INSTITUTE OF ADVANCED LEGAL STUDIES, 25, RUSSELL SQUARE, LONDON, W.C.1
12,1951

P.C. Appeal No. 61 of 1941.

In the Privy Council.

30817

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.

UNIVERSITY OF LONDON W.C.1 1953 INSTITUTE OF ADVANCED LEGAL STUDIES

BETWEEN

ATTA KOJO and KOJO APPEANYA - - *Appellants*

AND

CHIEF KWEKU DADZIE, Nkyidomhene of Bremang, for himself and on behalf of the Anona Stool and family of Bremang in Eguafo State - - - - *Respondent.*

Case for the Appellants.

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal dated the 25th May 1940 reversing a judgment of the Provincial Commissioner of the Central Province of the Gold Coast Colony dated the 28th October 1939, and restoring with one modification the judgment of the Eguafo Native Tribunal dated the 29th March 1939.

2. The main question for decision in this appeal is whether the Respondent who was the plaintiff in the case has established a title over certain land, superior to that of the first Appellant, who has been long in possession by virtue of purchase by public auction. p. 41.

3. The land in dispute is cocoa farm land known as Warababa Cocoa farm. The boundaries of the area were ascertained by inspection in the case, and the only dispute as to their position is whether they are or are not in what is known as the Eborhu land appertaining to the Respondent's stool.

4. Atta Kojo the first Appellant claims to have purchased the land at auction in 1918, and Kojo Appeanya the second Appellant described as his brother was joined as a defendant at the request of the first Appellant and with the consent of the Court. Chief Kweku Dadzie the Respondent claims the land as belonging to his stool, and would concede nothing more than tenancy rights to the first Appellant. p. 4, l. 1.

5. Apart from oral evidence there is nothing known of the earlier history of this land, but on the 13th February 1918 it was purchased by the first Appellant as evidenced by a Sale Certificate. Actually the Sale Certificate appears to bear the date 29th April 1908, but the Appellants have only claimed possession as purchasers from 1918. p. 41.

The Certificate is as follows :—

" Certificate of purchase of Lands.

In the Supreme Court of the Gold Coast Colony, Central Province, Cape Coast.

A.D. 1908 (*sic*)

Suit No. 5/16.

Between Kweku Mensah - - - - - - Plaintiff

and

Kwesie Tandoh - - - - - - Defendant.

This is to certify that Attah Kojoe has been declared the purchaser of the right, title and interest of Kweku Mensah in the messuages lands and tenements hereinafter mentioned, that is to say :— 10

All that plaintiff's land called Wadababa situate and being at Essaman or thereabouts in the District of Elmina bounded by or abutting the lands of the following persons, namely, Garboh, Kobina Esuon, and Ohene Kwesie Tandoh sold by Public Auction under Writ of Fi. Fa. No. 5/16 in the above case on the 13th day of February, 1918, for the sum of £30.0.0 which said messuages lands and tenements were sold in execution of a decree in the above suit by Order of this Court, dated the 13th day of February, 1908. 20

Dated at C. Coast the 29th day of April, 1908.

(Sgd.) G. W. Calley,
District Commissioner."

p. 43.
p. 44.
p. 48.

6. The Respondent appears to have made no protest at the time but in 1934 he brought a suit against the present Appellants for £25 damages for trespass in that they had entered the land unlawfully with a Surveyor for the purpose of making a survey. That suit was decreed, and the decree was confirmed in first appeal, but set aside on second appeal by the West African Court of Appeal on the 19th December 1936. 30

7. On the 10th February 1939 the Respondent instituted the

PRESENT SUIT

by means of a civil summons in the Native Tribunal of Eguafo State.

In this summons the Respondent claimed a declaration of title to all the land called Eborhu, and asked for an account to be " taken of all rents due and owing by the defendant on Eborhu land, and also all rents collected by the said defendant Atta Kojo from other tenants on the said Eborhu land from 1918 to date of judgment herein and payments by the defendant to the plaintiff of any sum or sums found due upon taking such accounts the said land being the property of the plaintiff's stool and family," and also for " An injunction restraining the said Atta Kojo the defendant herein his agents or servants from collecting any more rents from tenants occupying the said land." 40

8. At the hearing of the case by the Tribunal the plaintiff gave evidence to the effect that five years before the suit i.e. in 1934 the present 1st Appellant had asked for some land in Eborhu on rent, but had only paid £1 7s. instead of £3 7s. He also said that Eborhu land had been granted to Kweku Mensah's father by his ancestor, and that the latter had made the village Warababa, and on this land paid £1 16s. till his death. He further said that Kweku Mensah made a cocoa farm under the "Ebusa" system, and when the first Appellant purchased the cocoa farm he refused to pay the Ebusa. (The Ebusa system is a form of tenure under which the occupier gives one-third of the produce of the land to the owner or the person by whose permission he occupies the land.)

pp. 4-6. p. 4, l. 22. p. 4, l. 30. p. 5, l. 1.

It appears from this statement that the Respondent was claiming in respect of land in Warababa village occupied by the first Appellant in about 1934, and cocoa farm land occupied since his purchase in 1918. According to the Respondent it was the cocoa farm only which was sold at auction and not the land.

p. 5, l. 36.

9. The plaintiff's witnesses do not mention the cocoa farm land at all. They are neighbouring land-owners and the purport of their evidence is that the Warababa village is in the Respondent's Eborhu land.

10. The second Appellant gave rebutting evidence showing that the Appellants had obtained land in Warababa forty years ago from Kweku Mensah, whose ancestors were the owners of the land. He denied that only the farms and not the land were the subject of the sale, and he states that the Respondent himself bid at the auction.

pp. 9-11. p. 10, l. 38. p. 11, l. 1.

In reply to the Tribunal the second Appellant said: "We did not buy the whole 'Eborhu' land. We did not buy Wadababa village together with the land. The village (Wadababa) is not our property as we did not buy it."

Two witnesses support the Appellants' case that Kweku Mensah was the owner of the land sold at auction.

11. The Court made an inspection on the 24th March 1937, in which the boundaries of the cocoa farm land were established. The rough sketch map attached to this case shows the site. The nearest point of the disputed land is about one mile from Wadababa village.

p. 13. p. 13, l. 17.

12. In their judgment by which the Tribunal decreed the claim in full, they appear to have misapprehended the nature of the defence when they say: "It is alleged by the plaintiff and not denied by the defendant, that the land was owned by the stool of Breman, now occupied by the plaintiff and Kweku Mensah was a tenant to the plaintiff."

p. 15, l. 26.

The injunction granted by them is expressed as follows:—

> "The defendants are also restrained from collecting any more rents from the tenants occupying the said Eborhu land."

13. At the hearing of the appeal by the Deputy Commissioner Central Province on the 25th and 26th September 1939, the judgments in the Trespass Case of 1934 were not produced, but the Court allowed a

p. 21.

pp. 28–30.

review so that he might consider those judgments, and he concluded that they did not affect his decision that the appeal should be allowed, although some verbal alterations became necessary in the text of his judgment.

The learned Deputy Commissioner found that :—

p. 21, l. 37.

"The Tribunal has made erroneous statements in its judgment as to the evidence which was given before it which gives rise to a doubt as to whether the Tribunal's findings of fact are not perverted, erroneous interpretation of and faulty deduction from the evidence before it." 10

p. 21, l. 45.

p. 22, l. 3.

He pointed out that "the auction of this land was no hole and corner affair, but truly public, and that the plaintiff-Respondent was fully cognisant of it," and found it very strange that he entered no interpleader against the sale.

p. 22, l. 13.

In the conclusion he said : "Even if the facts with regard to the ownership by Kweku Mensah as found by the Tribunal were right which I more than doubt, no normally fair-minded person could possibly say that the conclusions drawn by the Tribunal are fair and just in upholding the Plaintiff's attempt to disturb the Defendant's possession after sleeping on his so-called rights for 21 years, and furthermore as the Defendant 20 came into possession by means of a legal process of English Law the Statute of Limitation operates and so the Tribunal had no legal right to entertain the Plaintiff's claim."

p. 29, l. 43.

After seeing the proof of the proceedings in 1934, the learned District Commissioner said : "It is now apparent that the plaintiff has made certain endeavours to establish title to the land in dispute and took an action for trespass against the defendant which action failed before the West African Court of Appeal, and having failed in this is now trying to establish his right by suing the defendant for rents on the land, to which the defendant never agreed." 30

p. 30, l. 30.

He summed up as follows : "It is my belief that the Plaintiff Respondent is endeavouring to use the Courts in every conceivable manner to try and recover to his stool certain land which was legally alienated twenty-one years ago and which no doubt has now become profitable."

p. 36.

14. In second appeal the West African Court of Appeal considered that the decision of the lower Appellate Court was based on two grounds, namely, the purchase of the land by the defendant, and the delay by the plaintiff.

On the first point they said :— 40

p. 36, l. 15.

"Actually all that the first defendant bought was Kweku Mensah's right, title and interest in the land. What Kweku Mensah's right, title and interest was is a question of fact and the Native Tribunal found as a fact that his right, title and interest were that of a tenant only. There was abundant evidence to support that finding of fact and we see no reason to disturb it."

On the second point they said :—

p. 36, l. 25.

"If this were an action to recover possession this matter of sleeping on his rights might have to be carefully considered, but it is well-established Native Law and Custom that rights of ownership are not extinguished by lapse of time, and consequently the plaintiff has not lost his right to the declaration he seeks."

As the claim for account of rents was not pressed in appeal, that part of the order of the Tribunal was not restored.

The Court did not explain the scope of the order of injunction.

10 15. It is submitted that the Court was in error in accepting the Tribunal's finding of fact, and in holding that there was abundant evidence to support it. Actually as shown by the learned Provincial Commissioner the Tribunal's judgment was not in accordance with the evidence, and there was no evidence to support the plaintiff's claim that Kweku Mensah was a tenant.

It is further submitted that the true rule of Native Law and Custom is that rights of ownership are not extinguished by lapse of time alone, but that such rights are extinguished by ouster, conquest or any other actual dispossession, and this rule is applicable not only to suits for 20 possession but to any action for a declaration of title.

p. 40.

16. Leave to appeal to His Majesty in Council was granted on the 13th May 1941.

17. The Appellants humbly pray that the judgment of the West African Court of Appeal should be set aside, and the judgment of the Provincial Commissioner dismissing this suit with costs should be restored for the following among other

REASONS.

(1) BECAUSE the Plaintiff (Respondent) failed to prove his title to the land in suit.

30 (2) BECAUSE the Defendants (Appellants) proved their title and have admittedly been in possession since 1918.

(3) BECAUSE the suit was barred by limitation.

(4) BECAUSE at all events the fact that the Plaintiff (Respondent) slept on his rights for at least 16 years is inconsistent with the claim which he has now set up.

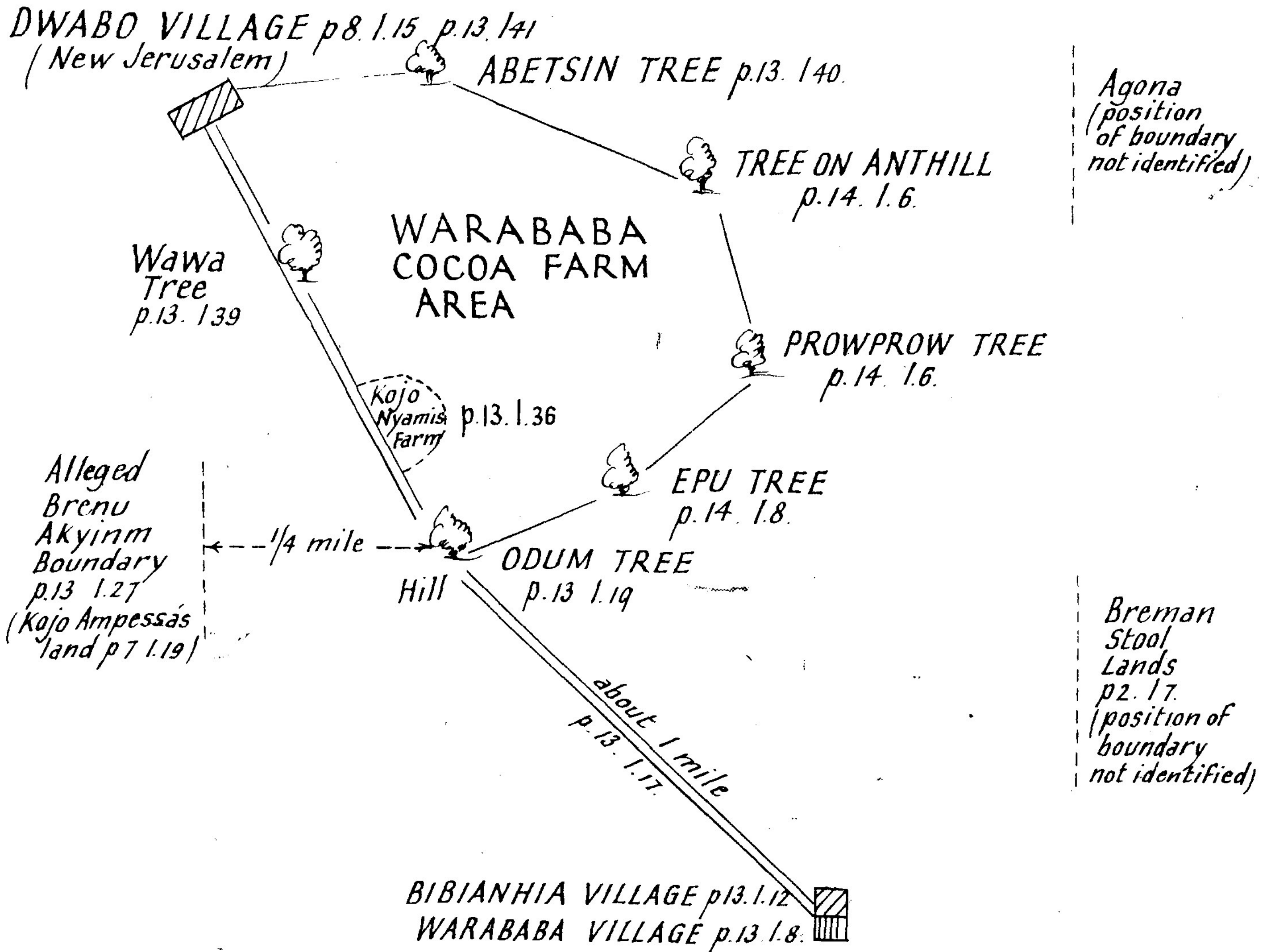
(5) BECAUSE the Court of Appeal were in error in holding themselves bound by findings of fact by the Tribunal, which were against the evidence.

40 (6) BECAUSE there is no evidence on which the order of injunction can be supported.

(7) BECAUSE the judgment of the Court of Appeal was wrong and the judgment of the Provincial Commissioner was right.

A. G. P. PULLAN.

Wassaw Stool Lands p.2 l.5.
(position of boundary not identified)



Bisiasi Stool Lands p2. l.7 p.7. l35 (position not identified)

BIMPONG VILLAGE p.6. l.15 near Warababa Village

EBEDENEGYA VILLAGE p.6 l.17 (position not identified)

BRENU - AKYINM STOOL LANDS p.2 l.6; p.7. l7 & l.25 and DABRI VILLAGE p.21 l.6.

The Gold Coast Government Survey Sheet No. 25 shews the distances from Warababa Village of the following places mentioned in the Record to be approximately as follows:-

Agona Village	3½ miles	North-east
Bisiasi Village	3¾ "	South South West
Brenu - Akyinm Village	7 "	somewhat West of South East
Breman Village	3 "	somewhat North of East
Bimpong Village	3 to 4	furlongs South East
Dabri Village	2½	miles South East
Dwabo (Old) Village	1½ miles	North east

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