utterly."

and later he said :—

p. 45, ll. 7–22.

> " Admissions do not operate as an estoppel, but their weight as evidence is a matter of common sense. If the leading members of the family have said again and again that they are caretakers of the land for the Stool, and until recently are not known to have said anything to the contrary, I can see nothing in the evidence to prevent my accepting those statements as true. If the persons uttering them believed them to be untrue one would expect some satisfactory explanation to be forthcoming. There has been nothing of the kind.
>
> " In the circumstances no reliance can be placed on tradition as to what happened two hundred years or more ago when this is disputed.
>
> " The facts as revealed by the evidence as to the extensive control exercised by the family over Obete-Kpakpo are quite reconcilable with the position so often alleged by the family that it has functioned as caretaker of the land for the Stool. A caretaker is normally accountable to the owner, but as already suggested what would be abnormal elsewhere has apparently in certain respects been the normal state of affairs in Akumajay."

The documents referred to by the learned Trial Judge as admissions by the family are Exhibits A, B, D, E, F, G, H, I and J, printed in the record between pages 68 and 117.

10. The Defendants (Appellants) being aggrieved by the Judgment of the learned Trial Judge appealed to the West African Court of Appeal and Final Leave to Appeal was granted on the 20th November 1945.

p. 45, l. 15.

11. The appeal of the Defendants (Appellants) was heard by the West African Court of Appeal (Baker, Pres., Beoku Betts and Korsah, JJ.). Arguments were heard on behalf of both parties on the 28th and 29th May, 1946, when judgment was reserved. On the 15th day of June, 1946, the judgment of the West African Court of Appeal was delivered, all three judges agreeing that the Appeal should be dismissed with costs.

pp. 47–50.
p. 51.

12. In the course of the judgment of the Court read by Beoku Betts, J. (of Sierra Leone), the Court agreed with the learned Trial Judge in its finding that Kru Tei gave evidence in support of the Plaintiff's claim that the land belonged to the Stool, but disagreed with the trial judge as to the effect

of the evidence of R. C. Abose, holding that it was ambiguous. As regards the notice referred to in paragraph 4 hereof they held that it was on the face of it, important as an admission and they concurred with the trial judge in disregarding the explanation given by Nii Akrong in evidence that he had not known the nature of the document he was signing. The Court then considered certain earlier documents and reached the following conclusion regarding the documentary evidence as a whole :—

" In these documents the several grantors expressly stated p. 55, ll. 1–26.
that they were caretakers of representatives of the stool and were
10 conveying the land or area respectively with the consent and concurrence of the elders, councillors and people. The effect is that these documents contained admissions that the land was stool land and not family land. Unless explanations are given which satisfy the Court as to the circumstances or show clearly that such admissions should not be so regarded, due weight would be given to them as such. One explanation given is that when Abossey Okai stated in the deeds that he was ' caretaker ' of the land his mentality should be taken into consideration. It was sought to show this mentality by reference to a recital in a previous case and to be found
20 on page 70 of Judgments of the Full Court held at Accra in February, 1919. In that Abossey Okai (the same person who figures prominently in these documents) is reported as saying that ' the person who is taking care of the land is the owner of the land.' If he as caretaker claims that he is owner of the land, surely an admission that he as caretaker and therefore for the time being the owner, is in fact only holding the land on behalf of the Stool, there is no element in his mentality which requires any special consideration. Such an admission from a person in that position is of greater weight than if it came from a person who is a ' caretaker ' according
30 to the English legal conception of the term. A caretaker according to the native customary law of the Gold Coast has full powers of disposing of and dealing with land in his care if he gets the consent and concurrence of others interested evidenced by their joining in any document. Admissions therefore made by him in similar circumstances would be binding and would have full weight and effect."

13. The learned Judges then dealt with the argument of learned p. 55, l. 39 *et seq.*
Counsel for the Appellants that a caretaker holds an interest analogous to a life tenant in English Law, and that any admissions made by him would
40 only bind his life interest and that of the remainderman or reversioners but they held that the nearest analogy of a caretaker to English Law is that of a trustee, under which the admissions of a trustee would bind the cestui que trust (*Bayerman* v. *Radenius*, 101, E.R. 1186).

14. When dealing with the Appellants' Exhibits (" 4 ", " 5 " and " 6") p. 56, ll. 11–40.
the learned Judges noted that they had not been referred to by the learned Trial Judge, but nevertheless came to the conclusion that when the whole of the evidence is taken together, these Exhibits do not affect or detract from the value of the admissions on which he acted.

15. The Appellants being aggrieved by the judgment of the West African Court of Appeal dated the 15th June, 1946, thereafter applied for an Order for leave to appeal to His Majesty in Council and on the 23rd day of May, 1947, final leave was granted.

p. 57, l. 28.

16. The Respondent submits that this Appeal should be dismissed with costs for the following among other

REASONS

(1) BECAUSE both Courts below have found as a fact that the land in suit was the property of the Stool and that the Appellants and their predecessors-in-title occupied the land as caretakers on behalf of the stool and not as owners.

(2) BECAUSE there was ample evidence, oral and documentary, to support such finding.

(3) BECAUSE both Courts have correctly held that, in the absence of any satisfactory explanation, they were entitled to rely on the admissions against interest by certain of the Appellants or their predecessors-in-title contained in the documentary evidence.

(4) BECAUSE the judgments of both Courts are right.

DINGLE FOOT.

GILBERT DOLD.

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Case for the Respondent

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